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1887, Mar. 14	Directors of Wabash Co. approve sale of D. M. N. W. to Polk & Hubbell	IV	1530
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1890, Feb. 5	Proposition from Purchasing Committee to F. M. Hubbell to sell $135,000 bonds and one-fourth interest in capital stock of D. M. Union, and acceptance of proposition	IV	1599
1890, Feb. 11	Draft of contract for sale to Hubbell of one-half the above bonds and stock, with one paragraph in the handwriting of Blodgett, and also guaranteeing that the D. M. & St. L. would approv transfer of stock.	IV	1600
1890, Feb. 11	Contract between Hubbell and Purchasing Committee for sale of above stock and bonds	IV	1601
1890, Feb. 11	Contract of Purchasing Committee to amend articles of incorporation of D. M. Union	IV	1601
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1889, Nov. 22	Deed of George F. Henry, Commissioner, to Solon Humphreys et al., trustees, of all property of the St. L., D. M. & N., including stock of D. M. Union	II	589
1889, Nov. 19	Articles of incorporation of D. M. & N. Ry. Co	II	592
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	G. M. Dodge 1 share		
	F. M. Hubbell 1 share		
	H. D. Thompson 1 share		
	L. M. Martin 1 share		
	J. F. How 1 share		
	C. M. Hays 1 share		
	Purchasing Committee 998 shares		
	D. M. & N. Ry. 998 shares		
	D. M. & N. W. Ry. 998 shares		
	F. M. Hubbell 500 shares		
	G. M. Dodge 500 shares		
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1890, Apr. 8	Letter of Ashley to Hubbell, asking $115,000 for $100,000 D. M. Union bonds and one-eighth D. M. Union stock	IV	1602
1890, June 5	Contract of sale by Purchasing Committee to Hubbell of 50 bonds and 500 shares of stock D. M. Union for $57,736	IV	1613

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1890, July 16	Purchasing Committee approve of sale of above stock and bonds	IV	1560
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1890, Aug. 11	Letter Hubbell to Ashley, enclosing certificate for 996 shares of stock in D. M. Union, asking to have Purchasing Committee assign 498 shares to him	IV	2023
1890, Aug. 15	Letter Ashley to Hubbell, asking for explanation	IV	2023
1890, Aug. 19	Letter Hubbell to Ashley explaining	IV	2024
1890, Aug. 22	Letter Ashley to Hubbell saying explanation is satisfactory.	IV	2026
1890, Aug. 28	Letter Hubbell to Ashley forwarding certificate for 498 shares in D. M. Union in name of Purchasing Committee	IV	2026
1890, Aug. 28	Certificate No. 9, D. M. Union, was canceled and certificate 15 for 498 shares to Purchasing Committee, and certificates 16 and 17 for 250 and 248 shares, respectively, to F. M. Hubbell were issued	II	711

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1891, Feb. 11	Annual meeting of stockholders of D. M. Union. Among those present were G. M. Dodge representing 500 shares, F. M. Hubbell 999 shares, James F. How representing himself and Purchasing Committee, F. C. Hubbell representing D. M. & N. W., G. M. Dodge representing D. M. & N. Minutes of meeting of stockholders and directors for the year 1890 including meeting at which articles were amended were read and approved	IV	1318
1891, Dec. 14	Articles of consolidation of D. M. & N. W. and D. M. & N. organizing the D. M. N. & W. Ry. Co., by which the property of the first two named companies vested in the D. M., N. & W.	II	624
1892, Jan. 15	Certificates 10, 11, 12, 14, 16 and 17, aggregating 3,492 shares in the D. M. Union, were transferred to the D. M., N. & W. Ry. Co., and reissued as certificates 19, 20, 21 and 22	II	711
1893, Oct. 4	D. M., N. & W. Ry. Co. pledge F. M. Hubbell & Son 2,500 shares of the D. M. Union stock to secure $122,000 indebtedness	IV	1480

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1893, Oct. 4	Certificates 20, 21 and 22, D. M. Union stock, were canceled, and in lieu thereof were issued certificate 25 for 494 shares, to D. M., N. & W., and certificate 26 to F. M. Hubbell & Son, for 2,500 shares	II	711
1893, Oct. 4	Directors of D. M. Union authorize transfer of above stock	IV	1333
1894, Jan. 25	Annual meeting of stockholders of D. M. Union, at which F. M. Hubbell & Son appeared as the owners of 2,500 shares of stock	IV	1333-4
1894, Jan. 19	Proxy of Purchasing Committee authorizing Hays to vote 498 shares at above meeting	IV	2012
1894, Jan. 29	Hubbell & Son buy 2,500 shares of stock of D. M., N. & W., held by them as collateral security	IV	1482
1894, Feb. 22	Letter Hubbell to Miller saying D. M., N. & W. own one-fourth, Wabash one-eighth and individuals five-eighth, of the capital stock of D. M. Union	IV	1617
1897, July 31	Ratification contract executed by all railway companies stating that F. M. Hubbell & Son own 2,500 shares of stock in the D. M. Union	II	506
1897, July 21	Meeting of board of directors of D. M. Union authorizing above contract	IV	1357

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1897, Sept. 7	Directors D. M., N. & W. Ry. Co. ratify same contract	IV	1497
1886, Oct. 16	Deed from Mercantile Trust Co. to Purchasing Committee, to properties of Wabash, St. L. & Pacific	II	706
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1899, Jan. 1	Mortgage of The Wabash R. R. Co. to Continental Trust Co. of its railroad commencing at or near the eastern limits of the city of Des Moines, where it connects with the track of the D. M. Union Ry. Co., and including 500 shares of stock in the D. M. Union Ry. Co	IV	1928

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1899, May 1	—Deed of D. M., N. & W. R. R. Co. to Milwaukee Co., transferring its railroad commencing at western imits of city of Des Moines, extending northwesterly, and a one-fourth interest in the capital stock of the D. M. Union Ry. Co	II	673
1899, May 8	—Stockholders of D. M., N. & W. R. R. Co. ratify the contract	IV	1508
1907, June 12	—Meeting of stocgholders of D. M., N. & W. R. R. Co. authorizing correction deed to the Milwaukee Company covering line extending from Farnham street westerly to Twenty-eighth street	II	678
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1891, Feb. 11	—Directors D. M. Union authorize amounts collected from tenants for switching credited on bills of tenant companies	II	497

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1892, Jan. 7	Directors D. M. Union order that practice of making credits above referred to be discontinued until further orders	II	498
1897, July 31	Ratification contract by which tenant companies agree to pay in strict accordance with the terms of contract of May 10, 1889	II	506
1897, Sept. 7	Directors D. M., N. & W. authorize execution of ratification contract	IV	1497
1897, Oct. 5	Directors of Wabash Co. authorize execution of ratification contract	IV	1540
1906, Mar. 12	Record of meeting of board of directors D. M. Union Ry. Co., at which for the first time complainants claim to be entitled to surplus earnings	II	333-6

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1918.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON,
Respondents.

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PETITION FOR WRIT OF CERTIORARI.

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Now come the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the "St. Paul Company", and the Wabash Railway Company, hereinafter called the "Wabash Company", and respectfully petition this Court to grant a writ of *certiorari* under Section 240 of the Judicial Code to the Circuit Court of Appeals for the Eighth Judicial Circuit, to remove therefrom, for review here, the record in the cause therein pending numbered 4885 in equity, wherein your petitioners are appellants, and the Des Moines Union Railway Company, F. M. Hubbell, F. C. Hubbell and F. M. Hubbell & Son are appellees,

also the record in the cause therein pending numbered 4886, wherein your petitioners are appellees, and said Des Moines Union Railway Company (hereafter called the Des Moines Company), F. M. Hubbell, F. C. Hubbell and F. M. Hubbell & Son are appellants (a copy of the records being presented herewith), and state:

This is a bill in equity filed in the District Court for the Southern District of Iowa to enjoin the respondents, F. M. Hubbell and F. C. Hubbell, from causing the Des Moines Company (which they dominate), to exclude petitioners from the use and occupation of the parts of their railroads and all their terminal facilities located in Des Moines, Iowa, which petitioners and their predecessors acquired and developed and have operated in the name and under the management of that company as their agent, and to recover income derived from the use thereof now in its treasury (55; 119).*

The railroads and terminal facilities in controversy include a double track railroad extending from a connection with the railroad of the Wabash Company at its terminus at the east limits of the City of Des Moines through the business center of Des Moines over a bridge across the Des Moines River to a connection with the tracks of the railroad of the St. Paul Company at its terminus at Sixteenth street near the western limits of Des Moines, a distance of about three miles; passenger depot, freight

*Note: Figures in parenthesis throughout this petition refer to pages of the record and where double pages appear they refer to the pages stamped by the clerk in heavy black figures above the pages originally printed.

depot, sidetracks, switches, roundhouses, turntables and industrial tracks connecting with all industries of importance in Des Moines, together with switch engines and other incidental facilities (1047) (183) (460). The original outlay for the ground and right-of-way was $461,257.00 (478-479) and F. M. Hubbell estimated the value of the property at $2,000,000 (1094).

All of the judges of the Court of Appeals were of opinion that petitioners are entitled to the income in the treasury of the Des Moines Company and that they and their predecessors acquired and owned the joint railroad and terminal facilities, but two of the judges were of opinion (2086-2119) that the petitioners and their predecessors had "gradually **let slip** from them" the joint railroads and terminal facilities (2115) notwithstanding "there is nowhere any indication that the railways **intended** any such result and yet such, in our judgment, is the result. This **unexpected outcome** was the product of several circumstances". The other Judge was of a contrary opinion (2120-2126), but the Court ordered and adjudged that petitioners are entitled to recover the income, and that the Des Moines Company is the owner absolutely of the joint railroads and terminal facilities and that petitioners are not entitled to use and occupy them (2126).

The bill is based on:

(1) **A contract dated January 2, 1882, between the D Moines & St. Louis Railroad Company, predecesso. in title of the Wabash Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, predecessors in title of the St. Paul Company, and How and**

Dodge, their trustees, which stated that said predecessor companies (hereinafter sometimes called the railway companies) "are engaged in the construction of railways converging at the City of Des Moines", and had agreed to extend their railroads into and through Des Moines by constructing joint railroads, and to develop joint terminal facilities therein on ground they had purchased for that purpose and that such joint railroads and terminal facilities should be held in perpetuity **"subject to the joint use and occupation of all said railway companies"** at actual cost to be shared in accordance with use (120-122).

(2) Articles of incorporation of the Des Moines Company made by F. M. Hubbell and other authorized representatives of the railway companies, on December 10, 1884, which after setting out the above contract *verbatim* provided among other things (Art. II) that, **"all the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, 1882"** (123-129).

(3) Resolutions of the railway companies directing that their joint railroads and terminal facilities be conveyed to the Des Moines Company **"to carry out the purposes of said contract of January 2nd, 1882"** (Ex. D, 131-132; Ex. F, 134-135; Ex. G, 135, 136, 137), and the resolution of the Des Moines Company **"that this Company accepts the transfer and management and operation of said property and assumes control thereof from this date * * * and that it hereby instructs its president to make such order as may be necessary to render such control and management effective as provided in said contract"** (Ex. C, 130-131).

(4) A supplemental agreement dated May 10, 1889, between the railway companies and the Des Moines Company, which covered in detail the operation of the joint railroads and terminal facilities until May 1, 1918 (150-159).

Deeds were made to the Des Moines Company (143-150, 455-459), which made its mortgage (459-472) and issued its bonds to reimburse the railway companies and their trustees for the outlays as provided in the contract of January 2nd, 1882 (478-479). F. M. Hubbell, the attorney and agent of the railway companies, at the inception of the terminal enterprise (396-400), purchased the joint right-of-way and terminal ground (1045-1046), became interested in and dominated the companies, predecessors of the St. Paul Company (1096-1097, 1100-1101); was at all times a director and secretary of the Des Moines Company (998) and an officer and director of each of the railway companies (1041, 1042, 1043, 1044). The officers and agents of the company predecessor of the Wabash relied on F. M. Hubbell to promote its interests as well as the interests of the companies he dominated (234, 361-365), but instead he acted adversely and in his individual interest by acquiring alleged assignments of the alleged rights of the company predecessor of the Wabash to three-eighths of the unissued stock of the Des Moines Company under an agreement that it would be sold "only to a railway company who will join with the Wabash in making a contract with the Des Moines Union guaranteeing interest on the bonds, operating expenses, etc." (1059-1060, 1061-1063, 1070, 1602-1603), and that the articles would not be amended otherwise than to permit the holder of one-eighth of stock to elect a director (1601-1602),

which stock was finally transferred to the company he dominated (1054-1065, 1069-1070, 1089). He caused the records of the Des Moines Company, without knowledge or consent of the railway companies (231-235, 364-365, 1080-1094, 1091-1092) to purport to show that at a meeting of its stockholders, when in fact no stock had been issued (1068, 1087) or subscribed (1085, 1087, 1090) its articles of incorporation had been amended so as to eliminate all the rights and interests of the railway companies in their joint railroads and terminal facilities and create a colorable claim that the Des Moines Company had acquired them (488, 494), and caused 4,000 shares of its stock to be issued under article III of the alleged amended articles (1068-1069), which falsely stated the stock would be issued in payment for the property, bonds having been previously issued for that purpose (478-479); the stock was therefore issued without consideration (348-349); by mesne assignments F. M. Hubbell and his son, F. C. Hubbell, acquired individually five-eighths thereof or 2,500 shares from the company they dominated in a trade at the alleged price of ten cents on the dollar (1016, 1042, 1064, 1065, 1482, 1483, 1484, 1096, 1097, 1150, 1151) in violation of the agreement that the stock would be sold "only to a railroad company who would join with the Wabash in making a contract with the Des Moines Company, guaranteeing interest upon the bonds, operating expenses, etc." (1052, 1060, 1061, 1070), and by means of said stock they controlled the majority of the directors (themselves and their dummies) of the Des Moines Company (1089), and caused it to set up said claim adverse to petitioners.

One fourth, or 1,000 shares, of the stock is now held

by the St. Paul Company, five-eighths, or 2,500 shares, by F. M. Hubbell and son (190), and one-eighth, or 500 shares, by the Wabash Company (169).

Before the Hubbells acquired five-eighths of the stock affidavits were made by Howe in 1889 (501); by Seely, general superintendent in 1890 (502); by Cummins, vice-president, in 1891 (503); by respondent F. C. Hubbell, president, in 1892 (504), and by Cummins (attorney for the Des Moines Company and the railway companies and the personal attorney of F. M. Hubbell) (1650), as vice-president of the Des Moines Company, February 28th, 1893, to the Council of the State of Iowa (505), that the Des Moines Company "is simply a representative company acting as an agency at Des Moines for the" railway companies, "performing all the necessary work for them and charging each road its due proportion of the expense thereby incurred, etc., at actual cost".

The Hubbells acquired five-eighths of the stock of the Des Moines Company January 29th, 1894 (1482-1483-1484) and on February 16th, 1894, Cummins, as vice-president of the Des Moines Company, made affidavit to the Council of State of Iowa that "the Des Moines Company is the owner of the property hereinbefore described, etc." (506). The first knowledge either of the railway companies or their successors had of the claim of respondents Hubbell that the Des Moines Company had acquired the joint railroads and terminal facilities was in October, 1905, when they threatened to cause the Des Moines Company to exclude petitioners from the use and occupation thereof at the expiration of the supplemental or operating agreement, to wit, on May 1, 1918, and to

withhold such income (328-329), whereupon in due time petitioners brought this suit (3).

As above stated the Judges of the Court of Appeals concurred in holding (see majority opinion 2086-2119, and dissenting opinion 2120-2126) that the petitioners are entitled to the income in the treasury of the Des Moines Company and that the predecessors of the petitioners acquired and owned the joint railroads and terminal facilities.

But Judge Stone (Judge Smith concurring, and Judge Hook dissenting), held:

First. That the deeds to the Des Moines Company vested in it the absolute title to all interest in the joint railroads and terminal facilities (2094-2110), contrary to *(a)* the contract of 1882 that they should be held subject "to the joint use and occupation of all said railway companies" (120); *(b)* the articles of incorporation that "all the powers exercised by this company shall be in accordance with the terms of the aforesaid contract" (127); *(c)* the resolutions of the railway companies that their joint railroads and terminal facilities should be conveyed to the Des Moines Company "to carry out the purposes of the said contract" (131-139); *(d)* the resolutions of the Des Moines Company "that this company accepts the transfer and management and operation of said property * * * and assumes control thereof * * * and it hereby instructs its president to make such order as may be necessary to render such control and management effective as provided in said contract" (130-131); *(e)* the understanding of the persons who actively participated in the transactions as shown by the affidavits made to the Council of State (501-505); *(f)* the decision of this court in Joy *et al* v. St. Louis (138 U. S.

l. c. 38). *(g)* public policy as announced in Central Transportation Company v. Pullman Company (139 U. S. 28-49) and confirmed by all subsequent cases, that a railway corporation can not alienate or convey its right to use its railway in whole or in part without the express consent of the state under whose franchise it was created and acquired and the laws of Iowa do not permit by sale, lease or otherwise, the dismemberment of a railroad or a separation of a railroad or any part from the franchise under which it was created or acquired (Section 2066 of the Iowa Code, 1897—same as Section 1300 of the Code of 1873; O'Connor v. Tennessee Central Railway, 109 Fed. Rep. 935); *(h)* the contract with the state of Iowa which arose from public taxes voted to the companies' predecessors to the St. Paul Company "for the purpose of aiding" them in constructing a railroad "to a connection with the line owned or operated by the Wabash, St. Louis & Pacific Railway Company (788-827); *(i)* and the condition on which they were accepted in writing (796-799) pursuant to which the railroad was constructed to Fourth street to a connection with the Wabash road (823), whereby the predecessors of the St. Paul Company and their successors became obligated to the state to perpetually maintain and continuously operate the same (State against Central Iowa Railway Company, 71 Iowa 410); and *(j)* contrary to the public policy of the State of Iowa announced in said section 2066, which reads as follows:

> "**Sale or Lease of Railroad Property—Joint Arrangement.** Any railroad corporation may sell or lease its property and franchises to, or make

joint running arrangements not in conflict with law, with any corporation owning or operating any connecting railway, and any corporation operating the railway of another shall be liable in the same manner and extent as though such railway belonged to it."

This statute prohibits by implication the dismemberment or breaking up of a railroad or the franchises under which it was constructed and permits a railroad and franchises to be disposed of only as a unit or entirety.

Second. That the articles of incorporation of the Des Moines Company made it a mere agency for the railway companies and gave them complete control and domination over its affairs, which enabled them to enjoy the use and occupation of the joint railroads and terminal facilities at cost, in accordance with their respective use (2110); but that this control and all the rights growing out of it were "later relinquished" to the Des Moines Company (2110) by the alleged amendments to the articles which "took away all control by the railway companies as such over the action of the terminal company * * * and all influence of the 1882 contract as embodied in the articles of incorporation" (2113), and that while "the amendments were never properly adopted" that question was "not open to complainants" (2110) because they were guilty of laches (2113-2114-2115) on the grounds:

(1) That "Hubbell was willing to purchase" the stock of the Des Moines Company "if the control of the railways as such given in the articles was removed; the articles were amended, removing Hubbell's objection; the purchase was made" (2113);

contrary to *(a)* the 16th paragraph of the answer wherein "these respondents aver that said stock was acquired long after the amendments to the articles of incorporation of the Des Moines Union Railway Company referred to in the amended bill had been adopted and that the two transactions were wholly and entirely independent of each other" (185); *(b)* to the testimony of F. M. Hubbell who made no "objection" to the articles and did not suggest the alleged amendments or rely on them (1075; 1098-1099-1100). "I do not think I attached any particular importance to those amendments as having any effect at all upon the value of the stock or upon the title held by the terminal company in the terminal property" (1081). "The purchasing committee made no representations to me concerning the title to the property. I never heard the title of the Des Moines Union Railway Company to the terminal property questioned until this suit was brought and I was made one of the defendants" (1078); *(c)* to the testimony of Cummins that he initiated the amendments (1206, 1210-1211) and his letter of January 27th, 1890, to Dodge that "while Mr. Hubbell was at first disposed to oppose the amendments which I had prepared after full explanation with him I believe that he will support them" and that "they are directed to two purposes, first, to clear up the ambiguity and uncertainty with respect to the amount of stock to be issued on account of the original purchase of the property, and, second, to enable the Des Moines Union Railway Company to act in all matters without the previous authority of three corporations" (1211-1212); *(d)* the implied agreement between Hubbell and the Wabash purchasing

committee arising fr. i the contract between them that the committee "will consent to such change in said articles of incorporation as will permit one director of said company to be nominated by any person or corporation holding one-eighth of the stock of the said Union Railway Company" (1601-1602). This instrument was obtained by Hubbell in connection with the purchase of stock, and amounts to an agreement between the parties that the articles would not be otherwise amended; *(c)* the undisputed documentary evidence that Hubbell acquired the stock of the Wabash purchasing committee with the express understanding that the sale of the stock "should be made only to a railway company who will join with the Wabash in making a contract with the Des Moines Union guaranteeing interest upon the bonds, operating expenses, etc.," and "that it would be prejudicial to sell any of this stock to outsiders (see Hubbell's letter of June 18, 1888, to Ashley [1060] and Ashley's letter of June 16, 1888 [1059]), and that the "one-eighth interest in the capital stock" retained by the Wabash purchasing committee "shall be sufficient to represent a proprietorship in the company, according to the understanding we had when you were here" (see Ashley's letter of April 5, 1890, in reply to Hubbell's letter of April 1st, 1890 [1061]).

(2) That "for seventeen years thereafter (adoption of the alleged amendments) the railways acted in perfect harmony with the articles as amended. During that time there was no question of their validity and not until this suit was filed in 1907 was there any such attack. The doctrine of laches comprehends and controls the situation," contrary to the conceded fact that the railway companies during the seventeen years op-

erated their joint railroads and terminal facilities under and pursuant to and in compliance with the supplemental or operating agreement (150-159). Hubbell testified "the contract of May 10, 1889," had been executed before he "ever heard of any suggestion from any one respecting the amendment of the articles"; that the method of doing business "was not changed after the amendments"; that "the business was transacted and has been transacted ever since * * * under the contract of 1889" (1099). Hubbell did not claim the alleged amendments would affect in any way the railway companies or the operations of the joint railroads and terminal facilities until after the expiration of the supplemental operating agreement (see paragraph 25, Respondent's answer) (191), and the first time he advised any officer or agent of the petitioners or their predecessors that he claimed adversely to them was in 1905, and this suit was brought shortly thereafter (328-329), and contrary to the elemental rule that mere unwariness of a principal or the beneficiary of a trust can not be set up by an agent or trustee in support of an adverse claim against his principal or beneficiary.

(3) That the railway companies "through successive acts, natural enough, and at the time, apparently harmless (2115) * * * gradually let slip from them that exclusive ownership and control which they had at the beginning so much valued and so carefully guarded (2115)," but that **"there is nowhere any indication that the railways intended any such a result, and yet such, in our judgment, is the result. This unexpected outcome** was the product of several circumstances" (2113). The railway companies ex-

pressly contracted against adverse claims that they had relinquished their use and occupation of their joint railroads and terminal facilities, based either on the express acts or acquiescence or laches of their officers and agents, by the provisions of article 2 (127) of the articles of incorporation which prohibited the Des Moines Company from disposing "of the use of any part of its franchises" without "the assent in writing" of the railway companies, and by article 4 (128), which provides that "no contract, lease or other agreement amounting to a permanent charge upon the property * * * shall be entered into * * * by the board unless the same shall have been first approved by" the railway companies. The "board" could be composed only of nominees of the railway companies (128), and therefore these provisions directly limited the authority of the officers and agents of the railway companies who acted as their representatives on the board of the Des Moines Company and reserved to the respective boards of directors of the railway companies all authority relating to their rights to the joint use and occupation of their joint railroads and terminal facilities. Besides, no assertion or exercise of the corporate power of the Des Moines Company could destroy or affect in any way the property rights of the railway companies in their joint railroads and terminal facilities.

Third. That the Des Moines Company "must furnish its full terminal facilities in so far as reasonably necessary and required by the railways and they will pay therefor such reasonable sum as may be agreed upon between the terminal company and each of the railways, or in default of such agreement, as may be

fixed by the proper public tribunal" (2119); but the Court of Appeals did not so decree (2127). The learned Judge had previously stated, "that when the present operating contract is ended the rights of the parties respecting the use of the terminals by the railways are those which spring from their nature as carriers and their physical and business relation to each other as carriers in and entering a large terminal" (2119). The holding, "that the terminal company must furnish its full terminal facilities, etc.," is based on the assumption that the laws of Iowa require it to do so, contrary to the decision of the Supreme Court of that state in the case of Morgan v. Des Moines Union Railway Company, 113 Iowa 55-61, that the Des Moines Company was organized under the general railroad act of that state, which does not obligate corporations formed thereunder to afford their facilities to other companies except pursuant to their agreements.

The District Court held that the income in the treasury of the Des Moines Company and the joint railroads and terminal facilities belong absolutely to the Des Moines Company, but that the railway companies were entitled to use the joint railroads and terminal facilities on the payment of reasonable compensation to be fixed by the court in default of agreement of the parties (2036-2052; 2064-2065) and adjudged and decreed accordingly (2065). Both parties being dissatisfied prosecuted appeals (2068-2084).

The Court of Appeals entered an order and judgment (2127) requiring the District Court to modify its decree so as to "state the complete title to the property in controversy in the" Des Moines Com-

pany, and "that the only interest of the railway companies in the property or the management of the corporation is such as flows from stock ownership", and that "the income in the treasury of the company belongs to the railway companies".

On the ground that the decision that the title to the property in controversy is in the Des Moines Company and that petitioners have no right to use and occupy same, adversely affects the public interest (St. L., K. C. & C. R. R. Co. v. Wabash R. R. Co., 217 U. S., *l. c.* 251), is contrary to public policy (Central Transportation Co. v. Pullman Co., 139 U. S. 28, *l. c.* 29) (State v. Iowa Central Railway Co., 71 Iowa 410) (Section 2066 Statutes of Iowa) and violates the *quasi*-public and important private rights involved, petitioners submit that, in view of the division of the judges and the facts to which reference has been made as well as those referred to in the opposing opinions, the matter "is of sufficient importance and is sufficiently open to controversy to make it the duty of this court to issue the writ applied for" (LAU OW BEW, 141 U. S. 583, *l. c.* 587), review that decision and determine the claim of petitioners that the Des Moines Company holds their joint railroads and terminal facilities under and pursuant to the contract of January 2nd, 1882, and its articles of incorporation, subject to the joint use and occupation of the petitioners

at cost, to be shared between them in accordance with their respective use.

John C. Cook

Gustav Hausam

James L. Minnis

Counsel for Petitioners Chicago, Milwaukee & St. Paul Railway Company and Wabash Railway Company.

JAMES D. MAHER,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1918

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, AND WABASH RAILWAY COMPANY,

Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL AND F. M. HUBBELL & SON,

Respondents.

No. 66

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

F. W. LEHMANN AND
J. L. PARRISH,
Of Counsel or Respondents.

PRESS A. S. FLEMING PRINTING CO., ST. LOUIS

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IN THE

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CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, AND WABASH RAILWAY COMPANY,

Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL AND F. M. HUBBELL & SON,

Respondents.

No. 819

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

The Parties.

The petitioners, the Chicago, Milwaukee and St. Paul Railway Company and the Wabash Railway Com-

pany, have each of them a line of railroad terminating at Des Moines, Iowa.

The respondent, the Des Moines Union Railway Company, owns and operates the railway terminal system which is used by the Milwaukee and Wabash and some other railway companies at Des Moines.

The respondents, F. M. Hubbell and F. C. Hubbell, are officers of the Des Moines Union Railway Company and have been for thirty years or more.

The respondents, F. M. Hubbell and Son are stockholders in the Des Moines Union Railway Company.

The Subject of Contention.

The nucleus of the property of the Terminal Company was acquired about 1882 and prior thereto by the Milwaukee and Wabash Companies, or rather by their predecessors, also railroad companies, and owning and operating the same lines of railroad now owned and operated by the Milwaukee and Wabash.

These predecessor companies organized or caused to be organized, the Des Moines Union Railway Company, with authorized capital stock of one million dollars and with authority for the issuance of bonds.

By deeds absolute and unqualified in form, the predecessors in title of the petitioners, conveyed this terminal property to the corporation they had created and as consideration for such conveyance they took four hundred thousand dollars of the bonds of this terminal company and all of its capital stock.

Other property was later and from time to time acquired by the company and paid for by its bonds or by proceeds of the sale of bonds.

The capital stock of the Des Moines Union was taken

by the companies which created it, one-fourth to each of the two original companies which are predecessors of the Milwaukee, and one-half to the predecessor of the Wabash.

The amount of this capital stock was fixed in the first instance at one million of dollars, increased then to two million dollars, and finally left at two million as being authorized, but only four hundred thousand as having been paid for and as so adjusted and issued one-half of the stock was assigned to the Wabah predecessor and the other half to the Milwaukee predecessors.

Of this stock F. M. Hubbell and Son have acquired twenty-five hundred shares by purchase from the predecessors of the Milwaukee and the Wabash, and the stock holding in the Terminal Company now is and has been for more than twenty years as follows:

The Wabash..... 500 shares.
The Milwaukee.....1,000 shares.
F. M. Hubbell & Son.....2,500 shares

The Question in the Case

Is as to the title by which the Terminal Company holds its property.

It got that property from the predecessors of the petitioners and they had unquestioned and unqualified good title. It got it by deeds which by their terms conveyed to the Terminal Company the same unquestioned and unqualified good title which the grantors had. And it paid full rounded measure of value therefor in its stocks and bonds.

Nonetheless, the petitioners contend that at some

time in the course of dealing between the parties, there was in some way, some sort of an easement in this property reserved to the grantors, an easement which gave to them the entire beneficial use, right and interest in the property in perpetuity, and that the Terminal Company by the deed absolute to it and for which it gave full value, got only the barren legal title.

Under this contention the Terminal Company must operate this property always for the use and behoof of the petitioning railway companies, for the bare cost of operation so far as they are concerned, with no allowance on account of the value of the property employed, and moreover, all rents, incomes, earnings and profits, the fruit of the use of the property by or for third parties, must go to these same petitioning railway companies.

The shares of stock of the Terminal Company are thus rendered entirely worthless, which the railway companies can well afford since they absorb everything as owners of the dominant estate. F. M. Hubbell & Son, however, lose everything.

The Decision of the Court of Appeals

Was against this contention of the railway companies, and held that the Des Moines Union Railway Company was the owner of its property, that it had in fact gotten what it had bought and paid for, and that the predecessors of the petitioners had parted with what they had sold and received the price for. The Wabash and the Milwaukee seek by their petition a review of this decision.

The Beginning of the Enterprise.

From our point of view the petition for certiorari herein is not entirely accurate in its presentation of the facts of the case, and we therefore think it appropriate to make a statement in chronological order of the acts and contracts involved, and to let these, as far as possible, speak for themselves in the very words of the record.

Three companies, predecessors of the petitioners, prior to 1882 determined on building lines of railroad to Des Moines, one of them, now the Wabash, from the south, and two of them, now the Milwaukee, from the north and northwest. They acquired land in Des Moines to be used by them for terminal purposes jointly, the purchase being made in part directly by the railroad companies and in part by James F. How and General G. M. Dodge, as trustees.

The Contract of January 2nd, 1882.

The arrangement between the companies, the Des Moines & St. Louis (predecessor of the Wabash), and the Des Moines Northwestern and St. Louis, Des Moines and Northern (predecessors of the Milwaukee), was expressed in a writing between these original companies and Col. How and General Dodge of date, January 2nd, 1882 (Rec., Vol. 2, p. 411).

It provided:

"FIRST.

The companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance, at their

joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

SECOND.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually; James F. How, trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

THIRD.

It is mutually agreed by the parties above named that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said company may issue and deliver to the companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

FOURTH.

The title to said property shall be and remain in a trustee to be named by agreement of said companies, but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

FIFTH.

The individual signers hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement.

SIXTH.

The Des Moines and St. Louis Company shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two companies, the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

SEVENTH.

The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration."

The remaining provisions of the contract need not be here considered.

It is obvious that under this contract the Railroad Companies were the absolute owners of this property with right to use it or dispose of it as they might agree among themselves, subject only to the right of Col. How and General Dodge to be reimbursed for what they had paid for lands purchased by them.

The contract does not provide, as stated on page 4 of the petition, that the property constituting its subject matter "should be held in perpetuity subject to the joint use and occupation of all said railway companies."

No trustee was ever named by the parties under paragraph four of the contract.

Operation under and according to the terms of this contract, each company doing its own switching over the tracks with simply police control, etc., by the Des Moines and St. Louis, proved to be unsatisfactory.

Organization of the Des Moines Union Railway Company.

December 10th, 1884, the Des Moines Union Railway Company was organized under the laws of Iowa relating to corporations for pecuniary profit. This was done at the instance of the railroad companies, parties to the agreement of January 2nd, 1882, and was contemplated by paragraph three of that agreement.

The agreement of January 2nd, 1882, is recited and set out in full in the Articles of Incorporation and then it is further recited (Vol. 2, p. 419):

> "Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said companies, and
>
> Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was the understanding of the parties that such company might acquire, operate and maintain said

property in such manner as best to serve the interest of the parties hereto.

Now, therefore, for the purposes aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following Articles of Incorporation."

The following among the articles of incorporation are pertinent to be considered:

ARTICLE 2.

The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Ia., as well as the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by chapter 1 of Title IX of the Code, and the amendments thereto. All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, trustee, and Grenville M. Dodge. The said company shall have the right to lease or otherwise

dispose of the use of any part of its franchises to any other railway company—provided that the assent in writing of the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

ARTICLE 3.

The capital stock of this corporation shall be one million ($1,000,000.00) dollars, which shall be divided into shares of one hundred ($100.00) dollars each and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge.

ARTICLE 4.

The affairs of the Company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of each year. The provisional Board of Directors, who shall hold office until the first Thursday in January, A. D. 1886; shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company,

and no stockholders shall be eligible for membership of the Board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive.

The provisions herein with respect to nomination for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the Stockholders as hereinbefore provided.

The Directors shall elect, from their number, a President, Vice-President, Secretary and Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

ARTICLE 9.

These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the

Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation—published in the City of Des Moines, Iowa."

It is to be observed:

First: The business of the corporation was expanded greatly beyond what was to be done under the agreement, as it was "the construction, ownership and operation of a railway in, around and about the City of Des Moines" and all sorts of things and everything incident thereto.

Second: The corporation was organized for pecuniary profit.

Third: The Company could not lease or otherwise dispose of its franchises without the consent of the Railroad Companies.

Fourth: The stock of the Company was to be paid for by the property held under the agreement of January, 1882.

Fifth: The members of the Board of Directors were to be nominated, four by the Des Moines & St. Louis Co. and two by each of the other Railroad Companies.

Sixth: No contract, lease or other agreement amounting to a permanent charge upon the property of the corporation could be made by it without approval of the Railroad Companies.

Seventh: These Articles could be amended only by a

vote of more than three-fourths of the shareholders and by such vote could be amended.

None of these provisions of the Articles of Incorporation limited or impaired in any way the title to the property which was to be and later was conveyed to the Terminal Company. The railroad companies and Col. How and General Dodge had an absolute title to the property and they conveyed all the title and all the interest they had to the Terminal Company.

The restrictive provisions of the Articles of Incorporation simply determined the mode in which and the limitations under which the powers of the Terminal Company were to be exercised.

Resolutions for Transfer of Property to Des Moines Union Railway Company.

On January 1st, 1885, at a meeting of the shareholders of the St. Louis, Des Moines & Northern Co. the following resolution providing for the conveyance and transfer of all its right and interest in the terminal property at Des Moines to the Des Moines Union Railway Company was unanimously passed (Vol. II, p. 423):

> "Whereas, The Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract; and

Whereas, On the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated, and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate property, rights and franchises in the City of Des Moines, east of Farnham Street in said city of the aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

Now, Therefore:

1. Resolved, That this Company accepts and ratifies, so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

2. Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract to convey, assign and transfer to said Company all its rights, title and interest of whatever name and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said city, now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract."

At the same meeting the following resolution pro-

viding for the transfer of the management and operation of the property was passed (Vol. IV, p. 1474):

> "Resolved, That the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines so far as the same may now be vested in the Company on the first day of January or as soon thereafter as practicable, leaving the question of settlement between this Company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein."

On the same day like resolutions were passed at the shareholders' meeting of the two other Railway Companies.

It is to be observed that by these resolutions the Railroad Companies intended three things—first, a ratification of the incorporation of the Des Moines Union Company, which involved approval of the ownership of the terminal property by that Company; second, a sale of the terminal property to the Des Moines Union Company in consideration of its stocks and bonds, and, third, the immediate transfer of the control, management and operation of the property to the Des Moines Union, leaving the settlement of the amount of stocks and bonds to be paid for the property to be determined thereafter.

On the same day at a meeting of the Directors of the Des Moines Union Company the following resolutions were adopted (Vol. II, p. 433):

> "Resolved,
>
> FIRST.
>
> That this Company accepts the transfer and management and operation of said property in

the City of Des Moines, east of Farnham Street in said city, heretofore owned and controlled by the Des Moines & St. Louis Railroad, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as practicable, and it hereby instructs its President to make such order as may be necessary to render such control and management effective, as provided in said contract.

SECOND.

That the President, Vice-President, Secretary and Treasurer of this Company be, and they are hereby, appointed a committee to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said properties provided for in said contract of January 2nd, 1882.

THIRD.

That to enable this Company to pay for the property and to maintain, operate and improve the same, and purchase other property necessary to carry out its objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same, the President and Secretary of this Company are hereby authorized and directed to issue full-paid capital stock of this Company not to exceed one million ($1,000,000.00) dollars and not to exceed five hundred (500) bonds of this Company, of the denomination of one thousand dollars ($1,000.00); the form to be agreed upon hereafter by this Board.

And to secure said bonds, the President and Secretary are authorized and directed to execute, in the name of this Company, a first mortgage or deed of trust, conveying all of said property so to be conveyed to this Company or thereafter to be acquired, to a trustee therein named, the form of which deed of trust shall be hereafter determined by this Board.

And when said committee shall have agreed with the said several parties to said contract as to the amount of bonds and stocks of this Company necessary to be delivered to them, and each of them, in payment for said railroad property and franchises, the President and Secretary of this Company shall deliver the same to said several parties as each appear to be entitled, on receipt of the conveyances and assignments of said property so to be made to this Company."

Here, then, was the assent of the Des Moines Union to purchase this property with its stocks and bonds and at once to take over its control, operation and management.

The Terminal Mortgage.

But financial difficulties intervened. The railroad enterprises were not prosperous and nothing was done in the way of carrying out these resolutions until some time in 1887, when a mortgage by the Des Moines Union of all its property was prepared by Col. Blodgett, the General Counsel of the Wabash and of the Des Moines and St. Louis. The mortgage is dated November 1st, 1887, but was acknowledged February 28th, 1888, and recorded May 21st, 1888 (Vol II, p. 459).

The mortgage recites that the Des Moines Union is

"fully authorized to locate, construct, own and operate a railway in, around and about the City of Des Moines" and that it "has undertaken and partially completed the construction of a railroad in the City of Des Moines," and that it "has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said city, and valuable franchises from the City Counsel of said city" (Vol. II, p. 460), and

> "Whereas, For the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds to the amount of eight hundred thousand ($800,000) dollars, to be dated on the first day of November, 1887, in accordance with the resolutions and orders of its Board of Directors at a duly called and authorized meeting thereof."

The mortgage described the property covered by it by detailed descriptions which include all the property that was ever within the scope of the agreement of 1882 and then to leave no doubt contains this paragraph (Vol. II . 464):

> "Also all the property and realty embraced in the several conveyances made to the said Des Moines Union Railway Company by James F. How, Trustee, James F. How, Grenville M. Dodge, the Des Moines Northwestern Railway Company, the Des Moines and St. Louis Railway Company, and the St. Louis, Des Moines & Northern Railway Company, or any other person or corporation not specially named above, and for which conveyances reference is hereby prayed to the records of said Polk County, Iowa."

The mortgage was in the general form usual at that time.

While this mortgage was in the course of preparation, the Railroad Companies and the Terminal Company were engaged in carrying out the purposes of the resolutions of 1885.

Resolutions for Conveyance by How and Dodge.

Those resolutions, through inadvertence, perhaps, contained no direction to the Trustees, Col. How and General Dodge to make conveyance of the property held by them, and this omission was now supplied.

November 5th, 1887, the Board of Directors of the St. Louis, Des Moines and Northern passed the following resolutions (Vol. II, p. 435):

> "Whereas, James F. How has prior to 1881 and since then purchased certain property and made expenditures on same as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and
>
> Whereas, Under an agreement between the Company and the Wabash, St. Louis & Pacific Railway Company and others it was intended that said property, standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions, it is hereby
>
> Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased on receiving from said Company a stipulation that as soon as practicable after the transfer said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the pay-

ment of said property and improvements, with interest on same and taxes paid thereon and also three-fourths of the stock of the Des Moines Union Railway Company, said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company or their successors or assigns in lieu for the money advanced by said Company to make the purchase of the above property and improvements and the payment of taxes for this Company.

Whereas, Grenville M. Dodge has prior to 1881 and since then purchased certain property and made expenditures on the same as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above so purchased on receiving from said Company a stipulation that as soon as practicable said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced by him for the payment of said property and improvements, with interest and taxes on the same, and also one-fourth of the capital stock of the Des Moines Union Railway Company."

Similar resolutions were passed by the two other Railroad Companies on November 8th (Vol II, p. 437 and 442).

Assent by the Terminal Company.

And on November 8th the Terminal Company passed resolutions assenting to the proposals of the Railroad Companies (Vol. IV, p. 1299) and authorizing the delivery of its stocks and bonds in payment of the property conveyed to it.

The Deeds of Conveyance.

Conveyances were now made by the Trustees, Col. How and General Dodge, of the land standing in their names (Vol. II, pp. 446 to 453).

Under date of November 7th, 1887, the St. Louis, Des Moines and Northern made a deed to the Des Moines Union of the property standing in its name, which, after describing the property conveyed, reads as follows (Vol. II, p. 456):

> "Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part and assigns forever."

There could hardly be left in the grantor after all this, the entire beneficial interest in the property.

Under date of February 21st, 1888, the Des Moines and St. Louis Company executed a deed which, after specifically describing a number of parcels of real estate conveyed by the deed, proceeds (Vol. II, p. 458):

> "And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, sidetracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have acquired by grant, donation, purchase or otherwise and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance "Granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said city between Court Avenue and Vine Streets. And the said Des Moines and St. Louis Railroad Company hereby covenants to warrant and defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it."

The contention is made in the face of this warranty deed that the grantor reserved to itself and to the two other Railroad Companies the entire beneficial interest in all the property conveyed.

The bonds of the Terminal Company were delivered to the Railroad Companies, and by them were sold

upon the general market. It is conceded by petitioners that the bonds were a lien upon the property of the Terminal Company, but it is contended that the stock represents no sort of beneficial interest in that property.

Actual possession of the property was taken by the Terminal Company May 1st, 1888, and ever since then that Company has held possession of and has operated the property.

The Operating Contract of 1889.

Under date of May 10th, 1889, a contract was made between the Terminal Company and the three Railroad Companies, effective from May 1st, 1888, and to run for thirty years from that time, providing for the use and operation of the property by the Terminal Company.

This contract was prepared by the General Counsel of the predecessor of the Wabash Company.

The preliminary recitals of this contract are as follows (Vol. II, p. 479):

> "This agreement, made and entered into this 10th day of May, A. D. 1889, by and between the Des Moines Union Railway Company, of Des Moines, Iowa, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part, witnesseth that:
>
> Whereas, The said party of the first part is the owner of valuable terminal facilities in the City of Des Moines, Iowa, hereinafter described; and
>
> Whereas, The respective parties of the second part have railroads in the State of Iowa which

terminate at, or run into and through, said City of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party; and

Whereas, Said party of the first part has become incorporated and organized under the laws of the State of Iowa for the purpose of owning and operating a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham street, in western part thereof; and

Whereas, Said party of the first part, in pursuance of said charter, has acquired and now owns a railway in said city, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, Said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and

Whereas, For the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject-matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined.

Now, therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows:"

The contract then provides for the acquisition of

more property and the construction of more facilities by the Terminal Company, as follows (Vol. II, p. 480):

> Section One. The party of the first part agrees to proceed with reasonable dispatch, and whenever its Board of Directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said City of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots, round houses, shops, water tanks and yard appurtenances, as the Board of Directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase, or otherwise, such additional real estate as may be necessary.
>
> Section Two. The amount of such additional grounds, and the form, character and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement and repairs thereof, shall in all matters not otherwise specifically provided for herein, be determined by the Board of Directors of said first party."

Other sections of the contract prescribe details of the service to be rendered and the charges therefor.

There are sections dealing with the transfer of stock in the Terminal Company to be considered later.

This contract was observed by the parties and their successors until the close of its term.

Amendment of Articles of Incorporation of the Des Moines Union Railway Company.

The petition for certiorari, p. 6, states that:

> "He (F. M. Hubbell) caused the records of the Des Moines Company (the Terminal) **without**

knowledge or consent of the railway companies to purport to show that at a meeting of its stockholders, when in fact no stock had been issued or subscribed, its articles of incorporation had been amended so as to eliminate all the rights and interests of the railway companies in their joint railroads and terminal facilities and create a colorable claim that the Des Moines Company had acquired them, etc."

This is a charge, certainly a suggestion, that the amendments to the articles of incorporation were furtively made by Mr. Hubbell.

A recital of what was done, with references to the record, will show that nothing was done without the presence of all parties in interest and participation by them.

It is true that at this time no certificates of shares had been printed and issued to the parties entitled, but the authorized amount of capital stock had been determined, its issuance in payment of property received had been directed and the amount due to each of the railroad companies had been settled.

The integrity of the records of these various corporations is not impeached, and there is nothing in the testimony to contravene any recital of facts in them.

At the annual meeting of the stockholders of the Terminal Company held January 3rd, 1890, among other things done, a Board of Directors for the ensuing year was elected. General G. M. Dodge presided at the meeting.

J. F. How, on behalf of the Wabash Railroad Co., operating the Des Moines and St. Louis R. R. Co., nominated Jas. F. How, C. M. Hays, W. H. Blodgett and A. B. Cummins "to be voted for as directors of

of the Des Moines Union Railway Company to represent the said Wabash Railroad Company, it having been certified to this meeting by the secretary of the Wabash Railroad Company and Des Moines and St. Louis Railroad Company that the above named gentlemen had been duly nominated as candidates for directors in this company on behalf of the Wabash Railroad Company, and the Des Moines and St. Louis Railroad Company" (Vol. IV, p. 1306).

Col. Jas. F. How was a vice-president of the Wabash Company and C. M. Hays was its general manager.

The same record shows that General Dodge, on behalf of the Des Moines and Northern nominated himself and L. M. Martin as directors of the Terminal, and F. M. Hubbell, on behalf of the Des Moines and Northwestern, nominated himself and F. C. Hubbell to represent his company.

The men nominated were all elected. Here was an annual meeting, of which every stockholder had constructive notice, and which was attended in the only way in which corporations can attend, that is, by personal representatives, by every stockholder in the company, and those representatives were on behalf of the Wabash, Col. J. F. How and Chas M. Hays; on behalf of the Des Moines and Northern, General G. M. Dodge and L. M. Martin, and on behalf of the Des Moines & Northwestern, F. M. Hubbell and F. C. Hubbell.

Further proceedings were had at this meeting as follows (Vol. II, p. 1307):

> "James F. How moved that the question of amending the articles of incorporation of this Company, as well as the question concerning issuing of stock for the purchase price of the

terminal property be referred to Attorneys W. H. Blodgett and A. B. Cummins for their investigation and recommendation."

Thus, what the petition for certiorari says was done by F. M. Hubbell "without knowledge or consent of the railway companies" was initiated at a meeting presided over by Gen. Dodge of the Des Moines and Northern, being moved by Col. How of the Wabash and referred for investigation and recommendation to Col. Blodgett and Hon. A. B. Cummins, both representing the Wabash.

This meeting adjourned without action on the amendments to February 18th. Meanwhile the attorneys were busy. Mr. Cummins prepared the amendments and sent them to Col. Blodgett for review (Vol IV, p. 1598).

At the February meeting, there being present A. B. Cummins, representing the Wabash, L. M. Martin for the Des Moines and Northern and F. M. and F. C. Hubbell of the Des Moines and Northwestern, the proceedings had were as follows (Vol. IV, p. 1311):

"The secretary reported that notice of the meeting had been duly published and also reported that he had, pursuant to the articles of incorporation, notified each stockholder of the time, place and object of this meeting, which notice contained the amendments proposed to be offered to the articles of incorporation.

Upon motion of A. B. Cummins the report of the secretary was adopted and this meeting declared to be duly and legally called, for the purpose of considering and adopting or rejecting amendments to the articles of incorporation.

Thereupon A. B. Cummins presented certain amendments to the articles of incorporation.

Thereupon F. M. Hubbell moved that the meeting of stockholders do now adjourn for the purpose of having further opportunity to examine said amendments, to meet on Tuesday, the 8th day of April, 1890, at ten o'clock a. m., which motion being seconded, was unanimously carried and thereupon the meeting of stockholders adjourned to meet as aforesaid."

At the meeting on April 8th there were present three men who had been elected as Wabash directors of the Terminal Company, viz., J. F. How, C. M. Hays and A. B. Cummins; one a director representing the Des Moines and Northern, viz., L. M. Martin, and the Hubbells, F. M. and F. C., representing the Des Moines and Northwestern.

The record, Vol. II, p. 488, *et seq.*, shows that the amendments to the articles of incorporation were offered one by one, the different individuals present each taking a hand, and all were unanimously adopted.

Under the law of Iowa, it was necessary for the officers of the Des Moines Union Company to certify the adoption of these articles of amendment and formally to acknowledge the certificate.

This was done by F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. B. Cummins and Horace Seeley on April 10th, 1890; by James F. How, Charles M. Hays and Wells H. Blodgett on April 14th, 1890; by G. M. Dodge, April 16th, 1890, and by H. D. Thompson, April 21st, 1890 (Vol. IV, pp. 1604-1610).

The articles as thus amended and certified were filed for record with the local recorder on April 23rd, 1890, and with the Secretary of State on May 12th.

And then notice of these amendments under signature of General Dodge as president of the company,

attested by F. M. Hubbell as secretary, was published in the Des Moines Leader for four consecutive weeks, from April 23rd to May 20th, 1890.

And under these amended articles and in accordance with them all parties concerned voted their stock, elected directors and did business generally without complaint for seventeen years, or until about the time of the institution of this suit.

These amendments were made in light and leisure, not in haste and darkness as charged in the petition.

And so Mr. Hubbell did not cause the records of the Terminal Company "without knowledge or consent of the railway companies to show" that the articles of incorporation were amended, but all concerned, the representatives of all the railroad companies, and particularly the Wabash, believed that amendments were necessary and acting with great deliberation, after successive adjournments and always under the advice of competent counsel, made, published, declared and accepted those amendments.

Issuance of the Capital Stock of the Terminal Company.

The petition (p. 6) states that F. M. Hubbell caused 4,000 shares of the stock of the Terminal Company "to be issued under Article III of the alleged amended articles, which falsely stated the stock would be issued in payment for the property, bonds having been previously issued for that purpose. The stock was therefore issued without consideration."

This is distinctly misleading in its suggestion. What was done respecting the stock of the Terminal Company, from beginning to end was with the knowledge,

approval and active participation of each and every one of the railroad companies, the original ones and their successors and assigns.

Article III of the original articles of incorporation of the Terminal Company (Vol II, p. 420), provided that the capital stock of the corporation should be one million dollars and the board of directors was authorized to receive in payment therefor the Des Moines properties and franchises of the three railroad companies.

These properties and franchises had been acquired from time to time since 1880. When they incorporated the Terminal and took over the property, they gave bonds to the parties who had advanced money for the property in amounts equal to the money advanced and as further consideration for the property acquired distributed the stock one-half to the Des Moines and St. Louis and one-fourth to each of the other companies (Vol. II, pp. 423, 435, 436, 437, 438, 442).

In November, 1887, the articles of the Terminal Company were amended increasing the capital stock to two million dollars (Vol. IV, p. 1298).

The contract of May 10th, 1889, precedes by nearly a year the amendments to the articles of the Terminal Company made in 1890. This contract recites, section 26, that the Des Moines and St. Louis Company is entitled to one-half of the capital stock of the Terminal Company, and the two other companies each to one-fourth. It further recites that "no certificates for said shares have yet been issued to said parties," and then proceeds to say that certificates shall be issued for ten thousand shares, par value one hundred dollars each, to the Des Moines and St. Louis and for

five thousand shares to each of the other railway companies (Vol. II, pp. 486 and 487).

But no stock certificates were in fact printed and issued to the railway companies at this time. They proceeded in the view, however, until in 1890 they amended the articles of incorporation, that they held stock in the Terminal Company in the amount and proportion stated in the agreement of May 10th, 1889.

There was no doubt some water in this stock, but of this the petitioners cannot complain, for they or their predecessors did the watering.

Mr. Cummins set about to correct this evil by an amendment to the third article of incorporation of the Terminal Company, which provided, among other things (Vol. II, p. 490):

> "The capital stock of the corporation shall be two million dollars ($2,000,000), which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the Terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds theretofore issued for that purpose constituting the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught.
>
> Said four thousand shares of the capital stock shall be issued to the following corporations and in the following proportions:
>
> Two thousand shares to the purchasing committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des

Moines and St. Louis Railroad Company, and the present owner of the property known as the Des Moines and St. Louis Railroad.

One thousand shares to the Des Moines and Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and

One thousand shares to the Des Moines and Northern Railway Company, successor to the St. Louis, Des Moines and Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, sixteen thousand shares, or any part thereof, shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered."

At this same meeting of the Terminal Company Mr Cummins introduced a resolution which explained and was intended to explain the action of the meeting with respect to the capital stock. The resolution recited that by inadvertence there was some uncertainty in the records of the Company as to the price at which the property had been acquired, and all parties being agreed that the property and franchises incident thereto should be purchased at its fair value payable partly in bonds and partly in stock fully paid and it being agreed that the property was fairly worth the sum of $861,257.11, and the relative shares of this to which the parties respectively were entitled having been ascertained and having been adjusted and paid so far as payable in bonds, it was resolved unanimously (Vol. II, p. 496):

"1st. That the purchase price of the property

originally acquired by the Company, as above stated, be fixed at said sum eight hundred sixty-one thousand two hundred fifty seven and 21/100 ($861,257.21) dollars as of the date of the conveyance thereof.

2nd. That the payment of a portion of such purchase price in first mortgage bonds, as above set forth, be confirmed and approved.

3rd. That to complete the payment of such purchase price, the president and secretary are hereby authorized to issue certificates for thirty-nine hundred and ninety-two (3,992) shares of stock, which shares, including eight already issued on behalf of said parties, aggregate four thousand (4,000) shares, as follows:

To the purchasing committee of the Wabash, St. Louis and Pacific Railway Company, nineteen hundred and ninety-six (1,996) shares.

To the Des Moines and Northern Railway Company nine hundred and ninety-eight (998) shares, and to the Des Moines and Northwestern Railway Company nine hundred and ninety-eight (998) shares.

4th. That the proceedings heretofore had respecting the issuance of capital stock, so far as such proceedings are inconsistent with said amendments to the articles of incorporation or with this resolution, are hereby modified to conform hereto."

Certificates of shares were now issued as provided in this resolution to the several parties on the 8th day of April, 1890 (Vol. II, p. 711).

Acquisition of Terminal Stock by F. M. Hubbell & Son.

The petition states that (p. 6):

"by mesne assignments F. M. Hubbell and his son, F. C. Hubbell, acquired individually five-

eighths thereof, or 2,500 shares, from the company they dominated in a trade at the alleged price of ten cents on the dollar, in violation of the agreement that the stock would be sold "only to a railroad company who would join with the Wabash in making a contract with the Des Moines Company, guaranteeing interest upon the bonds, operating expenses, etc."

There was no such agreement as that stated between any of the parties, nor has the inference that F. M. Hubbell & Son acted in bad faith, in acquiring their stock any foundation in the testimony.

The original articles of incorporation contained no restriction on eligibility to ownership of stock. They did impose as a qualification for the directorship that the person must be nominated by one of the three railroad companies and they did restrict the company itself as to the disposition or burdening of the property. The parties evidently thought that individuals might become shareholders (Vol. II, p. 420-421).

The agreement of May 10th, 1889, in Section 26, did contain a restriction on the transfer of Terminal stock viz.: "all of said certificates (of shares) shall express upon their face that they are not transferable in whole or in part without the consent in writing of all the parties of the second part to this agreement (the three railroad companies) except that any shares of stock" issued to qualify some one as a director may be retransferred, etc., etc. (Vol. II, p. 487).

The three railroad companies consenting, anybody could acquire stock in the Terminal Company.

The articles of incorporation as amended in April, 1890, provided in Article 3 that the stock was transferable only on the books of the Company by and with

the consent of three-fourths of all the directors, except in case of a transferee who is or becomes the owner of one of the three lines of railroad involved and a director could not be elected except by vote of more than seven-eighths of the stockholders (Vol. II, p. 491).

Here again individuals are not disqualified, but the power of rejection is reserved to one-eighth of the shareholders.

On February 5th, 1890, Mr. O. D. Ashley, who was secretary of the Purchasing Committee of the old Wabash Company and president of the Company itself, which owned all the stock and bonds of the Des Moines and St. Louis Company, wrote F. M. Hubbell, saying (Vol. IV, p. 1599):

> "I will give you for the Purchasing Committee the option of buying of them $135,000 of the bonds of the Des Moines Union Railway Company, and one-fourth interest in the capital stock of that company for $135,000 and accrued interest from November 1st, 1889, any time within ten days from this date. Payment to be made in cash if the option is availed of by you. (Signed) O. D. Ashley, Sec'y Pur. Com."

General Dodge came into this transaction for one half of it, leaving Mr. Hubbell with the remaining half as to which the Purchasing Committee solemnly authorized and empowered "said Des Moines Union Railway Company, or the proper officers thereof, to issue to said Hubbell or his assigns, one-eighth of all the capital stock in the said Des Moines Union Railway Company" and further, "The said Purchasing Committee hereby guarantees the approval by the Des Moines and St. Louis Railroad Company of the

transfer of said stock to said Hubbell within sixty days" (Vol. IV, p. 1601).

This sale to Hubbell was reported in writing to the Purchasing Committee and on motion of General Hubbard was approved (Vol. IV, p. 1558).

April 8th, 1890, this sale of stock was approved by the directors of the Des Moines and St. Louis Company, they being James F. How, C. M. Hays, H. S. Priest, George S. Grover, F. M. Hubbell and A. B. Cummins, all save Mr. Hubbell being Wabash representatives (Vol. II, p. 1434).

And the Des Moines Union Company itself on April 8th, by vote of all its directors, ratified and approved the sale and ordered the transfer of the certificates both to F. M. Hubbell and to General Dodge (Vol. II, p. 1312).

Pursuant to these transactions a certificate for five hundred shares was on April 8th, 1890, issued to F. M. Hubbell and for a like number to General Dodge (Vol. 2, p. 711).

April 5th, 1890, Mr. Ashley as president of the Wabash Railroad Company wrote to Mr. F. M. Hubbell as follows, viz. (Vol. IV, p. 1602):

> "I have yours of April 1st, this morning. The result of my conversation with Messrs. Joy and Welles is a rather vague idea that we ought not sell $100,000 of the Des Moines Union Railway Terminal bonds and one-eighth interest in the capital stock at less than $115,000 and accrued interest on the bonds, and I do not feel authorized to offer it at any less price. If, however, you will make me a definite bid of the best price you can, I will communicate it to the other members of the committee and give you an early and definite reply. It must be understood, of course,

that a one-eighth interest in the capital stock shall be sufficient to represent a proprietorship in the Company according to the understanding we had when you were here."

The negotiations opened by this letter resulted in a contract on June 5th, 1890, for the purchase by Hubbell of $50,000 of bonds and 500 shares of the stock of the Des Moines Union Company for $57,736. Transfer of the shares on the books of the Des Moines Union was guaranteed "so far as the vote of the directors of said Des Moines Union Railway Company, representing the Des Moines and St. Louis Railway Company will secure said transfer (Vol. IV, p. 1613).

The directors of the Des Moines and St. Louis Company, on February 11th, 1891, by unanimous vote approved the sale of the stock to Hubbell; Hays and How of the Wabash Company being present (Vol. IV, p. 1438).

The Des Moines Union on the same day approved the sale and made the transfer by unanimous vote of its directors (Vol. IV, p. 1320).

The foregoing are the contracts and agreements under which Mr. Hubbell first got the Terminal stock.

The petition (p. 5) assumes to quote from an agreement providing that this stock would be sold "only to a railway company who will join with the Wabash in making a contract with the Des Moines Union guaranteeing interest on the bonds, operating expenses, etc." No such words are to be found in any agreement between any of the parties; no such restriction on transfer of stock is contained in any of the articles of incorporation, original or amended.

More than a year and a half prior to the sale of the

stock to Hubbell he wrote to O. D. Ashley, president of the Wabash, saying that he had been asked whether Des Moines Union stock could be bought and at what price. In his answer, Ashley said the Purchasing Committee would be glad to sell a quarter interest at a fair price, but he said, "I have always supposed that it would be necessary to confine the sale to such railway companies as would be interested in the station." Hubbell in his reply said, "I agree with you that the sale of a quarter interest in the stock of the Terminal Company should be made only to a railway company who will join with the Wabash in making a contract with the Des Moines Union guaranteeing the interest upon the bonds and operating expenses, etc." He says that a certain Mr. Jones has been making inquiries about the shares, but he takes no stock in Jones (Vol. III, pp. 1059-1060). The last letter was written on June 18th, 1888. The subject of sale or purchase of stock by anyone in the Des Moines Union was not broached again until February 5th, 1890, when an entirely new and distinct chapter was opened by the option which Mr. Ashley gave to Mr. Hubbell.

The two transactions were distinct and unrelated, and they were eighteen months apart in time. Nothing was said in 1890 as to limiting sales of Terminal stock to certain railway companies. It is evident that Mr. Ashley, on behalf of the Wabash Company, wanted to market some Terminal stock and bonds. The transactions with General Dodge and F. M. Hubbell were sales of bonds and stocks pure and simple. And in making these sales the Purchasing Committee acted with full knowledge of the situation. Months passed by before the last sale was consummated by transfer of the stock. In truth, the money paid at the time was a

great desideratum, and the record shows that it was paid by Dodge and Hubbell to the Purchasing Committee and by that committee to the Wabash Company.

Relation of the Milwaukee Company to These Shares.

The Milwaukee Company has acquired the two Northern lines and in connection with them one thousand shares of the stock of the Terminal. The original Northern Companies lost the properties by foreclosure. New companies were formed, which afterward were consolidated. In the course of these proceedings Hubbell and Dodge transferred their Terminal shares to the consolidated company, which then had 3,500 shares. The consolidated company did not fare well, and being in need of money, pledged 2,500 of its Terminal shares to F. M. Hubbell & Son. These shares were by agreement of the parties taken by F. M. Hubbell & Son in liquidation of some indebtedness. This was in 1893.

This Northern Company found itself very dependent upon the Milwaukee, and whether it would prosper or not was determinable by the division of rates it secured from the Milwaukee. To get a better division the Hubbells, who were largely interested in the securities of the Northern Company, both stocks and bonds, in the year 1894 gave a large block of the stock of the Northern Company, 16,800 shares, to the Milwaukee, together with an option to the Milwaukee to purchase 16,468 shares more at a low price and the exercise of this option would give the Milwaukee full control of the Northern Company (Vol. II, p. 838, and Vol. IV, p. 1618).

At the very beginning of the negotiations leading up

to these contracts which were executed in July, 1894, although dated March 15th, and indeed so early as February 22nd, 1894, Mr. Hubbell wrote to Mr. Miller, president of the Milwaukee Company, as follows:

> "Your favor of the 20th is received and noted. Enclosed I send you a copy of the articles of consolidation and incorporation and trust mortgage of the Des Moines, Northern and Western Railway Company. There has been bonds issued on this property to the amount of $2,770,000. I have no printed copy of the articles of incorporation of the Des Moines Union Railway Company, but will say they were drawn by our attorney, Mr. A. B. Cummins, and I think are all right, and if important to you, can have a copy made and sent you. The amount of bonds authorized by that corporation is $800,000, bearing 5 per cent interest, of which amount $612,000 have been issued. I enclose plat of Des Moines Union. We have about five miles of right-of-way occupied by about twenty miles of track. **The Des Moines Northern and Western Railway Company own one-fourth of the capital stock of the Des Moines Union Railway Company. The Wabash own one-eighth and five-eighths is owned by individuals.**
>
> If you desire any further information, I shall be glad to furnish it" (Vol. IV, p. 1617).

Thus the Milwaukee was advised from the beginning and before it came into the situation of the precise facts as to this Terminal stock, viz.: one-eighth held by the Wabash, one-fourth by the Northern Company, which the Milwaukee contemplated getting and subsequently did get, and five-eighths by individuals.

The Wabash, of course, knew that individuals held Terminal stock, because it had sold it to them.

Year after year passed, with frequent directors' meetings and annual and perhaps other shareholders' meetings of the Terminal Company, and always the Wabash and the Milwaukee were represented and always the Hubbells were present and at the shareholders' meetings they voted and were recognized as having the right to vote the 2,500 shares of Terminal stock held by them, and shown to be held by them by the books of the Company.

The Ratification Agreement of 1897.

More than this, in the year 1897 a revision of the contract of May 10th, 1889, was desired by the Wabash. For the present purpose it is not necessary to detail the negotiations which followed. There resulted a contract, dated July 31st, 1897, which in some measure is a revision, but more strictly a ratification of the old agreement (Vol. II, p. 506).

There seemed to be some doubt whether the railroad companies, then the Wabash and the Des Moines, Northern and Western, were bound by the old agreement and that was settled and the contract ratified and confirmed by the railroad companies in every respect with this exception, viz. (Vol. II, pp. 508-509):

> "But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:
>
> The Purchasing Committee of the Wabash, St. Louis and Pacific Railway Company, 500 shares.

The Des Moines Northern and Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares.

Of the above shares belonging to said Purchasing Committee, two shares stand upon the books of the Company as follows: Joseph Ramsey, Jr., 1 share, and H. L. Magee, 1 share.

Of the shares belonging to the Des Moines Northern and Western, Railroad Company, two shares stand upon the books of the Company as follows: A. B. Cummins, 1 share, and F. M. Hubbell, 1 share.

Of the shares belonging to said F. M. Hubbell & son, five shares stand upon the books of the Company as follows: F. M. Hubbell, 1 share; F. C. Hubbell, 1 share; C. Huttenlocher, 1 share; H. D. Thompson, 1 share; A. N. Denman, 1 share."

And this contract of 1897 was formally ratified, approved and confirmed by the directors of the Wabash (Vol. IV, p. 1540); by the directors of the Des Moines, Northern and Western (Vol. IV, p. 1497), and by the directors of the Des Moines Union (Vol. IV, p. 1357).

Acquiescence.

Nearly ten years passed after this without challenge of the rights of F. M. Hubbell & Son as shareholders. And during all the years they were giving their service in official relations to the development of the Terminal Company and its business, and they did this without pay, and that service constant and continuous, faithful and arduous, was accepted without question by these petitioners who now say the Hubbells have no beneficial interest whatever in the property they have served and managed so well.

In Conclusion.

The case involves no profound questions of law.

The three railway companies, predecessors of the petitioners at the time of the contract of 1882, and under it, owned the property in question and every interest in that property.

The individual parties to that contract, Col. How and General Dodge, had no interest or right except to be reimbursed for what they had paid out, and they were so reimbursed.

As the railway companies made the agreement of 1882 so they could change it, and they did.

They created the Terminal Company, and they did this for the very purpose of having it acquire, own, operate and develop this property.

They transferred this property to the Terminal Company by conveyances as comprehensive in description of the rights and interests conveyed as the learning of experienced lawyers could devise.

They mortgaged this property, issued bonds secured by this mortgage, and sold those bonds to the public.

They issued stock against that same property and sold the stock.

The stock had for its basis the same property and the same interest in that property that underlaid the bonds.

The organization of the Terminal Company, the conveyance of the property to it, the contract of 1889, the amendments to the articles of incorporation in 1890, the sales of stocks and bonds, the ratification agreement of 1897, all were known to, participated in and approved by the persons who at the time were the ac-

credited representatives of these petitioners or their predecessors.

And there is not involved in this controversy anything of public interest or importance. The Terminal Company is discharging its public functions and duties and will continue to do so. Its property is affected with a public interest and is dedicated to the public use, and its obligations in this respect are the same whoever its shareholders may be or whatever may be their interest in the property. The controversy is essentially of a private nature. It is whether, notwithstanding the conveyance of the property in the most absolute terms and for a good consideration, the grantors reserved the entire beneficial interest in the property and the grantee got only a barren legal title. This affects the parties not as carriers, but as proprietors, for only proprietory rights are involved.

Respectfully submitted,

F. W. LEHMANN,
J. L. PARRISH,
Of Counsel for Respondents.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918

No._____

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL AND F. M. HUBBELL & SON,

Petitioners,

vs.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND THE WABASH RAILROAD COMPANY,

Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, respectfully petition this Court to grant a writ of certiorari to the Circuit Court of Appeals for the Eighth Judicial Circuit, to remove therefrom, for review here, the record in the case

therein pending, numbered 4885, wherein the petitioners are appellees and the respondents are appellants.

Two controversies are involved in the case, one of which was decided in favor of petitioners and the other against them and in favor of the respondents hereto.

The two controversies are fully presented by the same record and certified copies of that record accompany the petition for certiorari filed by the respondents hereto. And while the two controversies are more or less distinct, they rest upon the same evidence and grow out of the same series of transactions.

The questions to be determined are of the same general nature, involving the construction of contracts and of articles of incorporation as fixed by their terms and the conduct of the parties under them.

Your petitioners believe that if the case is one appropriate for review on writ of certiorari as to one of the controversies therein, it should in justice to all the parties be brought before the Court in its entirety, and being advised that they cannot otherwise have a review of the decision and decree herein, in so far as adverse to them, they respectfully submit this cross-petition for a writ of certiorari.

What is dealt with and designated by the parties and by the Court of Appeals as the "main" controversy or question in the case is presented by the petition of the respondents hereto. The question presented by these petitioners is designated by the parties and the Court as that of the "surplus earnings."

The "main" question is as to the rights of the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company, hereinafter called the

Railway Companies, and the Des Moines Union Railway Company, hereinafter called the Terminal Company, in and to the property to which the Terminal Company holds title and which it uses in the course of its operations as a Terminal Company.

The contention of the Railway Companies is that they are the real and beneficial owners of the property, and that the Terminal Company simply holds the title in trust for them, or that the ownership of the Terminal Company is subject to an easement in favor of the Railway Companies which gives them the right to the use of the property in perpetuity for terminal purposes at actual cost of operation, maintenance and taxes, they getting the benefit in reduction of the cost of operation of all revenue from whatever source obtained, thus depriving the Terminal Company of all beneficial interest in the property, and making its shares of stock worthless to the owners of them.

The issued capital stock of the Terminal Company amounts to four hundred thousand dollars divided into four thousand shares of the par value of one hundred dollars each, of which the Wabash Company owns and holds five hundred shares, the Chicago, Milwaukee and St. Paul Company, one thousand shares, and F. M. Hubbell & Son, twenty-five hundred shares. F. M. Hubbell & Son bought their shares from the predecessors in right and title of the Railway Companies.

The real purpose of this branch of the case, and the effect of the contention of the Railway Companies, if sustained, is to nullify and render worthless the shares of F. M. Hubbell & Son.

The determination of this "main" controversy, the Court of Appeals said, was "the definition of the legal

effect of certain instruments and acts of the parties or their predecessors in interest."

This question was decided by the Circuit Court of Appeals in favor of these petitioners, the Court holding that the Terminal Company was the absolute owner of its property, and that the rights of the Railway Companies therein or thereto were simply those of share holders in the Terminal Company.

The Surplus Earnings

controversy is the subject of this petition or cross-petition for certiorari and we may say as the Court of Appeals said of the main "controversy," that the determination of it is "the definition of the legal effect of certain instruments and acts of the parties or their predecessors in interests," and the same instruments and the same acts of the same parties are involved in the petition and cross-petition. This a statement of the case will show.

In December, 1880, the Des Moines and Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, to which companies the Chicago, Milwaukee and St. Paul Railway is the successor, and the Des Moines and St. Louis Railway Company to which the Wabash Railroad Company has succeeded, desired to bring their lines to the city of Des Moines, the first two from the North and Northwest and the third from the South.

Among other things done by them was the acquisition of certain real estate in the city of Des Moines, respecting which they made an agreemnt on January 2nd, 1882, reciting the acquisition of the property and providing that the expense of acquiring and improv-

ing it should be borne one-fourth each by the Northern companies and one-half by the Southern. We can speak of them hereafter, the Northern companies as the Milwaukee and the Southern as the Wabash.

The property had been acquired chiefly in the names of individuals who were confessedly trustees for the railroad companies.

The contract provided:

> "Third: * * * It is understood that a depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements."
>
> "Fourth: The title to said property shall be and remain in a trustee to be named by agreement by said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein prescribed."
>
> "Tenth: In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to inure to the companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account to be determined in the same manner as the sums due from the other companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the parties hereto." (Record, pp. 120-122.)

The Wabash Company was to have control, supervision and maintenance of the property and the expense of this was to be borne by the several companies on a wheelage basis.

The companies operated under this contract for some years, each doing its own terminal work, that is, employing its own engines and crews and moving its own cars.

This was not a satisfactory method of operation and in December, 1884, the Railway Companies organized the Terminal Company under the laws of the State of Iowa governing corporations for pecuniary profit, to carry out, as they said, the objects and purposes of the contract of January 2nd, 1882.

They provided for a capital stock of one million dollars "which shall be divided into shares of one hundred ($100.00) dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine and the Board are authorized to receive in payment therefor the property and franchises in the city of Des Moines now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, trustee, Jas. F. How and Grenville M. Dodge." (Record, pp. 9-11.)

There was no restriction in the articles as to who might become a stockholder in the Company, but the directors were distributed among the Railway Companies, four to the Northern companies and four to the Southern. And no stockholder was eligible to a directorship unless nominated by a Railway Company.

The terminal property held by and for the Rail-

way Companies was in time duly conveyed to the Terminal Company. The consideration for such conveyance was the proportion of each of the Railway Companies of the stock and bonds of the Terminal Company. Bonds to the extent of Eight Hundred Thousand Dollars, secured by mortgage on all the property of the Terminal Company, were authorized and executed November 1st, 1887, and something above four hundred thousand of these were delivered to the parties entitled to them on account of the property then and previously conveyed to the Terminal Company. Other of the bonds were issued from time to time as other property was acquired.

No shares of capital stock were then actually printed or issued, but the parties assumed the existence and outstanding of ten thousand shares of one hundred dollars each, one-fourth as held by each of the Northern Companies and one-half by the Southern Company.

May 1st, 1888, the Terminal Company took actual possession of its property and has ever since operated the same.

The delay in the proceedings was due undoubtedly to the fact that the railway enterprises were not prosperous, the Record showing a foreclosure of mortgages in every case except that of the Terminal Company.

May 10th, 1889, the contract was made between the Terminal Company and the Railway Companies, which underlies the contention as to "surplus earnings." It was to be effective from May 1st, 1888, and to run for a period of thirty years from that date. (Record, pp. 150-159.)

When this contract was executed, the capital stock

of the Terminal Company, was owned, one-fourth by each of the predecessors of the Milwaukee Company and one-half by the predecessor of the Wabash.

The contract recited that the Terminal Company was the owner of valuable terminal facilities in the city of Des Moines and that it was important that the Railway Companies should have use of them. Also that the Terminal Company should from time to time acquire other and further facilities, among them a union passenger depot, freight depots, etc., etc., the amount, character, cost and management of these to be determined by the Board of Directors of the Terminal Company.

Section three of the contract provided:

> "Each of said parties of the second part (Railway Company) for itself and its assigns, agrees to pay to said party of the first part (Terminal Company) a sum of money to be ascertained as follows, to-wit:
>
> 1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.
>
> 2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid

during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round houses, transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof."

Section nine makes special provision as to the operation of engine houses, which need not be further considered.

Section four is as follows:

Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, *there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof*, for the preceding month, *and the remainder* shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month, and it is expressly understood and agreed that in computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard guage cars, and that the term "wheelage" as used in this contract means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

Provisions of the contract for the enforcement of payment need not be considered.

The contract recites the shareholding in the Terminal Company by the Railway Companies as above set forth, and further the authorized capital stock having been increased to two million of dollars "that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of one hundred dollars each, the same shall be issued and held as follows, to-wit: One certificate of ten thousand shares shall be issued and delivered to the Des Moines & St. Louis Railroad Company; one certificate for five thousand shares shall be issued and delivered to the St. Louis, Des Moines & Northern Railway Company, and one certificate for five thousand shares shall be issued and delivered to the Des Moines & Northwestern Railway Company, and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement, except that any shares of stock issued on request of either of said companies to any person, to qualify him as a member of the Board of Directors shall be retransferable to the company on whose request it shall have been issued without the consent of the other companies; but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued, unless consented to by the other parties of the second part.

The bonds of the Terminal Company were negotiable and were in fact sold on the open market.

The Railway Companies were interested in the Terminal Companies in two ways, first as shareholders

and second as entitled to service by the Terminal Company in accordance with the terms of the contract.

Neither of these interests was an equal one as between the companies. As shareholders, two of them had one-fourth each, and the other had one-half. So far as the service was concerned each was to pay for such service as it received, that is on a wheelage basis.

As shareholders each, if the company made any net earnings out of its property, was entitled to the proportion indicated by its holding of capital stock. As to service it paid for what it got on the terms to which it had agreed.

The charge for the service was to be ascertained as to all the companies by ascertaining certain costs and expenses, deducting therefrom certain items of credit and then dividing the remainder between the Railway Companies on a wheelage basis.

There is no controversy here as to the wheelage basis, nor as to the items of charge, which are: (1) interest on bonds, (2) maintenance and repair, (3) taxes, (4) insurance, and (5) costs and expenses of every nature connected with operation.

From the sum of these items of charge there is to be a deduction and it is as to this that the controversy arises.

The contract provides that the aggregate of the items of charge having been ascertained "there shall be deducted therefrom *the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property or parts thereof.*"

The Terminal Company has such contracts and the amounts received under them have always been deducted from the ascertained items of charge against the Railway Companies.

And the Terminal Company has other sources of revenue. From time to time it moves cars from and to industries located on its lines to carriers other than the Railway Companies and other than those with which it has contracts, and for this it makes and collects a charge.

It leases portions of its depot building for news and cigar stands and for restaurant purposes. And it has acquired property in advance of its immediate use for terminal purposes and lets this for various purposes. The returns from this switching service and these rentals are known as "surplus earnings." At the time of the trial in the District Court these earnings aggregated about a half million dollars and they have accumulated since at the rate of about a hundred thousand dollars a year.

The Railway Companies contend that these surplus earnings should be deducted from the monthly aggregate of the items of charge against them under the contract of May 10th, 1889. The petitioners contend that, inasmuch as none of the moneys from which the "surplus earnings" are derived are "amounts to which *other railway companies* may be under obligation to pay by *virtue of contracts* for the use of said property," they should not be so deducted.

The Circuit Court of Appeals decided this adversely to these petitioners, saying of the contention of the petitioners that

> "*this latter contention is a strict construction of the exact wording of the contract.* It is not in our judgment a fair construction of the spirit of the agreement. This conclusion is based both upon the history of the transaction and upon the meaning to be given to this precise language when read in connection with the entire contract."

The provision of the contract here in question, that is, section four, is clear and unambiguous in itself, providing for deduction from the aggregate of charge, the moneys received on a single account, being the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property.

To deduct the rentals of news and cigar stands and payments for restaurant privileges is to add to the deduction provided for in the contract deductions of a very different kind, and is to write something into the contract which the parties did not write there.

"The meaning to be given this precise language when read in connection with the entire contract," is the same as when considered by itself, for this section is the only one in the entire contract dealing with this subject in any way. No other clause alludes to it even remotely and so cannot in any way qualify it.

Nor is the spirit of the agreement in any wise offended, and on the contrary, the "strict construction of the exact wording of the contract" is "a fair construction of the spirit of the agreement."

The contract is one for services by the Terminal Company, involving the use of its property, to be rendered to the Railway Companies. It did not involve the use of properties not used for terminal railway purposes. It had nothing to do with news stands or restaurants.

The Railway Companies were shareholders in the Terminal Company. Indirectly they were proprietors, and in such proportion as they had deliberately determined a number of times by agreement with each other. If there were any profits resulting from any use of this property other than that provided for by this contract

each company had its share in those profits in the measure of its indirect share of the property itself.

These "surplus earnings" were incidents of the proprietorship of the Terminal property and not incidents of the service contract between the Railway Companies and the Terminal Company.

"The history of the transaction" leads to the same conclusion. There were no individual shareholders in the Terminal Company until some time in 1890, when F. M. Hubbell and General G. M. Dodge acquired shares. Until now it was a matter of small significance what was done with the surplus earnings, for two reasons, i. e., they were small in amount and they went to the benefit of the Railway Companies in any event, and whether on a wheelage or a stock basis made no practical difference.

On February 11th, 1891, was had the first action respecting them. On that day it was ordered by the Board of Directors of the Terminal Company:

> "That the rents collected for the use of the Company's real estate, and the switching charges paid in, be credited on the rolls of the different tenant companies occupying this Company's terminals, giving to each Company its share ascertained by wheelage." (Record, p. 497.)

This was a disposition of these earnings by the Terminal Company and the authority of the Terminal Company therefor was regarded as necessary. The earnings were earnings of the use of the property and not earnings of the service rendered by the Terminal Company to the Railway Companies. So they belonged to the owner of the property, and consequently the owner of the property determined the disposition of them.

On the 7th day of January, 1892, the holdings of F. M. Hubbell had increased to one thousand shares and G. M. Dodge still held five hundred, and the Board of Directors of the Terminal Company again exercised the right of disposing of these earnings by the following resolution, viz.:

> "Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies.
>
> Therefore, Be It Resolved: That until the further action of the Board the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purposes." (Record, p. 499.)

And from this time on without question these earnings were dealt with by the Terminal Company as its own, and growing yearly in amount they were used in the acquisition of more property and in the making of improvements and extensions or accumulated as a surplus in the treasury until after January, 1906, a period of fourteen years, and but a short time prior to the beginning of this litigation.

Meanwhile the shareholding interests in the Terminal Company had greatly changed.

In April, 1890, the articles of incorporation of the Terminal Company were materially amended. At the meeting of the shareholders making these amendments on motion of A. B. Cummins, there was a valuation of the property of the Terminal Company in order to fix its fair worth in bonds and stocks, he being evidently of opinion that $2,000,000 of stock with the bonds that had been issued constituted a material over-valuation. The fair value was fixed at $861,257 and 21/100, the

individual interests in which were settled as follows, viz.:

The Wabash	$470,110,80
The Des Moines & N. W.	215,458,40
The St. L., Des Moines & N.	100,000,00
G. M. Dodge	74,388,01
Polk & Hubbell	2,000,00
	$861,257,21

On this account bonds had been issued as follows:

The Wabash	$270,000,00
G. M. Dodge	74,000,00
Polk & Hubbell	2,000,00
Des Moines & N. W.	115,000,00
	$461,000,00

This left aside from $257.21 settled in cash, $400,000, which went in shares of the Terminal Company to the parties entitled, $200,000 to the Wabash and $100,000 to each of the two Northern Companies.

But with this adjustment of the Terminal stock in view the Wabash Company had a short time before sold one-eighth of its allotment to F. M. Hubbell and the same amount to G. M. Dodge and a month or more later sold 500 more shares to F. M. Hubbell, so that on June 5th, 1890, the stockholding stood:

The Wabash	500	shares
Milwaukee predecessors	2,000	"
F. M. Hubbell	1,000	"
G. M. Dodge	500	"

January 15th, 1892, Dodge and Hubbell transferred their shares to a consolidated company which was the

immediate predecessor of the Milwaukee, giving it 3,500 shares and leaving the Wabash with five hundred.

October 4th, 1893, the consolidated company pledged 2,500 of its shares to F. M. Hubbell & Son as collateral for indebtedness and January 29th, 1894, sold the stock so pledged in liquidation of debt to F. M. Hubbell & Son.

Ever since January 29th, 1894, the stock of the Terminal Company has been owned:

The Wabash	500	shares
The Milwaukee, or predecessor	1,000	"
F. M. Hubbell & Son	2,500	"

It so appeared on the record and the Wabash Company was well aware of it all of the time. It had sold 1,500 of its own shares and knew where they had gone.

The Milwaukee Company became interested in the Northern railways in 1894 and acquired a majority of their capital stock in large part by gift from F. M. Hubbell & Son and in lesser part by purchase. The Milwaukee Company was advised that the consolidated Company owner of the two Northern railways, owned also 1,000 shares of the Terminal Company and no more, that the Wabash owned 500 and that private parties owned 2,500, or a majority.

With this knowledge the Milwaukee acquiesced in the disposition made of the surplus earnings for more than twelve years, after it acquired its interest in the Terminal Company.

The Circuit Court of Appeals in its opinion said and held that "a subsequent contract of July 31st, 1897, does not affect this controversy."

In this we think the Court erred, for the contract of July 31st, 1897, was a reaffirmation in terms of the

contract of May 10th, 1889. From the beginning to the time the new contract was made the "surplus earnings" had been disposed of as determined by the Directors of the Terminal Company and ever since January 7th, 1892, they had so far as disposed of, been appropriated to the uses of the Terminal Company for the acquisition of additional property. And this disposition of the earnings was deliberately approved by Mr. Hays, the Wabash representative on the Board. June 7th, 1894, Mr. Hays wanted time to consider the appropriation made to discharge a mortgage debt on some newly acquired property. June 19th, 1894, he gave his consent. In August of that year and again in November he approved of other like dispositions of these monies. At the November meeting of the Terminal Board, Mr. Cummins representing Mr. Hays, a resolution was passed directing that a certain mortgage debt be paid out of the "surplus earnings" and providing in terms that

> "The term 'surplus earnings' as herein used means that fund arising from the rentals of real estate and from switching charges." (Record, p. 1344.)

Why such a resolution? If every penny received by the Terminal Company from any and all sources must be deducted from the aggregate of the charges against the tenant companies, there would be and could be no "surplus earnings." The very use of the term was an acknowledgment that the parties recognized the meaning of the contract to be expressed by what the Court of Appeals spoke of as its exact wording.

December 28th, 1886, Mr. Ashley, President of the Wabash, wanted a new contract with the Terminal

Company, because of a foreclosure of mortgage against one of the tenant companies, which had weakened the position of the Terminal bonds on the market.

When it came to drafting the new contract, changes were desired and proposed by the Wabash as to the surplus earnings, and they were spoken of as changes.

Mr. F. C. Hubbell for the Terminal wrote to Mr. Ramsey of the Wabash, as follows:

> "Referring to the new terminal contract, I have seen the correspondence between you, Mr. Blodgett and Mr. Cummins. With respect to the Des Moines Union's revenue from rental and switching, would say that this fund has always been controlled by the Terminal Company, and is the only money which it has to use for other than strictly operating expenses. We therefore feel that the new contract should leave this fund the property of the Terminal Company. The rental and switching is a small item, and is now being used to pay our floating debt, consisting of $31,000 held by Commercial Bank of St. Louis, which will consume this fund for a good many years." (Record, p. 1680.)

On the same day, February 18th, 1897, Mr. Cummins wrote to Col. Blodgett, General Counsel of the Wabash, as follows:

> "Have your favor of the 16th inst., and have carefully considered the amendments that you propose to the terminal contract, and the reasons which are stated in Mr. Ramsey's letter *for the changes.*" (Record, p. 1684.)
>
> * * * * * * *
>
> "*With respect to the change in Sec. 4, which would require the Des Moines Co. to credit upon its expenses and disbursements the accounts re-*

ceived by it for switching charges, rental of houses and things of that character, Mr. Hubbell has written to Mr. Ramsey recalling to his attention the situation, which absolutely precludes the disposal of such revenues of the company in that way." (Record, p. 1686.)

February 24th, 1897, Mr. Cummins wrote to Mr. Hubbell, saying, "I have a telegram from Col. Blodgett asking me to send a copy of the *amended articles* of the company," etc.

March 26th, 1897, Col. Blodgett wrote to F. M. Hubbell, enclosing proposed amendments to the contract which he speaks of as changes. The second change is as follows:

"2nd. I send Section 3 in two forms, and I need not go into any detailed explanation of them. Number one is founded upon the theory that the Des Moines Company may do a switching business during the whole period of the lease, paying, on a wheelage basis, the same proportion of interest charges, cost of maintenance and operating expenses, as is paid by the tenants, and using its net revenue throughout the term in improving the property. That is the form suggested by Mr. Ramsey and myself.

Number two presents the section as you and Mr. Ashley suggested. Under it you are to switch and handle cars for others than tenant companies, and collect the revenue, until the net profits, together with the rentals from portions of the ground, amount to fifty thousand dollars, of which sum thirty-five thousand dollars is to be applied on the floating debt, and the balance used for a working fund. And after the fifty thousand dollars has been realized, all the net revenues from switching is to go to the tenant companies to re-

duce their expenses, on a wheelage basis." (Record, p. 1687.)

Different changes were proposed by different parties, but not accepted, and the matter was closed by a ratification agreement of date July 31st, 1897.

At this time all the original parties to the contract of 1889 except the Terminal Company had gone out of business because of insolvency and new companies owned and operated their lines of railroad, one company having now acquired both Northern lines. The new contract recited this history and further that "it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines Northern and Western Company." It was provided as follows:

> "Now, therefore, in consideration of the premises and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Wabash Company and the Des Moines, Northern & Western Company.
>
> And the said Wabash Company for itself agrees *to make the payments therein provided for at the times and in the manner prescribed for the said Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company,* and when the said Wabash Company ceases to operate the railroad of the said Des Moines & St. Louis Company its obligation to so pay, and all the obligations herein assumed by it, shall at once determine and be and become the obligations of whatever company operates the said railroad, it being the intention that the obligations of the said contract, so far as they pertain

to the Des Moines & St. Louis Railroad Company, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property leased in the said contract, to assume all the obligations therein or hereby undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein, and as though it had been named in and was a party to the said contract when originally made, *and to pay to the said Des Moines Company at the times and in the manner therein prescribed, the sums of money which may become due, computed according to the terms and provisions of the said contract with respect to a tenant company;* and the said Des Moines, Northern & Western Company further agrees that the obligations therein named and hereby assumed shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee, or successor of the said Des Moines, Northern & Western Company in the ownership or operation of the said Des Moines, Northern & Western Railroad, and any company succeeding the Des Moines, Northern & Western Company, in such ownership or operation shall be held by the operation of trains over the said Des Moines, Northern & Western Railroad, and upon the property leased in the said contract, to assume all the obligations therein expressed and herein undertaken by said Des Moines, Northern & Western Company.

But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:

The purchasing committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.

The Des Moines, Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares." (Record, p. 506.)

Here is not only a ratification or adoption of the contract by the Wabash Company and the company to which the Milwaukee is successor, but a reiterated agreement to pay to the Terminal Company at the time and in the manner prescribed in the contract the sums of money "which may become due *computed according to the terms and provisions of said contract with respect to a tenant company.*"

And added to this is the very express recognition of the fact that there is a large, a majority interest in the shares of the Terminal Company which is independently and individually held and is interested in the construction of the contract according to its express terms.

And from this time until 1906 the contract was construed according to its terms, surplus earnings being used from time to time for the acquisition of additional property, without protest from any one and with the approval of all concerned.

In view of all the facts, preceding, attending and following the execution of the contract of July 31st, 1897,

there was manifest error in holding that it "does not affect this controversy."

The history of this transaction has in considerable part been given, but there is much more in the record of the same nature, and much of that related to the main controversy which bears directly and indirectly upon the question of surplus earnings. The Hubbells, father and son, gave liberally and freely, the son for many years entirely, their time and service to this enterprise. They fostered it during all the thirty years of the contract of 1889, which certainly they would not have done if this contract had been a barren one and their stockholdings barren also. True, for a time they were interested in the Northern railroads, but from the time the Milwaukee acquired its holdings in these they had, if the contention of the respondents now made is warranted, no interest whatever in the Terminal Company, except the holding of stock which was forever precluded from yielding any profit. Still they conducted its business, managed and directed its affairs for years and were permitted to do this by respondents without the pay of a dollar, conduct upon both sides inconsistent with any view other than that they had a substantial beneficial interest as large stockholders in the Terminal Company.

We submit that the Circuit Court of Appeals erred in holding:

1. That the contention of petitioners that the only character of credit items to which the respondents were entitled under the contract "were such as were paid by some other railway by virtue of a contract for the use of the property" while "a strict construction of the exact wording of the contract" is not "a fair construction of the spirit of the agreement."

II. That its conclusion as to what was the "spirit of the agreement was based upon or warranted by the history of the transaction.

III. That its construction of the contract giving the surplus earnings to the respondents was justified by the reading of the contract in its entirety.

IV. And in its order, judgment and decree directing the District Court of the United States for the Southern District of Iowa to so modify its decree "that the surplus earnings belong to the railways, and to appoint a master under instructions to ascertain the part due each upon a wheelage basis."

The petitioners therefore pray that a writ of certiorari issue to said Circuit Court of Appeals to remove therefrom the Record in this cause for review here by this Court of the questions presented and the errors specified in this petition.

Respectfully submitted,

J. L. PARRISH and
F. W. LEHMANN,
Of Counsel for the Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1916.

No. 8[redacted]2[redacted]67

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL and F. M. HUBBELL & SON,

Petitioners,

vs.

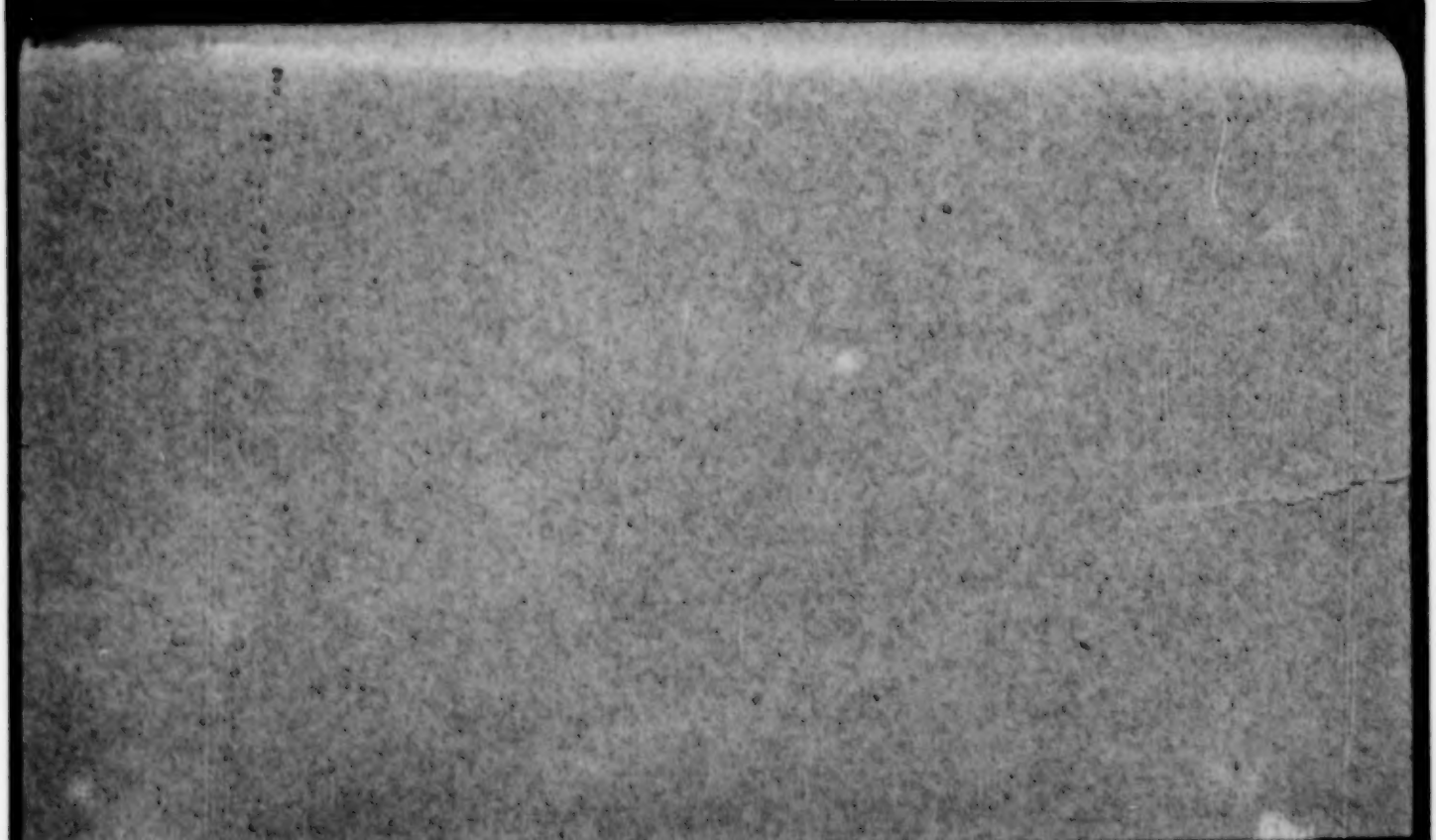
THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE WABASH RAILROAD COMPANY,

Respondents.

REPLY TO CROSS-PETITION FOR WRIT OF CERTIORARI.

J. L. Minnis,
Counsel for Respondent Wabash Railway Company.

St. Louis Law Printing Co., Ninth and Walnut Sts. Tel., Main 1020.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1918.

No. .....

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL and F. M. HUBBELL & SON,

Petitioners,

vs.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE WABASH RAILROAD COMPANY,

Respondents.

REPLY TO CROSS-PETITION FOR WRIT OF CERTIORARI.

Supplementing the reply of respondent, the Chicago, Milwaukee and St. Paul Railway Company, to the cross-petition for writ of *certiorari*, attention is called to the following additional matters:

I.

The contract of May 10, 1880, on which petitioners rely (Record, p. 150), after describing the terminal property, including the proposed union passenger depot and additional facilities to be constructed, obligated the predecessors of respondents to pay the maintenance and operating cost, interest and taxes, etc., and then by section 6 (Record, p. 152) "the party of the first part in consideration of the payments to be made to it by said parties of the second part hereby **grants** to said second parties the use of its terminal properties as aforesaid"—a grant not merely of a right to use, but of the "use of", *i. e.*, entire usefulness or **usufruct** of "its terminal properties", and, of course, includes the income derived from switching, station privileges, etc.

That the language of the grant expressed the intentions of the parties is obvious from the fact that all parties understood at the time that the grantees owned the terminal properties as shown by the evidence of Colonel Blodgett in regard to the purposes of the contract (Record, p. 366) by the resolution of the Des Moines Union Railway Company (hereinafter called the Des Moines Company), requesting him to prepare it "to be approved and executed by all lines now holding an **interest in the property**", and by its resolution that "the terms and conditions on which

the several lines now interested or which may hereafter become interested shall enjoy the use of these terminals be fully set forth in a **supplemental** agreement to be made and executed between the Des Moines Union Railway Company and each of the lines using the said terminals" (Record, p. 478). The contract could have been **supplemental** only to the contract of January 2nd, 1882 (Record, p. 120) and according to the resolution its purpose was to define the terms and conditions on which the **grantees** should enjoy the use of the terminals, not to define or recognize any right in the Des Moines Company, and accordingly no rent or compensation for the use of the terminals was reserved and all the covenants were by or for the benefit of the grantees—the Des Moines Company not having the slightest interest in their performance—it being merely an umpire or agency employed to unify the operations and bookkeeping and enforce the covenants as between the grantees for whose sole benefit they were made.

II.

(a) The parties at the outset committed themselves to a construction of the contract which entitled the grantees to the income produced by switching, station privileges, etc., by crediting it on their bills, first, under the direction of the joint superintendent (Record, p. 271), and after February 11, 1911, pursuant to

resolution of the Des Moines Company (Record, p. 497), and they were so credited until December, 1891 (Record, p. 333), when the Des Moines Company passed a further resolution that "the sum received as rent of real estate and all switching charges" should be used "to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies" (Record, p. 499), which was equivalent to crediting the sum on the grantees' bills because cash purchases of supplies and payment of current bills would to that extent lessen the grantees' bills. This method of applying such income was to be temporary "to accumulate a small fund for working capital", and it was intended the practice of directly crediting the bills should be resumed January, 1893 (see Supt.'s letter, Record, p. 338).

(b) After the Des Moines Company had thus committed itself to a construction of the contract which entitled the grantees to the income from the switching, etc., the grantees paid for the coal, labor and material necessary for the operation and maintenance of the engines, tracks, passenger station and real estate which produced the income in controversy. The petition states, on page 12, "at the time of the trial in the District Court these earnings aggregated about half a million dollars, and they have accumulated since at the rate of about one hundred thousand

dollars a year." The outlays by the grantees for fuel, labor, material, etc., in producing those earnings must have been very considerable, which, together with the protest made by the grantees when first advised, shortly before the bringing of this suit, by F. M. Hubbell, that he claimed the grantees were not entitled to such earnings (Record, p. 329), justifies the inference that the grantees made such outlays on the faith of the uniform construction of the contract by all the parties. Having stood by and knowingly permitted the grantees and their assigns to pay the cost of producing the income in controversy on the assurance of said resolutions that they were entitled to it, the Hubbells are now estopped from causing the Des Moines Company to claim, and it is estopped from claiming, the contrary.

III

The income from switching, etc., belongs to the respondents because it was derived from the **use and occupation** of the terminal property which the predecessors of [redacted] secured to themselves and their successors by the contract of January 2nd, 1882 (Record, p. 120); articles of association of the depot company (Record, p. 123) and the resolutions pursuant to which the terminal property was transferred to (Record, pp. 131-7) and received by the Des Moines Company (Record, pp. 130-1).

The right to the "use and occupation" of railroad property by a railroad company under the laws of Iowa embraces the entire usefulness of the property (Cummins v. Des Moines, St. Louis Railroad Company, 63 Iowa 397, *l. c.* 405; Smith v. Hall, 103 Iowa 95, *l. c.* 96-97).

The contract of May 10th, 1889, was merely an operating agreement defining the operations of the interested railway companies for a period. The Des Moines Company under its articles of incorporation (Record, p. 123) is the agency of these companies who nominated its directors, it having undertaken by article II to exercise all of its powers "in accordance with the terms and spirit of the aforesaid contract entered into on the second day of January, 1882".

IV.

The petition states on page 24 that "the Hubbells, father and son, gave liberally and freely, the son for many years entirely, their time and service to this enterprise. They fostered it during all the thirty years of the contract of 1889, which certainly they would not have done if this contract had been a barren one and their stockholdings barren also", but no reference is made to the record to justify this statement. The record shows that the Hubbells agreed when they purchased the stock from Ashley that "the stock should be held by a railway com-

pany entitled to use the terminal property" and that "it would be prejudicial to sell any of this stock to outsiders" (Record, pp. 1059-1060), and contrary to this understanding they acquired the stock from the companies they dominated at a nominal value (Record, pp. 1096-1097). The stock, therefore, was "barren" and they knew it was barren, and are not entitled to derive contrary to their agreement any profit from it. Hubbell testified, "I stated very clearly that I am in charge of that property (meaning the terminal property); I know all about it, manage it, buy all the material. I decide on the location of every track, side tracks and main line, changing of the tracks, everything in reference to the details of the business" (Record, pp. 1200-1201).

The son testified:

"Q. Did you or your father, or together as a firm, own and deal in real estate located near the lines of the Des Moines Union?

"A. Yes, sir; F. M. Hubbell has bought considerable lands along the Des Moines Union, and I have, also. I am a trustee in his estate.

"Q. Well, didn't you and your father make a large sum of money in those real estate transactions?

"A. The real estate which we have bought and held I think has gone up in value very considerably.

"Q. You have made plenty of money out of that that you have sold, haven't you?

"A. I do not recall ever having sold any at

a loss, because property has always advanced in Des Moines; I mean, as a general rule (Record, pp. 1198-1199)."

The Hubbells own the Des Moines Terminal Company and the Des Moines Western Terminal Company, which also own terminal railroad properties in Des Moines, and the Hubbells operate them for their own profit in connection with the operation of the Des Moines Company (Record, pp. 1200-1201).

It is respectfully submitted the question sought to be reviewed by petitioners is not an open one and that the petition should be denied.

Respectfully submitted,

JAMES L. MINNIS,

Counsel for Respondent Wabash Railway Company.

JAN 30 1919
JAMES D. MAHER,

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1918.

No. 820 [redacted] 67

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL and F. M. HUBBELL & SON,

Petitioners,

vs.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE WABASH RAILROAD COMPANY,

Respondents.

REPLY TO CROSS-PETITION FOR WRIT OF CERTIORARI.

JOHN C. COOK,
BURTON HANSON,
Counsel for Respondent, Chicago Milwaukee & St. Paul Railway Company.

DARTNELL-HARPER PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1918.

No._____

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL and F. M. HUBBELL & SON,

Petitioners,

vs.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE WABASH RAILROAD COMPANY,

Respondents.

REPLY TO CROSS-PETITION FOR WRIT OF CERTIORARI.

The objection to the issuance of a writ of certiorari on the cross-petition herein may be briefly stated as follows: That the question involved is not of sufficient gravity and importance, nor sufficiently open to controversy, to call for the interposition of this court in granting the writ.

Two causes of action are involved in this litigation:

The first cause of action (Rec., 55-106 and 117) involves the right of the St. Paul Company, which owns

and operates more than 10,000 miles of railway, and of the Wabash Company, which owns and operates about 2,500 miles of railway, to continue to occupy and use in connection with their systems of railway, as they have for many years last past, about three miles of main line double track, including a bridge over the Des Moines River, and about 27 miles of side and switch tracks, team and warehouse and industry tracks, and a modern passenger depot and freight houses, all located in the center of business and population in the City of Des Moines, the commercial center of Iowa, having a population of about 125,000. This cause of action is called in the opinions of the court below *The Main Controversy.* (Rec., 2088.) That this cause of action or controversy involves questions of large public interest—and, therefore, questions of gravity and importance, and is sufficiently open to controversy—is clearly shown by the opinion of Judges Stone and Smith and the dissenting opinion of Judge Hook in the court below. (Rec., 2086-2120.)

The second cause of action (Rec., 106-113) relates wholly to the matter of accounting during the life of the operating agreement, which expired May 1, 1918, and involves merely the question of the ownership of certain funds in the treasury of the Des Moines Company. This cause of action in the opinions of the court below is called *Surplus Earnings.* (Rec., 2115.) The court below—all judges concurring—held that these funds belong to the St. Paul and Wabash Companies. (Rec., 2115-2119 and 2120.) No public interest is involved in this cause of action, nor is there involved any rule or principle of law which the interest of the public requires this court to determine, and the cross-petition herein makes no such claim. The only reason assigned for the writ is that if the first cause of action, or main controversy, is to be reviewed here, then the second cause of action

should also be reviewed, regardless of the difference in the subject matter and the questions involved. It seems too plain for argument that each cause of action must be dealt with on its own merits, and that as the second cause of action or branch of the suit involves private interests only, and the decision of the court below in respect thereof being unanimous, and no rule of law on which there are conflicting decisions in the different circuits being involved, a writ of certiorari should not be granted for the purpose of reviewing that decision. If the controversy in this litigation had been confined to this single cause of action, and had been decided by the Circuit Court of Appeals as it was decided, there would be no grounds for granting the writ. Aside from this objection, this cause of action, as will be seen by reading the opinions of Judges Stone and Hook, was correctly decided by the court below and the question involved therein—whether the so-called "surplus earnings" belong to the St. Paul and Wabash Companies, as the court below held they do or to the Des Moines Company—is not sufficiently open to controversy to call for a review thereof by this court.

In addition to the facts stated in the opinions of the court below, we call attention to the following: In Section One of the operating agreement (Rec., 480), the Des Moines Company agreed *"to erect and furnish for the use of the parties of the second part (the railways), in said City of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots and roundhouses, shops, water tanks and yard appurtenances."* A considerable portion of the so-called "surplus earnings" arose from the renting of rooms and space in this passenger depot, the use of which belonged to the railways, and on the full cost of which the railways paid interest, taxes, insurance and the cost of repairs and

maintenance. Other portions of such surplus earnings were received from switching that was done with engines acquired at the cost of the railways. Every dollar expended in maintaining and operating these engines and in doing this switching service was borne by the railways and charged to them each month. The receipts from such rentals and switching, when collected, were credited on the monthly bills of the Des Moines Company against the railways "*from the time there were any such earnings.*" (Rec., 327.) The first appearance of any such earnings was a small amount in the month of December, 1889. (Rec., 273.) This was nearly a year after the operating agreement had been executed, and nearly two years after the Des Moines Company took charge of the terminal property. These rentals and earnings arising subsequent to the making of the operating agreement, had there been any dispute concerning their ownership or disposition, might well have called into play the provisions relative to arbitration between the parties found in Section 28 of that agreement. (Rec., 487.) But no dispute arose over them, as it was conceded by all concerned that they should go into the monthly accounts between the Des Moines Company and the railways as a credit on operating expenses in favor of the railways. This was in line with the action of the executive and accounting officers of the Des Moines Company (Rec., 272-313), the formal resolution of the board of directors of that company (Rec., 497), and, as the court below decided, was in full accord with the spirit of the operating agreement. It is significant that the resolution of the board of directors of the Des Moines Company was adopted long after the executive and accounting officers had given the railway companies credit for these receipts on their monthly expense bills. (Rec., 497.)

It is respectfully submitted that no grounds exist for granting the cross-petition herein for a writ of certiorari.

JOHN C. COOK,
BURTON HANSON,
Counsel for Respondent, Chicago, Milwaukee & St. Paul Railway Company.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. [redacted]66

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY,

Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL *et al.*,

Respondents.

No. [redacted]67

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL *et al.*

Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF AND ARGUMENT OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

JOHN C. COOK,

BURTON HANSON,

Counsel for Chicago, Milwaukee & St. Paul Railway Company.

WINSLOW S. PIERCE,

LAWRENCE GREER,

ROBERT J. CARY,

F. C. NICODEMUS, JR.,

Counsel for Wabash Railway Company.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1919.

No. 278.

Chicago, Milwaukee & St. Paul Railway Company and Wabash Railway Company,

Petitioners,

vs.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son,

Respondents.

No. 279.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son,

Petitioners,

vs.

Chicago, Milwaukee & St. Paul Railway Company and Wabash Railway Company,

Respondents.

WRITS OF CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE EIGHTH JUDICIAL CIRCUIT.

BRIEF AND ARGUMENT OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

STATEMENT OF THE CASE.

The petitioners, Chicago, Milwaukee & St. Paul Railway Company, called the "St. Paul Company," and

The Wabash Railroad Company, called the "Wabash Company" and also referred to in the brief and argument herein as complainants filed their bill in the District Court of the United States for the Southern District of Iowa, against Des Moines Union Railway Company, called the "Des Moines Company," Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, called "the Hubbells," and also referred to in the brief and argument herein as the defendants, to establish their right as equitable tenants in common to the joint and exclusive use in perpetuity of the terminal facilities and property in the City of Des Moines, Iowa, held in the name of the Des Moines Company, and for an accounting of large sums of money, called "surplus earnings," collected from time to time by the Des Moines Company and the Hubbells for the use of such terminal facilities and property. (Rec., 53, 119.)

The railroads and terminal facilities in controversy include a double track railroad extending from a connection with the railroad of the Wabash Company at its terminus at the east limits of the City of Des Moines through the business center of the city over a bridge across the Des Moines River to a connection with the tracks of the railroad of the St. Paul Company at its terminus at Sixteenth street near the western limits of the city, a distance of about three miles; modern passenger depot, freight depot, sidetracks, switches, roundhouses, turntables and industry tracks connecting with all industries of importance in Des Moines, together with switch engines and other incidental facilities. (Rec., 183, 480, 1047.) The original outlay for the ground and rights of way was $461,257 and F. M. Hubbell estimated the value of the property at $2,000,000. (Rec., 478; 1094.) The surplus earnings at the time of the filing of the bill amounted to approximately $500,000. (Rec., 109, 194.)

The Hubbells claim that the complete title to and ownership of the terminal property and surplus earnings is in the Des Moines Company, and as holders of 2,500 shares out of the total of 4,000 shares of the capital stock of that company—1,000 shares of the remainder thereof being owned by the St. Paul Company and 500 shares by the Wabash Company—they have asserted the right to exclude the petitioners from the use of such terminal facilities at the expiration of a supplemental operating agreement, namely, on May 1, 1918, and to distribute such surplus earnings among the holders of such capital stock pro rata. (Rec., 329, 333.)

The Bill.

The bill of complaint as amended avers, among other things, that three railway companies—Des Moines & St. Louis Railroad Company, called "St. Louis Company," Des Moines Northwestern Railway Company, called "Northwestern Company," and St. Louis, Des Moines and Northern Railway Company, called "Northern Company"—predecessors in title to the St. Paul Company and the Wabash Company, acquired terminal property in the City of Des Moines and constructed thereon railroad tracks, switches, sidetracks, turnouts, depots and other terminal facilities for their joint use and occupancy; that pursuant to a contract dated January 2, 1882, said Railway Companies created the Des Moines Company and conveyed to it the terminal property so acquired subject to the joint use and occupation thereof in perpetuity, which use and occupation they reserved to themselves, their successors and assigns; that thereafter additional property was from time to time conveyed to the Des Moines Company, subject to such joint use and occupation; that the articles of incorporation of the Des Moines

Company provided, among other things, that all powers exercised by that company should be in accordance with the terms and spirit of the contract of January 2, 1882; that the affairs of that company should be managed by a board of directors to be nominated by the three Railway Companies, their grantees or assigns, and that the Des Moines Company should act as the agent of the three Railway Companies in operating, financing and developing such terminal property and facilities for their use and benefit; that on May 10, 1889, the Des Moines Company and the three Railway Companies entered into an agreement supplemental to the contract of January 2, 1882, defining in detail the relations and duties of the Railway Companies to each other and to the Des Moines Company in the enjoyment of such joint use and occupation of the terminal facilities and property for a period expiring *May 1, 1918;* that the Des Moines Company collected and received from time to time, for the use of such terminal facilities and property by others, income aggregating approximately $500,000, called surplus earnings; that the Hubbells unlawfully obtained control of the Des Moines Company by usurping its offices, and just prior to the commencement of this suit had set up the claim that they owned a large majority of its capital stock, were entitled to elect its directors and officers, and that the Des Moines Company owned such termined facilities and property in its own right, free from such joint use and occupation thereof by the St. Paul Company and Wabash Company, successors in interest of said three Railway Companies, except the rights conferred upon them by such supplemental agreement of May 10, 1889, and that it, said Des Moines Company, was entitled to receive and retain in its own right such surplus earnings so as aforesaid collected from others for the use of such terminal facilities and property.

The bill, besides praying for general relief, prays, among other things, that after May 1, 1918, it be declared that the St. Paul Company and the Wabash Company as successors and assigns of the three Railway Companies, are entitled to the joint and exclusive use in common and in perpetuity of such terminal facilities and property, on the terms stated in the contract of January 2, 1882; that the Hubbells be restrained from interfering with, or obstructing, such use; that the amount of such surplus earnings so collected and received from the use of such terminal facilities and property by others be ascertained and that the Des Moines Company be required to pay the same to the St. Paul Company and the Wabash Company. (Rec., 53, 119.)

The Answer.

The answer to the bill admits in substance the making and execution of the January 2, 1882, contract, the incorporation of that contract in the articles of incorporation of the Des Moines Company, that the various persons who had held title to property under that contract had conveyed the same to the Des Moines Company, but denies that such conveyances were made to that company as trustee, and avers that that company owned said property in its own right.

The answer also admits that the Hubbells have asserted the claim that upon the expiration of the supplemental agreement, May 1, 1918, the right of the St. Paul Company and the Wabash Company to use such terminal facilities and property will cease, and that if they should desire to use such terminal facilities and property thereafter, they could do so only under such contract as might be made therefor.

The answer also admits that the Des Moines Company

had received for the use of such terminal facilities and property by others income aggregating a large sum.

The answer denies that the St. Paul Company and Wabash Company, or either of them, have any right in such terminal facilities and property except such rights as were acquired under the supplemental agreement of May 10, 1889, or that said companies, or either of them, have any interest in, or right to, the surplus earnings so as aforesaid received by the Des Moines Company for the use of said terminal property and facilities by others. (Rec., 174-196.)

Succession of St. Paul Company and Wabash Company.

Wabash *Railway* Company, herein called the "Wabash Company," on July 1, 1916, succeeded to the title of the railway, property and franchises theretofore belonging to The Wabash *Railroad* Company, the original complainant in this bill, and was by order duly entered herein substituted in place of The Wabash *Railroad* Company as party complainant in this bill. (Rec., 2053.) The Wabash *Railroad* Company succeeded to the title of the railway, property and franchises of the Wabash Western *Railroad* Company, which latter company succeeded to the title of the railway, property and franchises of the St. Louis Company and of the Wabash, St. Louis & Pacific Railway Company. (Rec., 530-534.)

The St. Paul Company is the remote successor of the Northwestern Company and the Northern Company, the two companies last named having in 1891 consolidated under the laws of Iowa under the name of Des Moines Northern & Western *Railway* Company. (Rec., 694.) Thereafter, by foreclosure and sale, the railway, property and franchises of the last named company were acquired by the Des Moines Northern & Western *Railroad*

Company, and this last named company in February, 1899, conveyed all its railway, property, franchises, rights and interests to the St. Paul Company. (Rec., 673.)

The St. Paul Company having succeeded to all the property, rights, interests and privileges of the Northwestern Company and the Northern Company, and the Wabash Company having succeeded to all the property, rights, interests and privileges of the St. Louis Company, they likewise succeeded to all the property, rights, interests and privileges of the parties to the January 2, 1882 contract and to all the property, rights, interests and privileges of the St. Louis Company, the Northwestern Company and the Northern Company in the supplemental agreement of May 10, 1889. Ever since such succession by the St. Paul Company and Wabash Company, they have used the terminal properties in Des Moines under said contract of January 2, 1882, and said supplemental agreement of May 10, 1889, and such succession and use of the terminal properties in Des Moines have been recognized by the Des Moines Company and the Hubbells. Neither of said railway companies nor any of their predecessors ever had or now has access or entrance to the City of Des Moines except over the terminal properties in controversy.

Decree of the District Court.

The decree of the District Court adjudged

(a) That the Des Moines Company was organized for the purpose of furnishing terminal services to the St. Paul Company and the Wabash Company and their predecessor Railway Companies, and acquired the terminal property and facilities for that purpose; that such corporate obligation still exists in their favor and is absolute and paramount to any obligation of the Des Moines Company to serve other railway companies, and that after May 1, 1918—the

termination of the supplemental agreement of May 10, 1889—if the parties in interest are unable to agree upon the terms under which the St. Paul Company and the Wabash Company might continue to use such terminal property and facilities, the court, upon application, would fix the same.

(b) That the Des Moines Company is the absolute owner of the so-called surplus earnings, and that the St. Paul Company and the Wabash Company have no interest therein except such as accrued to them as stockholders of the Des Moines Company. (Rec., 2065.)

The St. Paul Company and the Wabash Company appealed from the entire decree to the United States Circuit Court of Appeals for the Eighth Circuit. (Rec., 2068.) The Des Moines Company and the Hubbells appealed from that part of the decree set out in paragraph "(a)" above. (Rec., 2077.)

DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS.

The decree of the Court of Appeals adjudged

(a) That the decree of the District Court should be modified so as to state that the complete title of the terminal property and facilities was in the Des Moines Company; that the only interest of the St. Paul Company and the Wabash Company in such property and facilities, or in the management of the Des Moines Company, is such as flows from their ownership of stock of the Des Moines Company. (Rec., 2127.) *Hook, Circuit Judge, dissented as to this portion of the decree.* (Rec., 2021.)

(b) That the so-called surplus earnings belong to the St. Paul Company and the Wabash Company, and that a master should be appointed under instructions to ascertain the part due to each company upon a wheelage basis. (Rec., 2127.) *Hook, Circuit Judge, concurred in this portion of the decree.* (Rec., 2021.)

Writs of Certiorari.

The St. Paul Company and the Wabash Company petitioned this Court for a writ *of certiorari* to review the record in respect of that part of the decree of the United States Circuit Court of Appeals which adjudged that the complete title to the property and terminal facilities is in the Des Moines Company, and that the only interest of the St. Paul Company and the Wabash Company in such property and facilities or in the management of the Des Moines Company is such as flows from their stock ownership in the Des Moines Company. The Des Moines Company and the Hubbells petitioned this Court for a writ *of certiorari* to review the record in respect of that part of the decree of the United States Circuit Court of Appeals which adjudged that the so-called surplus earnings belong to the St. Paul Company and the Wabash Company. Both petitions were granted by this Court, and this case is here in response to these writs *of certiorari*. As the so-called surplus earnings branch of this case involves no public interest and no rule or principle of law which public interest requires this Court to determine, and as the decision of the Court of Appeals thereon was unanimous, presumably this branch of the case is here because the other branch, or the main controversy in the case, was brought here. Indeed, this was the ground of the Hubbells' petition.

Questions Involved.

The underlying questions are:

(a) Whether the Des Moines Company holds the title to the terminal property in trust for the St. Paul and Wabash Companies as equitable tenants in common therein and subject to their joint use and occupation upon the

terms described in the contract of January 2, 1882, with the result that following the expiration of the Supplemental Agreement on May 1, 1918, the St. Paul and Wabash Companies were, and are, remitted to the rights and obligations of that contract, as held by Judge Hook in his dissenting opinion, or whether the title to the terminal property is absolute and complete in the Des Moines Company, and the St. Paul and Wabash Companies' only interest therein is such as flows from stock ownership, as held by the majority opinion; and

(b) Whether the St. Paul and Wabash Companies are entitled to the so-called Surplus Earnings, as adjudged by the Circuit Court of Appeals—all the judges concurring.

The questions in paragraph (a) are raised by the following specification of error:

SPECIFICATION OF ERROR RELIED UPON.

The court below—Circuit Court of Appeals—erred in holding that the Railway Companies have parted with the exclusive ownership and control of the terminal property which they had reserved to themselves under the January 2, 1882 contract, and that the complete title to this property is in the Des Moines Company, and that the only interest of the St. Paul Company and the Wabash Company in such property, or in the control and management thereof or of the Des Moines Company, is such as flows from stock ownership. (Rec., 2114, 2118.)

STATEMENT OF FACTS.

It is not questioned by any of the parties in interest to this proceeding that the transactions and events out of which has grown the present controversy began with the existence of a trust under which the predecessor Railway Companies of the complainants were the beneficial owners in the property held by the Des Moines Company.

The majority opinion of the Circuit Court of Appeals assumes as the premise upon which its conclusions are founded the existence of this trust, and the result reached by it is based upon the theory that through inadvertent developments this trust has disappeared. (Rec., 2096, 2102.) This factor of inadvertence in the alleged dissolution of the trust is stated by that Court in the following language:

> "There is nowhere any indication that the railways intended any such result and yet such in our judgment is the result. This unexpected outcome was the product of several circumstances." (Rec., 2113.)

The dissenting judge in the Court of Appeals states that

> "The excerpt quoted above touches the quick of this controversy." (Rec., 2119.)

And in commenting upon it, he says that the conclusions of the majority are of this significance:

> "In other words the proprietary companies were not cognizant of the trend of the circumstances and the result held to follow though unexpected and not intended by them, is enforced because of legal presumption of intention of natural consequences of acts, regardless of intention in fact. The circum-

stances relied on do not appear to me to have the significance attributed to them, but were it otherwise, the presumption should not be so broadly applied to the case of a trust, the destruction of which is claimed by those subject to the disabilities of trustees dealing for themselves." (Rec., 2119.)

The several tests of the rights of the parties must all eventually come to the issue disclosed by the above quotations from the majority and minority opinions of the Circuit Court of Appeals.

In such a situation it is believed that the facts of the case can be presented most significantly by classifying them in the following three groups:

I. A statement of those facts which were preliminary to the establishment of the trust and were the inducement for the same.

II. A statement of the terms of the trust and of its development in the corporate form which it eventually took, and in this respect the relation of the defendants Hubbell as the administrators and fiduciaries of the trust.

III. The independent transactions of the Hubbells in respect of the trust property and the several aliquot interests evidenced and measured by shares of stock of the corporate trustee.

I.

A STATEMENT OF THOSE FACTS WHICH WERE PRELIMINARY TO THE ESTABLISHMENT OF THE TRUST AND WERE THE INDUCEMENT FOR THE SAME.

The defendant F. M. Hubbell.

In 1880 the defendant F. M. Hubbell and Jefferson S. Polk were copartners, practicing law, trading in real estate and promoting railroad enterprises in and about the City of Des Moines, Iowa, under the firm name of

Polk and Hubbell. (Rec., 998.) The defendant Hubbell was president of and he and his partner Polk and two associates, J. S. Clarkson and J. S. Runnells, were the stockholders of the Narrow Gauge Railway Construction Company, a contracting company which had constructed certain railroad mileage in the vicinity of Des Moines. (Rec., 407, 408; 998.)

The railroad situation at Des Moines in 1880.

At this period the Wabash, St. Louis and Pacific Railway Company, referred to in the pleadings as the original Wabash Company, owned and operated a system of railways lying east and west of the Mississippi River, including a line extending from St. Louis to Albia, a point in the State of Iowa about 67 miles southeast of the City of Des Moines. (Rec., 998.) Polk and Hubbell being interested in a narrow gauge railroad partly constructed to the northwest of Des Moines from Waukee to Adel, a distance of about 7 miles, sought to interest the Wabash Company in the construction of new railroad mileage in and about the City of Des Moines, including the completion and development of the partially constructed road, of which they were the owners. (Rec., 998, 1001.)

The projected railroad construction in which Polk and Hubbell sought to interest the Wabash Company, may be roughly indicated by the letter Y. The stem of the Y represents a proposed extension of the road of the Wabash Company from Albia to Des Moines; the left arm of the Y a line extending northwesterly from Des Moines to Fonda, of which 7 miles of railroad between Waukee and Adel had already been constructed under the charter of a corporation controlled by Polk and Hubbell and known as the Des Moines Northwestern Railway

Company, hereafter referred to as the "Northwestern Company." The right arm of the Y represents a further projected line to extend in a general northerly direction from Des Moines to the Town of Boone.

A blue print of these roads as subsequently constructed appears in the record at page 197.

As the three projected roads converged at Des Moines, it was also proposed that proper terminals and terminal facilities in Des Moines be acquired for their joint and common use. (Rec., 412, 1001.)

The contracts with the defendant Hubbell and his associated interests.

On December 8, 1880, the defendant F. M. Hubbell, his partner Jefferson S. Polk and J. S. Clarkson and J. S. Runnells, being the same parties who owned and controlled the capital stock of the Narrow Gauge Railway Construction Company, entered into a contract with the Wabash Company providing for the construction of a line in extension of the line of that company along the stem of the Y from Albia to Des Moines, this line to be constructed at the cost of the Wabash Company in the name of the St. Louis Company, a corporation which the defendant Hubbell and his associates contracted to organize. This contract provided in substance that the defendant Hubbell and his associates would incorporate the St. Louis Company with a capital stock of two million dollars and authorized to construct a railroad from Des Moines, Iowa, to Albia in said state. They were to give their time, personal attention to and act as directors and officers of this enterprise, so far as necessary to locate and economically construct the railroad, but subject to the approval of the Wabash Company. They were personally to exert

themselves to procure subsidies in aid of the line and donations of lands, stations, right of way and other benefits in aid of its construction. They were to receive as compensation for their services, in all of the above respects from the time of the execution of the contract made by them to the completion of the railroad, the sum of $10,000 in money and a further sum of five per cent of the amount of all subsidies which should be actually paid, and five per cent of the value of donations in lands for right of way or station purposes and five per cent of the value of all other aid to the construction of the railroad accepted by the Wabash Company. (Rec., 396.)

The contract also provided that the defendant Hubbell and his three associates should each subscribe for one share of the stock, and that the balance of the stock should be subscribed for by a nominee of the Wabash Company, who should undertake to make payment of his subscription by constructing the proposed railroad. (Rec., 398.) James F. How became the nominee of the Wabash Company, and so subscribed for the balance of the stock, and the road was constructed by the Wabash Company in his name as contractor. (Rec., 999.)

On the same date with that of the above contract, namely, December 8, 1880, the line hereinbefore mentioned as controlled by Hubbell and his associates, namely, the Northwestern Company and a corporation named the Narrow Gauge Railway Construction Company, also owned and controlled by the same parties, entered into a contract with the Wabash Company, providing for the completion of the line of the Northwestern Company along the left arm of the Y from Des Moines to Fonda. This contract provided that the line should be constructed by the Construction Company in consideration of $7,000 per mile of bonds of the Wabash

Company, to be secured in part by a mortgage given by the Northwestern Company upon the proposed road, the stock of the Northwestern Company to be equally divided between the Construction Company representing Hubbell and his associates, and the Wabash Company. (Rec., 400.)

The contract also provided that, in order to supply the Construction Company with funds, the Wabash Company would purchase the mortgage bonds deliverable to the Construction Company on the basis of 95 per cent of their par value. (Rec., 406.) This formality was not followed, but the Wabash Company, instead of actually delivering the bonds to the Construction Company, provided it with funds direct by selling the bonds in the market. (Rec., 1001.)

No contract covering the construction of the line northwardly from Des Moines to Boone, along the right arm of the Y, appears in the record, the financing of this road having been undertaken by Gen. Grenville M. Dodge, as an independent enterprise. However, the actual construction work was performed by the Narrow Gauge Construction Company, which company operated from the office of Polk and Hubbell in the City of Des Moines. (Rec., 1170, 1180.)

The corporate organization of the three railway companies mentioned above.

On December 15, 1880, Polk, Clarkson, Runnells and Hubbell, in pursuance of the contract first mentioned above, incorporated the St. Louis Company under the laws of Iowa, for the purpose of constructing the proposed line along the stem of the Y from Albia to Des Moines. (Rec., 408.) Hubbell was made secretary of

the company and also a director, and held both positions until 1891. (Rec., 1297.)

On December 23, 1880, the same four individuals, pursuant to the contract last above mentioned, reincorporated said Northwestern Company for the purpose of completing the line along the left arm of the Y from Des Moines to Fonda (Rec., 725.) Hubbell was made treasurer of the company and also a director of the same, and served continuously in both capacities until the reorganization of said company in 1886, except in 1880, when he served as its assistant treasurer. (Rec., 1279.)

On April 4, 1881, the same four individuals, pursuant to an arrangement with said Dodge, incorporated the St. Louis, Des Moines and Northern Railway Company, hereinafter referred to as the "Northern Company," for the purpose of constructing the third line along the right arm of the Y from Des Moines to Boone. (Rec., 728.) Hubbell was made a director of the company and served in this capacity until 1890; he also served as treasurer of the company until 1883. (Rec., 1297.)

The construction work.

The actual construction work of the three lines, as well as the assembling the necessary terminal railways and facilities at Des Moines, proceeded actively during the year 1881.

The work on the line of the St. Louis Company was under the direction of James F. How, the subcontractor above referred to, designated by and representing the Wabash Company. (Rec., 419, 1001.)

The work on the lines of the Northwestern Company and of the Northern Company was under the direction of the Narrow Gauge Construction Company, and the

operations were conducted from the office of Polk and Hubbell. (Rec., 1170.)

The assembling of the terminal railways and facilities in Des Moines was also conducted from the office of Polk and Hubbell and was under the personal direction of Hubbell himself. (Rec., 981, 1181.) Hubbell also negotiated the purchase of all the real estate, and where condemnation proceedings were necessary these were conducted by Parsons and Runnells, attorneys for the Wabash Company at Des Moines. (Rec., 1001, 1002.)

The funds for the purchase and acquisition of real estate and other property were advanced by the Wabash Company and Gen. Grenville M. Dodge.

Such of the real estate acquired as was charged to the St. Louis Company, or to the Northwestern Company, was paid for by the Wabash Company and title to the same was taken in the name of James F. How individually or of James F. How, trustee, or was taken in the name of other individuals in the first instance and subsequently transferred to How in one of the above capacities.

Such of the real estate as was charged to the Northern Company was paid for by Dodge and the titles were taken in his name.

Certain property being largely property acquired as the result of condemnation proceedings, was taken in the names of either the St. Louis Company or the Northern Company. (Rec., 1045, 1181.)

At the close of the year 1881, the road of the Northwestern Company was opened for operation, and its trains were running into the Des Moines terminals, and the two other roads were well advanced. (Rec., 1053.) But no formal contract had yet been made for the per-

manent ownership and operation of the terminals, that is to say, the terminal development was still proceeding under the parol understanding dating back to the inception of the enterprise.

Thus, at this point, the following situation had developed:

The legal title to certain of the properties was in the Northern Company, which it had acquired by condemnation proceedings; the legal title to certain other property was in the St. Louis Company, which it had also acquired by condemnation proceedings; the remaining property was in the title of certain individuals, namely, Dodge and How, without specification of the terms of the trust, but the beneficiaries of the trust were the three railway companies, by or on whose behalf all of the above referred to properties had been acquired and which had provided the money for the acquisition thereof.

It therefore appears that operation had already begun on the terminal properties before any permanent plan for the proper holding of such properties for railroad purposes had been determined upon by the beneficiaries of the trust enterprise.

II.

A STATEMENT OF THE TERMS OF THE TRUST AND OF ITS DEVELOPMENT IN THE CORPORATE FORM WHICH IT EVENTUALLY TOOK, AND IN THIS RESPECT THE RELATION OF THE DEFENDANTS HUBBELL AS THE ADMINISTRATORS AND FIDUCIARIES OF THE TRUST.

As a result of the situation summarized at the conclusion of the foregoing subdivision, the parties to the enterprise entered into a certain contract which created the express trust lying at the foundation of this suit.

The contract of January 2, 1882 (Rec., 411).

This contract was made between the St. Louis Company, the Northwestern Company and the Northern Company as the beneficial owners of the terminal properties and G. M. Dodge, James F. How and James F. How, trustee, as the holders in trust of the legal titles to certain of the terminal properties. The Wabash Company also subjoined its consent to the execution of the agreement by the St. Louis and Northwestern Companies.

This contract states:

(1) That the three companies—St. Louis Company, Northwestern Company and Northern Company—are engaged in the construction of railways converging at Des Moines, and had theretofore agreed upon the purchase, construction and maintenance of terminal facilities at Des Moines, at their joint expense, *and that such terminal facilities should be held and used in common as provided in said contract.* (Rec., 412.)

(2) That in pursuance of the agreement theretofore made various purchases had been made of property in Des Moines in the name of the St. Louis Company, James F. How individually and as trustee, and Grenville M. Dodge, and the construction of buildings and other improvements upon the property so purchased had been commenced. (Rec., 412.)

(3) That the expense incurred by such purchases and improvements, and such others as might thereafter be made, should be borne one-half by the St. Louis Company, one-quarter by the Northwestern Company, and one-quarter by the Northern Company. (Rec., 412.)

(4) That it was understood that a "*Depot Company*" might be organized to take permanent charge of the

terminal property upon the terms set forth in the contract, and that said "*Depot Company*" might issue and deliver to the three railway companies its mortgage bonds to the amount of their respective portions of the cost of said purchases and improvements. (Rec., 412.)

(5) That the title to said terminal property should *be* and *remain* in a trustee to be named by the three railway companies "*but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.*" (Rec., 412.)

(6) That How and Dodge declare that their purchases of property were "made in their names upon the trusts above referred to, and agree to quitclaim and convey the same to said TRUSTEE *upon demand and reimbursement.*" (Rec., 413.)

(7) That the St. Louis Company shall be charged with the police control, supervision and maintenance of the terminal property, and the expense thereof to be apportioned between it and the Northwestern and Northern Companies upon a wheelage basis. (Rec., 413.)

(8) That spur tracks shall be built connecting the terminal property or grounds with factories and other sources of trade in Des Moines, which tracks shall be adapted for use for both broad and narrow gauge tracks. (Rec., 413.)

(9) That in the event that any company whose railroad does not extend to Des Moines shall effect an arrangement for running its trains into Des Moines over the railroad of the St. Louis Company, the Northwestern Company or the Northern Company, such company shall be entitled to the use of all of the terminal facilities upon the payment of a fair sum for rental and its proportion of maintenance, and that railroad companies

whose roads extend to Des Moines may be admitted to the use of such terminal facilities by agreement of all said companies. (Rec., 413-414.)

(10) That the grounds or terminal property to be held in common by the St. Louis Company, Northwestern Company and Northern Company under such contract are all east of Farnum street in the City of Des Moines. (Rec., 414.)

Speaking of this contract, Judge Stone, who wrote the majority opinion in the Court of Appeals, says:

(a) "An analysis of this contract shows a statement of the occasion and object of the contract, provisions for the title, the use and occupation, the maintenance and improvement of the property." (Rec., 2091.)

(b) "As to the companies (Railways), the contract not only declared some existing property rights, but attempted to define for the future the rights of title and usage of the terminal property. *The title contemplated was a trust.* The legal title to be 'in a trustee to be named by agreement of said companies.' The beneficial estate to be in the three companies in proportion to the parts each contributed to the payment therefor. While this proportional interest is not set forth in so many words, it is necessarily inferred from the combined circumstances that the companies were to pay therefor and for improvements thereto in proportion of one-half, one-fourth and one-fourth." (Rec., 2096.)

(c) *"The contract terms and intent as to ownership were a trust."* (Rec., 2102.)

In connection with the foregoing, particular attention is directed to the third article of the agreement, providing that a "Depot Company" *might be organized to take charge of the terminals, the same to be transferred to the Depot Company in such form of title as would permit it to mortgage the property as security for its bonds,* and also to the second and fourth articles of the agree-

ment providing that the title to the terminal properties *shall be* and *remain* in a trustee to be designated by the parties, *but subject to the use and occupation of the terminals by the three beneficiary railway companies.*

Following the execution of this contract, the parties in interest continued the work of completeing the three railway lines, the making of improvements of the terminal property at Des Moines by the construction of necessary buildings and facilities, the purchase of additional property, obtaining franchises, and connecting the tracks of the St. Louis Company, which were broad gauge, with the tracks of the Northwestern and Northern Companies, which were narrow gauge, by laying a third rail alongside of the rails of each of the three companies through the terminal property.

It is to be further noted that the enterprise was subsidized by aid voted by various counties through which the lines of the St. Louis, the Northern and the Northwestern Companies extended, and that it received further valuable subsidies in the form of donations of rights of way, among these being a right of way granted by ordinance of the City of Des Moines covering the main line of the terminal railway in the City of Des Moines. (Rec., 443, 788-816, 1049.)

The completion of the railroads

During the years 1882 and 1883, the construction of the two remaining roads was completed. The line of the Northern Company was put into operation in August, 1882, and on January 4, 1883, stockholders of the St. Louis Company adopted a resolution formally accepting its road as completed between Albia and Des Moines. (Rec., 882, 1427.)

The incorporation of the Des Moines Union Railway Company.

On December 9, 1884, the board of directors of the Northwestern Company adopted a resolution reciting that, it having been agreed by the parties to the contract of January 2, 1882 that the property and franchises theretofore acquired, should be used for terminal facilities at Des Moines, it was desirable that a corporation be organized for the purpose of taking and holding such property and "*carrying out the objects of said contract of January 2, 1882,*" *and that F. M. Hubbell and others act for this company in the organization of such corporation.* (Rec., 415.)

Accordingly on December 10, 1884, representatives of the Northwestern Company, of the St. Louis Company and of the Northern Company met in the City of Des Moines for the purpose of organizing the Depot Company, which the parties had agreed "might be organized to take permanent charge of the terminal property upon the terms set forth in the contract."

Present at the meeting were:

G. M. Dodge, representing himself and the Northern Company.

J. S. Polk and F. M. Hubbell, representing the Northwestern Company.

John S. Runnells and C. F. Meek, representing the St. Louis Company, and

James F. How, both as trustee and in his individual capacity.

The first action of this meeting was the adoption of the following resolution:

"*Revolved, That for the purpose of carrying out*

the objects and purposes of the agreement heretofore, to wit, on the second day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company and others (which is set out in full in the following Articles of Incorporation), the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company, to wit:" (Rec., 416.)

Following this resolution, articles of incorporation of the Des Moines Company were adopted which were preceded by the following:

"WHEREAS, The Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Ia., and have secured certain franchises, purchased certain realty and made certain improvements thereon—which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions, at their joint expense—in accordance with a contract made and entered into by and between said companies and Grenville M. Dodge and James F. How, trustee, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to wit:

(Here follows the contract of January 2, 1882, *verbatim et literatim.*)

"WHEREAS, each of said railway companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said companies, and

WHEREAS, it was provided in the contract aforesaid that a depot company might be organized to take permanent charge of the property, and it was the understanding of the parties that such company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto.

NOW, THEREFORE, for the purposes aforesaid, as well as for those hereinafter expressed, the under-

signed hereby associate themselves in a body corporate, and adopt the following:
Articles of Incorporation." (Rec., 416-419.)

These articles, besides stating the name of the corporation, its principal place of business, the names of the officers and the first board of directors, the manner of calling meetings of the board of directors, the method by which the articles might be amended, and the term of the corporation, provided:

(1) That the nature of the business to be transacted by the "*Depot Company*" shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, including the construction, ownership and use of depots, freight houses, railway shops, and whatever else may be useful and convenient for the operation of the railways at the terminal point in Des Moines, as well as the transfer of cars from one railway to another, or from factories, warehouses and elevators to each other or to any of the railways in or around Des Moines; the "*Depot Company*" to possess all the powers conferred upon corporations for pecuniary profit under Chapter 1 of Title IX of the Iowa Code and the amendments thereto. (Rec., 420.)

(2) *That all the powers exercised by the "Depot Company" shall be in accordance with the terms and spirit of the January* 2, 1882, *contract.* (Rec., 420.)

(3) That the "*Depot Company*" shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other railway company, provided the assent in writing of the St. Louis Company, the Northwestern Company and the Northern Company shall be necessary before such lease or disposition can be made to any other than the three companies last named. (Rec., 420.)

(4) That the affairs of the *"Depot Company"* shall be managed by a board of eight directors, four of whom shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two of whom by the Northwestern Company, and two by the Northern Company. This provision applies to any grantee or assignee of either of these companies. (Rec., 421.)

(5) That no contract, lease or other agreement amounting to a permanent charge on the property of the *"Depot Company"* shall be entered into unless the same shall have been first approved by the St. Louis Company, the Northwestern Company and the Northern Company, or their assignees, and shall have been submitted to a meeting of the stockholders and approved by more than three-fourths of all the stockholders, and that no limitation whatsoever upon any of the franchises of the *"Depot Company"* shall be made by its board of directors except the same shall have been submitted to and approved by the stockholders. (Rec., 421.)

(6) That the capital stock of the *"Depot Company"* shall be $1,000,000, divided into shares of $100 each, to be paid at such times and in such manner as the board of directors may determine, and the board is authorized to receive in payment of such stock the property and franchises in Des Moines now held by the St. Louis Company, the Northwestern Company, the Northern Company, How and Dodge individually and How as trustee. (Rec., 420.)

The articles bear the signature of F. M. Hubbell, J. S. Polk and J. S. Runnels. (Rec., 422.)

F. M. Hubbell acted as secretary of the meeting which adopted these articles. (Rec., 423.)

Particular note should be given to that provision of

the articles of incorporation above quoted, which reads that:

> "All the powers exercised by this company (The Depot Company), shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." (Rec., 420.)

Particular attention is also called to the article giving a veto power in the management of the affairs of the "*Depot Company*" to each of the beneficiaries of the trust in the following terms:

> "No contract, lease or other agreement amounting to a permanent charge upon the property of the corporation, shall be entered into by the board, unless the same shall have been first approved by the Des Moines and St. Louis Railroad Company, the Des Moines, Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, or their assignees * * *." (Rec., 421.)

The resolutions of January 1, 1885.

"Following the incorporation of the Des Moines Company, the stockholders of the St. Louis Company, the Northwestern Company and the Northern Company, at meetings held January 1, 1885, adopted resolutions reciting the execution of the January 2, 1882, contract, and the incorporation of the Des Moines Company December 10, 1884, and declaring:

(a) That each company accepted and ratified, so far as its interests were affected thereby, the articles of incorporation of the Des Moines Company *as in substantial accord and compliance with the terms and conditions of the January 2, 1882, contract,* and undertook to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of the Des Moines Company. (Rec., 424.)

(b) That the proper officers of each company be authorized, upon the issuance to it of the share of bonds and stock of the Des Moines Company to which it might be entitled under the contract, to convey, assign and transfer to the Des Moines Company all its right, title, and interest, of whatever name and nature, in and to the real estate, franchises, choses in action and right in possession or contingent, to all the property in the City of Des Moines east of Farnum street *then held, enjoyed or claimed by either or all the signatories of said January 2*, 1882, *contract, or any agent or trustee thereof, purchased, acquired or held in pursuance of that contract.* (Rec., 424.)

F. M. Hubbell presented the resolution adopted by the stockholders of the St. Louis Company and the Northwestern Company, and voted for their adoption. (Rec., 423, 426.)

On the same day, January 1, 1885, the first meeting of the board of directors of the Des Moines Company after its incorporation, was held. At this meeting, resolutions were adopted the preambles to which stated that the St. Louis Company, the Northwestern Company, the Northern Company, How both in his individual right and as trustee, and Dodge, had by their officers and by themselves personally notified the Des Moines Company that they had each approved of the organization of the Des Moines Company and had directed their officers and trustees to surrender and deliver to the Des Moines Company the railroad property and franchises mentioned in the contract of January 2, 1882, *and had requested the Des Moines Company to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in the January 2*, 1882 *contract*, and that said railway companies and individual signa-

tories to that contract had indicated their desire and purpose to transfer the property to the Des Moines Company in accordance with the terms of that contract, and that it was desirable that the Des Moines Company at once should take possession of such property and maintain, control and operate it and procure all necessary conveyances and transfers of the same and make provisions for, and pay for said property so proposed to be conveyed to it. The resolutions declared:

(a) That the Des Moines Company accepted the transfer and management and operation of such property theretofore owned by the St. Louis Company, the Northwestern Company, the Northern Company and others, parties to the January 2, 1882 contract, and assumed control thereof, and instructed its president to make such order as might be necessary to render *such control and management effective as provided in that contract.* (Rec., 433.)

(b) That the officers of the Des Moines Company be appointed a committee to confer with the parties to the January 2, 1882 contract, and agree with them severally upon the terms and price at which they would, respectively, assign, transfer and convey such property and franchises to the Des Moines Company, *and to procure from them, and each of them, such conveyances and transfers as might be necessary to fully invest the Des Moines Company "with the* TITLE, *control and management of said properties provided for in said contract of January 2nd,* 1882." (Rec., 433.)

(c) That to enable the Des Moines Company to pay for the property and to maintain, operate and improve the same, and purchase other property necessary to carry out its objects, the president and secretary of the company were authorized and directed to issue fully

paid capital stock not to exceed $1,000,000, and bonds not to exceed $500,000, and to secure said bonds were authorized and directed to execute in the name of the Des Moines Company a first mortgage or deed of trust covering all the property of the Des Moines Company, and that when the committee had agreed with the parties to the January 2, 1882 contract as to the amount of bonds and stock of the Des Moines Company necessary to be delivered to them, the president and secretary of the Des Moines Company should deliver said stock and bonds to the several parties on receipt of the conveyances and assignments of the property to be made to the Des Moines Company. (Rec., 434.)

Frederick M. Hubbell as a member of the board of the Des Moines Company voted in favor of these resolutions, and as secretary of that company acted as secretary of the meeting. (Rec., 435.)

In considering the significance of the foregoing resolutions it should be noted that the authority and direction given by them to the officers of the Des Moines Company to issue its bonds and stock is to be identified with the terms of the trust declared by the January 2, 1882, contract.

Respecting the issue of bonds authorized by the resolutions, the trust contemplated that the expenses incurred by the purchases and improvements representing the trust property should be borne by the beneficiaries in the proportion of one-half by the St. Louis Company and one-quarter by each of the other two companies and that, through a Depot Company, such beneficiaries might reimburse themselves for this expense by the acceptance of mortgage bonds to be issued to them by such Depot Company to the amount of their respective portions of the cost of said purchases and improvements.

Respecting the issue of stock, the trust authorized the Depot Company to take charge of the property upon the terms of the January 2, 1882 contract and the resolutions in harmony with this idea appointed a committee to confer with the parties to such contract for the purpose of procuring from them such conveyances and transfers as would be necessary to fully invest the Depot Company "with *the title, control and management of said properties provided for in said contract of January 2, 1882*"; thus, the stock to be issued by such Depot Company became an indicia of ownership of the several proprietors in the trust title to be conveyed to the Depot Company as contemplated by the resolutions.

Supplementary resolutions of November 5 and 8, 1887, of the Des Moines Company and the proprietary companies, providing for the transfer of titles of the trust properties held by the individual trustees to the Des Moines Company.

It is to be noted that more than two years intervened between the passage of the resolutions of January 1, 1885, and the date of the above resolutions. This delay in providing for the transfer of the trust property, arose by reason of the following circumstances:

On May 29, 1884, receivers were appointed of the railroads and property of the Wabash, St. Louis and Pacific Railway Company. (Rec., 229.)

On July 15, 1885, James F. Joy, O. D. Ashley, Thomas H. Hubbard and Edgar T. Wells, representing the holders of the defaulted bonds of the Wabash Company, associated themselves together as a purchasing committee for the purpose of acquiring at foreclosure sale the properties of the company. (Rec., 540, 1864.)

As already stated, the Wabash Company had advanced

to the Northwestern Company the funds necessary to enable it to build the extension of its line from Des Moines northwesterly, and it had received from the Northwestern Company as security for these advances a mortgage upon all the property of the Northwestern Company. This mortgage secured an issue of bonds at the rate of $7,000 a mile, which were in default and had been acquired by the purchasing committee. It further appears that, although under the contract of 1882 the Northwestern Company should have contributed a quarter of the expense of acquiring the terminals held in trust for the proprietary companies and was to receive a quarter share in the trust enterprise, the Northwestern Company had in fact advanced only the sum of $3,000, and was insolvent. (Rec., 478.) This discrepancy, between its obligations under the contract of 1882 and the value of the one-quarter share with which it was to be vested in the trust enterprise, proved an obstacle in the consummation of the conveyance of the trust properties to the Des Moines Company as corporate trustee and the distribution of the trust interest in the several amounts provided for in the contract of 1882. There developed therefrom a negotiation between Polk and Hubbell, representing a half stock interest in the Northwestern Company, with the purchasing committee, above described, of the Wabash Company, which resulted in an agreement dated the 10th day of September, 1887, by the terms of which the purchasing committee of the Wabash Company, which latter Company had advanced the moneys which should have been advanced by the Northwestern Company and had succeeded temporarily to the equitable interest of the Northwestern Company, agreed to furnish to Polk and Hubbell the general mortgage bonds of the Wabash Company held by it, secured by mortgage upon the prop-

erties of the Northwestern Company, to enable Polk and Hubbell to bid in the properties of the Northwestern Company at foreclosure sale. (Rec., 1573.)

In consideration of the foregoing, the Northwestern Company was to be reorganized by Polk and Hubbell and the reorganized company was to execute and deliver to the purchasing committee its bond for $450,000, endorsed by Polk and Hubbell, in satisfaction of the Wabash bonds to be delivered, as above described, to Polk and Hubbell and also for the one-quarter interest in the trust properties assigned to the Northwestern Company under the contract of January 2, 1882. (Rec., 1574.)

Simultaneously with the conveyance above mentioned of such one-quarter interest to the reorganized Northwestern Company, the same was to be mortgaged back to the purchasing committee as further security of the bond for $450,000; and, if in the meantime the terminal property should be merged into a terminal company, the bonds and stock received from the terminal company in exchange for this one-quarter interest were to be transferred, in lieu of the property, to Messrs. Polk and Hubbell and retransferred by them to the purchasing committee, to be held by such committee as further security for the payments of the $450,000 above mentioned. (Rec., 1575-1576.)

It thus appears that the above transaction was designed merely to re-establish the Northwestern Company to its original status under the terms of the trust.

When the above arrangement had been agreed upon the proprietary companies were for the first time in a position to cause conveyance of their trust properties from the individual trustees to the Depot Company under the directions contained in the resolution of Jan-

uary 1, 1885. The resolutions of November 5 and 8, 1887, were addressed to the same objects as the resolution of January 1, 1885, namely, the transfer of the trust properties to the Des Moines Company as corporate trustee, but were more specific and comprehensive in their terms by further providing, in detail, for the distribution of the bonds and stock of the Des Moines Company.

At a board meeting of the Northern Company held November 5, 1887, a resolution was passed requesting How to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that How had purchased such property with funds of the Wabash Company, but had taken the title in his name with the understanding that it should be transferred to the Des Moines Company "*under certain conditions.*" (Rec., 435.) At the same meeting, another resolution was passed requesting Dodge to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that such property was acquired by him under an agreement with the Wabash Company that it should be transferred to the Des Moines Company "*under certain conditions.*" (Rec., 436.)

At a board meeting of the St. Louis Company held November 8, 1887, a resolution was passed requesting How to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that he had purchased such property with funds furnished by the Wabash Company, taking the title in his name with the understanding that he should transfer such property to the Des Moines Company "*under certain conditions.*" (Rec., 437.) At the same meeting, another resolution was passed requesting Dodge to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that such

property was acquired by him under an agreement with the Wabash Company that it should be transferred to the Des Moines Company *"under certain conditions."* (Rec., 438.)

At the same board meeting of the St. Louis Company November 8, 1887, the following resolution was unanimously adopted:

> *"Resolved*, that the president and secretary of this company be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company, a deed conveying to it all its real estate, rights of way, franchise, roadbed and other property of said company lying and being in the City of Des Moines, east of Farnum street, whether the same was acquired by grant from City of Des Moines or by purchase or condemnation, this resolution being offered *for the purpose of carrying out the contract of date January second*, 1882, *entered into by and between this company, the Des Moines North Western Railway Company, the St. Louis, Des Moines and Northern Railway Company and others."* (Rec., 439.)

At a board meeting of the Northwestern Company held November 8, 1887, a resolution was passed requesting How to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that he had purchased such property with funds furnished by the Wabash Company, taking the title in his name with the understanding that he should transfer such property to the Des Moines Company *"under certain conditions."* (Rec., 442.) At the same meeting another resolution was passed requesting Dodge to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that such property was acquired by him under an agreement with the Wabash Company that it should be transferred to the Des Moines Company *"under certain conditions."* (Rec., 443.)

November 8, 1887, the St. Louis Company notified the Des Moines Company of the passage of the resolutions of its board of November 8, 1887, requesting How and Dodge to convey the property standing in their names to the Des Moines Company, which notice contained a copy of the resolutions as adopted. The St. Louis Company also on the same date, November 8, 1887, notified the Des Moines Company of the resolution adopted by its board November 8, 1887, directing its president and secretary to execute a deed of conveyance to the Des Moines Company, conveying all its rights of way, franchises, roadbed and other property in the City of Des Moines *for the purpose of carrying out the contract of January 2, 1882*, which notice contained an exact copy of the resolutions as adopted. (Rec., 439.)

November 8, 1887, the Northern Company notified the Des Moines Company of the resolutions adopted by its board November 5, 1887, requesting How and Dodge to convey to the Terminal Company the property purchased by them and standing in their names. This notice contains a copy of the resolutions as adopted. (Rec., 441.)

November 8, 1887, the Northwestern Company notified the Des Moines Company of the resolutions adopted by its board November 5, 1887, requesting How and Dodge to convey to the Des Moines Company the property purchased by them and standing in their names. This notice contains a copy of the resolutions as adopted. (Rec., 442.)

On the same day, to wit, November 8, 1887, a meeting of the directors of the Des Moines Company was held, there being present How, Runnells, Hubbell, Polk and Hays. (Rec., 1299.)

At this meeting a preamble and resolution was adopted

which recited the previous action of the St. Louis Company, the Northern Company and the Northwestern Company, as above, and directed

> "That on receipt from the Des Moines and Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railway Company and from James F. How, trustee, and G. M. Dodge of deeds to this company of the property standing in their name in the City of Des Moines, that the officers of this company be authorized to issue to said James F. How and G. M. Dodge, respectively, an agreement to deliver to them as soon as prepared, *bonds for the amount of money, with interest and taxes added, which will be shown by them at that time to have been expended by or through them for or on the property referred to.*
>
> The agreement for the delivery of bonds to be turned over to James F. How, trustee, to state that the same are for the benefit of the purchasing committee of the Wabash, St. Louis & Pacific Railway Company; also that the agreement issued by the officers of this company shall state that certificates can be prepared *and the officers of this company will issue to the St. Louis, Des Moines & Northern Railway Company certificates for one-fourth of the stock of the company and to James F. How, trustee, to be delivered to the purchasing committee of the Wabash, St. Louis & Pacific Railway Company certificates for three-fourths of the stock of the company.*" (Rec., 1300.)

It will be noted that the one-fourth stock interest deliverable under the above resolutions to the Northern Company was the interest originally assigned to it by the contract of January 2, 1882.

It will be further noted that the three-fourths stock interest assigned by the above resolutions to the purchasing committee of the Wabash Company represented its predecessors one-half interest under the contract of

January 2, 1882, and, in addition thereto, the one-fourth interest originally assigned to the Northwestern Company and which the purchasing committee had contracted to redeliver to the Northwestern Company as soon as Polk and Hubbell had carried out their undertaking to reorganize the Northwestern Company, as hereinbefore set forth.

Conveyances to the Des Moines Company, pursuant to the resolutions of January 1, 1885, and November 5 and 8, 1887.

The St. Louis Company, pursuant to resolutions of its stockholders of January 1, 1885, the resolutions of its board of directors of November 8, 1887, and the resolutions of the board of the Des Moines Company of January 1, 1885, on February 21, 1888, conveyed by warranty deed all its real estate, rights of way, railroad and franchises in Des Moines to the Des Moines Company. (Rec., 457.) Frederick M. Hubbell signed this deed of conveyance as secretary of the St. Louis Company, and testified that it was made pursuant to the resolution that such conveyance should be made to the Des Moines Company *"for the purpose of carrying out the contract of January 2, 1882."* (Rec., 1115.)

The Northern Company, pursuant to resolutions of its stockholders of January 1, 1885, and the resolutions of the board of the Des Moines Company of January 1, 1885, by quitclaim deed dated November 7, 1887, conveyed certain lots in the City of Des Moines to the Des Moines Company. (Rec., 455.)

The Northwestern Company made no conveyance to the Des Moines Company, as it had no property standing in its name, the property charged to the Northwestern Company having been paid for by the Wabash Com-

pany, and the title taken in the name of How. By the January 2, 1882, contract, the Northwestern Company, in common with the other railway companies, had an interest in the terminal property and the right to use the same in perpetuity.

James F. How as trustee made two deeds of conveyance to the Des Moines Company, one dated November 19, 1887, the other dated April 28, 1888, and one deed individually to the Des Moines Company, dated December 10, 1887. (Rec., 446, 448, 451.) These conveyances were made in pursuance of the resolutions adopted by stockholders of each the St. Louis Company, the Northern Company, and the Northwestern Company, January 1, 1885, the resolutions of the board of the Des Moines Company of January 1, 1885, and the resolutions of the board of directors of the Northern Company November 5, 1887, and of the St. Louis Company and Northwestern Company November 8, 1887. *Each of the deeds recited that the property was acquired and held by him in trust and was conveyed for the purpose and upon the terms set forth in the contract of January 2,* 1882.

Grenville M. Dodge made his deed of conveyance to the Des Moines Company November 7, 1887. (Rec., 453.) This conveyance was made pursuant to the resolution adopted by the stockholders of the Northern Company January 1, 1885, the resolutions of the board of the Des Moines Company of January 1, 1885, and of resolutions adopted by the board of directors of the Northern Company November 5, 1887, and of the St. Louis Company and Northwestern Company November 8, 1887.

All properties conveyed to the Des Moines Company subsequent to those above enumerated, and all the improvements made upon the terminal properties, were paid for either out of the revenue of the Des Moines

Company hereinafter referred to as "Surplus Earnings" or out of the proceeds derived from the sale of its bonds under its mortgage of November 1, 1887. F. M. Hubbell so testified. (Rec., 1095.)

Des Moines Company's Mortgage.

For the purpose of mortgaging the trust properties to reimburse the proprietary companies for the expense incurred by them in acquiring the terminal properties, as provided by Article Third of the contract of January 2, 1882, the Des Moines Company made its certain mortgage dated November 1, 1887. This mortgage recites, among other things, that for the purpose of paying for the property acquired by the foregoing conveyances, and to aid in the construction of the railway of the company, and to complete the necessary and desirable improvements thereon, the Des Moines Company proposed to issue its bonds in the amount of $800,000, to be dated November 1, 1887, payable thirty years after date, to be secured by mortgage covering all of its property, including the property conveyed by the deeds of conveyance from the St. Louis Company, Northern Company, How and Dodge. (Rec., 460, 461.) The execution of this mortgage was ratified by the stockholders of the Northwestern Company and the St. Louis Company at meetings held, respectively, January 2 and 3, 1890. (Rec., 474, 475.)

Meeting of Stockholders of the Des Moines Company of March 31, 1888. (Rec., 476.)

On March 31, 1888, a meeting of the stockholders of the Des Moines Company was held, at which meeting a board of directors was elected. How, on behalf of the St. Louis Company, nominated four persons to be voted for as directors to represent the interests of that company; F. M. Hubbell, on behalf of the Northwestern Company, nominated himself and one other to be voted

for as directors to represent the interests of that company; G. M. Dodge, on behalf of the Northern Company, nominated himself and one other to be voted for as directors to represent the interests of that company. The eight persons so nominated were elected as the board of directors. (Rec., 476.) *At this meeting a resolution was adopted that the St. Louis Company, the Northwestern Company and the Northern Company, their successors or assigns, pay the operating expenses, taxes and interest on the bonds that may be issued under the aforesaid Des Moines Company's mortgage.* (Rec., 477.) A resolution was also adopted reciting that the Wabash Company had expended $382,110.80, G. M. Dodge $74,088.01, Polk and Hubbell $2,000 and the Northwestern Company $3,058.40, for the property acquired for the Des Moines Company, and it was thereupon resolved that a corresponding amount in the bonds of the company be delivered to these parties respectively, in settlement of such expenditures. (Rec., 478.) This settlement was made and bonds were issued accordingly, pursuant to paragraphs third and fifth of the January 2, 1882 contract, which provided that "said company (the Depot Company) may issue and deliver to the companies parties hereto its mortgage bonds to the amount of their respective portions of the cost of said purchases and improvements. (Rec., 412.)

It is to be noted, in the above connection, that, when the issue of shares of stock of the Des Moines Company was authorized by the resolutions of November 8, 1887, above quoted, the distribution of stock to the proprietary companies therein provided for bore no relation to the several sums of money recited above as being advanced by each in purchasing the trust properties, but that such distribution was to be on the basis of the terms of the contract of January 2,

1882, and as also provided for in the hereinafter mentioned agreement supplemental thereto of May 10, 1889, namely one-half to the St. Louis Company and one-quarter to each the Northern Company and the Northwestern Company. (Rec., 483, 711.)

At the meeting of the stockholders held November 1, 1887, of the Des Moines Company a resolution was adopted providing for an amendment to Article 3 of the Articles of Incorporation of the company so as to increase the authorized capital stock of the company from $1,000,000 to $2,000,000. (Rec., 1298.)

Supplemental agreement of May 10, 1889. (Rec., 479.)

This agreement made between the Des Moines Company of the first part and the St. Louis Company, the reorganized Northwestern Company and the Northern Company of the second part, was entered into for the purpose of regulating the user among the proprietary companies of the jointly owned premises, and providing for the distribution of operating expenses, taxes, interest on bonds and so forth.

Col. Wells H. Blodgett, the general solicitor of the Wabash Company, who was present at the stockholders' meeting of the Des Moines Company, held on March 31, 1888, which authorized this agreement and who prepared the same, gives the following testimony as to why this supplemental agreement was suggested:

> "A. It was considered necessary to have something in addition to the agreement of January 2, 1882, for these reasons: In the first place the agreement of January 2, 1882, made no provision for the payment of interest and did not provide how the interest charge should be distributed among the railroad companies using the property. That was one reason. Another reason was, that the contract of January 2, 1882, did not obligate the railroad

companies who were parties to it or their assigns to use the terminal.

Q. Or pay interest?

A. Nor pay the interest. Let me see—there was the interest charge and the matter of using the property, and then the contract of January 2, 1882, put everything, all the expenses of maintenance and operation of all the property on a wheelage basis, and Mr. Hays and General Dodge and all the parties interested thought that the cost of operating the roundhouses should not be on a wheelage basis, but should be distributed among the railroad companies according to the number of engines that were housed and taken care of for each company; and those were the three things wherein, I think, the contract of May 10, 1889, differed from the contract of January 2, 1882.

Q. It was to cover those points?

A. It was for those reasons that all parties agreed it would be advisable to have a supplemental agreement." (Rec., 366.)

As above stated, the agreement had its inception in resolutions passed by the stockholders of the Des Moines Company at a meeting held March 31, 1888. There were present at this meeting Dodge, Polk, Hays, Hubbell, How, Blodgett and Martin. Among other things it was resolved that the Northwestern Company, the Northern Company and the St. Louis Company should pay operating expenses, taxes and interest on bonds *after deducting any amount received from other sources for rental*, prorated on a wheelage basis. (Rec., 477.)

Col. Blodgett was requested to prepare an agreement for thirty years from May 1, 1888, based on the above resolution and covering in detail the conduct and *operation of the Des Moines Company, "said agreement to be approved and executed by all lines now holding an interest in the property."* (Rec., 478.)

Said agreement was to provide that if, at the end of six months from the date of the same, either party to

the contract should feel that the terms of the same were unjust to them, and gave notice to that effect, it was to be a matter of readjusment.

And it was further resolved

> "that the terms and conditions on which the several lines now interested, or which may hereafter become interested, shall enjoy the use of these terminals, be fully set forth in a supplemental agreement to be made and executed between the Des Moines Union Railway Company and each of the lines using the said terminals." (Rec., 478.)

Pursuant to the resolutions above recited, the supplemental agreement of May 10, 1889, was made and executed. (Rec., 479.)

After reciting, among other things,

that the first party was the owner of valuable terminal facilities;

that the second parties have railroads in the State of Iowa which terminate at or run into and through the City of Des Moines and in order to prevent expense and facilitate public convenience, it had become important that the second parties should have the use of such terminal facilities;

and that for the protection of the parties thereto and their assigns, "it is important that the rights, duties and liabilities of each in regard to the whole subject matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance and repairs, shall be stated and defined";

It was agreed:

Section One: That the Des Moines Company was to provide, when its board of directors should deem expedient, a union passenger station and appurtenances for the use of the proprietary companies and shall acquire the additional real estate necessary therefor. (Rec., 480.)

Section Two: This relates to determining the amount of property required for the passenger depot. (Rec., 480.)

Section Three: The second parties agree to pay to the first party certain sums of money to be ascertained as follows. (Rec., 481.)

First: Five per cent interest upon the first party's mortgage bonds, "*less any deduction hereinafter provided for.*"

Second: The cost of maintenance, repairs, taxes and insurance shall be ascertained monthly.

Third: The cost of operation, except the expenses specified in Section Nine (relating to engines), shall be ascertained monthly.

Section Four: This reads:

> "Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month." (Rec., 481.)

Section Five: The second parties are to pay on a wheelage basis any sums in default due from other railroad companies for the use of the property. (Rec., 481.)

Section Six: The Des Moines Company is to maintain the premises, provide engines, employees, the moving and handling of cars of the second parties, and to switch cars and handle all freight, and house and care for all engines of the second parties. (Rec., 482.)

Section Seven: The accounts are to be presented monthly. (Rec., 482.)

Section Eight: The contract is made retroactive from May 1, 1888, as relating to rental necessary to pay interest upon mortgage bonds. (Rec., 482.)

Section Nine: This provides for the distribution of expense for caring for and repairing engines and operating engine houses. (Rec., 482.)

Section Ten: This provides that upon default in payment by one of the parties, the first party may, "*with the consent of the remaining parties of the second part,*" assign the rights of such defaulting party to any other party for such sum as the board of directors of the first party may determine. (Rec., 483.)

Section Eleven: "*The directors of the party of the first part hereto shall appoint an executive committee, of which each party of the second part shall have one member as its representative.*" (Rec., 483.)

Section Twelve: The executive committee is to appoint the managing superintendent of the terminal properties, subject to the approval of the board of directors. (Rec., 483.)

Section Thirteen: The executive committee is to fix the superintendent's salary. (Rec., 483.)

Section Fourteen: This relates to use of terminal properties by passenger trains. (Rec., 483.)

Section Fifteen: The executive committee, subject to the board, shall make and enforce rules and regulations for the operations of the terminals. (Rec., 484.)

Section Sixteen: This relates to insurance. (Rec., 484.)

Section Seventeen: This provides for the keeping of books and accounts relating to such matters of agreement to be open to inspection. (Rec., 484.)

Section Eighteen: This provides for keeping records

of car movements and of all expenditures relating to cars and engines and the handling and switching of the same. (Rec., 484.)

Section Nineteen: This relates to distribution of cost of damages to rolling stock. (Rec., 484.)

Sections Twenty and Twenty-one: These are personal injury and property injury clauses. (Rec., 485.)

Section Twenty-two: This provides that the covenants, conditions and stipulations contained in the contract shall be binding for the term of thirty years from May 1, 1888. (Rec., 485.)

Section Twenty-three: The covenants and agreements of the second parties are several and not joint. (Rec., 485.)

Section Twenty-four: This *should be especially noted*. It provides that the St. Louis Company, as the owner of one-half of the capital stock of the Des Moines Company, "may sell and transfer one-half of said stock or one-quarter of the whole, to such railway company as may be acceptable to a majority of the parties of the second part, *in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto of the second part upon the same terms and conditions as those stipulated for the other parties of the second part.*"

It is then provided that only as aforesaid may other railroad companies be admitted *to the use* of the first party's property without the consent of all the parties of the second part. (Rec., 485-486.)

Section Twenty-five: This authorized the assignment or mortgage by any of the second parties to another railroad company, of all its rights under the agreement, but prohibited a mortgage or assignment of a portion of its rights and privileges therein. (Rec., 486.)

Section Twenty-six: This *should also be especially noted.* It recites that the second parties are entitled to share in the stock of the first party in the following proportions, to wit: The St. Louis Company, one-half; the Northwestern Company, one-quarter; and the Northern Company, one-quarter. It recites further that no shares have been issued, and provides that as the authorized capital of the Des Moines Company is two millions of dollars, or twenty thousand shares, one certificate of ten thousand shares shall be issued to the St. Louis Company, one certificate of five thousand shares shall be issued to the Northern Company and one certificate of five thousand shares shall be issued to the Northwestern Company, "*and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement,*" except qualifying shares issued to a member of the board of directors, which shall be retransferable to the company on whose request such shares shall be issued without the consent of the other companies. (Rec., 486-487.)

Section Twenty-seven: This recites that the second parties having obligated themselves to pay as part compensation for the use of the premises, a sum sufficient to pay interest on bonds of the first party, issued or thereafter issued, and provides that the first party will not dispose of such bonds except for the purpose of purchasing with them, or their proceeds, additional terminal property. (Rec., 487.)

Section Twenty-eight: This is an arbitration clause. (Rec., 487.)

The following features of the supplemental agreement should be noted to show its significant relationship as a supplement to the contract of January 2, 1882, creating the

trust interests, and as further identifying the proprietary companies with the trust properties.

First (Section 4): The Des Moines Company was not intended to acquire revenue over and above its cost of operation, as amounts derived from other railroad companies were to be deducted from expenses apportionable among the proprietary companies.

Second (Sections 11, 12, 13, 15): The proprietary companies were to control the management and operation of the Des Moines Company through an executive committee of three, each of the three proprietors to have one representative. The executive committee was to appoint the superintendent of the properties and make and enforce the rules and regulations for the use, management and operation of the terminals.

Third (Section 26): (A provision wholly foreign to the ordinary operating agreement made between railroads occupying co-ordinate positions.) The respective interests of the proprietary companies in the trust properties, as provided for in the contract of January 2, 1882, are recited and it is then provided that the authorized capital stock of two million dollars, shall be distributed in the relative amounts so originally assigned, namely:

One-half to the St. Louis Company and one-quarter each to the Northwestern and the Northern Companies, *in single certificates, nontransferable except by unanimous consent of the second parties to the agreement.*

Fourth (Section 24): The one exception to the above rule was that the St. Louis Company might transfer one-half of its interest, or one-quarter of the whole stock of the Des Moines Company, to such railroad company as might be acceptable to a majority of the parties of the second part. Only as aforesaid were other railroad com-

panies to be admitted to the use of the terminals without *unanimous* consent of the parties of the second part.

Fifth: That with the transfer of an aliquot portion of stock to another railroad company within the limitations of Section 24, went always a concomitant of user on a parity with the original proprietors. Thus the prerogatives of a tenant in common would be vested in each successive railroad stockholder acquiring its stock with unanimous consent (except in the one instant noted) of the other stockholders.

Sixth (Section 5): If any outsider so admitted defaulted in its obligations, the second parties were to reimburse the first party on a wheelage basis for the amount of such default, thus showing the responsibility of proprietors to protect their own interests.

Seventh (Sections 3 and 27): The second parties were to pay the interest on the mortgage bonds and the Des Moines Company had no right to dispose of bonds, except for the purpose of purchasing with them, or their proceeds, additional terminal property or for improving or equipping that now owned by the Des Moines Company. (Rec., 479-488.)

There was no provision for the payment by the proprietary companies of any rental or compensation for the use of the terminal properties, or for the service that the Des Moines Company obligated itself to render to the proprietary companies.

Finally it should be noted that it is the stockholders of the Des Moines Company, in their resolution of March 31, 1888, who are resolving alone that the Northwestern, the Northern and the St. Louis Companies shall assume the expenses, taxes and interest on bonds of the Des Moines Company, as subsequently set out in the agreement of May 10, 1889, and who are providing that said

agreement shall "be approved and executed by all the lines now holding an interest in the property." (Rec., 476.) This resolution was unanimously adopted by the stockholders, including F. M. Hubbell. (Rec., 479.)

From the foregoing it seems proper to assert, as an ultimate fact, that the supplemental agreement is, in a court of equity, nothing more than a written agreement between the equitable owners of the terminal property and their own trustee in possession settling the details of operation and accounting until May 1, 1918.

On May 18, 1889, the directors of the Northwestern Company approved and authorized the execution of the same, and on May 25, 1889, a similar resolution was adopted by the directors of the St. Louis Company. (Rec., 1454, 1433.) The agreement was duly executed by the parties thereto on May 25, 1889. (Rec., 1597.)

The amended articles of the Des Moines Company. (Rec., 488.)

In 1886 John S. Runnells, who for many years had been the local attorney of the Wabash Company at Des Moines, resigned to take up work at Chicago. (Rec., 359.) He was succeeded by A. B. Cummins, who was the personal counsel of the defendant Hubbell, and of all the Hubbell interests. At the same time Mr. Cummins was appointed general counsel of the Des Moines Company. (Rec., 1204, 1211, 1233, 1236.) Although General Dodge was at this time nominally the president of the Des Moines Company, he resided at New York and the whole management of the Des Moines Company was left to the defendant F. M. Hubbell, who, in addition to being an officer and a director of the same, was regarded as a con-

fidential agent of the Wabash Company at Des Moines. (Rec., 132-136, 233.)

In January, 1890, Mr. Cummins, acting ostensibly on his own initiative and independently of the defendant Hubbell, set about to procure amendments to the articles of incorporation of the Des Moines Company.

At a meeting of the stockholders of the Des Moines Company held January 3, 1890, at the suggestion of Mr. Cummins

> "James F. How moved that the question of amending the articles of incorporation of this company, as well as the question concerning the issue of stock for the purchase price of the property, be referred to Attorneys W. H. Blodgett and A. B. Cummins for their investigation and recommendation." (Rec., 1307.)

No report was ever made by this committee, and it appears from the correspondence that no conference took place between Blodgett and Cummins, but that Cummins alone redrafted the proposed amendments to the articles of incorporation. In a letter by Cummins to Dodge, dated January 27, 1890, Cummins explains that the amendments were directed to two purposes.

First, to clear up the ambiguity and uncertainty with respect to the amount of stock to be issued on account of the original purchase of the property.

Second, to enable the Des Moines Company to act in all matters, without the previous authority of three corporations. (Rec., 1212.)

In respect to this latter subject matter, he explained in the letter to Dodge:

> "I have endeavored to protect the interest of the minority as fully as it is protected in the present articles, that is to say, under the amendments as now proposed the company cannot do anything of im-

portance without the affirmative vote of the *one quarter of* the stock which your road will represent or the vote of one of the directors which you will always be able to control. By this arrangement, you will have *as effective a negative upon the* conduct of the company exerted directly by your stock, as you now have by requiring the previous formal action of the Des Moines & Northern Railway Company. I have given the matter the most careful attention, and while Mr. Hubbell was at first disposed to oppose the amendments which I have prepared, after a full explanation with him, I believe that he will support them. If this reaches you before he leaves New York, it will be well to talk the matter over with him. In any event give me your ideas as fully as you can, and particularly if you do not expect to be here." (Rec., 1212.)

At the time this letter was written, the defendant Hubbell was in New York, endeavoring to purchase an interest in the Des Moines Company. (Rec., 1013.)

On February 5, 1890, as will be set forth more in detail in the next subdivision of facts, Hubbell acquired from the purchasing committee of the Wabash Company one-half of its interest in the capital stock of the Des Moines Company, being one-quarter of the total interest in such stock. (Rec., 1599.)

On February 11th, the purchasing committee made a memorandum of agreement between it and Hubbell, wherein it was provided that the ownership of one-eighth of the stock in the Des Moines Company would permit one director to be nominated by any person or corporation holding one-eighth of the stock in such company. (Rec., 1601.)

The amendments to the articles of the Des Moines Company were passed at a so-called stockholders' meeting held at Des Moines, April 8, 1890. (Rec., 488.) No stock certificates of interest in the company had been issued

at this time. (Rec., 711.) The record of the meeting shows as present in person: How, Hays, F. M. Hubbell, Martin, F. C. Hubbell and Cummins, representing each one share, and present by proxy: Dodge and Blodgett, each representing one share. It is then recited that the Northwestern Company was present by Hubbell, its president, the Northern Company by Cummins, its vice president, and the St. Louis Company by How, its president.

It is, however, conceded that no one of these individuals held a proxy authorizing him to represent the interest of the company and that the directors of none of the three companies authorized any action to be taken amending the articles of the Des Moines Company. (Rec., 1165-1169.)

At this meeti[illegible] t[illegible] llowing amendments were adopted upon the vot[illegible] of the eight individuals above named recorded as owning one share each of the Des Moines Company's stock (Rec., 489):

Article 1: This was not substantially changed. (For original articles see Record, 416.)

Article 2: The principal change in this article was the elimination of the provision that all powers exercised by the company should be in accordance with the terms and spirit of the January 2, 1882, contract, and the right of the company to lease or dispose of the use of any part of its franchise to any other railway company with the assent of the three Railway Companies.

Article 3: This was changed so as to provide, (a) for the increase formerly made by resolutions of March 31, 1888, of the authorized capital stock from $1,000,000 to $2,000,000; (b) the amount of stock to be paid for and actually issued; and (c) that all previous resolutions and issue of such capital stock be set aside.

Article 4: This was changed so as to provide that at all future elections of directors, *more than* seven-eighths of the votes of all the stock theretofore issued should be required to elect any director, *and that as to all matters except the ordinary operation of the property of the company the board of directors could act only upon the unanimous vote of the eight members of the board.*

Article 5: There was no substantial change made in this article excepting to provide for the annual election of the officers of the company, and that such officers might exercise such powers and be charged with such duties as usually pertain to their respective offices.

Articles 6, 7 and 8 were not changed.

Article 9: *This was changed so that the articles could be amended only by a vote of more than seven-eighths of all the stock instead of by three-fourths.*

Article 10: This was not changed.

There were added to the articles five new articles, to wit: Article 11, Article 12, Article 13, Article 14 and Article 15.

Article 11 related to the calling of special meetings of the stockholders.

Article 12 provided that each stockholder should have one vote for each share of stock owned, such vote to be cast either in person or by proxy.

Article 13 provided that it was not necessary in order to enable the company to carry on its business that all its authorized stock be issued.

Article 14 *approves, ratifies and confirms the purchase of the property theretofore conveyed to the Des Moines Company, and the conveyances made in pursuance thereof to that company, as well as the execution of the trust mortgage of that company.*

Article 15 purports to repeal, strike out and expunge the proceedings of the first meeting of the incorporators of the company held December 10, 1884, with certain preambles, which include the January 2, 1882, contract. (Rec., 416.)

Briefly stated, the effect of these amendments, if valid, was:

(a) To expunge from Article 2 of the original articles the provision that all powers exercised by the company should be in accordance with the terms and spirit of the January 2, 1882 contract, and that the right of that company to lease or otherwise dispose of the use of any part of its franchise to any other railway company could be exercised only on the assent of the three Railway Companies. With these exceptions, there remains no substantial difference between Article 2 of the original articles and Article 2 of the amended articles.

(b) To provide that 4,000 shares, aggregating $400,000, of capital stock together with the first mortgage bonds theretofore issued for that purpose constitute the fair value of the terminal properties acquired by the Des Moines Company. That of such total number of shares 2,000 be issued to the purchasing committee, 1,000 to the Northwestern Company and 1,000 to the Northern Company, and that the remaining capital stock, to wit, 16,000 shares or any part thereof, shall be issued only by authority of a resolution of the stockholders adopted by vote of *more than seven-eighths* of all the stock theretofore issued.

(c) To provide that *more than* seven-eighths of the votes of all the stock issued should be required to elect any director of the company, and that the board of directors could act only upon the unanimous vote of the eight members thereof.

(d) To require the vote of more than seven-eighths of all the stock to amend the articles of the company.

(e) To approve, ratify and confirm all purchases of property theretofore conveyed to the Des Moines Company and the conveyances made in pursuance thereof to such company, as well as the execution of the mortgage of that company.

(f) To attempt to repeal, strike out and expunge from the company's records the proceedings of the first meeting of the incorporators of the company, held December 10, 1884.

Particular attention is called to the limitations in the foregoing amendments that *more than seven-eighths* of the votes of all the stock issued shall be required to elect any director and to amend the articles of the company, and that the board of directors could act only upon the unanimous vote of the eight members thereof. These limitations should be read in the light of the transactions and correspondence hereafter set forth in the third subdivision of facts which establish a definite agreement among the representatives of the three proprietary companies that a one-eighth stock interest in the Des Moines Company shall be sufficient to represent "a proprietorship" in the Des Moines Company.

Annual Reports made by the Des Moines Company to the Executive Council of the State of Iowa for the purpose of the assessment of its properties for taxation by said Council. (Rec., 721.)

On December 31, 1888, 1889, and 1890, and on January 1, 1892 and 1893, the Des Moines Company made an annual report to the executive council of the State of

Iowa for the purpose of taxation. In each of these reports appears the following:

> "The Des Moines Union Railway Company is simply a 'Representative Company' acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines and Northwestern Ry. Company, and the Des Moines and Northern Railway Company, performing all the necessary work for them and charging each road at actual cost, its due proportion of the expense, thereby incurred. (Rec., 721.)"

These reports were under oath and the report for the year 1888 was verified by James F. How, vice president of the Des Moines Company and J. B. Van Dyne, general superintendent.

The report for 1889 was verified by Horace Seeley, general superintendent of the Des Moines Company.

The report for 1890 was verified by A. B. Cummins, vice president of the Des Moines Company, and Horace Seeley, general superintendent.

The report for 1891 was verified by F. C. Hubbell, president of the Des Moines Company, and Horace Seeley, general superintendent.

The report for 1892 was verified by A. B. Cummins, vice president of the Des Moines Company, and J. A. Wagner, superintendent. (Rec., 721-723.)

The fiduciary relations of F. M. Hubbell to the constituent companies in the trust and to the Des Moines Company.

F. M. Hubbell held in such companies positions as follows:

1. The St. Louis Company.
   Director—1880-1891.
   Secretary—1880-1891. (Rec., 1296.)

2. The Northwestern Company:
   Director—1881-1886.
   Treasurer—1881-1883, 1885-1886.
   Asst. Treasurer—1884.

3. Reorganized Northwestern Company:
   Director—1887-1892.
   President—1887-1892.

4. The Northern Company:
   Director—1881-1890.
   Treasurer—1881-1883.
   Secretary and Asst. Treasurer—1884.
   Vice President—1885-1888.
   Asst. Secretary and Treasurer—1889.
   Secretary—1890.

5. The consolidated corporation formed by the merger of the reorganized Northwestern and Northern Companies:
   Director—1891-1895.
   President—1891-1895.

6. The Reorganized Consolidated Company:
   Director—1895-1899.
   President—1895-1899.

7. The Des Moines Company:
   Director—1884, to the time of the institution of the suit.
   Secretary—1884, to the time of the institution of the suit. (Rec., 1296.)

At the date of the reorganization of the Northwestern Company, the firm of Polk and Hubbell, through their ownership of the Narrow Gage Railway Construction Company, had acquired and held one-half of the stock of the Northwestern Company. (Rec., 400, 1104.) Under the reorganization of the Northwestern Company as

hereinbefore set forth, Polk and Hubbell acquired a majority of the capital stock of the reorganized company and held the same up to the time of the merger of that company with the reorganized Northern Company. (Rec., 621.)

The controlling interest in the Northern Company at all times was held by General Dodge, although the firm of Polk and Hubbell had acquired a minority interest in the stock through the Narrow Gage Railway Construction Company. (Rec., 1163.)

Upon the merger and consolidation of the reorganized Northern and Northwestern Companies, a majority of the capital stock was acquired by the firm of Polk and Hubbell and was held continuously by the Hubbell interests until the same was sold to the St. Paul Company in 1898.

It thus appears that, at the time of the important transactions involved in this litigation, the defendant F. M. Hubbell was an officer and director of the Des Moines Company and of its three proprietary companies and was the dominating stockholder of the Northwestern Company and of its successor the Consolidated Company.

F. M. Hubbell presented the resolutions adopted by the stockholders of the St. Louis Company and the Northwestern Company and voted for their adoption at the meeting held January 1, 1885, authorizing, among other things, the conveyance to the Des Moines Company of the real estate and franchises of said two Railway Companies in the City of Des Moines. (Rec., 424, 428.)

F. M. Hubbell, as a member of the board of directors of the Des Moines Company, voted in favor of the resolutions adopted by that company at a meeting held January 1, 1885, accepting the transfer, management and operation of the property theretofore held by the several

parties acquiring the same in the interests of the three Railway Companies and instructing its president to take such action as should be necessary to render such transfer, management and operation effective as provided in the January 2, 1882 contract. (Rec., 432.)

F. M. Hubbell signed the deed of the St. Louis Company, conveying its title to the properties to be held in the common interest, to the Des Moines Company, as secretary, and testified that such deed was made for the purpose of carrying out the January 2, 1882, contract. (Rec., 457.)

F. M. Hubbell executed the Des Moines Company mortgage, dated November 1, 1887, as secretary of that company. (Rec., 459.)

F. M. Hubbell was present at the stockholders' meeting of the Des Moines Company held March 31, 1888, and acted as secretary of that meeting, which adopted the resolution requesting that the supplemental agreement of May 10, 1889, be made and voted for the same. (Rec., 476.)

F. M. Hubbell signed the supplemental agreement as secretary of the Des Moines Company, as secretary of the St. Louis Company and as president of the Northwestern Company. (Rec., 479.)

Following the execution of the supplemental agreement of 1889, F. C. Hubbell, a son of F. M. Hubbell, and a member of the firm of Hubbell and Son, became the president of and a director in the Des Moines Company and held these offices continuously up to the time of the insituation of the present suit. (Rec., 1183.)

III.

THE INDEPENDENT TRANSACTIONS OF THE HUBBELLS IN RESPECT TO THE TRUST PROPERTY AND THE SEVERAL ALIQUOT INTERESTS EVIDENCED AND MEASURED BY SHARES OF STOCK OF THE CORPORATE TRUSTEE.

On June 12, 1888, Hubbell wrote to O. D. Ashley, president of the Wabash Company, saying:

"I have been asked several times whether a quarter interest in the Des Moines Union Railway stock could be bought, and, if so, at what price. I, of course, am unable to give any satisfactory answer. If you have a price at which you would be willing to part with a quarter interest in the Des Moines Union Railways Company stock and are willing that I should offer it, I would like to do so. If you do not wish me to offer it for sale, shall I refer the parties to you?" (Rec., 1059.)

On June 16, 1888, Mr. Ashley replied as follows (italics ours):

"Yours of June 12th received. My impression is that the purchasing committee will be glad to sell a one-quarter interest in the Des Moines Union Railway stocks if they could obtain a fair price for it, but I have always supposed *that it would be necessary to confine the sale to such railway companies as would be interested in the station.* It seemed to be desirable to offer the stock to the Chicago and Northwestern, if we could get that company to come into the station.

Was there not an understanding or agreement as to the sale of the stock when the Terminal Company was formed and would it not be prejudicial to the interest of the whole to part with the stock to outsiders?

I should like to hear from you on this point, after which I will bring the subject before the purchasing committee, as soon as possible." (Rec., 1059.)

On June 18, 1888, Hubbell replied to Ashley in part as follows (italics ours):

"Yours of June 16th at hand. *I agree with you that the sale of a quarter interest in the stock of the Terminal Company should be made only to a railway company, who will join with the Wabash in* making a contract with the Des Moines Union, guaranteeing the interest upon the bonds and operating expenses, etc.

I think it would be prejudicial to sell any of this stock to outsiders, and I understand it, as you do, that the stock cannot be sold without the consent of the different railroad companies who now form the Terminal Company." (Rec., 1060.)

Following the exchange of the above letters, the defendant Hubbell suggested that the purchasing committee surrender to the Des Moines Company a portion of the stock issuable to the St. Louis Company under the resolutions of 1887. This proposal was made in connection with the consideration of a preliminary draft of the supplemental agreement of May 10 1889, prepared pursuant to the resolutions of March 31, 1888. The proposal was rejected on September 17, 1888, in a letter from James F. How to Polk and Hubbell, reading in part as follows:

"Mr. Ashley is in town and I have just had a talk with him concerning the amendments to the proposed contract for the use of the Des Moines Union Depot that you desire, viz.: that the purchasing committee should surrender one-fourth of their stock for the benefit of the Depot Company. Mr. Ashley says that this is an arrangement which he could not agree to on behalf of the purchasing committee being satisfied that they would not approve the surrender of any of their stock without a consideration." (Rec., 1594.)

In the above connection, attention is called to Section twenty-four as embodied in the final draft of the agreement of May 10, 1889 (hereinbefore summarized), providing that the St. Louis Company, as the owner of one-half of the capital stock of the Des Moines

Company, may sell and transfer one-half of said stock or one-quarter of the whole to such railway company as may be suitable to a majority of the parties of the second part, in which case it is agreed that such railway company may be admitted as one of the parties to the agreement of May 10, 1889, upon the same terms and conditions as those stipulated for the other parties to such agreement; and the further proviso that, except as aforesaid, other railroad companies shall be admitted to the use of the terminal property, only upon the unanimous consent of the constituent companies.

Attention is also called in this respect to Section twenty-six which in providing for the issue of shares to the constituent companies, in the proportions allotted under the contract of January 2, 1882, requires that the certificates therefor shall express on their face that they are not transferable in whole or in part, without the consent in writing of all of the constituent companies.

In the early part of February, 1890, Hubbell went to New York to persuade Ashley to give him an option on one-half of the purchasing committee's interest in the Des Moines Company, that is a one-quarter interest in the Des Moines Company. As a result of this, on February 5, 1890, Ashley, as secretary of the purchasing committee, gave the following option in writing:

> "I will give you for the purchasing committee the option of buying of them $135,000 of the bonds of the Des Moines Union Railway Company and one-quarter interest in the capital stock of that company for $135,000 and accrued interest from November 1, 1889, at any time within ten days from this date. Payment to be made in cash if the option is availed of by you." (Rec., 1599.)

Thereupon Hubbell explained the situation to Dodge, who asked to participate in the purchase, by taking one-

half of the optioned stock and bonds. Hubbell consented to this and thereupon closed his option by the following letter addressed to Ashley, dated February 5, 1890 (Rec. 1599):

> "I hereby accept the proposition made by you, for the purchasing committee to me, for the sale to me of $135,000 of Des Moines Union Railway Company bonds, and a one-quarter interest in the capital stock of that company, and hand you now $10,000 and will pay the balance as soon as you deliver the property."

On this letter is endorsed a receipt, dated February 5, 1890, reading:

> "Received of F. M. Hubbell his check for ten thousand dollars on account of $135,000 Des M. U. R. Co. bonds and one-quarter of the stock of said company as per letter written to him by me in behalf of the purchasing committee. O. D. Ashley."

On February 11, 1890, a bill of sale covering one-half of the bonds and one-half of the stock, included in the above option, was executed by Mr. Ashley and delivered to Mr. Hubbell. (Rec., 1601.)

This memorandum of agreement, made between the purchasing committee and Hubbell, recites that in the articles of incorporation of the Des Moines Company it is provided that the Wabash Company shall nominate four directors of the Des Moines Company; that the stock of the Des Moines Company is now held by different parties and in different proportions from what it was when said articles were adopted and that it was agreed therefore between the purchasing committee and Hubbell, who had acquired a one-eighth ownership of the stock of the Des Moines Company, that the purchasing committee would consent to such change in the articles of the Des Moines Company as would permit one director to be nominated by any person or corporation holding one-

eighth of the stock of the Des Moines Company. (Rec., 1601.)

The recital above made that Hubbell had acquired a one-eighth ownership was due to the fact that, by virtue of his understanding with Dodge, the one-quarter interest in the Des Moines Company, although optioned by him, was divided between him and Dodge; and at the same time and as part of the same transaction, a similar agreement covering the other eighth was executed by the purchasing committee and delivered to Dodge. (Rec., 1602.)

At the time of the above transaction, Hubbell began negotiating with the purchasing committee of the Wabash for the purchase of an additional one-eighth share of its interest in the Des Moines Company.

On April 1, 1890, he wrote Ashley as follows:

> "In our last interview at your office it was understood that you would talk with Mr. Joy and Mr. Wells of the purchasing committee and write me upon what terms you would sell a one-eighth interest in the capital stock of the Des Moines Union Railway Company. Thinking that this matter might have escaped your memory I beg to say that I would like to hear from you in regard to it." (Rec., 1061.)

Ashley replied on April 5, 1890, as follows (our italics):

> "I have yours of April 1st this morning. The result of my conversation with Messrs. Joy and Wells is a rather vague idea that we ought not to sell $100,000 of the Des Moines Union Railway Terminal bonds and one-eighth interest in the capital stock at less than $115,000 and accrued interest on the bonds, and I do not feel authorized to offer it at any less price. If, however, you will make me a definite bid of the best price you can, I will communicate it to the other members of the committee and will give you an early and definite reply. *It must be understood, of course, that a one-eighth interest in the capital stock shall be sufficient to represent a pro-*

prietorship in the company according to the understandings we had when you were here." (Rec., 1602.)

Hubbell accepted the terms proposed and consummated the purchase of the additional bonds and an additional one-eighth interest in the Des Moines Company, on June 5, 1890. (Rec., 1080.)

On June 5, 1890, a bill of sale was made by the purchasing committee to Hubbell, selling him fifty bonds of one thousand dollars each of the Des Moines Company and one-eighth of its capital stock for the sum of $57,763. The bill of sale also provided that, upon payment of the above sum, the purchasing committee would deliver said five hundred shares to Hubbell by a certificate transferred by endorsement; and it further agreed to have the same transferred on the books of the Des Moines Company, so far as the vote of the directors of the Des Moines Company representing the St. Louis Company will secure said transfer. (Rec., 1613.)

Pursuant to the above, in due course, the certificate above provided for was issued to Hubbell.

At a stockholders' meeting of the Northwestern Company held on October 12, 1891, at which meeting it appeared that F. M. Hubbell and F. M. Hubbell and Son held sixty-five hundred shares and G. M. Dodge thirty-five hundred out of a total of ten thousand and four shares, it was resolved to consolidate the Northwestern Company with the Northern Company, pursuant to the terms of a certain agreement, set out in full in the resolution, made between Dodge and Humphreys as first parties and Hubbell as second party. In this agreement Dodge agreed to convey to the consolidated company, among other things, one-eighth of the capital stock of the Des Moines, being the stock acquired by him from the purchasing committee of the Wabash Company, and

Hubbell agreed to convey to the consolidated company one-quarter of the capital stock of the Des Moines Company, being the two-eighths of the stock acquired by him in February and in June, 1890, from the purchasing committee of the Wabash Company, and to receive as consideration for his two-eighths share $60,000 in first mortgage bonds of the consolidated company. (Rec., 1461.)

At the time of the consolidation of the Northern and Northwestern Companies each of the companies held a one-fourth interest in the capital stock of the Des Moines Company, these shares being the shares originally assigned to each of said companies under the contract of January 2, 1882.

In addition to these shares Dodge and Hubbell undertook to transfer to the consolidated company their aggregate three-eighths interest mentioned above, so that it was contemplated that the consolidated company upon its formation would become the owner of seven-eighths of the stock of the Des Moines Company, the other eighth remaining in the hands of the purchasing committee of the Wabash Company.

The parties also agreed that contemporaneously with the consolidation of the Northern and Northwestern Companies, the consolidated company should execute and deliver to the Metropolitan Trust Company of New York a trust mortgage upon all of the properties so acquired by it, except stock of a certain coal company and five-eighths of the capital stock of the Des Moines Company. (Rec., 1462.)

Pursuant to the above arrangement, Dodge and Hubbell transferred their respective interests in the Des Moines Company to the consolidated company and the certificates were issued on January 15, 1892. (Rec., 711.)

Thereafter, pursuant to a resolution passed by the board of directors of the consolidated company on October 4, 1893, said five-eighths ($250,000 par value) of the stock of the Des Moines Company was pledged with nineteen one thousand-dollar bonds of the Des Moines Company to F. M. Hubbell & Son, to secure an indebtedness owing Hubbell & Son by the consolidated company of $122,000. (Rec., 1480-1481.)

On January 29, 1894, at a meeting of the board of directors of the consolidated company, at which were present: Hubbell, Martin, Cummins, Denman and Thompson, a resolution was passed reciting that the company was indebted to F. M. Hubbell & Son in the amount of $128,833.33, which indebtedness was long past due; that the company had in its treasury certain of its first mortgage bonds, amounting to $225,000, which it has been unable to dispose of at 55 per cent of their par value, although in its said efforts said bonds were offered to each of the stockholders of the company, as well as in the markets at said price; that the company was also the owner of 2,500 shares of the capital stock of the Des Moines Company, "*which shares of stock have no market value*"; that Hubbell and Son have offered to accept said $225,000 first mortgage bonds at 55 cents on the dollar of their face value and have offered to purchase said capital stock of the Des Moines Company at 10 per cent of the par value thereof, and to cancel therefor the debt of the consolidated company to Hubbell and Son, and to assume and pay a certain indebtedness of the consolidated company, amounting to $20,000, to the Metropolitan Trust Company; and which thereupon resolved that the treasurer of the company be authorized and directed to transfer to Hubbell and Son said bonds and said shares of stock, upon surrender of the notes of the consolidated company, evidencing the $128,000 of

debt, and upon receiving an agreement from Hubbell and Son to pay the debt due the Metropolitan Trust Company. The records show that this resolution unanimously passed with F. M. Hubbell not voting. (Rec., 1482-1484.)

Although F. M. Hubbell abstained from voting at the meeting, it is undisputed that he was in complete control of the company. Of the seven members of the board of the company, three (F. M. Hubbell, F. C. Hubbell and H. D. Thompson) were members of Mr. Hubbell's family, and a fourth (A. B. Cummins) was the personal attorney for the Hubbell interests. (Rec., 1096.)

Following the pledge of the above shares to Hubbell and prior to the actual purchase of the shares, a meeting of the board of directors of the Des Moines Company was held, to wit: On October 4, 1893, at which the following minute was adopted:

> "The Des Moines & Northwestern Railway Company, by its president, F. M. Hubbell, stated that they had found it necessary to transfer 2,500 shares of their stock in the Des Moines Union Railway Company to F. M. Hubbell and Son, by Certificate No. 26, dated October 4, 1893, and asked that the directors of this company consent to the transfer above mentioned."

Thereupon it was resolved that the consent to such transfer be given. (Rec., 1333.)

On the same date these shares were transferred in the name of F. M. Hubbell and Son on the books of the Des Moines Company and continued under that same registered number up to the institution of this suit. (Rec., 711.)

An examination of the records will disclose that no approval of the above transaction was given by Wabash Company or the St. Louis Company, as required pur-

suant to Sections twenty-four and twenty-six of the Supplemental Agreement of May 10, 1889.

Following the above transaction whereby Hubbell & Son obtained possession of five-eighths of the stock of the Des Moines Company a report was made to the executive counsel of the State of Iowa differing materially from the reports made for the years 1888, 1889, 1890, 1891 and 1892 hereinbefore set out. These earlier reports all stated that the Des Moines Company was merely a representative company acting as an agency at Des Moines for the three proprietary companies. The report for 1893 which was verified by A. B. Cummins, vice president of the Des Moines Company, and J. A. Wagoner, superintendent, the first named being the personal attorney of the Hubbell interests, contained the following statement:

> "The Des Moines Union Railway Company is the owner of the property hereinbefore described and in addition to leasing the same to the Wabash Railroad Company the Des Moines, Northern and Western Railway Company and the Chicago Great Western Railway Company perform certain services for these companies and collect from them as rental for such services the aggregate amount of its expenses, which expenses are paid by the several railway companies in proportion to the use of the property and services rendered, as provided by contracts existing between this company and the said Wabash Railroad Company, the Des Moines, Northern and Western Railway Company and the Chicago Great Western Railway Company." (Rec., 724.)

Agreement of July 31, 1897. (Rec., 506.)

On July 31, 1897, a so-called agreement of ratification and confirmation was entered into between the Wabash Company, the Des Moines Company and the Consolidated Company, F. C. Hubbell signing as president for the last

two companies. This agreement recites the existence of the supplemental agreement of May 10, 1889, the parties thereto; that the Wabash Company now operates the St. Louis Company; that the Northwestern Company and Northern Company have ceased to own and operate their respective railroads, and that the consolidated company is now the owner of the same; that the Wabash Company and the consolidated company had been using the terminal properties for a long time past and that it is doubted whether said contract is legally binding upon the Wabash Company and the consolidated company. It is thereupon agreed that the contract shall become binding upon these two last named companies, as successors to their respective predecessors, and it concludes with the statement:

> "that so much of said contract, a copy of which is hereto attached, as relates to the issuance and distribution of the capital stock of the said Des Moines Company, is no longer binding and that the capital stock of the said Des Moines Company is held as follows:
>
> 500 by the purchasing committee of the Wabash Company.
>
> 1,000 by the Des Moines & Northwestern Railway Company.
>
> 2,500 by F. M. Hubbell and Son.
>
> A list is also given of shares issued qualified directors." (Rec., 506.)

The evidence introduced by the Hubbells in support of their plea of estoppel and laches.

The Hubbells have set up in their answer, among other things, the following:

> "That the facts with reference to the ownership of the terminal property and stock in controversy have been known to the complainants and to their predecessors in interest ever since the dates of the

transactions complained of and were so known to the complainants and their predecessors in interest for many years prior to the commencement of this suit and that the complainants have been guilty of laches and their claims are stale and are barred and are not cognizable in equity." (Rec., 193.)

As supporting this plea of estoppel and laches, the Hubbells introduced certain evidence of negotiations occurring in the ten-year period between 1897 and the date of the institution of this suit, between the operating officials of the Wabash and St. Paul Companies and themselves, for an operating contract in substitution for, or in extension of, the supplemental contract of May 10, 1889, all of which negotiations failed.

In so far as these negotiations are concerned, as well as the "series of acts and circumstances" referred to in the majority opinion of the Circuit Court of Appeals we ask the Court to keep constantly in mind in connection with the defense of estoppel, namely, that the Hubbells themselves were the officers and directors of the Des Moines Company upon whom the proprietary companies and their respective operating and other officials were accustomed to rely for all information respecting the trust enterprise. Mr. How, who represented the Wabash Company during the development of the enterprise, retired as a director of the Des Moines Company in 1892 and died prior to 1897. (Rec., 1677.) The late Chas. M. Hays, who later was the active representative of the Wabash Company, resigned in 1895 and was succeeded by Joseph Ramsey, Jr. (Rec., 1659.) For all information respecting the terminals Ramsey was dependent on the Hubbells. (Rec., 1666.)

The St. Paul Company was a stranger to the terminal enterprise until 1898, when it purchased the property of the reorganized Consolidated Company and the officials

of the St. Paul Company were dependent upon the Hubbells for all information respecting not only the terminal enterprise but also the Consolidated Company.

A careful analysis of certain of the documents offered by the Hubbells in support of their plea of estoppel will develop a studied abuse of this relation of confidence.

It is sufficient in this connection to refer two letters which they themselves have offered in evidence.

On December 2, 1898, following the purchase of the consolidated company by the St. Paul Company, Mr. Roswell Miller, president of the last named company, wrote F. M. Hubbell as follows:

> "I observe that the contract between the Des Moines Union Railway Company and the Des Moines Northern and Western Railroad Company is only for twenty years. I think it should be for fifty years. Have you any objection to extending it for so long?" (Rec., 1765.)

And on the same date Mr. Miller wrote asking Hubbell to send copies of any trackage contracts that were in existence. (Rec., 1766.)

On the following day F. M. Hubbell replied stating that there was no trackage contract except *the lease* (our italics) with the Des Moines Union Railway Company, a copy of which he had previously given to the St. Paul Company, which was of course the supplemental contract of May 10, 1889. It thus appears that at the very outset of his dealings with the St. Paul Company F. M. Hubbell deliberately suppressed the contract of January 2, 1882. (Rec., 1767.)

The Hubbells' claim that the properties of the Des Moines Company were not held in trust for the use and occupation of the complainants thereby presenting the controversy as to the so-called Surplus Earnings.

No question as to the equitable ownership of the terminal properties by the proprietary companies was ever made until October, 1905, when at a meeting in Chicago between the officers of the St. Paul and Wabash Companies and F. M. Hubbell the disposition of the so-called surplus earnings of the Des Moines Company, which had recently become a subject of controversy, was under consideration.

The history of the controversy as to the so-called surplus earnings is briefly as follows:

At the time of the execution of the supplemental agreement of May 10, 1889, it was contemplated that the only source of revenue of the Des Moines Company, independent of the contributions made by the proprietary companies, would be rentals paid by other railway companies admitted by contract to the use of the terminal properties.

Shortly afterwards, however, other sources of revenue developed. These were the switching of cars to and from industries adjacent to the terminal properties and rentals for unused office space in the Union passenger station.

The question then arose as to the proper disposition of these unexpected revenues.

Under the supplemental agreement of May 10, 1889 all expense incident to the ownership and operation of the terminal properties was charged against the proprietary companies on a wheelage basis and bills there-

for were rendered monthly. In determining the amount payable by each proprietary company there was, however, deducted from the bill its proportionate share on a wheelage basis of

> "The amount, if any, which other railroad companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month." (Rec., 481.)

It is reasonably clear that switching charges and rentals from the station property are within the purview of the language above quoted, and the subsequent conduct of the parties confirms such construction.

The board of directors of the Des Moines Company at a meeting held February 11, 1891, adopted a resolution ordering:

> "That the rents collected for the use of the company's real estate and the switching charges paid in be credited on the bills of the different tenant companies occupying this company's terminals, giving to each company its share ascertained by wheelage." (Rec., 497.)

This resolution was adopted by the unanimous vote of the eight directors of the Des Moines Company, including the defendant F. M. Hubbell, and particular attention is called to it as it is in line with the provisions of the supplemental agreement that the proprietary companies should have the full use and benefit of the terminal property including the proposed union depot building to be erected for their "use." (Rec., 480.)

Pursuant to the above resolution of the board of directors of the Des Moines Company all revenues from outside sources were credited to the proprietary companies on their monthly bills until January 7, 1892, when the board of directors adopted the following minute:

> "Whereas this company is in need of a cash capital with which to purchase supplies and pay current bills

which come in before it receives its monthly revenue from the tenant companies, therefore be it resolved: That until the further action of the board the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies but shall be used for the aforesaid purposes." (Rec., 499.)

On March 1, 1892, the auditor of the Wabash Company wrote to the superintendent of the Des Moines Company inquiring why no credit for switching revenues and rentals of real estate had been made on the bills for the preceding two months.

To this letter the superintendent of the Des Moines Company replied as follows:

"DES MOINES, IOWA, March 2, 1892.

D. B. Howard, Auditor,
Wabash Railway,
St. Louis, Mo.

DEAR SIR:

Replying to yours of the 1st inst. in regard to the allowance of switching, rentals, etc., that should be made on our bills for the months of December and January, I have to say that at a meeting of the executive committee held January 7, 1892, it was decided not to distribute these collections for a period of time until the Des Moines Union Railway Company could accumulate a small fund for working capital. I presume this will continue in effect until January, 1893. You will be furnished each month a statement showing the amount of this rental and your proportion of the same so you can make a charge against the D. M. U. Railway Company and carry it on your books as you see fit for future adjustment.

Yours very truly,
HORACE SEELEY,
Superintendent."

This is written on the letterhead of the Des Moines Union Railway Company, general offices, G. M. Dodge,

president, F. M. Hubbell, secretary, H. Seeley, superintendent. (Rec., 338.)

Following the above action of the board of the Des Moines Company the outside revenues derived from switching and real estate rental were accumulated in a separate cash fund to be used as working capital. In the earlier period of the enterprise these earnings were relatively small and a number of years elapsed before a substantial fund had been accumulated. In the meanwhile the Hubbells had caused the consolidated company to transfer to the firm of F. M. Hubbell & Son 2,500 shares of the stock of the Des Moines Company, and when the St. Paul Company and the Wabash Company, having ascertained that the fund had accumulated in an amount greatly in excess of the requirements of the Des Moines Company for working capital, suggested that the excess be distributed among the proprietary companies in accordance with the practice and understanding of the parties, as evidenced by the resolution of February 11, 1891, the Hubbells failed to comply with the request. The subject became a matter of controversy which culminated in a meeting at Chicago in October, 1905, when the defendant F. M. Hubbell stated that he would not consent to the distribution of any part of the surplus earnings and that, moreover, upon the expiration of the supplemental agreement on May 1, 1918, the St. Paul Company and the Wabash Company could not have the right to use the terminals except upon such terms and conditions as *he* might make. (Rec., 329, 333.)

At the next meeting of the directors of the Des Moines Company representatives of the St. Paul Company and of the Wabash Company each filed a written protest against the refusal of the Des Moines Company to credit the surplus earnings in reduction of the monthly bills

rendered against the proprietary companies and made formal demand that without further delay all monies arising from rents of real estate, switching charges, etc., theretofore and thereafter collected, be credited on the bills rendered against the proprietary companies on a wheelage basis. (Rec., 334.)

Within a year thereafter the complainants commenced the present suit. (Rec., 3.)

BRIEF OF ARGUMENT.

I.

BY THE TERMS OF THE CONTRACT OF JANUARY 2, 1882, THE ST. LOUIS COMPANY, THE NORTHWESTERN COMPANY AND THE NORTHERN COMPANY, PREDECESSORS OF THE COMPLAINANTS, ESTABLISHED FOR THEIR JOINT AND SEVERAL BENEFIT AN EXPRESS TRUST IN CERTAIN RAILROAD PROPERTIES THERETOFORE ACQUIRED IN THEIR COMMON INTEREST.

(1) The terms of the trust so created by this instrument were as follows:

It is recited:

(a) That "the companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for (of) terminal facilities in the City of Des Moines *to be held and used in common as hereinafter provided.*" (Rec., 412.)

(b) That in pursuance of said agreement various purchases have been made of real property in the City of Des Moines by a number of parties, individual and corporate. (Rec., 412.)

It is then agreed:

(a) That the expense of such purchases shall be borne in the proportion of one-half by the St. Louis Company and one-quarter by each of the other two companies *and "that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said company may issue and deliver to the companies, parties hereto, its mortgage bonds* to the amount of their respective portions of the cost of the said purchases and improvements." (Rec., 412.)

(b) That "the title to said property is to *be and*

remain in a trustee to be named by agreement of said companies *but subject to the joint use and occupation of all of said railway companies upon the terms herein described.*" (Rec., 412.)

(c) That the individual signers to the agreement "hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quitclaim and convey the same to said *trustee upon demand and reimbursement.*" (Rec., 412.)

(2) Under the terms of the trust the status of the proprietary companies was as follows:

(a) With respect to the premises subject to the trust the equitable interest of each was that of proprietorship, equivalent to an estate in fee in real property.

Brown v. *Fletcher*, 235 U. S., 589.

Pomeroy's Equity Jurisprudence, Fourth Edition, Section 975.

(b) With respect to each other they held equitable estates in a tenancy in common.

Pomeroy's Equity Jurisprudence, Fourth Edition, Section 147.

II.

THE DES MOINES COMPANY WAS ORGANIZED PURSUANT TO THE EXPRESS PROVISIONS OF ARTICLE THIRD OF THE TRUST INSTRUMENT TO MAKE EFFECTIVE THE DEVELOPMENT OF THE TRUST IN CORPORATE FORM AS THEREIN AUTHORIZED, AND THE TERMINAL PROPERTIES OWNED BY THE PROPRIETARY COMPANIES WERE CONVEYED TO AND ACCEPTED BY IT FOR THIS PURPOSE.

This is established by the following facts:

(a) At the meeting of the incorporators of the Des Moines Company it was resolved:

"That for the purposes of carrying out the objects and purposes of the agreement heretofore, to wit, on the 2nd day of January, 1882, made and en-

tered into between the Des Moines and St. Louis Railway Company and others (which is set out in full in the following Articles of Incorporation), that the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company, to wit:"

Thereafter follow the Articles of Incorporation of the Des Moines Company, including within them the contract of January 2, 1882. (Rec., 416.)

(b) The Articles of Incorporation provide that "all the pow exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." (Rec., 420.)

(c) At meetings of stockholders held January 1, 1885, of each of the Railroad Companies, party to the contract of January 2, 1882, it was duly resolved that such company accept and ratify the Articles of Incorporation of the Des Moines Company "as in substantial accord and compliance with the terms and conditions of the contract of January 2, 1882," and "undertake to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company," and that, in pursuance thereof, upon the issuance to it of the *bonds and stock* of said company to which it may be entitled *under said contract*, its proper officers be authorized to "convey, assign and transfer" to said Des Moines Company the properties "held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof, purchased, acquired or held in pursuance of said contract." (Rec., 423-428.)

At meetings of stockholders held November 5 and 8, 1887, of each of said companies, it was further resolved that, whereas, under said contract of January 2, 1882, it was *intended* that the properties standing in the name of trustees should be transferred to the Des Moines Company *under certain conditions*, said trustees be requested to transfer to the Des Moines Company said properties upon receiving from it, in mortgage bonds of the Des Moines Company, the amount of money advanced for the

payment of its aliquot share of the capital stock thereof, said bonds and stock to be transferred to the proprietary company in lieu for the money advanced by said company to make the purchases, etc. (Rec., 435-442.)

(d) The Des Moines Company, by resolution of its board of directors, adopted January 1, 1885, reciting that, whereas, the Railroad Companies, parties to the contract of January 2, 1882, have notified the Des Moines Company that they severally approve of the organization of the Des Moines Company and have directed their officers, agents and trustees to surrender and deliver to such company the "railroad properties and franchises mentioned in said contract, and have requested it to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in said contract and that said railway companies and individual signatories have indicated their desire and purpose to transfer said property to this company, *in accordance with the terms of said contract*," duly resolved that said Des Moines Company "accepts the transfer and management and operation of said properties * * * and assumes control thereof from this date, so far as practicable, and it hereby instructs its president to make such order as may be necessary to render such control and management effective *as provided in said contract*." (Rec., 432.)

It further resolved that its officers be appointed a committee to confer with the several parties to said contract and "agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this company and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this company with *the* TITLE, *control and management of said properties provided for in said contract of January 2, 1882*." (Rec., 433.)

(e) Each Railroad Company, party to the contract of January 2, 1882, served notice upon the Des Moines Company of its resolution, as above set forth, requesting the transfer to the Des Moines Company *under certain conditions* of the properties thereto-

fore acquired subject to the terms of the contract of January 2, 1882; and the individual holders of said property thereupon made deeds of conveyance to the Des Moines Company reciting that for "convenience the legal title to said property was conveyed to me in trust" and that "said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882," and that by the resolutions above set forth "it was intended that said property * * * should be transferred to the Des Moines Union Railway Company *under certain conditions*," and the Railroad holders of certain of said properties executed and delivered their several quit-claim deeds for a like purpose. (Rec., 432-442, 446, 455-457.)

III.

THE PROPRIETARY COMPANIES HAD NO CORPORATE POWER TO ALIENATE THEIR EQUITABLE ESTATES IN THE TERMINAL PROPERTIES IN THE CITY OF DES MOINES, ACQUIRED TO BE HELD AND USED BY THEM IN COMMON.

(1) The transfer of terminals to the Des Moines Company except as trustee of the proprietary companies would dismember the railway lines of the latter and cut them off from their entrance to the City of Des Moines. It is settled law that such alienation of property and franchises is *ultra vires*.

Central Transportation Company v. *Pullman Company*, 139 U. S., 28.

Northern Pacific Railway Company v. *Ely*, 197 U. S., 1.

Northern Pacific Railway Company v. *Townsend*, 190 U. S., 267.

Section 2066 of Code of Iowa of 1897.

State v. *Central Iowa Railway Company*, 71 Iowa, 410.

Connor v. *Tennessee Central Railway Company*, 109 Fed. Rep., 931.

(2) The Des Moines Company is a railway company and not a terminal company, and its railway lines are not open to use by connecting carriers as a matter of right.

Title IX, Chapter 1, page 587, Code of Iowa, 1897.

Title X, Chapter 5, page 748, Code of Iowa, 1897.

Morgan v. *Des Moines Union Railway Company*, 113 Iowa, 561.

Chicago, Milwaukee and St. Paul Railway Company v. *Iowa*, 233 U. S., 334.

Iowa v. *Chicago, Milwaukee & St. Paul Railway Company*, 152 Iowa, 317, 321.

Section 3 of Interstate Commerce Act.

(3) The transactions should receive a construction which would sustain rather than invalidate them.

Hobbs v. *McLean*, 117 U. S., 567, 576.

IV.

THE ALLOTMENT OF SHARES OF CAPITAL STOCK OF THE DES MOINES COMPANY TO THE SEVERAL PROPRIETARY COMPANIES IN THE RELATIVE PROPORTIONS OF THEIR SEVERAL PROPRIETARY INTERESTS IN THE TRUST PROPERTIES AS FIXED BY THE CONTRACT OF JANUARY 2, 1882, WAS INTENDED TO EVIDENCE AND MEASURE THEIR SEVERAL UNDIVIDED ESTATES IN THE PROPERTY SO HELD BY SUCH CORPORATE TRUSTEE.

Under the contract of January 2, 1882, it was contemplated that a corporation might act as trustee to hold title to the terminal properties for the benefit of the proprietary companies. (Rec., 412.) The proprietary companies incorporated the Des Moines Company to act as such trustee. (Rec., 416.) Its capital stock was issued to them in the several proportions of their respective

tive estates in the trust properties and was intended to represent the same:

(1) The Articles of Incorporation provide:

The Board of Directors of the Des Moines Company was to be designated by the proprietary companies and not by the stockholders, and representation in this respect was to be based upon relative proprietary interests. (Rec., 421.)

The Board of Directors of the Des Moines Company had no power to take any corporate action, except upon consent of the three proprietary companies. (Rec., 421.)

(2) Under the agreement of May 10, 1889, it was provided that

Shares should be issued to the proprietary companies in proportions relative to their several proprietary interests, as fixed by the contract of January 2, 1882, and in the instance of each proprietary company the shares so allotted to it should be evidenced by a single certificate expressing upon its face that the same should not be transferable in whole or in part without the consent in writing of all the proprietary companies. (Section twenty-six, Rec., 486.)

The St. Louis Company as the owner of one-half of the capital stock of the Des Moines Company might sell and transfer one-half (no more and no less) or one-quarter of the whole to such railway company as may be acceptable to a majority of the proprietary companies, *in which case it was agreed that such railway company may become the purchaser of said stock and may be admitted as one of the proprietors.* Only as aforesaid should other railroad companies be admitted *to the use of* the property of the Des Moines Company without the consent *of all* the proprietors. (Section twenty-four, Rec., 485.)

Thus an ownership by a railroad company of an aliquot share of capital stock acquired pursuant to the terms of Sections twenty-four and twenty-six

carried with it a right of user equivalent to a tenancy in common.

(3) Under the Amended Articles of Incorporation of the Des Moines Company, it was provided that its shares should be allotted to the proprietary companies in the relative amounts of their respective proprietary interests as fixed by the contract of January 2, 1882. (Rec., 491.)

In contemplation of the segregation of proprietary interests into *eighths* instead of *quarters*, it was further provided therein that "at all future elections it shall require the votes of more than seven-eighths of all the stock theretofore issued to elect any director," and that in all matters except the ordinary operation of the property "the Board of Directors can act only upon the *unanimous vote of the eight members thereof.*" (Rec., 491, 492.)

(4) The transactions between Hubbell and the purchasing committee of the Wabash Company, whereby Hubbell and Dodge acquired certain stock interests in the Des Moines Company subsequently transferred by them to a proprietary company were had with the express understanding that an ownership in a railroad company of an aliquot amount of the capital stock of the Des Moines Company would represent a proprietorship in such company. (Rec., 1603.)

V.

"THE SERIES OF ACTS AND CIRCUMSTANCES" THROUGH WHICH, IN THE MAJORITY OPINION OF THE COURT OF APPEALS, THE PROPRIETARY COMPANIES ARE SUPPOSED TO HAVE "GRADUALLY LET SLIP FROM THEM THE EXCLUSIVE OWNERSHIP AND CONTROL WHICH THEY HAD AT THE BEGINNING SO MUCH VALUED AND SO CAREFULLY GUARDED" WERE ALL IN HARMONY AND CONSISTENT WITH THE CONTINUED EXISTENCE OF THEIR RESPECTIVE PROPRIETARY INTERESTS.

THESE ACTS AND CIRCUMSTANCES ARE TO BE INTERPRETED IN THE LIGHT OF THE FOLLOWING PRINCIPLE, NAMELY, THE EQUITABLE INTEREST THAT EACH OF THE RAILWAY COMPANIES, PARTY TO THE CONTRACT OF JANUARY 2, 1882, ACQUIRED IN THE TERMINAL PROPERTIES OF THE DES MOINES COMPANY WAS MORE THAN A RIGHT IN PERSONAM OR CHOSE IN ACTION—IT WAS A RIGHT IN REM, NAMELY, AN ESTATE IN PROPERTY VESTED IN THIS RESPECT TO THE SAME EXTENT AS THOUGH THE LEGAL TITLE THERETO HAD BEEN CONVEYED TO SUCH COMPANY.

Brown v. Fletcher, 235 U. S., 589.

Pomeroy's Equity Jurisprudence, Fourth Edition, Section 975.

(1) The Articles of Incorporation of the Des Moines Company, adopted December 10, 1884, are based upon the premise that the Des Moines Company was organized for the sole purpose of making effective the trust created by the contract of January 2, 1882.

The resolution of the incorporators of the Des Moines Company, adopting its articles, recites that such company is organized for the purpose of making effective the trust created by the contract of January 2, 1882, and said contract is embodied in said articles as part of the organic law of the Des Moines Company. (Rec., 416.)

(2) In respect of the terminal properties, it was provided by the contract of January 2, 1882, that "*the title to said property shall be and remain in a trustee to be named by agreement of said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described,*" and that "*said trustee,*" *upon receiving quitclaim and conveyance to it*

of the trust properties should issue bonds secured by a mortgage upon the same to "reimburse" the temporary trustees for advances made by them or their beneficiaries in acquiring such properties. (Rec., 412.)

The conveyances made by the temporary trustees to the Des Moines Company, the making of its mortgage of November 1, 1887, and the delivery by it of its bonds secured thereby to the temporary trustees and their beneficiaries, as "reimbursement" for advances made in acquiring the trust properties, were transactions all had in compliance with the trust instrument of January 2, 1882.

(3) After the concentration of the trust properties in the Des Moines Company, no equitable tenant in common in such trust properties ever conveyed, released or otherwise relinquished to the Des Moines Company, its equitable estate therein.

(4) The resolution of the stockholders of the Des Moines Company of March 31, 1888, providing for the making of a supplemental agreement fixing the terms and conditions upon which the proprietary companies should enjoy the use of the terminal properties, and the agreement of May 10, 1889, made pursuant to such resolution between the Des Moines Company and the three proprietary companies are based upon and presuppose the continuing existence of the contract of January 2, 1882, and of the trusts created thereby. (Rec., 476, 479.)

Said supplemental agreement of May 10, 1889, provided in substance for (a) a regulation in detail among the proprietary companies of the use of their common tenancy, (b) a defining of terms for distributing among the proprietors the cost of maintenance, operation thereof and interest on bonds, and (c) a fixing of the manner in which the several equitable estates in the trust property should be represented and regulated through the issue of the shares of the corporate trustee. (Rec., 479.)

(5) The amendments to the articles of the Des Moines Company were illegally adopted, but, without respect to their legality, they did not purport to and could not alter or destroy the equitable estates in common of the proprietary companies in the terminal properties.

VI.

TO GIVE THE ACTS AND CIRCUMSTANCES HEREINBEFORE ENUMERATED A CONSTRUCTION OR ASPECT IN DEROGATION OF THE EQUITABLE ESTATES IN COMMON OF THE PROPRIETARY COMPANIES PURSUANT TO THE CHARACTERIZATION THEREOF OF THE MAJORITY OPINION OF THE CIRCUIT COURT OF APPEALS WOULD BE TO PERMIT TRUSTEES OR FIDUCIARIES NOT ONLY TO REPUDIATE THE RIGHTS OF THEIR CESTUIS QUE TRUSTENT, BUT TO ACQUIRE FOR THEMSELVES THE BENEFICIAL INTERESTS IN THE TRUST ESTATES.

(1) The Circuit Court of Appeals in its majority opinion holds that a trust was created under the terms of the contract of January 2, 1882; that the beneficiaries thereunder, the proprietary companies, at all times intended the continuance of such trust, but that the same through acts of inadvertence of the beneficiaries "apparently harmless" was destroyed, and that the Des Moines Company became an independent corporation holding the trust properties free from the terms of the trust and under the control of the Hubbells.

A trustee is not permitted to assert in his own behalf any right or interest in trust properties resulting from the inadvertence of his beneficiaries.

Bigelow on Estoppel, 6th Ed., page 589.

(2) As an officer, director and agent of the Des Moines Company, Hubbell was bound by the terms of the trust.

(3) The consolidated company, a successor in interest to the properties acquired to be held and used in common, of which Hubbell was also an officer and director, and the controlling stockholder, was subject to the disabilities of a fiduciary; for cotenants occupy to each other the position of express trustees in respect of the property held in common.

Rothwell v. *Dewees*, 2 Black, 613, at 618.
Bissell v. *Foss*, 114 U. S., 252, at 259.
Turner v. *Sawyer*, 150 U. S., 578, at 586.
Starkweather v. *Jenner*, 216 U. S., 524, at 528.

Therefore, Hubbell, as a successor to the consolidated company in ownership of a portion of the stock in the Des Moines Company, by a transaction in which he was virtually both seller and buyer, was a fiduciary in respect of the trust properties, for he could have rights no greater than those of his controlled vendor.

VII.

THE FIVE-EIGHTHS STOCK INTEREST IN THE DES MOINES COMPANY HAVING BEEN ACQUIRED BY THE HUBBELLS FROM THE CONSOLIDATED COMPANY OF WHICH THEY WERE DOMINATING STOCKHOLDERS AND DIRECTORS IN VIOLATION OF THEIR FIDUCIARY OBLIGATIONS TO THE PROPRIETARY COMPANIES, THE DECREE HEREIN, IN ADDITION TO THE PRIMARY RELIEF ASKED, QUIETING THE EQUITABLE TITLES OF THE COMPLAINANTS IN THE TRUST PROPERTIES SHOULD ALSO PROVIDE FOR A RESCISSION OF THE STOCK TRANSACTION AND FOR A REDEMPTION OF THE SHARES BY THE COMPLAINANTS ON EQUITABLE TERMS.

(1) The transaction was intrinsically a fraud.

(2) The stock having been acquired by the Hubbells for the purpose of destroying the trust, the transaction is voidable by the beneficiaries thereof.

Rothwell v. *Dewees*, 2 Black, 613, at 618.

VIII.

NO FACTS APPEAR IN THE RECORD CONSTITUTING AN ESTOPPEL OR LACHES DEFEATING THE EQUITY OF THE COMPLAINANTS.

(1) It is essential to the application of the doctrine of estoppel that a party asserting it must have been misled to his prejudice.

Brant v. *Virginia Coal & Iron Company et al.*, 93 U. S., 326.

Bigelow on Estoppel, 6th Ed., page 476.

Herman on Estoppel, page 797.

Chicago, Milwaukee & St. Paul Railway Company v. *Des Moines Union Railway Company and others*, 165 Iowa, 35.

(2) Laches can never be asserted, upon an equivocal state of facts.

Speidel v. *Henrici*, 120 U. S., 377.

IX.

THE SURPLUS EARNINGS WERE PROPERLY AWARDED TO THE COMPLAINANTS BY THE UNANIMOUS DECISION OF THE CIRCUIT COURT OF APPEALS.

(1) The surplus earnings are apportionable to the proprietary companies under Section Four of the supplemental agreement of May 10, 1889, as construed by the parties themselves.

Topliff v. *Topliff*, 122 U. S., 121, 131.

(2) The surplus earnings were determined to belong to the proprietary companies by formal action of the directors of the Des Moines Company, including the Hubbells, and such adjustment is binding upon the Des Moines Company.

Central Trust Company v. *Wabash, St. Louis and Pacific Railway Company*, 34 Fed. Rep., 254.

ARGUMENT.

I.

BY THE TERMS OF THE CONTRACT OF JANUARY 2, 1882, THE ST. LOUIS COMPANY, THE NORTHWESTERN COMPANY AND THE NORTHERN COMPANY, PREDECESSORS OF THE COMPLAINANTS, ESTABLISHED FOR THEIR JOINT AND SEVERAL BENEFIT AN EXPRESS TRUST IN CERTAIN RAILROAD PROPERTIES THERETOFORE ACQUIRED IN THEIR COMMON INTEREST.

It is the claim of the complainants in this case that the Des Moines Company holds title to the terminal railway properties at Des Moines in trust for their joint use and occupation. This claim has its foundation in the contract of January 2, 1882, made between the "St. Louis Company," the "Northwestern Company" and the "Northern Company," James F. How, James F. How, trustee, and Grenville M. Dodge.

To appreciate fully what was then done and what was intended to be secured thereby, this contract should be read in the light of those events and transactions which are set forth in Subdivision I of the statement of facts, which were preliminary to the establishment of the trust, and were the inducements for the same. From these facts it appears that Hubbell and his partner Polk, were the promoters, and that the Wabash, St. Louis & Pacific Railway Company, predecessor of the Wabash Company, was the financial sponsor of the enterprise, having as its object the construction and ownership of terminals at Des Moines to the end that the railroads which eventually became the Northwestern and the Northern Companies, lying as the arms of a Y, to the northwest and north of Des Moines, should be connected with the railroad which eventually became the St. Louis

Company, the stem of the Y, lying to the south of Des Moines through the terminal properties to be owned in common interest at Des Moines.

At the inception of this enterprise none of these three companies extended into the City of Des Moines, and the Wabash Company undertook also to finance the construction work to extend the respective lines for this purpose. Polk and Hubbell were the local people at Des Moines promoting all these activities. They, with others, incorporated the St. Louis Company for the purpose of constructing the extension from Albia to Des Moines on the south. They also reincorporated the Northwestern Company for the purpose of completing the left arm of the Y from Des Moines northwest to Fonda, to connect with and become a part of the railroad theretofore promoted by Hubbell. They also incorporated the Northern Company for constructing the third line along the right arm of the Y from Des Moines to Boone.

All this was done pursuant to written agreements, among these an agreement made December 8, 1880, between Hubbell, Polk, Clarkson and Runnells of the one part, owning and controlling the capital stock of the Narrow Gauge Railway Construction Company, and the Wabash Company on the other part. The first parties were to give their time, personal attention to and act as directors and officers of the enterprise. They were personally to exert themselves to procure subsidies in aid of the line and donations of lands, rights of way and other benefits in aid of construction.

The construction work of the three lines, as well as the assembling of the necessary terminal railways and facilities at Des Moines proceeded actively in 1881, and the operations were conducted from the office of Polk and Hubbell. Hubbell negotiated the purchase of real estate

for the terminal properties at Des Moines, and the funds therefor were advanced by the Wabash Company and by Gen. Grenville M. Dodge. Four parties acquired this real estate to be used for the common purpose. The St. Louis Company and the Northern Company acquired certain property largely obtained through condemnation proceedings. James F. How and Grenville M. Dodge took title to the remainder of the properties, Dodge paying for certain of the properties that were credited to the Northern Company.

At the close of the year 1881, the road of the Northwestern Company was open for operation, and its trains were running into the Des Moines terminals, and the two other roads were well advanced.

Thus, at this point, the following situation had developed:

The legal title to certain of the properties was in the Northern Company, which it had acquired by condemnation proceedings; the legal title to the certain other property was in the St. Louis Company, which it had also acquired by condemnation proceedings; the remaining property was in the title of certain individuals, namely, Dodge and How, without specification of the terms of the trust, but the beneficiaries of the trust were the three railway companies, by or on whose behalf all of the above referred to properties had been acquired, and which had provided the money for the acquisition thereof. It therefore appeared that operation had already begun on the terminal properties before any definite plan for the permanent holding of the properties for railroad purposes had been determined upon by the beneficiaries of the trust.

The above situation prompted the making of the contract of January 2, 1882 (Rec., 411), which lies at the foundation of the rights of the parties to this suit.

The three railroad companies and the two individuals above named joined in making it, and the Wabash Company subjoined a consent to the execution of the contract by the St. Louis and Northwestern Companies. The first five paragraphs of the contract are the substructure of this controversy. They are very simple and very clear in their terms. We quote them here in full:

"First.

The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance, at their joint expense for terminal facilities in the City of Des Moines *to be held and used in common* as hereinafter provided.

Second.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually, James F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third.

It is mutually agreed by the parties above named, that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

Fourth.

The title to said property shall be and remain in a trustee to be named by agreement of said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth.

The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement." (Rec., 412, 413.)

From the above certain things are obvious.

(a) The Railroad Companies, parties to the agreement, had theretofore agreed that the terminal facilities, being then acquired at Des Moines, should be held and used in common by them, and that this contract of January 2, 1882, should provide the basis for this common tenancy.

(b) The common properties were held in severalty by four parties: two corporate and two individual. It was apparent that tenure for railroad purposes could not continue in this form and that, therefore, these several trustees must convey to a common trustee.

(c) It was therefore agreed that title was *to be and remain in a trustee, but subject to the joint use and occupation of all of said Railroad Companies upon the terms defined in the agreement.*

(d) The individual signers declared that the purchases made in their names were taken in trust and they agreed to quitclaim and convey the same to this single trustee *upon demand and reimbursement.*

(e) It was agreed that the contemplated trustee might be a Depot Company, to be organized to take

permanent charge of the property upon the terms set forth in the contract, and that said company might issue and deliver its mortgage bonds to the three constituent companies to the amount of their respective portions of the cost of said purchases and improvements.

It is very clear from the foregoing that the parties intended to vest in the three Railroad Companies a common proprietorship in the terminal properties acquired in their common interest, and it is also very clear that the parties intended to finance the properties so to be owned by them by an issue of bonds secured upon their common title.

Note particularly in this respect, that the temporary holders in trust of the properties are to convey and quit claim to a *trustee* (not to a vendee), only upon demand and reimbursement.

Note further in this respect that the expenses incurred by purchases and improvements are to be borne in the proportion of one-half by the St. Louis Company and one-quarter by each of the other two companies, and that the Depot Company, to be organized for the purpose of taking charge of the property, is to issue and deliver its mortgage bonds to the above companies to the amount of their respective portions of cost of the said purchases and improvements.

It follows beyond question that the title of the Depot Company in the terminal properties was to be of the character that would permit it to mortgage them to secure such bond issue, and that in this respect it must necessarily have been intended to act as a trustee agent, mortgaging the beneficial interests or the equitable estates of the three proprietary companies in their common tenancy; for the individual title holders were to convey the properties, for which they were to be reim-

bursed through these bonds, only to a *trustee* and not to a vendee.

The scheme of reimbursement thus contemplated was identical with that in common use among railroad companies, namely, the mortgaging of properties bought with current funds for the purpose of reimbursing the railroad treasury to the end that the railroad investment might be transferred to a permanent capital obligation. If the three proprietary companies had taken legal title as tenants in common, instead of equitable titles in this respect, they would have reimbursed themselves with a bond issue in identically the same manner.

The majority opinion of the Court of Appeals, has properly described the effect of the above contract as follows:

> "As to the Companies, the contract not only declared some existing property rights, but attempted to define for the future the rights of title and usage of the terminal property. The title contemplated was a trust. The legal title to be 'in a trustee to be named by agreement of said companies.' The *beneficial estate* (italics ours) to be in the three companies in proportion to the parts each contributed to the payment therefor." (Rec., 2096.)

This Court has stated in the case of *Brown* v. *Fletcher*, 235 U. S., 589, that the equitable interest of a *cestui que trust is* more than a chose in action or a right *in personam*. It says that

> "the modern cases do not treat the relation between trustee and *cestui que trust* as contractual."

The interest of the *cestui* is *in rem*. It is an estate in property to the same extent as if the property was in his possession and it passes by deed. In such case an instrument of alienation is not an assignment of a chose in action. It is a deed, or if not called a deed, "an evidence of the assignee's right, title and estate in and to property."

As stated in Pomeroy's Equity Jurisprudence, Fourth Edition, Section 975:

> "In fact, the entire dealing of equity with the subject of equitable estates, and the fundamental distinctions between equitable and legal conceptions and modes are based upon the notion that equitable estates are in the truest sense property, and not mere rights to obtain certain equitable remedies."

In analyzing the subsequent transactions of the parties, this principle is important in determining their significance and effect.

It is to be noted that the ownership and control of property rights of this character, is *that* which the majority opinion of the Court of Appeals states was never intended to be released by the proprietary companies, and yet that Court says that through their acts of inadvertence, they have "gradually let slip from them that exclusive ownership and control which they had at the beginning so much valued and so carefully guarded." It is also to be noted, that the title to such property has thus gradually faded away to the advantage and interest of their own creature, the trustee, created by them with the sole object of conserving in each of them its equitable estate in common therein.

When an estate in trust is once solemnly created, transactions thereafter had between the trustee and his beneficiary will be presumed to be in harmony with and in furtherance of the trust estate so set up, for as is said in *Brown* v. *Fletcher*, above referred to, "the relation between the trustee and the *cestui que* trust is not contractual."

They are indeed one

> "and a proceeding by the beneficiary or his assignee for the enforcement of rights in and to the property, held—not in opposition to but—for the benefit of the beneficiary, could not be treated as a suit on a

> contract, or as a suit for the recovery of the contents of a chose in action, or as a suit on a chose in action." (p. 599.)

It follows that if, after making the trust instrument of January 2, 1882, the record had shown merely the organization of a railroad corporation by the three proprietary companies, warranty deeds of conveyance by the temporary trustees of the terminal properties to such corporation, and the issuing of mortgage bonds by such corporation in amounts sufficient to reimburse the grantors for such warranties of conveyance, all these acts would be *presumed* to have been done in furtherance of the trusts established by the contract of January 2, 1882.

It will appear, however, that in the corporate and intercorporate procedure had subsequent to the making of this contract, the parties to the same, with painstaking repetition of expression, contained in resolution, articles of incorporation and deed, took every step possible to continue the existence of the equitable tenancy in common set up among them in the terminal properties at Des Moines.

II.

THE DES MOINES COMPANY WAS ORGANIZED PURSUANT TO THE EXPRESS PROVISIONS OF ARTICLE THIRD OF THE TRUST INSTRUMENT, TO MAKE EFFECTIVE THE DEVELOPMENT OF THE TRUST IN CORPORATE FORM, AS THEREIN AUTHORIZED, AND THE TERMINAL PROPERTIES OWNED BY THE PROPRIETARY COMPANIES WERE CONVEYED TO AND ACCEPTED BY IT FOR THIS PURPOSE.

At the first meeting of incorporators of the Des Moines Company, held at Des Moines, December 10, 1884, the proceedings state that the meeting was held for the purpose of organizing a Union Depot and Railroad Company,

to be run and operated in and around the City of Des Moines, Iowa, *in pursuance of the contract of January 2*, 1882. (Rec., 416.)

There were present at this meeting, Grenville M. Dodge, who appeared for himself and in the interest of the Northern Company; Polk and Hubbell, who appeared for the Northwestern Company; Runnells and Meek, who appeared for the St. Louis Company, and How, appearing as trustee and in his individual capacity. It was resolved:

> "That for the purpose of carrying out the objects and purposes of the agreement heretofore, to wit, on the 2nd day of January, 1882, made and entered into between the Des Moines and St. Louis Railroad Company and others, (which is set out in full in the following articles of corporation) that the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company."

The articles begin with a recital that the St. Louis Company, the Northwestern Company and the Northern Company and Dodge and How have purchased properties upon certain agreed conditions at their joint expense in accordance with the contract of January 2, 1882.

Thereafter said contract is set out in full in said articles.

It is then recited that it was provided in said contract that a Depot Company might be organized to take permanent charge of the property, and that it was understood that the Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties.

In Article 2, it is stated that the object of the Company shall be to construct, own and operate a railway in and about the City of Des Moines, and that "*all the powers exercised by this company shall be in accord-*

ance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." (Rec., 429.)

It is to be noted that the articles provide that the affairs of the company shall be managed by a board of eight directors, four of whom shall be nominated by the Wabash Company and two by the Northwestern Company and two by the Northern Company; that no contract, lease or agreement, amounting to a permanent charge upon the properties of the Depot Company, shall be entered into by the board without having the approval of the three proprietary companies. (Rec., 421.)

Thereafter, on January 1, 1885, the three proprietary companies passed identical resolutions, accepting and ratifying the articles as in substantial accord and compliance with the terms and conditions of the January 2, 1882 contract, and requesting the temporary individual trustees to convey the properties held by them under the terms of the January 2, 1882, contract, to the Des Moines Company. (Rec., 423, 424, 429.)

On the same day the Des Moines Company adopted a resolution reciting that it had been notified by the proprietary companies that each had approved its organization and had directed its officers and trustees to deliver to the Des Moines Company the railroad properties and franchises mentioned in the contract of January 2, 1882, *and had requested the Des Moines Company to take possession of and maintain and operate the same for the purposes and on the terms mentioned in the January 2, 1882 contract.* It was therefore resolved that the Des Moines Company accept the transfer and management and operation and assume control thereof, so far as practicable, and instruct its officers to make such order as may be necessary to render such

ontrol and management effective as provided in said contract, and its officers were appointed as a committee to confer with the parties to the January 2, 1882, contract, to agree upon the terms and price at which they would respectively convey such property and franchise to the Des Moines Company *and to procure from them and each of them such conveyances and transfers as might be necessary to fully invest the Des Moines Company with* THE TITLE, *control and management of such properties provided for in the January 2, 1882 contract.* (Rec., 432, 433.)

Hubbell, as a member of the board of the Des Moines Company, voted in favor of these resolutions, and as secretary of that company acted as secretary of the meeting. (Rec., 435.)

Owing to the receivership of the Wabash, St. Louis and Pacific Railway Company and the consequent insolvency of the Northwestern Company, for whose benefit the Wabash Company had advanced funds, and the consequent inability of the parties to the terminal enterprise to arrange for the assignment to the Northwestern Company of its one-quarter estate in the trust properties, no further action was taken to vest in the Des Moines Company title to the properties that it was to hold in trust, until November 5 and 8, 1887, when each of the proprietary companies passed resolutions reciting that the temporary trustees had taken title to certain properties, which were to be transferred to the Des Moines Company *under certain conditions*, and requesting that these temporary trustees convey the properties held by them to the Des Moines Company, for the purpose of carrying out the contract of January 2, 1882. (Rec., 435, 437, 442.)

In the instance of the St. Louis Company and the

Northwestern Company, with respect to the properties to which each took title for the common enterprise, they directed their own officers to make conveyance of the same to the Des Moines Company *for the purpose of carrying out the contract dated January* 2, 1882. (Rec., 436, 438, 439, 442, 443.)

On November 8, 1887, the three companies served notice upon the Des Moines Company that they had passed these resolutions. (Rec., 439, 441, 442.) On the same day the board of directors of the Des Moines Company adopted a resolution directing its officers, upon receiving conveyance of the properties in question, to deliver bonds to How and Dodge for the amount of money which will be shown by them to have been expended for, or on the property referred to, and that certificates for one-quarter of the stock be issued to the St. Louis Company and three-quarters of the stock be issued to the purchasing committee of the Wabash Company. (Rec., 1300.)

Pursuant to the foregoing, the St. Louis Company conveyed the properties held by it for the enterprise to the Des Moines Company (Rec., 457), *and Frederick M. Hubbell, who signed this deed of conveyance as secretary, testified that it was made pursuant to the resolution that such conveyance should be made to the Des Moines Company for the purpose of carrying out the contract of January* 2, 1882. (Rec., 1115.) The Northern Company conveyed its interest by quitclaim deed. How and Dodge made two deeds of conveyance. The How deeds recited that the property was acquired and held by him in trust and was conveyed *for the purpose and upon the terms set forth in the contract of January* 2, 1882. (Rec., 446, 448, 451.)

For the purpose of mortgaging the trust properties, to reimburse the proprietary companies for the ex-

penses incurred by them in acquiring the terminal properties as provided by Article Third of the contract of January 2, 1882, the Des Moines Company made its certain mortgage dated November 1, 1887, to secure an issue of bonds amounting to $800,000. (Rec., 474, 475.)

The conveyances above recited, the execution of the mortgage of the Des Moines Company and the issuance of its bonds thereunder were all "approved, ratified and confirmed" in their original significance by virtue of Article 14 of the amended articles of the Des Moines Company, adopted at a meeting of its stockholders on April 8, 1890. (Rec., 494.)

The foregoing facts speak for themselves.

They show that with painstaking effort in corporate action, all the parties in interest strove to make an effective conveyance of the legal titles acquired in their common interest to the Des Moines Company to the end that their equitable and common estates therein should continue, to be availed of thereafter, for the purposes of their joint use and occupation of the terminal properties.

The status thus reached in the affairs of the proprietary companies was never thereafter altered by any act which resulted in the defeasance or alienation of the estates thus created.

In this respect, the following is to be noted:

(1) That a right of possession adverse to the user incident to the equitable estates of the proprietary companies never arose in favor of the Des Moines Company, even if it could be assumed that the Des Moines Company, in its capacity as trustee, could acquire a right by adverse user; for from the inception of the enterprise and during the period in which the four temporary trustees held title to the terminal property; during also the period after the conveyance of the same to the Des Moines Com-

pany, the permanent trustee, namely, from 1888, up to the making of the supplemental agreement of May 10, 1889; and since the making of said last named agreement to the present time, the three proprietary companies have been in constant use and possession of the premises operated by the Des Moines Company, thus asserting through several distinct periods and varieties of legal tenure, a continuing proprietorship therein.

(2) No instrument of any kind or character was ever executed by any proprietary company, or by any of its successors, releasing or conveying to the Des Moines Company its estate in the common property.

(3) Estates in property do not pass by acts of inadvertence to parties who are not innocent purchasers for value, and particularly in this respect to those holding a fiduciary relationship to the alleged grantors.

(4) The privity of relationship in respect of the controversy here involved is between the proprietary companies and their trustee. Therefore the transactions by which Hubbell acquired his stock in the first instance from the purchasing committee of the Wabash Company, even if admitted to be anomalous (an admission denied) could not alienate or release the trust estates set up by the proprietary companies, or relieve the Des Moines Company from its duties as a trustee or create an estoppel in its favor in this respect. They could not create an estoppel in favor of Hubbell, for the nature of interest, which an individual holding stock in the Des Moines Company (assuming his title in the same) could have in the trust properties, is not on trial here.

III.

THE PROPRIETARY COMPANIES HAD NO CORPORATE POWER TO ALIENATE THEIR EQUITABLE ESTATES IN THE TERMINAL PROPERTIES IN THE CITY OF DES MOINES ACQUIRED TO BE HELD AND USED BY THEM IN COMMON.

One of the necessary objects of the proprietary companies in acquiring properties at Des Moines, upon which to construct and operate terminals, was to serve the public. The Railway Companies could exercise their powers of condemnation, by which a portion of the properties were acquired, only upon this theory. Moreover, with this same idea in view, three townships of Boone County, Iowa, voted and paid over to the Northern Company $61,337.72, for the purpose of aiding the Northern Company in constructing its railway from Boone to a connection with the line of the Wabash Company, and each township by ordinance provided that the tax for raising this money be due and payable when the railroad connection to be so required shall have been completed and cars running thereon. These conditions were accepted in writing. (Rec., 789-797.) Green County voted taxes amounting to $27,732.49 and Calhoun County likewise voted $19,587.28 to the Northwestern Company for a similar purpose. (Rec., 797-820.)

On March 22, 1881, the City of Des Moines passed an ordinance granting a right of way to the St. Louis Company over, across and along certain streets in said city, upon which eventually became located the main lines of railroad of the Des Moines Company. This grant was made upon the condition that the Railroad Company locate and build passenger stations in East and West Des Moines, and that cars should be running into the city by the first day of January, 1882. By express provision,

the ordinance was to operate as a contract between the City of Des Moines and the St. Louis Company, upon acceptance of the same by the latter. (Rec., 443-445.)

Thus the proprietary companies having accepted public funds for the purpose of uniting their properties through the ownership of a common terminal, having exercised the sovereign right of condemning private property for this purpose, and having received a charter from the state to enable them to operate as an entity the terminal properties so acquired by them, it was beyond their power to put themselves in a position with respect to this railroad company and to the properties to which it took title in trust for their use and occupation, whereby they would be unable to serve the public.

In view of this principle, not only every presumption will be indulged to interpret their acts as intending to keep intact the joint control acquired over the terminal properties by virtue of their ownership in the same, but it should also be held that if attempt were made by them to part with this control their acts for such purpose should be regarded as ineffectual.

The contentions of the defendants in this case run counter to the above principle.

It is asserted by them that the proprietary companies deliberately abandoned their trust estates by selling properties, acquired by them for the purpose of making connections between their respective railroads, to an independent railroad company and deliberately became minority stockholders in such company, thus making imminent a situation now claimed by the defendants to have arisen, namely, a status of being strangers to properties which they had appropriated and otherwise obtained by sovereign prerogative for a public trust.

That it was not within their power to abandon title to railroad properties so acquired is the settled law of the land.

This Court has repeatedly decided that a railway corporation cannot alienate or turn over to another railroad corporation its railroad in whole or in part without the express consent of the state, under whose franchise the railroad was constructed or acquired.

Central Transportation Company v. *Pullman Company*, 139 U. S., 28.

Mr. Justice Gray, who wrote the opinion in this case, reviewed the law on this subject and stated the above principle as the "clear result" of the decided cases.

This Court by subsequent decisions has reaffirmed and followed the opinion of Mr. Justice Gray, and in applying the principle asserted therein, it has repeatedly held that railway properties dedicated to public use cannot be lost by adverse possession.

Northern Pacific Railway Company v. *Ely*, 197 U. S., 1.

Northern Pacific Railway Company v. *Townsend*, 190 U. S., 267.

Section 1300 of the Iowa Code of 1873, which is the same as Section 2066 of the Iowa Code of 1897, is as follows:

"SALE OR LEASE OF RAILROAD PROPERTY—JOINT ARRANGEMENT. Any railway corporation may sell or lease its property and franchises to, or make joint running arrangements not in conflict with law, with any corporation owning or operating any connecting railway, and any corporation operating the railway of another shall be liable in the same manner and extent as though such railway belonged to it."

It will be seen from the provisions of this statute that if it be desired to sell or transfer railroad property, the entire railroad together with its franchises—and not a part—must be sold or transferred. The Iowa statute does not permit a railroad to be dismembered, or the franchises under which it was constructed to be disrupted. The railroad and franchises are a unit, and are required to be held and used as a unit, and when transferred must be transferred as a unit. *State* v. *Central Iowa Ry. Co.*, 71 Iowa, 410. That a part of a railway system cannot be separated from its franchises is clearly shown in the opinion of Mr. Justice Lurton in *Connor* v. *Tennessee Central Railway Co.*, 109 Fed. Rep., 931.

The fact that the proprietary companies held their terminal properties at Des Moines in a common proprietorship makes but a distinction without a difference in the application of the above principle; since one owning a tenancy in a common estate has rights of user in all the properties of such estate (subject to like rights in its other tenants) equivalent to an exclusive proprietorship therein, and thus unity of ownership in terminals makes permanent for each carrier the means of interchange of through traffic with its associates.

If, then, it was beyond the power of the proprietary companies to convey away, or, as the District Court put it, "chop off," the most essential parts of their railways terminating in the City of Des Moines they, of course, could not by acquiescence or by a "*series of acts or circumstances*," as the majority opinion of the Circuit Court of Appeals states, *indirectly or unintentionally*, "*gradually let slip from them the exclusive ownership and control which they had at the beginning so much valued and so carefully guarded.*" (Rec., 2114.)

In the case of *State* v. *Central Iowa Railway Co.*, 71

Iowa, 410, the rule is announced that, where a line of railroad has been built by aid of taxes levied for that purpose, the line in aid of which the tax was voted must be operated as a whole, and a portion thereof cannot be leased or operated separately to the injury of any locality on that line. A railroad company which avails itself of such aid assumes relations to the public different from those resulting from a mere private contract.

The majority opinion seeks to avoid the application of the above principle by yielding to an adroit but insidious "concession" of the Hubbells that the Des Moines Company must furnish reasonable and necessary terminal facilities to the St. Paul and Wabash Companies upon payment therefor of such reasonable sum as may be agreed upon, or in default of such agreement *"as may be fixed by the proper public tribunal."* This conclusion rests upon the erroneous assumption that the Des Moines Company is a union railway depot company or terminal company, and as such is under legal obligation to permit the use of its tracks and terminal facilities by any railway company entering the City of Des Moines upon reasonable terms, which if not agreed upon between the parties may be fixed by some proper public tribunal.

The Des Moines Company, however, was not organized under the Statutes of Iowa as a union railway depot company, or as a terminal company, with the obligations usually charged upon such companies to serve other railroads. The statutes of the state provide for only two kinds of railroad companies, namely:

(a) Corporations for the construction and operation of railways. (Title IX, Chap. 1, page 587 *et seq.*, Code of Iowa 1897.)

(b) Corporations for the construction and main-

tenance of union railway depot companies. (Title X, Chap. 5, page 748 *et seq.*, Code of Iowa 1897.)

In the case of *Morgan* v. *Des Moines Union Railway Company*, 113 Iowa, 561, the Supreme Court of Iowa held that the Des Moines Company was organized under the former of the above statutes, namely, the general railroad incorporation law of the state, and that it therefore had rights and duties measured by this statute and not by the union railway depot act. This decision, being the construction by the highest Court of the state of a state law as applied to the status of the Des Moines Company, is conclusive here.

There is no statute of the State of Iowa which requires one railway company to give the use of its railroad tracks or terminal facilities to another railway company. The sole statute bearing on the subject is Section 2116 of the Code of Iowa, 1897, page 751, which in substance requires connecting carriers to interchange and transport empty and loaded cars. The statute was so construed in *Chicago, Milwaukee and St. Paul Ry. Co.* v. *Iowa*, 233 U. S., 334, sustaining the construction given to it by the Supreme Court of Iowa in the same case, 152 Iowa, 317, 321. Such an obligation is, of course, wholly distinct from a duty to permit one railway company to use the tracks or terminals of another.

Section 3 of the Interstate Commerce Act, in providing for the interchange of traffic between connecting carriers, makes by express provision the same distinction in the clause reading:

> "But this shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

From the foregoing it follows that, if the proprietary companies have lost the equitable estates once existing

in them in the Des Moines terminals, they have no power by common law or statute to compel the Des Moines Company to give to them upon any terms the use of these terminals.

With such consequence resulting from any termination of the ownership in the Des Moines terminals originally existing in the proprietary companies, not only should their unintentional and "apparently harmless" acts never be interpreted as effecting a separation of such ownership from their other railway properties, but it should also be held that, even with design, they could not bring about such a result.

Hobbs v. *McLean*, 117 U. S., 567, 576.

IV.

THE ALLOTMENT OF SHARES OF CAPITAL STOCK OF THE DES MOINES COMPANY TO THE SEVERAL PROPRIETARY COMPANIES IN THE RELATIVE PROPORTIONS OF THEIR SEVERAL PROPRIETARY INTERESTS IN THE TRUST PROPERTIES AS FIXED BY THE CONTRACT OF JANUARY 2, 1882, WAS INTENDED TO EVIDENCE AND MEASURE THEIR SEVERAL UNDIVIDED ESTATES IN THE PROPERTY SO HELD BY SUCH CORPORATE TRUSTEE.

It is asserted by the Hubbells that the issuing of capital stock of the Des Moines Company to the proprietary companies was intended to represent in part the purchase price paid by the Des Moines Company for the conveyance to it of the beneficial interest of the proprietary companies in the Des Moines terminals, and is therefore inconsistent with the continuance of these equitable estates in the proprietary companies.

An analysis of the circumstances under which this capital stock was issued, the basis of its distribution and the limitations in its attributes and transferability will show quite a contrary intent.

To protect rights or conserve interests, a court of equity will always ignore form for substance. It is admittedly a legal fiction that regards the stockholders of a corporation as not in fact the owners of its corporate property, and when an instance arises in which it appears that shares of stock are not intended to evidence a thing of value separate and distinct from an aliquot interest or estate in the properties themselves of a corporation, a court of equity to protect such interests in corporate properties otherwise created and intended to be preserved will not hesitate to ignore the conventional status of such shares.

Judge Hook of the Court of Appeals has stated the principle clearly in his dissenting opinion in this case. He says:

> "*But the doctrine of a corporate entity separate and apart from the persons composing the corporation is after all a mere legal fiction established for convenience and to serve the ends of justice.* (Our italics.) It does not go beyond that. In equity the shell artificially assumed is not impermeable. The court will look through it and regard the kernel, and whenever justice requires will hold the stockholders as the corporation. That is being constantly done in equity in determining public rights as affected by the corporate association of particular individuals and the rights of the individuals among themselves and with respect to their organization." (Rec., 2123.)

That in this case the stock of the Des Moines Company was not intended to be issued as a substitute thing of value for the equitable estates of the proprietary companies in the terminal properties, but was intended to measure their respective aliquot shares in their equitable estate in common is evidenced by all the facts. Of this Judge Hook says:

> "After the conclusion is reached that the terminal

company had by gradual action thrown off its trust character and had become independent, attention is directed to the transactions in its stock. The power asserted by the individual defendants to control the terminal company and thereby to exclude the plaintiffs from the use of the terminals rests upon their possession of five-eighths of the issued capital stock. *There is, however, abundant proof that the stock of that company was intended only to represent the interests of railroad companies actually using the terminal facilities and as a method of apportionment among them. The stock was not intended as a source of personal or individual profit apart from railroad use. Stock ownership and terminal use were inseparable.* I know of no public policy or rule of law against such a status of corporate stock or its enforcement as between the parties who established it. If it were formally expressed in the corporate charter the world would have to take notice. But as between the parties themselves, those participating and having actual knowledge, internal evidence may disclose it. It should always be in mind that in this case there are no innocent purchasers relying upon public records. The contract of 1882 specified the proportional interests of the three original railroad companies and foreshadowed the organization of the terminal company to take the place of an individual trustee. *In* 1884 *the terminal company was organized for the expressed purpose of carrying out the contract.* My brothers see in the articles of incorporation some evidence of a departure from the trust and the beneficial relations, but it seems to me that *the intention to maintain them was asserted and reasserted as definitely and positively as words would permit.* (Our italics.) While, as customary, the charter made provision for a capital stock, the connection between the distribution and future ownership of such thereof as might be issued and the railroad use of the property was manifested not only in that instrument but afterwards in many ways by both the railroad companies and the terminal company." (Rec., 2120.)

The Des Moines Company was incorporated Decem-

ber 10, 1884 (Rec., 416), but no certificates of stock were issued until after the attempted amendments to its articles of incorporation made at the alleged stockholders' meeting of April 8, 1890. (Rec., 488.) It is a fact, however, that the legal issuing of stock took place under the agreement of May 10, 1889 (Rec., 479), which, as will hereafter appear, was intended to regulate in detail the user and distribute the cost of operation and other expenses of the terminal properties among the proprietary companies; and which also allotted the stock of the Des Moines Company to the proprietary companies in specific amounts and defined its attributes and the limitations on its transferability. It is well settled that the issuing of certificates is not essential to make stock outstanding.

Hawley v. *Upton*, 102 U. S., 316.

Farmers Mutual Telephone Co. v. *Howell*, 132 Iowa, 22.

Article 3 of the original articles of incorporation of the Des Moines Company provided that the capital stock of the corporation should be one million dollars to be divided into shares of $100 each to be paid in at such time as the board of directors may determine, and the board was authorized to receive in payment therefor the properties and franchises held by the St. Louis Company, the Northwestern Company, the Northern Company, James F. How and Grenville M. Dodge. (Rec., 420.)

At a meeting of the stockholders of the Des Moines Company, held on November 1, 1887, Article 3 was amended by making the capital stock two million dollars and again providing that the board of directors be authorized to receive in payment therefor the properties and franchises in the City of Des Moines, held by the above mentioned parties. (Rec., 1297-8.) At this meeting the board also adopted a resolution, offered by F. M. Hubbell, authorizing the issue of $800,000 of mortgage

bonds of the company, and it is to be noted that the execution of this mortgage was ratified by the stockholders of the Northwestern Company and of the St. Louis Company at meetings held respectively on January 2 and 3, 1890. (Rec., 474, 475.)

As a matter of fact stock of the Des Moines Company was never issued, to the proprietary companies, either in form or amount, or under circumstances, which could identify its issue in any way as a substituted consideration for the supposed conveyance to the Des Moines Company of the equitable estates of the proprietary companies in the terminal properties.

Stockholders' Meeting of the Des Moines Company Held March 31, 1888.

At a stockholders' meeting of the Des Moines Company, held March 31, 1888 (Rec., 476), it was recited that, for the cost of acquiring the terminal properties, the parties are entitled to the following amounts:

Wabash Company	$382,110.80
Grenville M. Dodge	74,088.01
Polk and Hubbell	2,000.00
Northwestern Company	3,058.40

It was therefore resolved that *in settlement of* said amounts:

382 bonds be issued to the purchasing committee of the Wabash Company
74 bonds to Grenville M. Dodge
2 bonds to Polk and Hubbell
3 bonds to the Northwestern Company.

These bonds were to be those to be issued under the mortgage of the Des Moines Company, dated November 1, 1887, and authorized by the resolution of the stockholders of the same date above referred to, and in due course the bonds above authorized were delivered to the several parties entitled to receive the same in reimbursement of their advances. (Rec., 459.)

These proceedings were all had in exact accord with the contract of January 2, 1882, which it will be remembered provided that the terminal properties should be permanently financed by the issue of mortgage bonds which were to be used *to reimburse* the several parties to the trust instrument in the "amount of their respective portions of the cost of said purchases and improvements." The temporary trustees, namely, the two railroad companies and the two individuals, were to severally convey the trust properties acquired by them to the new "*trustee* upon demand and reimbursement."

The capital stock of the Des Moines Company, under the resolutions adopted at the respective stockholders' meetings of the proprietary companies, held on November 5 and 8, 1887, was to be delivered with the bonds above provided for to the proprietary companies "in lieu for the money advanced" to purchase the terminal properties. From this it is quite evident that the parties intended such stock to represent their several equitable estates in the terminal properties, for, as above shown, the bonds of the Des Moines Company were made the means of completely reimbursing the temporary trustees for their advances, and the capital stock to be issued with them, pursuant to the above resolutions, could thus have office only as identifying the estates of the proprietors.

The agreement of May 10, 1889, making provision for the issue of this stock, gives it attributes to make effective the above intent. This agreement, the detail purposes of which are to be hereafter discussed in a further subdivision of this brief, had its inception in another resolution adopted at the stockholders' meeting of March 31, 1888, above referred to.

It was resolved that the three proprietary companies

should "pay the operating expenses, taxes and interest on bonds that are, or may be issued, after deducting an amount received from any other sources for rental, prorated on a wheelage basis," and it was further resolved that "Col. Blodgett be requested to prepare an agreement for thirty years from May 1, 1888, based upon the above resolution and covering in detail the conduct and operation of the Des Moines Union Railway Company, said agreement to be approved and executed by all the lines now holding an interest in the property." (Rec., 477-8.)

As the result of this resolution and further provisions of the same, to be hereafter commented upon, the agreement of May 10, 1889 (Rec., 479), was drafted and executed. Sections twenty-four and twenty-six of this agreement defined the characteristics of the shares of stock to be issued by the Des Moines Company, and by virtue of their provisions, such shares became in fact then legally outstanding. This is important to remember in considering the effect of the resolution relating to the issue of stock subsequently attempted to be adopted by the stockholders of the Des Moines Company at the illegal meeting held by them on April 8, 1890 (Rec., 494), at which an attempt was also made to amend the articles of incorporation.

Sections twenty-four and twenty-six of the agreement of May 10, 1889, carried out the understanding of the trust instrument, that the tenancy in common should be divided into aliquot estates, each of which should be at least one-quarter of the entire common estate. It will be remembered that, by the provisions of this trust instrument, the St. Louis Company was to have a one-half interest and the Northwestern and Northern Companies a one-quarter interest each in the trust properties. (Rec., 412.)

In Article 4 of the original articles of incorporation this understanding was recognized and given force by the proviso that four members of the board of directors were to be nominated by the Wabash Company (controlling the St. Louis Company), and two members by each the Northwestern Company and the Northern Company. (Rec., 421.)

Section twenty-six of the agreement of May 10, 1889, again protects the aliquot interests of the proprietary companies on the above basis in the common estate. It recites that the second parties "are entitled to the shares of stock of said first party in the following amounts, or proportions, to wit:

The St. Louis Company to one-half said shares.

The Northwestern Company to one-quarter said shares, and the Northern Company to one-quarter said shares."

It then provides, "that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of $100 each, the same shall be issued and held as follows, to wit:

One certificate of ten thousand shares shall be issued and delivered to the 'St. Louis Company.'

One certificate for five thousand shares shall be issued and delivered to the 'Northern Company,' and

One certificate of five thousand shares shall be issued and delivered to the 'Northwestern Company,' and *all of said certificates shall express upon their face that they are not transferable in whole or in part without the consent in writing of all the parties of the second part to this agreement.*" * * * (Rec., 487.)

Here was obviously shown the intent to evidence the ownership of the several estates of the respective par-

ties by the capital stock of the Des Moines Company and not, as contended by counsel for the defendants, to artificially substitute rights *in personam* identified with shares in a corporation as the sole prerogatives of the stockholders from the rights *in rem*, which theretofore were vested in them, and which, the Court of Appeals has held, they never intended to abrogate or surrender.

The issuing of shares or certificates has no magic in and of itself to alter the status of the proprietors of a corporation in their relation to its properties. Intent, as determined by what the parties in fact did in such a transaction, will be the controlling factor in an analysis of their interests. The distribution then of stock in single blocks among the parties in the proportions of their several estates, with attributes of alienation limited to unanimous consent to the end that the common estate should continue in the proprietors as an entity, was but the means of evidencing, through the conventions of a corporation, the titles of the several parties in the trust properties. Judge Hook says of this:

> "There is, however, abundant proof that the stock of that Company (Des Moines Company) was intended only to represent the interests of the Railroad Companies actually using the terminal properties, and as a method of apportionment among them. The stock was not intended as a source of personal or individual profit apart from railroad use. Stock ownership and terminal use were inseparable." (Rec., 2120.)

The above idea is emphasized by the provisions of Section twenty-four of this agreement of May 10, 1889. It provides:

> "That the 'St. Louis Company' as the owner of one-half of the capital stock of the 'Des Moines Company' may sell and transfer one-half of said stock, or one-quarter of the whole to such railway company as may be acceptable to a majority of the

parties of the second part; *in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of the second part.* Only as aforesaid shall other railroad companies be admitted to the use of the property of the first party, without the consent of all of the parties of the second part, and the compensation to be paid by any other railroad company, or person not a party hereto (or provided for as aforesaid), for the use of said depot or terminal facilities, or any part thereof, shall be determined by the Board of Directors of said first party." (Rec., 487.)

Note that here the St. Louis Company may sell a one-quarter interest (no more and no less), that is one of the aliquot estates in the common tenancy with the consent of the majority of the parties, and that with the transfer, under such circumstances, is to pass as a concomitant, a right of user on a parity with the original proprietors who, as it will hereafter appear in an analysis of the agreement of May 10, 1889, paid no rent for the use of their own premises, and received in the reduction of the cost of operation of the terminal properties, revenue derived from outside companies who were not stockholders and were thus not proprietors in the enterprise. *Thus, the prerogatives of a tenant in common would be vested in each successive railroad stockholder acquiring its stock as provided in Section twenty-four.*

From the foregoing it appears that as the result of the action taken at the meeting of the stockholders of the Des Moines Company held March 31, 1888, *and the delivery pursuant thereto of bonds of the Des Moines Company to reimburse those who had advanced the moneys to acquire the terminal properties, and of the execution of the agreement of May* 10, 1889, *between the*

Des Moines Company and the three proprietary companies, they and their corporate trustee had consummated the plan contained in the contract of January 2, 1882, to organize a corporate trustee whose bonds should be used to reimburse them for advances made on account of the terminal properties and whose stock was to be issued as evidencing their respective equitable estates in the common property to which such trustee was to take title.

Stockholders' meeting of the Des Moines Company of April 8, 1890.

In the latter part of 1888, or in 1889—in any event, sometime after the passing of the resolution of March 31, 1888, A. B. Cummins became the personal counsel of the Hubbells and the Hubbells' interests, and also the General Counsel of the Des Moines Company. (Rec., 1204, 1211, 1233, 1236.) Although General Dodge was at the time nominally the president of the Des Moines Company, he resided at New York, and the whole management of the Des Moines Company was left to Hubbell, who, in addition to being an officer and an agent of the same, was regarded as the confidential agent of the Wabash Company at Des Moines. (Rec., 132-136, 233.)

In January, 1890, Mr. Cummins, acting ostensibly on his own initiative and independently of Hubbell, conceived the idea that certain amendments should be made to the articles of the Des Moines Company. He had had nothing to do with the drafting of the contract of January 2, 1882, or with the drafting or adoption in 1884 of the articles of the Des Moines Company, and he testified that, while he was familiar with the contract of May 10, 1889, he had had nothing to do with the negotiations and formulation of this agreement. (Rec., 1205.)

At a meeting of the stockholders of the Des Moines Company held January 3, 1890, at the instance of Cummins the question of amending its articles and of issuing stock for the purchase price of the properties was referred to Attorneys Blodgett and Cummins. (Rec., 1307.) No conference, however, took place between Blodgett and Cummins, and Cummins alone redrafted the proposed amendments to the articles. In a letter to Blodgett dated January 22, 1890, he urges the necessity of a redraft of the articles (Rec., 1210), and in a letter to Dodge dated January 22, 1890, he writes that

> "you will observe that these amendments are directed to two purposes: First, to clear up the ambiguity and uncertainty with respect to the *amount* of stock to be issued on account of the original purchase of the property. Second, to enable the Des Moines Union Railway Company to act in all matters without the previous authority of three corporations." (Rec., 1212.)

In addition to preparing the drafts of amendments to the articles, Cummins also drafted all resolutions, planned the procedure for the stockholders' meeting of April 8, 1890, and as he said parcelled out the resolutions among the members who were present to be offered from time to time. (Rec., 1217.)

The record of the meeting shows that among others he attempted to accomplish three things:

> *First.* To distribute among the proprietary companies, instead of two million dollars of capital stock to represent their respective interests in the terminal properties, as provided by the agreement of May 10, 1889, four hundred thousand dollars of stock for this purpose, to be divided in exactly the same proportions as provided by said agreement.
>
> In this respect he still left intact the characteristics and the limitations relating to the issue of the capital stock, as provided in Sections twenty-six and twenty-four of the agreement of May 10, 1889. The remainder of the stock in excess of the four hun-

dred thousand dollars was to be issued only by authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all of the stock theretofore issued.

Second. To alter aliquot interests in the common properties from quarters to eighths. In this respect it required the votes of *more* than seven-eighths of all the stock theretofore issued to elect a director; but "to authorize the execution of mortgages, to issue bonds, to enter into contracts, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other things that may be proper or necessary for the corporation to do * * * except the ordinary operation of the property, the board of directors can act only upon the unanimous vote of the eight members thereof." Moreover, a vote of more than seven-eighths of all the stock was required to amend the articles. (Rec., 492-3.)

Third. To repeal, strike out and expunge the proceedings of the meeting of the incorporators held December 10, 1884 (being the meeting at which the original articles were adopted), "with certain preambles including a contract executed on the 2nd day of January, 1882." (Rec., 494.)

Before discussing the significance of the above amendments, attention should be called to the fact that the so-called stockholders' meeting, at which they were supposed to have been adopted, was for the reasons hereafter shown, undoubtedly illegal. Of this the majority opinion of the Court of Appeals says that "the claim that the amendments were never properly adopted is well taken, but not open to the complainants," and the reason assigned for the latter conclusion is that the proprietary companies were present at this meeting by authorized agents, and that under such circumstances the *legally* ineffectual attempts to amend articles and pass resolutions amounted in fact to a contractual understanding between them, creating a situation inconsistent with the contentions now advanced by the complainants.

In weighing the reasoning by which such conclusion was reached, it is to be remembered that the interests at issue and supposed to have been disposed of at this meeting, in the manner above stated, were equitable estates in real property vested in the proprietary companies to the same extent from the standpoint of being actually owned and possessed property, as if the legal title to such real estate, as well as the beneficial interest therein, had stood in their respective names. It is beyond question that property rights of such character can be transferred, released or surrendered in the instance of corporations only by corporate action, evidenced by some form of instrument of assignment. In the case of *Brown* v. *Fletcher* (*supra*) this Court has said that they passed by deed.

In the light of the above principle, the legality of the stockholders' meeting of April 8, 1890, is important for the purpose of determining what in fact could have legally taken place there affecting the *property* rights of the proprietary companies.

The majority opinion of the Court of Appeals says:

> "When the corporation undertook to amend its fundamental law, that could be legally done only by the stockholders. There was no stock issued; there was only a right to stock through the contract of 1889." (Rec., 2110.)

The minutes of the meeting show as present in person How, Hayes, F. M. Hubbell, Martin, F. C. Hubbell and Cummins as representing one share each and by proxy, G. M. Dodge by L. M. Martin, representing one share and W. H. Blodgett by J. F. How, representing one share. It is then recited that:

> "There was also present the 'Northwestern Company' by F. M. Hubbell, president.
> The 'Northern Company' by A. B. Cummins, president.

The 'St. Louis Company' by J. F. How, president."

It was then "determined that all the stockholders of said company were present either in person or by proxy duly filed with the secretary of the company." (Rec., 489.)

F. M. Hubbell testified that neither the stockholders nor directors of any proprietary company had adopted any resolution or had issued any proxy authorizing anyone to be present at such stockholders' meeting of April 8, 1890, or to vote thereat any share or shares of stock of such company. (Rec., 1165-1169.) It is thus apparent that, so far as corporate action of the Des Moines Company is concerned, the resolutions offered at such stockholders' meeting of April 8, 1890, purporting to amend its articles and providing for the issue of its capital stock, were not legally adopted.

But the factors that made the corporate action of the Des Moines Company illegal, also show want of corporate action on the part of the proprietary companies, sufficient to surrender or release to their corporate trustee, their respective estates in common in the terminal properties; for without yet considering what the parties intended to accomplish at the stockholders' meeting of April 8, 1890, it is very clear that Hubbell, Cummins and How could not, either individually or by concerted action, convey away the several estates of their principals. *These principals could alone do this through execution of their own deeds of assignment.* Furthermore, in the sense of severally representing their own companies in the making of a supposed contract at this meeting, these parties could have acted only in an oral manner, for the record in writing there made, even if signed by the parties present, could only purport to represent the sole corporate action of the Des Moines Company.

The intent of the parties in amending the articles of incorporation of the Des Moines Company and the result thereby accomplished, irrespective of the legality of the stockholders' meeting.

(1) *The status of the parties.*

There were no innocent purchasers for value in the transactions had at the so-called stockholders' meeting of April 8, 1890. The relations of the proprietary companies with the Des Moines Company, was not contractual, for the Des Moines Company was an active trustee created by the proprietary companies to conserve their several equitable estates. Likewise, in respect of protecting their common title to and the common use of the terminal properties, each cotenant stood in its relations with its other cotenants in a noncontractual status, for as to their common vested interests, the proprietary companies were made by law reciprocal trustees.

Rothwell v. *Dewees*, 2 Black, 613, at 618.
Bissell v. *Foss*, 114 U. S., 252, at 259.
Turner v. *Sawyer*, 150 U. S., 578, at 586.
Starkweather v. *Jenner*, 216 U. S., 524, at 528.

Thus, as a result of this trust relationship, no cotenant could take advantage of inadvertent or legally insufficient acts of another cotenant to the derogation of its ownership or right of use in the common properties.

It follows therefore that, if the proprietary companies came to the above stockholders' meeting with their rights in the above respect intact, these rights could have been parted with in favor of the Des Moines Company, or of one cotenant as against another only by an act of clear intent and some form of separate or con-

erted assignment in writing, based upon due corporate action and an actual consideration.

In the absence of the above facts, no estoppel could arise in favor of one as against the others, and if these facts existed the doctrine of estoppel to protect an altered status of interests need not be invoked.

That all of the above essentials of intent and action were wanting in the transactions of the parties will appear upon analysis thereof.

(2) *The reasons assigned by Cummins for the making of the amendments.*

These reasons were threefold:

(1) He thought it "very wise to have it so arranged that every railroad that might come into the depot in the future might become the owner of one-eighth of the capital stock." (Rec., 1208.)

(It is to be remembered in this respect that the agreement of May 10, 1889, authorized the sale of proprietary interests only in quarters.)

(2) He thought that two millions of capital stock should not be distributed among the stockholders. (Rec., 1208.)

(3) He thought that the articles of incorporation were inconsistent with the contract of January 2, 1882. In this respect he had told the parties "that the contract provided for a title of the property in trust for the three companies which had signed it and for the joint use and occupation" of the terminal properties. (Rec., 1209.) He was therefore of the opinion that in view of the conveyances which had been made to the Des Moines Company and the reimbursement in bonds, and the provision in its articles "for the issuance of capital stock for the remainder of the purchase price, if any, that it was imperative to clear up the title and get rid of any question of doubt respecting the ownership of the Des Moines Union Railway Company and its right to manage its own property. These were the reasons which led up to my suggestion that there ought to be an amendment to the articles of incorporation

that would put this company, beyond any question, in the ownership and control of its property. * * *" (Rec., 1210.)

In other words, the situation may be summed up as follows:

The personal counsel for the Hubbell interests, at a time when Hubbell had already purchased from the Wabash purchasing committee a two-eighths interest in the stock of the Des Moines Company and was engaged in negotiating for the purchase of a further one-eighth interest in the same, having reached the conclusion that trust estates were undoubtedly provided for by the proprietary companies under the contract of January 2, 1882, and having the belief that the Des Moines Company might have taken title to the terminal properties for the purpose of carrying out these trusts, decided that it would be advisable to alter the articles of the trustee by a "nunc pro tunc" declaration of intent for the purpose of causing it to repudiate retroactively those very obligations, which were the sole excuse for its existence.

That is to say, having speculated upon the possible existence of trust estates in the proprietary companies, he intended to remove the cloud in this respect upon the titles of the trustee, the Des Moines Company, by destroying these estates without a penny of consideration to the beneficiaries thereof, without any authority from them, without the execution by them of any instrument of assignment and alone through the form of corporate action of the trustee.

The evidence of Mr. Cummins, relating to the above subject matters is equivocal. He admits on cross-examination that the trust had never been abrogated, except (as he puts it), "as in the original articles themselves, or the amendment" later made, "increasing the capital stock to two million dollars." (Rec., 1241.) Yet

le repeatedly states that the amendments to the articles attempted to be made at the meeting of April 8, 1890, were not intended to affect titles. "That," he said, "had been effected before." (Rec., 1247.) While the trust was not entirely abrogated (whatever this may mean), the original articles, the conveyances made to the Des Moines Company, and the conduct of the parties, in his view, had partially brought this about. (Rec., 1248.) He was clearing up uncertainties in this respect as he would "in a bill to quiet title to property upon which I might think there was a cloud." (Rec., 1258.) The trust created by the contract of 1882 was destroyed in part, in his opinion, by the articles of incorporation. (Rec., 1244.)

He never stated what part of the trust estate was left or what was the value of this remainder which he proposed to destroy without consideration to the beneficiaries through a repudiation of the same by the corporate action of the trustee.

If the foregoing was his intent, was not his letter of January 7, 1890 (Rec., 1211), to Dodge somewhat disingenuous in stating that the amendments were intended "to clear up the ambiguity and uncertainty with respect to the *amount* of stock to be issued on account of the original purchase of the company, and to enable the Des Moines Union Railway Company to act in all matters without previous authority of three corporations."

There is no evidence in the record that the proprietary companies or their authorized agents had the slightest idea that the proceedings of April 8, 1890, were intended to terminate a trust or to effect a surrender of trust estates.

Indeed to suggest such an intent is to insult intelligence, for if Hubbell, Cummins and How intended and

tried to surrender at the stockholders' meeting of April 8, 1890, the equitable estates of their principals they were engaged in perpetrating a fraud upon them; since, if this was the nature of the transaction, the proprietary companies not only did not receive a dollar of consideration in exchange for their interests, but they also gave up the distribution among themselves of the entire capital stock of their trustee, namely $2,000,000, and accepted in lieu thereof, only one-fifth of such stock, namely $400,000, leaving the remainder to be sold to other railroad companies, thus reducing their stockholding interests in the property, if this was all they were to have, to a relatively small proportion of what was originally intended.

The result of the amendments, assuming their validity.

(1) *The amendment dividing aliquot interests into eighths instead of quarters.*

This amendment continues that attribute of the stock of the Des Moines Company consonant with the intent of the parties that stock should represent proprietorship in the terminal properties, for it is to be remembered that under the agreement of May 10, 1889, provision was made for the admission of railroad companies as outsiders to the use of the terminals without the ownership of stock, with the proviso that they should pay rental, which was to be used in reducing the cost of operation among the proprietary companies. If a railroad company, holding an eighth interest in the capital stock of the Des Moines Company, was to acquire thereby no rights of user or proprietorship in the terminal properties, because thereof, why the comment of Mr. Cummins that it would be wise to permit railroads to come in upon the ownership of eighths, instead of quarters!

Unanimous consent of the proprietors was required before stock could be purchased by another railroad company, and likewise this unanimous consent was required before a railroad company, without capital stock, could be permitted to use the terminals. If stock holding as such brought no prerogatives of ownership, why should it be sold to newcomers only in eighths, instead of in single shares.

(2) *Amendment authorizing the issue of four hundred thousand dollars of capital stock, instead of two million dollars, in proportions identical with those provided for in the agreement of May* 10, 1889.

This amendment left intact, both as to apportionment and characteristics, all the attributes of the capital stock of the Des Moines Company contemplated in the contract of January 2, 1882, in the original articles adopted December 10, 1884, and provided for in detail in the agreement of May 10, 1889, with one significant difference, namely, if the allotment of stock to every proprietary company was not to represent its equitable estate in the terminal properties, the stockholders were voluntarily or unwittingly, *and without consideration*, surrendering the right to have distributed among them the entire capital stock of the Des Moines Company, and were accepting in lieu thereof, an aggregate distribution among them of only one-fifth of its capital stock, with the proviso that the remaining four-fifths might eventually be sold, presumably to other railroad companies. Thus, if they were only stockholders, and not tenants entitled to a common use of the properties, their proportionate interest in the terminals was reduced from one-quarters to possibly one-twentieths.

(3) *Article* 15 *expunging the proceedings of the meeting of December* 10, 1884. (Rec., 494.)

It is difficult to understand what was expected to be accomplished by the so-called expunging of the proceedings of the meeting of incorporators held six years earlier. Assuming that it is possible to wipe resolutions from records, corporate actions had as a result thereof, will not thereby be given an altered significance.

Intent cannot be made retroactive.

But irrespective of intent, the rule is elementary that existing rights are not affected by changes in the charter or articles of a corporation.

Woodruff v. *Trapnall*, 10 How. (U. S.), 190.

Curran v. *State Bank of Arkansas*, 15 How. (U. S.), 304.

Hawthorne v. *California*, 2 Wall. (U. S.), 10.

If the proprietary companies did not intend to and did not in fact convey their equitable estates to the Des Moines Company by the deeds of the temporary trustees, executed and delivered to it in 1887 and 1888, the action had at the meeting of the Des Moines Company on April 8, 1890, surely did not effect such conveyances. If, on the other hand, Article 15 was intended to be prospective in effect, for the purpose of removing a cloud on titles, it was equally ineffectual. Moreover, it is inconceivable that, if such was the intent of the parties at the time it was adopted, they did not pursue the obviously effective course of executing mutual quitclaim deeds of their equitable estates to the Des Moines Company. To be sure, one cannot understand what would prompt them to do so under an arrangement which would not give them a dollar of consideration for the assignment of their property rights.

In contrast with any such possible corporate action, by amended Article 14, they "approved, ratified and confirmed" in their full and original significance, the conveyances made by the temporary trustees to the permanent trustee, and the issuance of the mortgage bonds in reimbursement therefor, thus reiterating all that they intended to do by virtue of the resolutions of January 1, 1885, and of November 5 and 8, 1887, and the deeds of conveyance made pursuant thereto.

(4) *The resolution adopted fixing the value of the terminal properties at* $861,257.21, *as of the date of the conveyance thereof, instead of* $461,257.21, *being the actual cost thereof as recited at the meeting of stockholders of March* 31, 1888, *and the issuing of* $400,000.00 *of capital stock upon the basis of the above value.* (Rec., 494.)

After the amendments to the articles of incorporation were adopted, Mr. Cummins offered a resolution which was unanimously adopted, reciting in substance that there was some uncertainty in the records of the company respecting the purchase price of the terminal property; that it was agreed that the same should be purchased at its fair value, payable partly in mortgage bonds and partly in capital stock; that it was agreed that said property was fairly worth the sum of $861,257.21 (that is $400,000 more than the aggregate amount recited in the resolution of March 31, 1888 (Rec., 476), above referred to, to be due the several parties therein named "for money expended for the property acquired for this company," and for which bonds had been delivered in reimbursement), of which purchase price the purchasing committee of the Wabash Company, as the real owner of the St. Louis Company, is entitled to $470,110.80, the

Northwestern Company $215,058.40, the Northern Company to $100,000, G. M. Dodge to $74,088.01 and Polk and Hubbell to $2,000; that by a settlement theretofore made, the purchasing committee has received 270 bonds of $1,000 each, G. M. Dodge 74 bonds, Polk and Hubbell 2 bonds and the Northwestern Company 115 bonds, making in all 461 bonds; that as a further part of said purchase price, the Des Moines Company has paid to the purchasing committee, G. M. Dodge and the Northwestern Company $257.21; that there still remains $400,000 of the purchase price yet unpaid to be paid in capital stock; that by agreement between the several persons and corporations owning the property prior to the transfer so much of the purchase price as was to be paid in capital stock was to be divided one-half to the St. Louis Company, one-quarter to the Northern Company and one-quarter to the Northwestern Company; that the articles have been amended to conform to the true intent of the several parties.

It was thereupon resolved:

First. That the purchase price of the property originally acquired, be fixed at $861,257.21.

Second. That the payment of a portion of said purchase price, as above set forth, be confirmed and approved.

Third. That, to complete the payment of such purchase price, one-half of the stock be issued to the purchasing committee, one-quarter to the Northern Company and one-quarter to the Northwestern Company.

Fourth. That proceedings heretofore had, respecting the issuance of capital stock so far as said proceedings are inconsistent with the amendments to the articles of incorporation or with this resolution, are hereby modified.

Certain things are obvious from the foregoing resolution. It is a colorable recital of facts, made in conventional form, to give the stock interests of the several

proprietary companies theretofore issued under the agreement of May 10, 1889, an appearance of being fully paid and of being issued as a substitute for the properties conveyed to the Des Moines Company.

The arbitrary *fixing* of the purchase price of the property "*as of the date of the conveyance thereof,*" at $861,257.21, instead of $461,257.21, flies in the face of the settlement made between the proprietary companies and the Des Moines Company, pursuant to the resolution of March 31, 1888 (Rec., 476), in which it appeared that the cost of the properties aggregated $461,257.21, and wherein it was resolved, as provided for by the contract of January 2, 1882, that the temporary trustees should be reimbursed for this amount in the proportion of their several advances by the mortgage bonds of the Des Moines Company. The reimbursement thus provided for had taken place, and the transactions identified with the transfer of title to the trustee company were a concluded subject matter.

The fixing of such purchase price at four hundred thousand dollars in excess of the amount for which the temporary trustees were reimbursed in the bonds of the Des Moines Company, and the identification of the capital stock of such company as a consideration paid to the proprietary companies to represent the values of such excess, is also directly contrary to the resolutions adopted on November 5th and on November 8, 1887, by the proprietary companies, providing that the stock of the Des Moines Company should be transferred together with its bonds "in lieu for the money advanced," to purchase the terminal properties and the consummation of this proviso by the issuing of stock pursuant thereto under the agreement of May 10, 1889.

The recitals therefore, above summarized from the

resolution adopted April 8, 1890, are disingenuous and contrary to fact. Whatever their intent be, they must have been ineffectual, for they could not recall a concluded transaction and manufacture corporate assets for stock where none had theretofore existed.

Moreover, that the scheme was disingenuous, and that the purchase price of the property was artificially fixed for the purpose of giving the capital stock to be issued an appearance of being fully paid, Mr. Cummins himself expressly states. He found that there were 461 bonds outstanding and he added $400,000 to the actual cost of the terminal properties *as of the date of the conveyance thereof*, because he "thought it would *stand* $400,000 without creating any liability upon the part of those who held it to make good for unpaid stock, if the company should get into trouble and fall into the hands of a receiver." (Rec., 1241.) Referring to the equity above actual cost, he said:

> "Of course I understand it couldn't have sold for $400,000 at that time." (Rec., 1240-1.)

The ineffectuality of the resolution, however, upon the theory upon which it was based, is exposed in the distribution of stock in the original proportions contemplated by the trust instrument, namely, in one-half and one-quarters and not on what could have been the only theory of adding stock to bonds to make up an increased purchase price, namely, by prorating stock in the same ratio that bonds were distributed on the assumption that each party, conveying property to the Des Moines Company, should receive his pro rata share of the increased value, representing the purchase price to the Des Moines Company, of such property over and above the actual cost of the same, paid for by the bonds already delivered to him for purposes of reimbursement.

The foregoing amendments could not affect the con-

veyance to the Des Moines Company of the equitable estates of the proprietary companies, which had theretofore continued to be vested in them, for the Des Moines Company as a trustee could not by its own corporate process repudiate or destroy the trust estates. Independent corporate action on the part of the proprietary companies could alone produce such a result. *And as hitherto stated, after the conveyances made by the temporary trustees to the Des Moines Company as the permanent trustee of the trust properties, in the fall of* 1887 *and the winter of* 1888, *no deeds, conveyances or assignments of any character were ever made by the proprietary companies, or any of them, to the Des Moines Company of any of their interests in the trust properties and no corporate action for this purpose was ever thereafter had by any of them.*

It is difficult to appreciate how these several companies could be legally present at a stockholders' meeting through the agencies of the above individuals, but, without respect to this query, it is beyond question that any action taken by these persons at such stockholders' meeting of the Des Moines Company must be regarded as identified alone with *its* corporate activities.

Whatever their intent and in whatever capacity each of them may have appeared at such stockholders' meeting, it was not within their power, either by individual or concurrent action, to convey away, release or alter the status of the respective equitable estates in the terminal properties then existing in the proprietary companies.

It is fitting to conclude this subdivision with the statement that Hubbell testified repeatedly to the fact that he never regarded the amendments, supposed to have been made at the stockholders' meeting of April 8, 1890, as having any effect on the title to property or on the value

of the stock. (Rec., 1081.) He relied upon the deeds made by the temporary trustees to the Des Moines Company, the original articles of incorporation, and the agreement of May 10, 1889, which he construed as a lease, as establishing in the Des Moines Company the beneficial interests which gave his stock holdings value. (Rec., 1075, 1083.)

(5) *The amendments to the articles were not published so as effectively to eliminate the contract of January 2, 1882, from the original articles of incorporation.*

Finally and wholly apart from all other infirmities in the alleged proceedings for the amendment of the articles of incorporation, we insist that the proceedings taken were wholly ineffectual to discharge the Des Moines Company from its charter obligations to observe the trust created by the contract of January 2, 1882, by virtue of the incorporation of said contract in its articles as a part of its organic law.

By Chapter 88 of the acts of assembly of Iowa of 1888, in force April 8, 1890, it is provided:

> "That any of the provisions of the Articles of Incorporation may be changed at any annual meeting of the stockholders or special meeting called for that purpose; but said changes shall not be *valid* unless recorded and *published* as the original articles are required to be; and said changes in the articles need only be signed and acknowledged by the officers of said corporation."

Pursuant to the above provision, the Des Moines Company published notice of the amendments to its articles, and this published notice, which appears in the record as Exhibit 614 (Rec., 2010), contains no reference whatever to the new article 2, supposed to be substituted in place of the original article 2, which contained the provision that

"All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract (recited in the preamble of the articles), entered into on the 2nd day of January, A. D. 1882."

We submit, therefore, that the above provision of the original articles is in full force and effect, and has been in no manner or to no extent impaired by the supposed amendments of April 8, 1890.

The above conclusion is fortified by what the Supreme Court of Iowa has said respecting the effect of these amended articles. In *Morgan* v. *Des Moines Union Railway Company* (the Des Moines Company here), 113 Ia., 561, the question of the powers of that company was in issue. The court, after quoting article 2 of the original articles, states:

"These articles were afterwards amended, but in no way was the language set out qualified in the amendment."

It is also to be noted that Judge Wade of the District Court, in referring to the amendment to the articles of incorporation, says:

"It does not appear that it was intended to affect any right then existing, and even if such intention existed on the part of anyone, it was not manifest, and I find nothing which would give it effect." (Rec., 2047.)

The independent transactions of F. M. Hubbell in respect of the trust properties.

That it was farthest from the intent of the purchasing committee or of the defendants to repudiate or destroy the trust estates, is demonstrated by the contemporaneous transactions taking place between Hubbell and the purchasing committee, set out in full in the third subdivision of the statement of facts, and now to be commented upon.

The above transactions resulted in two successive purchases by Hubbell from the purchasing committee of the Wabash Company of first, a quarter interest in the stock of the Des Moines Company, of which General Dodge took one-half, thus vesting in each of these parties an eighth interest in such stock, and second, a further purchase by Hubbell from the purchasing committee of an eighth of the total amount of stock of the Des Moines Company, thus leaving the purchasing committee of the Wabash Company with only an eighth interest in the Des Moines Company, instead of its original one-half.

In considering the significance of these transactions, which thus resulted in the transfer of stock ownership, it is very important to note that Dodge and Hubbell became but the channel by which the one-eighth interest, acquired by Dodge, and the two-eighths interest acquired by Hubbell, were transferred at the inception of its existence, to the consolidated corporation composed of the union of the Northern and Northwestern Companies and controlled by Hubbell and Dodge, Hubbell owning approximately six thousand out of ten thousand shares of this company. Thus, these transactions were not the source of the five-eighths stock holding interest which Hubbell now has in the Des Moines Company and upon which he bases his claim to control the corporation.

The foregoing is important in a determination of what both Hubbell and Ashley, in their negotiations, understood to be the nature of the property interests evidenced by the capital stock of the Des Moines Company. The correspondence and transactions of the parties, relating to these stock transfers, is set out in full in subdivision III of the statement of facts and particular attention is called to the same.

On June 12, 1888, Hubbell wrote Ashley, asking permission to offer for sale a quarter interest in the Des

Moines Company to parties making inquiry of him. (Rec., 1059.) On June 16, 1888, Ashley replied stating that he thought the purchasing committee would be glad to sell a one-quarter interest, but that he had always supposed "that it would be necessary to confine the sale to such railway companies as could be interested in the station." He mentioned the Chicago and North Western Ry. Company and further said:

> "was there not an understanding or agreement as to the sale of the stock when the terminal company was formed and would it not be prejudicial to the interest of the whole to part with the stock to outsiders." (Rec., 1059.)

On June 18, 1888, Hubbell replied:

> "I agree with you that the sale of a quarter interest in the stock of the terminal company should be made only to a railway company, who will join with the Wabash in making a contract with the Des Moines Union, guaranteeing the interest upon the bonds and operating expenses, etc. * * * I understand it, as you do, that the stock cannot be sold without consent of the different railroad companies who now form the Terminal Company." (Rec., 1060.)

At this juncture it is at least clear that Hubbell was working in harmony with the conception that stock could only be sold in one-quarter interests and must eventually be held by railroad companies who would thereby enter the terminal enterprise on a parity with the original proprietors. This idea was in exact harmony with the intention constant with the proprietary companies, that stock should be identified with ownership and therefore should represent an aliquot estate in the tenancy in common.

Later in the year 1888, Hubbell unsuccessfully attempted to persuade the purchasing committee to surrender a one-quarter interest of the stock to the Des

Moines Company, presumably to enable that company to sell the aliquot portion of the estate represented by it to another railroad company. In February, 1890, Hubbell obtained from Ashley an option to buy $135,000 of the bonds and a one-quarter interest in the capital stock of the Des Moines Company for $135,000 (Rec., 1599), and as a result of this option, Dodge and he acquired from the purchasing committee each an eighth interest in the stock of the Des Moines Company. (Rec., 1601.)

Memoranda of agreement in identical form, made between the purchasing committee and Hubbell and Dodge respectively, relating to these one-eighth stock transfers, are very important. This memorandum recites that in the articles of incorporation of the Des Moines Company, it is provided that the Wabash Company shall nominate four directors; that the stock of the Des Moines Company is now held by different parties and in different proportions from what it was when said articles were adopted, and that it was agreed therefore, between the purchasing committee and Hubbell (and Dodge) who had acquired a one-eighth ownership of the stock of the Des Moines Company that the purchasing committee would consent to such change in the articles of the Des Moines Company as would permit one director to be nominated by any person or corporation holding one-eighth of the stock of the Des Moines Company. (Rec., 1601.)

In other words, the parties controlling the three proprietary companies had agreed that thereafter aliquot estates in the common tenancy might be transferred in eighths, instead of quarters. This is what was cared for as before shown in the amendments made in the articles of the Des Moines Company.

In the last transaction had between Hubbell and the purchasing committee, it conclusively appears that both

parties always understood ownership of stock to be identical with ownership of property, and that in this respect, an eighth interest would be sufficient to represent a proprietorship, for they expressly said so.

At the time of the foregoing transactions Hubbell began negotiating with the purchasing committee of the Wabash for the purchase of an additional one-eighth share of its interest in the Des Moines Company. On April 1, 1890, he wrote Ashley, asking the terms upon which such one-eighth interest could be purchased. (Rec., 1951.) On April 5, 1890, Ashley replied, giving his price with this statement contained in his letter:

> "IT MUST BE UNDERSTOOD, OF COURSE, THAT A ONE-EIGHTH INTEREST IN THE CAPITAL STOCK SHALL BE SUFFICIENT TO REPRESENT A PROPRIETORSHIP IN THE COMPANY ACCORDING TO THE UNDERSTANDING WE HAD WHEN YOU WERE HERE." (Rec., 1952.)

On these terms Hubbell consummated the purchase of the additional one-eighth interest in the Des Moines Company. When certificates of stock were eventually issued by the Des Moines Company a one-eighth interest was issued to Hubbell, a one-eighth to Dodge, and a few months later an additional one-eighth was transferred to Hubbell; and as before stated, on the consolidation of the Northern and Northwestern Companies on October 12, 1891, these two parties transferred their interest in the Des Moines Company to the consolidated company, thereby giving that company with the original two one-quarter interests, derived from its constituent companies, a seven-eighths interest in the estate in common. (Rec., 1951.)

It is contended by counsel for the defendants that the sale by the purchasing committee of an aliquot portion of its stock in the Des Moines Company to individuals, represents an anomaly in the contention that stock

was intended to evidence proprietorship in the trust properties, and that, therefore, the purchasing committee perpetrated a disingenuous transaction upon Hubbell. The answer to this proposition is very clear. It is true that the scheme contemplated, that railroads alone could be proprietors in the common enterprise, as is shown by Section twenty-four of the agreement of May 10, 1889, and could only become such upon unanimous consent. Still this is not to say that, with all parties agreeing and having full knowledge of the situation, Hubbell could not have been made a proprietor to the extent to which persons, as distinguished from railroads, might be able to benefit thereby. *It is to be remembered that the character of the beneficial interest that Hubbell and Dodge acquired in the stock transferred to them, is not on trial and should have no bearing or influence in this case. Hubbell presumably wished to acquire such stock for a sale at a profit to other railroad companies who might seek to use the terminals, and he and Dodge in fact became merely the channel by which they did transfer at a profit their respective interests to the proprietary company controlled by them; but whether or no the transfers of stock to Hubbell and Dodge were anomalous in the sense that there could not be vested in them as individuals that character of beneficial interest in the common estate which could only be enjoyed by railroad companies, it is beyond question that this anomaly had no equivocation of a character that could possibly destroy the proprietary estate of the purchasing committee as the successor of the St. Louis Company, as long as it was expressly agreed between the parties "that a one-eighth interest in the capital stock shall be sufficient to represent a proprietorship in the company."* (Rec., 1603.)

It is appropriate to conclude this subdivision by calling attention to the annual reports that were made by

the Des Moines Company for purposes of taxation to the executive council of the State of Iowa, on December 31, 1888, 1889 and 1890, and on January 1, 1892, and 1893. In each of these reports appears the following:

> "The Des Moines Union Railway Company is simply a 'Representative Company' acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines and Northwestern Ry. Co., and the Des Moines and Northern Railway Company, performing all the necessary work for them and charging each road at actual cost, its due proportion of the expense, thereby incurred." (Rec., 731.)

The officers of the company verified these reports, and in the instance of 1891, F. C. Hubbell was the verifying president. (Rec., 721, 723.) It is significant that the report signed and verified on February 16, 1894, immediately succeeding the transaction of January 29, 1894, by which Hubbell acquired his five-eighths interest in the Des Moines Company, states that the Des Moines Company "is the owner of the property hereinbefore described." (Rec., 724.)

V.

"THE SERIES OF ACTS AND CIRCUMSTANCES" THROUGH WHICH, IN THE MAJORITY OPINION OF THE COURT OF APPEALS, THE PROPRIETARY COMPANIES ARE SUPPOSED TO HAVE "GRADUALLY LET SLIP FROM THEM THE EXCLUSIVE OWNERSHIP AND CONTROL WHICH THEY HAD AT THE BEGINNING SO MUCH VALUED AND SO CAREFULLY GUARDED" WERE ALL IN HARMONY AND CONSISTENT WITH THE CONTINUED EXISTENCE OF THEIR RESPECTIVE PROPRIETARY INTERESTS.

THESE ACTS AND CIRCUMSTANCES ARE TO BE INTERPRETED IN THE LIGHT OF THE FOLLOWING PRINCIPLE, NAMELY, THE EQUITABLE INTEREST THAT EACH OF THE RAILWAY COMPANIES, PARTY TO THE CONTRACT OF JANUARY 2, 1882, ACQUIRED IN THE TERMINAL PROPERTIES OF THE DES MOINES COMPANY WAS MORE THAN A RIGHT IN PERSONAM OR CHOSE IN ACTION—IT WAS A RIGHT IN REM, NAMELY, AN ESTATE IN PROPERTY VESTED IN THIS RESPECT TO THE SAME EXTENT AS THOUGH THE LEGAL TITLE THERETO HAD BEEN CONVEYED TO SUCH COMPANY.

The conclusions reached in the majority opinion of the Court of Appeals are based upon the premise of the existence of a trust and the loss by the beneficiaries of this trust, without their design or intention, of all their rights under the same through successive acts on their part "natural," "harmless" and inadvertent. In the above respect the Court said:

> "(a) The title contemplated was a trust. The legal title to be 'in a trustee to be named by agreement of said companies.' The beneficial estate to be in the three companies in proportion to the parts each contributed to the payment therefor." (Rec., 2096.)
>
> "(b) Thus the railways themselves had, through a series of acts and circumstances extending over many years, gradually let slip from them the exclusive ownership and control which they had at the

beginning so much valued and so carefully guarded." (Rec., 2114.)

"(c) There is nowhere any indication that the railways intended any such result, and yet such, in our judgment, is the result. This unexpected outcome was the product of several circumstances." (Rec., 2113.)

Judge Hook in his dissenting opinion has the following to say of the position of the majority:

"In both aspects of its position towards the proprietary companies the terminal company was in a high sense their trustee; and according to salutary principles it was bound to maintain the integrity of that relation. Being itself a corporation, its fiduciary obligations and disabilities rested equally upon its officers through whom alone it could act. The limitations upon the right of a person in such a capacity to act for his personal benefit with respect to the subject of the trust are familiar. Never are they less than that the dealing must be open, avowedly at arm's length, and without contrivance or concealment. The individual defendants, one or the other or both, were, at all the times material in this case, officers and directors of the terminal company. The conclusion of my brothers, briefly stated, is that by a series of transactions occurring in a long course of years the original character of the terminal company was gradually changed into that of an independent corporation, and that the control of it was lost by the railroad companies and was acquired by the individual defendants who were its officers. But they say: *'There is nowhere any indication that the railways intended any such result, and yet such, in our judgment, is the result. This unexpected outcome was the product of several circumstances.'* In other words, the proprietary companies were not cognizant of the trend of the circumstances, and the result held to follow, though unexpected and not intended by them, is enforced because of a legal presumption of intention of natural consequences of acts, regardless of intention in fact. The circumstances relied on do not appear to me to have the

significance attributed to them, but were it otherwise the presumption should not be so broadly applied to the case of a trust the destruction of which is claimed by those subject to the disabilities of trustees dealing for themselves. *The excerpt quoted above touches the quick of this controversy.* In my opinion the various transactions thought to produce a result so unexpected and unforeseen should be severally examined in the light of the surroundings at the time they occurred. If in one aspect they were then consistent, or not apparently inconsistent, with the frequent and studied declarations of the object of the terminal organization and that view was then reasonably entertained by the railroad companies, that view should prevail in a court of equity rather than a shrewder one tending to a conclusion in favor of participants who were bound in good conscience to the contrary." (Italics ours.) (Rec., 2119.)

A sufficient answer to the theory upon which the conclusions in the majority opinion are reached ought to be that it is based upon a fundamentally erroneous conception of the principle of law, applicable to the status of the parties. It is assumed that, upon the creation of the Des Moines Company designed as the corporate entity to hold legal title to the terminal property owned by the proprietary companies, the future relations between that company and the proprietary companies would be contractual. Such was not in any respect the essence of this relationship, for properties charged with a trust are "held—not in opposition to but—for the benefit of the beneficiary." (*Brown* v. *Fletcher*, 235 U. S., 589.) Thus, in equity the parties were, in respect of the trust proprietors, one and the same. (Pomeroy's Equity Jurisprudence, Fourth Edition, Section 975.) Beneficial estates, established and reserved upon such a principle of law, cannot be lost by inadvertence to the very party created to hold them intact, for a conveyance to it, the trustee, is in fact

a conveyance to the *cestui*. This principle is the true guide to a proper interpretation of the "series of acts and circumstances" relating to the trust properties.

This series of acts and circumstances upon which the majority opinion of the Court of Appeals relies for its conclusions is as follows:

(1) *The Articles of Incorporation of the Des Moines Company adopted December* 10, 1884. (Rec., 416.)

These articles are based upon the premise that the Des Moines Company was organized for the sole purpose of making effective the trust created by the contract of January 2, 1882; for the resolution of the incorporators adopting them so recites, the contract of January 2, 1882, is set forth in them as a preamble to their provisions, and article 2 thereof provides that all the powers exercised by the company shall be in accordance with the terms and spirit of said contract.

After the concentration of the trust properties in the company organized for the above purpose, no equitable tenant in common in such trust properties ever conveyed, released or otherwise relinquished to it its equitable estate therein.

(2) *Deeds of Conveyance.*

By article fifth of the contract of January 2, 1882, the temporary trustees declared that the purchases made by them were made in their names upon the trusts set up in said instrument, and they agreed to quitclaim and convey the same to the permanent trustee, provided for by such instrument, upon demand and reimbursement. Their several deeds of conveyance of the properties so acquired by them were premised upon resolutions of the

respective proprietary companies and of the Des Moines Company, adopted for the purpose of vesting the terminal properties in the Des Moines Company as the permanent trustee thereof under the provisions of the contract of January 2, 1882.

(3) *The Mortgage of the Des Moines Company.*

It is stated that, since the Des Moines Company was required to make a mortgage upon the properties to which it took title to reimburse the temporary trustees for the cost of the purchases made by them, it must be presumed that the Des Moines Company took not only the legal but the beneficial interests in the properties conveyed to it. Such a statement ignores the principle that the attributes of a trust are to be limited alone by the intent of the parties setting up the same. Trustees may be given powers to sell and reinvest the proceeds of trust property, and to mortgage the same in the interests of the trust estate. The term "trustee" and the term "reimbursement" were used advisedly in the fifth article of the contract of January 2, 1882. It was the clear intent of the parties by their deliberate expression in that contract that a "*trustee*" should take title to the properties, that a "*trustee*" should mortgage these properties and issue its bonds and that a "*trustee*" by means of these bonds should "*reimburse*" the temporary trustees for the advances made on acount of the terminal properties. Thus, the making of the mortgage by the Des Moines Company, the issuing of the bonds thereunder and the delivery of the same to the temporary trustees of the terminal properties in exchange for the deeds of conveyance were a literal compliance with the provisions of the contract of January 2, 1882.

(4) *The Supplemental Agreement of May* 10, 1889. (Rec., 479.)

This agreement had its inception in a resolution adopted at a stockholders' meeting of the Des Moines Company on March 31, 1888. (Rec., 476.) It was resolved that the proprietary companies shall "pay the operating expenses, taxes and interest on bonds that are or may be issued, after deducting any amount received from other sources for rental, prorated on a wheelage basis, and that said payments, including interest charges shall be made monthly." It was further resolved "That Colonel W. H. Blodgett be requested to prepare an agreement for thirty years from May 1, 1888, based on the above resolution and covering in detail the conduct and operation of the Des Moines Union Railway Company. Said agreement to be approved and executed by all the lines now holding an interest in the property.

Said agreement shall provide that if, at the end of six months from the date of the same, either party to the contract shall feel that the terms of the same are unjust to them, and give notice to that effect, it shall be a matter for readjustment." (Rec., 478.)

And it was also resolved "that the terms and conditions on which the several lines now interested, or which may hereafter become interested, shall enjoy the use of these terminals, be fully set forth in a *supplemental agreement* to be made and executed between the Des Moines Union Railway Company and each of the lines using the said terminals." (Rec., 478.)

Of the necessities for this agreement, Col. Blodgett, who drew the same, said:

> "A. It was considered necessary to have something in addition to the agreement of January 2, 1882, for these reasons: In the first place the agreement

of January 2, 1882, made no provision for the payment of interest and did not provide how the interest charge should be distributed among the railroad companies using the property. That was one reason. Another reason was, that the contract of January 2, 1882, did not obligate the railroad companies who were parties to it or their assigns to use the terminal.

Q. Or pay interest?

A. Nor pay the interest. Let me see—there was the interest charge and the matter of using the property, and then the contract of January 2, 1882, put everything, all the expenses of maintenance and operation of all the property on a wheelage basis, and Mr. Hays and General Dodge and all the parties interested thought that the cost of operating the roundhouses should not be on a wheelage basis, but should be distributed among the railroad companies according to the number of engines that were housed and taken care of for each company; and those were the three things wherein, I think, the contract of May 10, 1889, differed from the contract of January 2, 1882.

Q. It was to cover those points?

A. It was for those reasons that all parties agreed it would be advisable to have a supplemental agreement." (Rec., 366-367.)

He also called attention to the fact that, in respect to the payment of the interest on the mortgage bonds of the Des Moines Company, the contract was to be made retroactive from May 1, 1888, and that the thirty-year period of its proposed existence was to be identical with the time in which the bonds of the Des Moines Company were to be outstanding. (Rec., 367.)

It is to be observed that at the date of this meeting of the stockholders of the Des Moines Company, a date *subsequent* to the conveyance of the terminal properties to the Des Moines Company, and to the execution of the Des Moines Company's mortgage, all of the parties distinctly recognize the continuing existence of the con-

tract of January 2, 1882, as it is elementary that a supplemental agreement presupposes the continuing force and vitality of the instrument upon which it is based.

From the above, it is also apparent that the agreement of May 10, 1889, was intended to be merely a regulation of the joint relations of the proprietary companies in the use of their common properties. This is evident not only because Col. Blodgett so states, but because the proprietary companies were resolving not separately but in the form of a resolution adopted by their corporate trustee that they should bear the operating expenses, taxes and interest charged upon their own properties, with the proviso that, if at the end of six months any one of them should regard the terms of the contract unjust, notice should be given to that effect and it should be a matter for readjustment; and that the agreement should be a "*supplemental agreement*," thus intending to keep in full force and effect the contract of January 2, 1882, and to supplement it with details necessary to make possible a harmonious joint user of the terminal properties by its three proprietors.

In objection to the above, it is stated that the preambles of the contract recite that the Des Moines Company became incorporated and organized under the laws of the State of Iowa, for the purpose of owning and operating a line of railway in the City of Des Moines, etc. (Rec., 363.)

Judge Hook, in his dissenting opinion answers the foregoing by saying that

> "in a preamble it was recited that, in pursuance of its charter, it acquired and owned a railway. The charter was that of 1884, into which the contract of 1882 was written." (Rec., 2121.)

An analysis of the terms of the contract also discloses

a recognition of the proprietorship of the second parties thereto in the terminal properties.

(a) No rental was required of the second parties; whereas, it provided for the payment of rental by other railroads who (without becoming stockholders) might be admitted to the use of the terminal properties with the unanimous consent of the second parties.

(b) The Des Moines Company was not intended to acquire revenue over and above its cost of operation, as amounts derived from other railroad companies were to be used to reduce the expense of operating the terminals assumed by the proprietary companies.

(c) The proprietary companies were to assume the control and operation of the Des Moines Company, through an executive committee of three, each of the three proprietors to have one representative. The executive committee was to appoint the superintendent of the properties and to make and enforce the rules and regulations for the use, management and operation of the terminals.

(b) Sections twenty-four and twenty-six identified the second parties to the agreement as proprietors of the properties, by providing the terms and conditions under which stock in representation of their proprietary interests was to be allotted to them, and in identifying the ownership of stock with the right of use and occupation.

(c) If an outsider should default in its obligations, the second parties were to reimburse the first party on a wheelage basis for the amount of such default, thus showing the responsibility of proprietors to protect their own interests.

The foregoing shows that the agreement of May 10, 1889, was made supplemental to the contract of January

2, 1882, for the purpose of settling the details of operation and accounting among the proprietors until May 1, 1918.

(5) *The issue of capital stock.*

The subject matter of the issue of capital stock has already been fully developed. The record shows that it was neither issued to reimburse the temporary trustees or their beneficiaries for advances made by them in acquiring the terminal properties, nor distributed in relation to such advances, but was issued in exact accord with the contract of January 2, 1882, and of the supplemental agreement of May 10, 1889, with the intent that it should represent the several aliquot estates of the proprietary companies in the common tenancy.

(6) *The Amended Articles of Incorporation.*

Full comment has been made upon this subject matter under title IV of this brief.

(7) *The agreement of July* 31, 1897. (Rec., 506.)

The sole object of this agreement was to make the Wabash Railroad Company, as successor to the St. Louis Company, and the Des Moines, Northern and Western Railway Company (the consolidated company) as successor to the Northwestern and Northern Companies, parties to the supplemental agreement of May 10, 1889. It is therein stated that so much of said contract "as relates to the *issuance and distribution* of the capital stock of said Des Moines Company is no longer binding and that the capital stock of said Des Moines Company is held as follows:" Thereafter, F. M. Hubbell & Son is listed, among others, as holding twenty-five hundred shares.

It is contended that this latter recital is a statement made by the Wabash Railroad Company inconsistent with the continuance of the trust established by the contract of January 2, 1882.

The above may be answered by saying that since it is an attribute of common tenancies that each title holder therein, irrespective of his proportionate interest, has a right of user of the common premises on a parity with all other tenants in common, the assignment by a proprietary company of an allotment of stock to an individual instead of to another railroad company is certainly not an act inconsistent with the continued existence of a proprietary interest in the terminal properties in such railroad assignor to the extent of any aliquot share of the same still held by it; and that the nature of the interest of an individual stockholder, assuming his rightful ownership of such stock in the terminal properties, is not on trial here.

Furthermore, the statement quoted from the above contract has a significance directly contrary to that contended for by the defendant. The sole object of the contract was to bring the consolidated company and the Wabash Company within the terms of the supplemental agreement of May 10, 1889. If stock in the Des Moines Company was not intended to represent proprietary shares in its properties, it would have been idle and irrelevant to recite in such contract its distribution and ownership. The purpose of this recital was undoubtedly to lock up, so to speak, the successor companies as tenants in common with the remaining tenants in common in said property in respect of their joint and several obligations. Finally it may be noticed that no allusion was made to the agreement of July 31, 1897, in the opinions of the court below except in the majority

opinion in connection with the disposition of the surplus earnings, where as affecting these earnings the majority opinion states:

> "A subsequent contract of July 31, 1897, does not affect this controversy." (Rec., 2114.)

VI.

TO GIVE THE ACTS AND CIRCUMSTANCES HEREINBEFORE ENUMERATED A CONSTRUCTION OR ASPECT IN DEROGATION OF THE EQUITABLE ESTATES IN COMMON OF THE PROPRIETARY COMPANIES, PURSUANT TO THE CHARACTERIZATION THEREOF, OF THE MAJORITY OPINION OF THE CIRCUIT COURT OF APPEALS, WOULD BE TO PERMIT TRUSTEES OR FIDUCIARIES, NOT ONLY TO REPUDIATE THE RIGHTS OF THEIR CESTUIS QUE TRUSTENTS, BUT TO ACQUIRE FOR THEMSELVES THE BENEFICIAL INTERESTS IN THE TRUST ESTATES.

The Circuit Court of Appeals in its majority opinion holds that a trust was created under the terms of the contract of January 2, 1882, that the beneficiaries thereunder or proprietary companies at all times intended the continuance of said trust, but that the same, through acts of inadvertence "apparently harmless," was destroyed, and that the Des Moines Company became an independent corporation holding the trust properties free from the terms of the trust and under the control of the Hubbells.

The principle announced in the title to this subdivision of the brief is to be applied to the conclusions of the Circuit Court of Appeals as above stated. It has application to the parties in interest in their relation to the terminal properties in several aspects, namely:

(1) To the Des Moines Company and to any officer, director or agent thereof, making a claim on its behalf or to his own advantage inconsistent with the rights or

interest of the proprietary companies as beneficiaries of the trust assumed by the Des Moines Company.

(2) To any cotenant in the common equitable estate, whether one of the proprietary companies or a successor in interest thereto by assignment of its estate as against the interest of any other cotenant in the common equitable estate.

At all times during the transactions involved in this litigation, F. M. Hubbell was an officer and director of the Des Moines Company and of each of the three proprietary companies and the controlling stockholder of the Northwestern Company and of its successor the consolidated company from which he acquired the five-eighths interest in the stock of the Des Moines Company, upon which he now bases his claim. (Rec., 1296.)

In the above respect he actively participated in the management of the corporate affairs of the Des Moines Company and of the Northwestern and the consolidated companies, and he was, moreover, the individual upon whom the Wabash Company and its successor, the purchasing committee, relied in confidence for the purpose of protecting their interest in the terminal properties at Des Moines.

Therefore, as an officer, director or agent of the Des Moines, he was bound by the terms of the trust and in this respect could not take advantage of any act of a proprietary company in derogation of its beneficial interest in the trust estate. A trustee is not permitted to assert in his own behalf any right or interest in trust properties resulting from the inadvertence of his beneficiaries. (Bigelow on Estoppel, 6th Edition, page 589.)

Likewise, as an officer, director and controlling stockholder of the consolidated company, a successor in interest to an aliquot estate in the properties acquired

to be held and used in common, he controlled the acts of a trustee and was thus bound as a fiduciary, for cotenants occupy to each other the position of express trustees in respect to the property held in common.

In the case of *Bissell* v. *Foss*, 114 U. S., 252, at page 259, it is said:

> "It is true that one of two or more tenants in common, holding by a common title, cannot purchase an outstanding title or incumbrance upon the joint estate for his own benefit. Such a purchase enures to the benefit of all, because there is an obligation between them, resulting from their joint claim and community of interest, that one of them shall not affect the claim to the prejudice of the others. *Rothwell* v. *Dewees*, 2 Black, 613; *Van Horne* v. *Fonda*, 5 Johns. Ch. 388; *Lloyd* v. *Lynch*, 28 Penn. St. 419; *Downer* v. *Smith*, 38 Vt. 464."

See, also, to the same effect the case of *Rothwell* v. *Dewees*, 2 Black, 613, at page 618, in which it is said:

> "In the case of *Van Horne* v. *Fonda*, 5 Johns. Chy. R., 407, the rule is very fully laid down by Chancellor Kent, that where two devisees or tenants in common hold under an imperfect title, and one of them buys in the outstanding title, such purchase will enure to their common benefit upon contribution made to repay the purchase money."

See, also, *Turner* v. *Sawyer*, 150 U. S., 578, at page 586, and *Starkweather* v. *Jenner*, 216 U. S., 524, at page 528.

The principle announced in the above authorities, which makes one cotenant a trustee for another, where he buys an outstanding title of the common estate, would, of course, apply with peculiar force where one would attempt to acquire a control or title to the common estate as against the other by taking advantage of his unintentional acts in derogation of his title. If the foregoing be true, of course, it also follows that Hubbell, as a successor to the consolidated company in ownership to

a portion of the stock in the Des Moines Company, by a transaction in which he was virtually both seller and buyer, could have rights no greater than the consolidated company, his controlled vendor. Thus, whatever his status as an individual stockholder in respect of the terminal properties of the Des Moines Company, he may not assert thereby a control over the properties of the Des Moines Company inconsistent with the trust estates of the proprietary companies therein.

It is appropriate here to submit to this Court the form of relief which should be awarded the complainants in the enforcement of their proprietary interests in the terminal properties. The trust established by the contract of January 2, 1882, has never been abrogated. The period of the supplemental agreement of May 10, 1889, has expired. The rights of the proprietors should be protected upon the basis of the attributes belonging to their equitable estates established by the original trust instrument, and this Court is, therefore, asked to decree that the complainants are entitled to the use and occupation of the terminal properties in perpetuity, the cost of operation to be divided between them on a basis of wheelage, as provided in Article Sixth of the contract of January 2, 1882. (Rec., 413.)

VII.

THE FIVE-EIGHTHS STOCK INTEREST IN THE DES MOINES COMPANY HAVING BEEN ACQUIRED BY THE HUBBELLS FROM THE CONSOLIDATED COMPANY, OF WHICH THEY WERE DOMINATING STOCKHOLDERS AND DIRECTORS, IN VIOLATION OF THEIR FIDUCIARY OBLIGATIONS TO THE PROPRIETARY COMPANIES, THE DECREE HEREIN, IN ADDITION TO THE PRIMARY RELIEF ASKED QUIETING THE EQUITABLE TITLES OF THE COMPLAINANTS IN THE TRUST PROPERTIES, SHOULD ALSO PROVIDE FOR A RESCISSION OF THE STOCK TRANSACTION AND FOR A REDEMPTION OF THE SHARES BY THE COMPLAINANTS ON EQUITABLE TERMS.

Enough has already been said to demonstrate the clear right of the complainants to the primary relief asked in the amended complaint quieting their equitable title to the trust properties and protecting them in the use and enjoyment thereof upon the basis of the contract of January 2, 1882.

It is unthinkable that these great public carriers, serving a populous community by means of railway facilities, which they and their predecessors established in the exercise of corporate franchises derived from the State of Iowa, and in a large measure through the aid of grants and subsidies provided by the community itself, should be cut off from the use of these facilities as the result of machinations of their own fiduciary and trustee.

The granting of a decree enforcing alone the right of the complainants to the use and enjoyment as equitable tenants in common of the terminal properties, would, however, leave undetermined a subordinate but important question as to the proper disposition of the shares of the Des Moines Company claimed to be owned by F. M. Hubbell & Son.

It was never intended by the proprietary companies

or their predecessors that any of the shares of the Des Moines Company should be permanently divorced from the beneficial ownership, use and enjoyment of the terminal properties.

By the contract of January 2, 1882, as already pointed out, an undivided quarter interest in the terminals represented a proprietorship thereof, and a one-quarter interest was allotted each to the Northwestern Company and the Northern Company and a one-half interest to the St. Louis Company, leaving in the possession and control of the St. Louis Company a surplus quarter interest which might be sold to another railway company. It was then understood and agreed by the proprietary companies that this surplus quarter interest held by the St. Louis Company might be sold to another railway company desiring to use the terminals, but only sold to such railway company and "not to outsiders."

This agreement was recognized by F. M. Hubbell in his correspondence with Ashley in 1888. (Rec., 1060.) A year later it was definitely incorporated in the supplemental agreement of May 10, 1889, as Section twenty-four thereof. (Rec., 485.)

Afterwards, as testified by A. B. Cummins, the personal counsel of the Hubbell interests, and the general counsel of the Des Moines Company, the proprietary companies determined to broaden the trust enterprise so "that all the railroads in Des Moines could be brought into these terminals" and "that each railroad that might come into the depot in the future might become the owner of one-eighth of the stock." (Rec., 1208.)

This merely involved a redivision of the shares of the trust enterprise into eighths instead of quarters, each interest to be measured by one-eighth of the stock of the Des Moines Company—a division which, as a

glance at a railroad map will show, corresponds precisely to the number of railroads entering Des Moines.

At this juncture, F. M. Hubbell again approached Ashley respecting the purchase of the surplus interest held by the St. Louis Company and in the months of February and August, 1890, he induced Ashley to part with three-eighths of the stock of the Des Moines Company held by the St. Louis Company, upon the distinct understanding "that a one-eighth interest in the capital stock shall be sufficient to represent a *proprietorship* in the company." (Rec., 1602.)

That this transaction was in furtherance of the trust enterprise and not in destruction of it is clear.

That it was not intended that Hubbell individually should permanently hold the stock is equally clear.

In the hands of Hubbell, the stock of the Des Moines Company could have no legitimate value, except for the purpose of resale to other companies who could be admitted with the original proprietors as equitable tenants in common in the use and occupation of the terminals.

What effort, if any, was made by Hubbell to bring in new proprietors does not appear.

It does appear, however, that within a year after the above transaction, Hubbell and Dodge resold at a profit to themselves the three-eighths interest, acquired as above, to the consolidated company formed by the union of the Northwestern and Northern Companies, which it is to be noted was directly in line with the definite understanding of the various parties that shares in the Des Moines Company could only be held by railway companies using the terminals.

For the two-eighths interest sold by Hubbell, he received from the consolidated company its first mort-

gage bonds at par, in the amount of $60,000, which was at the rate of $30,000 for each one-eighth interest. (Rec., 1461.)

The shares remained in the treasury of the consolidated company for nearly two years when, together with certain other shares, they were removed therefrom by the Hubbells by successive transactions, to which the attention of this Court is especially directed.

At a meeting of the board of directors of the consolidated company, held October 4, 1893, on motion of A. B. Cummins, a director of that company, and the personal counsel of the Hubbell interests, it was resolved to pledge five-eighths of the stock of the Des Moines Company, out of the seven-eighths then held by the consolidated company, as security for certain alleged outstanding notes of that company held by F. M. Hubbell & Son. (Rec., 1480.)

Inasmuch as this pledge of the five-eighths interest in the Des Moines Company was given, or attempted to be given, on the threshhold of a receivership, as security for *antecedent* indebtedness of the consolidated company, the pledge was voluntary and without consideration and consequently was invalid. (Jones on Collateral Securities, Section 360a.)

The next step taken by the Hubbels was in the nature of a *pro forma* foreclosure of the invalid pledge.

At a meeting of the board of directors of the consolidated company held January 29, 1894, less than four months after the transaction above mentioned, on motion of A. B. Cummins, a resolution was adopted surrendering to F. M. Hubbell & Son, in satisfaction of a certain part of the consolidated company's alleged note indebtedness the five-eighths interest in the Des Moines

Company's stock at 10 per cent of its face value or at a rate of $5,000 for each one-eighth interest. (Rec., 1482.)

That F. M. Hubbell abstained from voting either for or against the resolution of the board of directors of the consolidated company is, we submit, of no consequence. He was the president of the company, and he and his firm owned and controlled a majority of its capital stock and he dictated and controlled the action of the directors in all respects. Of the seven members of the board of directors, three (F. M. Hubbell, F. C. Hubbell and H. D. Thompson) were members of Mr. Hubbell's immediate family and a fourth, A. B. Cummins, was the personal attorney for the Hubbell interests.

As F. M. Hubbell himself had valued a one-eighth interest at $30,000, in the sale made to the consolidated company two years earlier, giving to the five-eighths he took from the consolidated company under the resolution last above mentioned for $25,000 a valuation of $150,000, it is unnecessary to argue that the transaction in and of itself was a fraud on the consolidated company, its stockholders, bondholders and other creditors. Moreover, the alleged notes of the consolidated company, which the Hubbells surrendered at their *face* value, in payment for these shares in the Des Moines Company were unsecured, save as they themselves had sought to secure them by the invalid pledge made three months earlier: The property of the consolidated company, including an additional two-eighths interest in the Des Moines Company, was encumbered by a mortgage to the Metropolitan Trust Company of the City of New York, securing an issue of bonds upon which a default was imminent. The notes of the consolidated company, which the Hubbells so surrendered at their *face* value, were junior in equity to the outstanding mortgage bonds, and as to these the record states "that the company had

made strenuous efforts to dispose of the same at 55 per cent of their face value" but had been "wholly unable to do so." (Rec., 1482.)

The immediate purpose of the above transaction was to enable F. M. Hubbell to remove from the treasury of the consolidated company, of which he was the president, a director and the dominating stockholder, certain assets which were unpledged but held by the company in trust for its creditors to apply the same to the full payment of a certain uncollectible indebtedness held by his own firm; thus preferring his own firm over other creditors equally entitled to the benefit of the free assets of the company, including among these creditors the holders of bonds secured by the mortgage to the Metropolitan Trust Company and then unsalable in the market on the basis of 55 per cent of their face value.

The ultimate purpose of the transaction was to place in the possession, and under the dominion and control of F. M. Hubbell, shares of the Des Moines Company, of which he was also an officer and director, to be employed by him in furtherance of a scheme to destroy the proprietary interests of the consolidated company and the Wabash Company in the terminal properties held in trust by the Des Moines Company. At this time he was, it will be recalled, negotiating to sell his interest in the consolidated company to the St. Paul Company.

Against these transactions, the complainants are clearly entitled to equitable relief.

As stated at the outset, it was never intended that the stock of the Des Moines Company should be permanently divorced from the beneficial ownership, use and enjoyment of the terminal properties. Representing, as it unquestionably did, the several proprietary or aliquot interests in the trust properties, each of the proprietary

companies was an express trustee of the other as to the common property held in equitable title and was precluded from dealing with the trust properties or with any interest therein to the injury of one or more of the equitable cotenants. The disability of one equitable cotenant to thus deal with the trust properties is an incident of the reciprocal trusteeship existing between cotenants. (*Rothwell* v. *Dewees*, 2 Black, 613.)

The defendant Hubbell, as an officer, director and dominating stockholder of the consolidated company, had no right to take from its treasury on *any* terms an interest in the Des Moines Company to be employed in his hands to lessen or impair or undermine the interests which that company retained in the Des Moines Company and had pledged to the Metropolitan Trust Company.

The consolidated company had no right to give to anyone, much less to F. M. Hubbell & Son, an interest in the Des Moines Company to be employed in the hands of the taker to lessen or impair or undermine the interests in the Des Moines Company held by the St. Louis Company.

Moreover, in the present instance, each of the equitable cotenants had agreed with the others and with the Des Moines Company that no share in the Des Moines Company could be transferred without the consent of all of the proprietors, and it was further agreed that all stock certificates of the Des Moines Company "shall express upon their face that they are not transferable in whole or in part, without the consent in writing" of the proprietary companies. (Rec., 487.)

That F. M. Hubbell, as secretary of the Des Moines Company, issued the stock certificates of the Des Moines Company, without placing thereon this legend is not disputed.

That F. M. Hubbell never obtained from the St. Louis Company or from the Metropolitan Trust Company, as mortgagee of the consolidated company, a written consent or any other consent to the transfer of the five-eighths interest here in question is also not disputed.

Upon these facts the complainants have a clear remedy.

The original pledge of the five-eighths interest to F. M. Hubbell & Son, having been made without notice either to the St. Louis Company or to the Metropolitan Trust Company, as mortgagee of the consolidated company, and the pledge having been foreclosed without public sale or judicial sale, but under a fraudulent private sale had under action of the board of directors of the consolidated company dominated by Hubbell, a sale made without notice either to the St. Louis Company or to the Metropolitan Trust Company, it follows (viewing the transaction most favorably from the standpoint of the Hubbells), that the shares passed to the Hubbells and have been continuously held by them, subject to redemption on equitable terms by the St. Louis Company and the Metropolitan Trust Company or those claiming under it.

Nor is the right of the complainants to equitable relief barred by laches. The fraud was not discovered until after the institution of this suit, and it is elementary that laches does not operate until the fraud is discovered.

As the proprietary companies and their successors held equitable estates in the terminal property as tenants in common, it was immaterial in respect of their rights of use and occupation of the same which company held the major portion of the Des Moines Company's stock. The Hubbells having diverted and obtained possession of 2,500 shares of the Des Moines Company's stock in violation of their trust obligations, the right to redeem the same belongs jointly and severally to the complainants

in their status as tenants in common. Therefore, they ask that said 2,500 shares so diverted and held by the Hubbells be surrendered to the complainants upon reimbursement to the Hubbells for the amount claimed to have been paid by them for such shares, to wit: $25,000, with interest thereon from January 29, 1894.

It will be recalled in this connection that the unanimous vote of the stockholders of the Des Moines Company is necessary to elect a director and that the unanimous vote of the eight directors of the company is necessary for the election of officers. The Hubbells controlled the board of the company and held its principal offices at the time of the institution of this suit and the complainants are unable to dislodge them. They are usurping the several offices they hold in plain violation of the community principle upon which the Des Moines Company was organized and have arrogated to themselves, as individuals, the management of the vast property interests held in trust by the Des Moines Company. As the corporate representative and agency of the proprietary companies, the Des Moines Company has ceased to function and, unless equitable relief in this respect is awarded to the complainants, a dissolution of the Des Moines Company is the only alternative to perpetual domination and control of its affairs by these thoroughly discredited defendants, who assert their control by the suffrage of shares of stock held under a title which is fraudulent *per se* and is voidable by the complainants upon settled principles of equity. In such a situation, affecting as it does not only the rights of these complainants as public officers but also the vital interests of the City of Des Moines, an application of the well settled principles of equity above developed seems eminently proper and just.

VIII.

NO FACTS APPEAR IN THE RECORD CONSTITUTING AN ESTOPPEL OR LACHES DEFEATING THE EQUITY OF THE COMPLAINANTS.

That the doctrine of estoppel has no application in this controversy, except as it may operate against the Hubbells, is too clear for argument.

It is fundamental that no man can set up another's act or declaration as a ground of an estoppel, unless he, himself, has been misled or deceived thereby.

Further, as stated by Mr. Justice Field, speaking for this Court in *Brant* v. *Virginia Coal & Iron Company et al.*, 93 U. S., 326, at page 337:

> "It is also essential for its application with respect to the title of real property that the party claiming to have been influenced by the conduct or declarations of another to his injury was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. Where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

As F. M. Hubbell was an officer and director in the Des Moines Company and had for years been directing the trust enterprise, his actual knowledge of the condition of the title was certainly as good, in fact far superior to that of the proprietary companies and their representatives. Manifestly, he can claim no estoppel against them.

He, however, by reason of his official relation to the trust enterprise was the principal, if not the only, channel of information available to them in respect thereof. They were entitled to rely implicitly upon any statement

which he might make with reference thereto, and he is estopped to repudiate any such statement.

Take, for example, his dealings with Ashley in 1890 when he acquired the three-eighths interest in the Des Moines Company's stock:

He induced Ashley to part with the stock in question upon the distinct understanding that a one-eighth stock interest "shall be sufficient to represent a proprietorship in the company." He now seeks to repudiate this understanding, but is estopped to do so because, if a one-eighth interest was *not* sufficient to represent a proprietorship,

(a) Hubbell so represented the fact to Ashley;

(b) The circumstances were such that knowledge of the truth was imputed to Hubbell; and

(c) Hubbell thereby induced Ashley to change his position.

There are here present all of the elements of a complete estoppel:

Bigelow on Estoppel, 476.
Herman on Estoppel, 797.

The Hubbells insist, however, that at various times, especially during the period between 1897 and the date of the institution of this suit, the complainants had dealings or negotiations with the Hubbells for an extension of the supplemental agreement of May 10, 1889, and that by reason of these negotiations:

(a) They had induced the Hubbells to believe that the stock in the Des Moines Company represented valuable property rights;

(b) That they had led the Hubbells to believe that they recognized them as the lawful owners of the five-eighths interest in the stock of the Des Moines Company, and

(c) That in reliance upon these representations of the complainants they served with-

out direct compensation as officers and directors of the Des Moines Company for a long period of years solely for the purpose of building up the terminals and making the terminals valuable so as to enhance the value of their stock interest in the Des Moines Company.

We shall refer briefly to these propositions in their order, as stated.

The record discloses no representation on the part of the complainants, or either of them, respecting the property rights represented by the Des Moines Company stock apart from the definite agreement and understanding between F. M. Hubbell and Ashley already mentioned, namely, that a one-eighth stock interest in the Des Moines Company should be sufficient to represent a proprietorship in that company. How valuable such proprietorship may be the complainants do not know and have never stated. They do, however, regard it as an immensely valuable interest and have always so regarded it; and inasmuch as the five-eighths stock interest claimed to be owned by the Hubbells is equivalent to five proprietary interests in the Des Moines Company, it follows that the stock interests claimed to be owned by the Hubbells are very valuable. If their title to this five-eighths interest were good, they could readily dispose of the same to various railway companies whose lines enter the City of Des Moines, a number of which are already using the terminals and paying substantial rentals therefor.

The title under which the Hubbells claim to hold this stock has already been discussed.

Neither of the complainants had any knowledge of the purpose for which this stock had been acquired until Hubbell declared it in 1905, and they had no knowledge as to the character of the Hubbells' title thereto until the

Hubbells themselves introduced in evidence in this suit the records of the consolidated company, to which the attention of this Court has already been directed.

Afterwards the complainants amended the bill so as to obtain a decree setting the transactions aside.

The first definite advice to the Wabash Company of Hubbell's claim to own this stock interest came to it as follows:

Ashley, on behalf of the Wabash purchasing committee, was negotiating to sell certain of the Des Moines Company's bonds when the point was raised that by reason of foreclosure proceedings and reorganizations of the Northwestern and Northern Companies, parties to the supplemental agreement of May 10, 1889, these companies had ceased to exist, and that the reorganized consolidated company, their successor, was under no definite contract obligation to use the terminals and pay its proportion of the interest on the Des Moines Company's bonds. (Rec., 1561.) Ashley at once wrote Hubbell asking that he arrange for the execution of a new agreement with the reorganized consolidated company as a party, the agreement

> "to be exactly as before, except that the time must be made to correspond with the life of the bonds, or to be made for a period to extend beyond their maturity." (Rec., 1673.)

Upon receipt of this letter Hubbell wrote Cummins directing that he prepare a new agreement and suggesting certain changes, the significance of which, in the light of subsequent developments, cannot possibly be misunderstood.

We call especial attention to the following suggestions made in his letter to Cummins. He says:

> "On page one of the present contract, the extent of the present railway seems to be limited to the

east boundary line of the city on the east and to Farnham street on the west. I suggest that there be no limit either east or west."

The purpose of this we will indicate later.

He further says:

"I think it advisable to have the new contract recognize the ownership of the stock as it now exists, hence the last seven lines of Sec. 24 are unnecessary, as the Wabash Company and the D. M. N. & W. Company, each being bound to always have a director in the D. M. Union Company, can decide whether or not new railroad companies shall be admitted." (Rec., 1674-1675.)

Following the directions contained in the above letter Cummins prepared a new agreement which Hubbell mailed to Col. Blodgett with a letter from which we quote the following:

"Mr. Ashley wanted it sent to you for approval. As soon as it is approved, if you will return it to me I will have it printed in the form of a pamphlet and we will execute it in that form instead of the long sheet written in type.

If you have occasion to amend this contract, please do so as quickly as you can and return it to me and if the amendments are agreed to, we will proceed to print, say one hundred copies, four of which we will execute as originals, one for each party to the contract.

Mr. Ashley is in a great hurry for this contract and I therefore ask you to be as expeditious as possible." (Rec., 1679.)

The draft of contract so prepared by Cummins under Hubbell's directions, and forwarded by Hubbell to Col. Blodgett, contained the following provision relative to the Des Moines Company's stock:

"It is stipulated and agreed * * * that the capital stock of the said Des Moines Union Railway Company is now *rightfully* held as follows, to wit: Purchasing committee of the Wabash.

St. Louis & Pacific Railway Company	500 shares
Des Moines and North Western Company	1,000 shares
F. M. Hubbell & Son	2,500 shares

In spite of Hubbell's obvious anxiety to have the agreement approved and executed without revision, Col. Blodgett withheld his approval. A protracted negotiation ensued, but the parties failed to agree on a new instrument to be substituted for the supplemental agreement of May 10, 1889.

To analyze the correspondence and other data relative to this negotiation would be impracticable.

It is sufficient to say that a careful examination of this evidence will fail to disclose a single fact or representation on the part of the complainants, or their predecessors, which was inconsistent with the continued existence of the trust established by the contract of January 2, 1882.

Failing to agree upon a new agreement to substitute for the supplemental agreement of May 10, 1889, the parties, in order to cover the point originally raised by Mr. Ashley, executed the instrument known and heretofore referred to as the agreement of ratification and confirmation of July 31, 1897. This instrument contains the following provision:

> "That so much of said contract, a copy of which is hereto attached (contract of May 10, 1889) as relates to the issuance and distribution of the capital stock of the said Des Moines Company is no longer binding and that the capital stock of the Des Moines Company is held as follows:
> 500 by the purchasing committee of the Wabash Company, 1,000 by the Des Moines and Northwestern Railway Company and 2,500 by F. M. Hubbell & Son." (Rec., 506.)

This was certainly not an admission on the part of the complainants or their predecessors that the 2,500 shares

referred to were *rightfully* held by the Hubbells, the word "rightfully" inserted in the original draft of agreement submitted by Hubbell having been stricken out by Col. Blodgett. It was merely a recital of the fact not now disputed that the Hubbells then *held* the stock, and the recital was made under circumstances that did not put the Wabash Company upon inquiry as to the validity of their title.

At the time this so-called agreement of ratification was signed, the Wabash Company had no knowledge or no means of knowledge of the transaction under which the Hubbells acquired possession of this five-eighths stock interest in the Des Moines Company, and they had no knowledge or means of knowledge of the fraudulent purpose for which it was acquired until October, 1905. Moreover, at the time the agreement was executed the consolidated company was still under the domination and control of the Hubbells and could not effectively ratify a fraudulent transaction of which the Hubbells were beneficiaries.

The record further shows that after the St. Paul Company had succeeded to the rights of the consolidated company there were further negotiations with Mr. Miller, on the part of the St. Paul Company, and Mr. Ramsay, on the part of the Wabash Company, for an extension of the supplemental agreement of May 10, 1889.

Mr. Ramsay, called as a witness by the Hubbells, testified that he entered into these negotiations without having considered whether the Wabash Company had any right to use the terminals independent of the contract of 1889. Answering the question whether he had heard either of the Hubbells at any time set up a claim that the Wabash Company would not have the right to use that property after the expiration of the contract of 1889, he testified:

"I never heard any such claim set up." (Rec., 1264.)

Moreover, as we have already pointed out, both Mr. Miller and Mr. Ramsay and the other operating officials of the St. Paul and Wabash companies were dependent upon the Hubbells themselves for information respecting the terminal situation.

That the Hubbells, thus situated, cannot claim an effective estoppel by reason of any act or representation of the officials of the St. Paul and Wabash companies, is clear.

If, however, authority is necessary on this point, the case of *Chicago, Milwaukee and St. Paul Railway Company* v. *Des Moines Union Railway Company et al.*, 165 Iowa, 35, will serve the purpose.

This case grows out of another transaction of the Hubbells in connection with the terminal properties at Des Moines.

The salient features may be briefly stated:

At the time the Hubbells took from the treasury of the consolidated company the five-eighths stock interest in the Des Moines Company, which they now claim to own, they were negotiating to sell their holdings in the consolidated company to the St. Paul Company.

The terminus of the line of the consolidated company was at Farnam street, afterwards 16th street, where it connected with the tracks of the Des Moines Company at the latter's westerly yard limit.

This terminus was so fixed both by the contract of January 2, 1882, and the agreement supplemental thereto of May 10, 1889.

As soon as the negotiations with the St. Paul Company had taken the definite form of a contract, the Hub-

bells moved out the yard limit sign to 28th street so as to include in the terminal properties of the Des Moines Company, and exclude from the properties of the consolidated company, one mile of railway between 28th street and 16th street belonging to the consolidated company.

It was in furtherance of this fraud that Hubbell in his letter to Cummins of December 31, 1896, wrote:

> "On page one of the present contract, the extent of the present railway seems to be limited to the east boundary line of the city on the east and to Farnam street on the west. I suggest that there be no limit either east or west." (Rec., 1674.)

Early in 1898, in anticipation of the transfer of their interest in the consolidated company to the St. Paul Company, the Hubbells caused the Des Moines Company to assume possession and maintenance of this mile of railway, and when the consolidated company was transferred to the St. Paul Company the Hubbells represented to the latter that the line of the consolidated company terminated at 28th street.

From that time on until 1907 the Des Moines Company retained possession of and asserted control and ownership of the one mile of railway between 16th street and 28th street.

The true situation was not discovered until 1907 when the St. Paul Company promptly instituted suit to recover the property. The Hubbells resisted the suit and urged there, as they urge here, the plea of estoppel and acquiescence. In rejecting the plea, the Supreme Court of Iowa said:

> "The evidence to sustain the plea of estoppel tended to show that, with knowledge of plaintiff (St. Paul Company) and its grantor (the reorganized Consolidated Company) defendant (the Des Moines Company) expended large sums of money in grad-

ing, laying sidetracks, and maintaining the road. These expenses, however, were incurred with knowledge on the part of the officers of the defendants (F. M. Hubbell and F. C. Hubbell) that it did not own the road and that it was in reality the property of plaintiff or its grantor, and, this being so, it could not have been misled to its prejudice by the acquiescence of plaintiff in what was being done, to say nothing of plaintiff's ignorance concerning its title and that of its grantor. That there can be no estoppel under these circumstances is too elementary to require citation of authority."

With this recent expression of the Supreme Court of Iowa, upon an identical state of facts, we might well conclude the discussion.

The Hubbells claim, however, that they have devoted the better part of their lives to the building up of these terminals without compensation and without hope of compensation except such as might flow from the increased value of their stock.

Even if this were true it would not help them for the reason pointed out by the Supreme Court of Iowa.

It is, however, not true.

The record shows that the Hubbells devoted their time and energy to the trust enterprise for a period of fifteen years prior to the time when they acquired stock in the Des Moines Company. They were working then without compensation and were certainly working without hope or expectation of a reward flowing from the increased value of their stock, since they held no stock. The truth is that the management of the terminal enterprise was merely incidental to the real estate operations conducted for many years by the Hubbells under the firm name of F. M. Hubbell & Son. A dominant position in the management of the Des Moines Company gave them a grip upon the development of a great and

growing city; and it was their control and manipulation of the terminal enterprise which enabled them to conduct their real estate operations successfully and profitably, a fact admitted with obvious reluctance by F. C. Hubbell, under cross-examination. (Rec., 1199.) That their real estate operations were successful is not disputed, the vast extent of their holdings of real estate in the City of Des Moines being plainly indicated by the deed to the "Trustees of Hubbell Estate," executed December 31, 1903. (Rec., 681.)

In concluding this subdivision, and also in concluding the argument in number 278, we submit the following propositions, which have a direct materiality to every phase of this controversy:

Estoppel, acquiescence, ratification, laches and kindred equitable defenses, which have been developed by chancellors in furtherance of substantial justice, can never rest securely upon an equivocal state of facts. As stated in Bigelow on Estoppel, 6th Ed., page 641: "*Certainty* is essential to all estoppels." This is especially true of estoppel by laches. The law does not require a party to come into court to assert his rights until his rights have been clearly, directly and indubitably assailed. This rule is peculiarly applicable to the case of a trust. As pointed out by Mr. Justice Gray, speaking for this Court in *Speidel* v. *Henrici*, 120 U. S., 377, 386, time does not begin to run against a trust until

> "it is openly disavowed by the trustee, insisting upon an adverse right and interest which is *clearly* and *unequivocally* made known to the *cestui que trust;* as when for instance such transactions take place between the trustee and the *cestui que trust*, as would in case of tenants in common amount to an ouster of one of them by the other."

The complainants have been in undisputed use and enjoyment of the terminal properties continuously since

the establishment of the trust in 1882—originally under the contract of January 2, 1882, *alone*, and subsequently under this contract as supplemented by the agreement of May 10, 1889. At no time did the Des Moines Company by any *clear* and *unequivocal* action (even at the illegal stockholders' meeting of April 8, 1890), repudiate the trust or indicate any purpose to repudiate it. Nor did either of the Hubbells ever repudiate or question the trust until October, 1905, and promptly thereafter the complainants commenced this suit.

IX.

THE SO-CALLED SURPLUS EARNINGS WERE PROPERLY AWARDED TO COMPLAINANTS BY THE UNANIMOUS DECISION OF THE CIRCUIT COURT OF APPEALS.

The controversy as to the so-called "surplus earnings" presented in No. 279 will only become material in the event that this Court decides that the complainants have no proprietary interest in the Des Moines Company.

The Circuit Court of Appeals—all judges concurring—held that the revenues received by the Des Moines Company, and referred to as surplus earnings, belonged to the St. Paul and Wabash Companies. The majority opinion based such conclusion upon its interpretation of the supplemental agreement of May 10, 1889, taken as a whole, and the construction placed upon it by the acts of the parties thereto for a series of years following its execution. Judge Hook based his conclusion in the above respect not only upon the grounds above stated, but also upon the broader ground that the increments of the trust properties belonged to the proprietors under the terms of the trust.

Since the opinion of the Circuit Court of Appeals on this branch of the case was unanimous, and since the is-

sue thus disposed of involves no public interest and no rule or principle of law, which public interest requires this Court to determine, it may be that this court will conclude to dismiss as improvidently granted the *writ of certiorari* in No. 279, issued upon the petition of the Hubbells. *Furness Withy & Co., Ltd.*, v. *Yang-Tsze Insurance Association, Ltd. et al.*, 242 U. S., 430.

In the contingency, however, of this Court reaching a consideration of the question presented in No. 279, we submit the following brief remarks supplementary to the statement as to this controversy embodied in our preliminary statement of facts:

At the time of the filing of the bill of complaint in this suit, the so-called surplus earnings amounted to approximately $700,000. (Rec., 109-194.)

Although the record does not show the amount of these accumulations at the present time, the testimony having been taken a number of years ago, it seems proper to state to the Court that these accumulations now amount to approximately two million dollars, or a sum equivalent to approximately 500 per cent of the Des Moines Company's outstanding capital stock.

As explanatory of the large amount of these accumulations, it should be noted that they are in no sense surplus earnings, but are the *gross* receipts of the Des Moines Company for switching, demurrage on cars of the proprietary companies and excess baggage carried by them; and also for rental of parts of its property, principally unused space in the Union Passenger Station and privileges in connection therewith; all of the expenses incident to the production of these earnings being borne by the proprietary companies.

The proprietary companies paid the interest charge on all the capital invested in the terminal enterprise; they

paid the taxes on the Union Station, the cost of heating it and lighting it and operating it; they paid the cost of operating the engine houses and the cost of turning, housing and maintaining the engines, the cost of furnishing water and fire, cost of firing and fueling the engines; in short, all of the operating expenses incident to the creation of the revenues denominated by the Hubbells as surplus earnings were borne by the proprietary companies. (Rec., 320-323.) It was, of course, the intention of the parties that all revenues of the Des Moines Company should be applied in the reduction of operating expenses charged to the proprietary companies, and the agreement of May 10, 1889, was authorized and drawn on this theory. Furthermore the resolution authorizing it provided that if at the end of six months any party thereto should feel that the terms were in any respect unjust and should give notice to that effect, the subject should be one for readjustment.

In the agreement itself it was provided (in Article twenty-eight) that if any question arose respecting any matter *not* provided for in the agreement, the same should be adjusted by arbitration, the arbitrators to "determine what would be just and equitable for each of said parties to do in and about the matter in dispute."

It seems that as early as December, 1889, the question arose as to whether or not these particular revenues should be credited to the proprietary companies under Section four of the agreement, and as soon as receipts of this character arose, the accounting officers of the Des Moines Company, by direction of its executive committee and its president, credited the amount of such receipts upon the monthly bills against the proprietary companies. This was done for a period of nearly two years. (Rec., 272-313.)

Thereupon, as shown in the statement of facts, the board of directors of the Des Moines Company, at a meeting held February 11, 1891, adopted a resolution ordering:

> "That the rents collected for the use of the Company's real estate and the switching charges paid in be credited on the bills of the different tenant companies occupying this Company's terminals, giving to each Company its share ascertained by wheelage." (Rec., 497.)

A year later the board ordered a temporary suspension of the practice pending the accumulation of a small fund for working capital, but distinctly recognized the right of the proprietary companies to receive these revenues. (Rec., 499, 338.)

Thus, the conclusion reached by the Court of Appeals, relating to the disposition of excess earnings, is in exact accord with the interpretation placed upon the provisions of the supplemental agreement of May 10, 1889, by the parties themselves, as disclosed by their acts in the disposition of these earnings, until the Hubbells, in the interest of their claim of corporate control, determined to repudiate this interpretation.

Of course, if the Des Moines Company had undertaken to withhold these revenues from the proprietary companies, they would have at once demanded a readjustment of the matter as being manifestly unjust to them or would have asked that the matter be determined by arbitration under Section twenty-eight on just and equitable principles, and inasmuch as the proprietary companies were paying all the expenses incident to the production of these earnings, their right to receive them could not have been questioned.

The Board itself, therefore, undertook to adjust the matter, and we submit adjusted it properly upon either

one or the other of the following interpretations of its acts.

If it be contended that under a literal construction of Section four of the supplemental agreement of May 10, 1889, it is doubtful whether the same be broad enough to include these accumulations, this doubt was resolved against the Des Moines Company by reason of the practical construction given to this section by the Des Moines Company's board of directors. *Topliff* v. *Topliff*, 122 U. S., 121, 131.

If, however, it be assumed that these revenues are not covered and disposed of by Section four, then it follows that no definite disposition thereof was made by the supplemental agreement, and the matter was open for adjustment "upon just and equitable" principles by a board of arbitrators under Section twenty-eight. In this situation the board of directors of the Des Moines Company, acting as such arbitrators, deliberately adjusted the matter in the only way it could be disposed of without doing violence to every principle of justice and equity. *Central Trust Company of New York* v. *Wabash, St. Louis and Pacific Railway Company*, 34 Fed. Rep., 254.

It is submitted, therefore, that the decision of the Circuit Court of Appeals in No. 279 should be affirmed or that the *writ of certiorari* issued therein should be dismissed.

In Conclusion.

The complainants ask the following relief:

In Case No. 278. (a) That the Court determine that the Des Moines Company took title to all properties vested in it subject to the terms of the contract of January 2, 1882, and holds them in trust for the complainants

herein subject to their joint use and occupation in perpetuity, as provided in said contract. (b) That the defendants F. M. Hubbell, F. C. Hubbell and the firm of F. M. Hubbell & Son be directed to surrender and deliver to the complainants 2,500 shares of the capital stock of the Des Moines Company upon payment to them of the sum of $25,000, with interest thereon from January 29, 1894, or in the alternative that said F. M. Hubbell, F. C. Hubbell and F. M. Hubbell and Son, and each of them, be perpetually restrained, by the order and injunction of this court, from selling, pledging or otherwise disposing of said shares of capital stock of the Des Moines Company, issued in their names, and that as holders of stock certificates, representing the same they and each of them be restrained by the order and injunction of this court from exercising any control or management of the terminal properties, excepting such as shall be in accordance with the terms and spirit of the contract of January 2, 1882.

In Case No. 279. That the decree of the Circuit Court of Appeals be affirmed or, in the alternative, that the writ of certiorari issued therein be dismissed.

All of which is respectfully submitted.

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Counsel for Wabash Railway Company.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,

Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL and F. C. HUBBELL,

Respondents.

No. [redacted]66

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON,

Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,

Respondents.

No. [redacted]67

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Statement, Brief and Argument for Respondents in No. 278 and Petitioners in No. 279

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Petitioners,
vs.
DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL and F. C. HUBBELL,
Respondents.
No. 278

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON,
Petitioners,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Respondents.
No. 279

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Statement, Brief and Argument for Respondents in No. 278

These cases present two controversies in one and the same suit brought by the petitioners in No. 278 as com-

plainants against the respondents in that case as defendants, in the District Court of the Southern District of Iowa, Central Division.

One controversy concerns what has been called the Main Issue, which is as to the ownership of certain terminal property at Des Moines, and the other is as to what are called Surplus Earnings, arising under a contract of 1889 for the operation of the terminal properties.

The District Court decided the main issue in favor of the defendants, with a qualification as to which the defendants appealed, and decided the surplus earnings question unqualifiedly in their favor.

The Circuit Court of Appeals decided the main issue unqualifiedly in favor of the defendants and that decision was brought here for review by the petitioners in No. 278. The question of surplus earnings was decided adversely to the defendants and that decision is the subject of review in No. 279.

We shall deal first with the *Main Issue*.

STATEMENT OF FACTS.

Prior to 1881 the Wabash, St. Louis & Pacific Railway Company (hereafter sometimes referred to as the "Wabash Company") was the owner of a line of railroad extending from St. Louis northwesterly to Albia, Iowa. The Des Moines Northwestern Railway Company was the owner of a line of narrow gauge railway extending from Waukee, Iowa, a town some ten miles west of Des Moines, northwesterly to Panora, in which railway J. S. Clarkson and others were interested.

These railway companies being desirous of extending their lines to Des Moines and interchanging traffic

therein, the Wabash Company on December 8, 1880, entered into a contract with J. S. Clarkson and others (vol. II, p. 396), providing for the organization of the Des Moines & St. Louis Railroad Company and the building of a line from Albia to Des Moines with funds to be furnished by the Wabash Company. On the same day the Wabash Company also entered into a contract with the Des Moines Northwestern Railway (vol. II, p. 400), looking to the extension of that line to Des Moines and also in a northwesterly direction, and also looking to the use by that company of a terminal in the City of Des Moines to be owned by the Des Moines & St. Louis Railroad Company.

In pursuance of these contracts, the Wabash Company, in the early part of 1881, commenced to acquire property in Des Moines for terminal purposes taking the title in James F. How, who was then Vice-President of the Wabash Company, and charging the money so expended to the Des Moines & St. Louis Railroad Company (vol. III, p. 989).

In April, 1881, there was organized under the laws of Iowa a corporation known as the St. Louis, Des Moines & Northern Railway Company, with power to construct a railroad from Des Moines northwesterly to Boone, Iowa, and thence to the northerly part of the state. This company proceeded to construct a narrow gauge line from Des Moines to Boone, with a branch line from Clive (a station about five miles west of Des Moines), to Waukee.

In January, 1882, it entered into a contract (vol. II, p. 600) with the Des Moines Northwestern Company, by which it sold to that company the line from Clive to Waukee, and a one-half interest in the line from Clive

to Des Moines thereby giving the latter company access to Des Moines.

In the meantime there had been changes in the plans of these companies with respect to the terminal in Des Moines which it was originally intended should be owned exclusively by the Des Moines & St. Louis Railroad Company. In April, 1881, the plan was changed from an ownership exclusively by the Des Moines & St. Louis Company to an ownership jointly by the Des Moines & St. Louis and the Des Moines Northwestern Company (vol. III, p. 989), and later this plan was changed to an ownership jointly by the three companies—the Des Moines & St. Louis, the Des Moines Northwestern, and the St. Louis, Des Moines & Northern. This ripened into the contract of January 2, 1882, (vol. II, p. 411), which set out the terms on which the terminal property should be owned and used by the three railroads.

In the meantime additional terminal property was acquired and improvements made thereon with money furnished principally by the Wabash Company, though some of the money was furnished by General Dodge who was the principal owner of the St. Louis, Des Moines & Northern Company. The title to the terminal property was taken principally in the name of James F How, trustee, though a small amount was taken in the name of General Dodge, a small amount in the name of the Des Moines & St. Louis Company, and a still smaller amount in the St. Louis, Des Moines & Northern Company.

The Des Moines & St. Louis Company having constructed its line into Des Moines these three railroads or their lessees commenced to use and operate the terminal property jointly, as provided in the contract of

January 2, 1882. That contract provided that the terminal property should be owned jointly by the three railways in the proportions therein stated; that the title thereto should stand in the name of a trustee, who might or might not be a depot company; that it should be policed and maintained by the Des Moines & St. Louis Company, and that the expenses of maintenance and operation should be borne by the users on a wheelage basis.

Thus matters continued until December, 1884, when the representatives of the three railorad companies organized, under the laws of the State of Iowa relating to the organization of corporations for pecuniary profit, the defendant, the Des Moines Union Railway Company, with power to acquire, own and operate a terminal railway in the City of Des Moines, and especially authorized to issue its capital stock in purchasing the terminal property then owned by the three railway companies (see articles of incorporation of Des Moines Union Railway Company, vol. II, pp. 416-23).

Immediately upon the organization of the defendant, the Des Moines Union Railway Company, the three railways parties to the contract of January 2, 1882 at meetings of their stockholders passed resolutions authorizing their officers to transfer to the defendant company the ownership of the terminal property (vol. II, pp. 423-32). These resolutions did not authorize How and Dodge, the trustees, to transfer to the defendant company the legal title to the property, but simply authorized the beneficial owners to convey the ownership. The consideration for the transfer of the ownership was stated in the resolutions to be the bonds and stock of the defendant company.

On the same day the Board of Directors of the defendant company passed resolutions accepting the propositions of the three railroad companies (vol. II, p. 432). However, nothing was immediately done under these resolutions owing, no doubt, to the fact that at about this time the Wabash Company (which was the leading spirit behind all these transactions) became insolvent, its property placed in the hands of a receiver and sold to certain persons known in this record as the "Purchasing Committee." These resolutions were, however, never repealed and were finally acted upon.

Nothing further was done in the matter until in the fall of 1887, when these three railroad companies passed resolutions authorizing How and Dodge, trustees, to transfer the legal title to that portion of the terminal property which they held, to the defendant company (vol. II, pp. 435-43); these deeds to be delivered to the defendant company upon its giving to How and Dodge written agreements that it would deliver to the parties entitled thereto bonds of the defendant company equal in amount to the sums advanced by the Wabash Company and General Dodge in payment for the terminal property the improvements thereon, taxes and interest, and also its capital stock.

Following the passage of these resolutions, How and Dodge gave to the defendant company deeds to the property standing in their names; the Des Moines & St. Louis Railroad Company gave the defendant company a special warranty deed not only to that portion of the terminal property standing in its name, but also to all other property, including railways, embankments, buildings, improvements, franchises, etc., in which it had any interest, in the City of Des Moines,

Iowa; and the St. Louis, Des Moines & Northern Company gave to the defendant company a deed, which by its terms transferred an absolute title to that portion of the terminal property standing in its name (vol. II, pp. 446-59). No part of the terminal property stood in the name of the Des Moines Northwestern Company and no deed was given by that company to the defendant, but each of the three railway companies or their successors received the consideration provided for in the resolutions.

On May 1, 1888, the defendant railway company took possession of the terminal property and has ever since possessed and operated it.

Immediately upon the defendant's taking possession of the terminal property, it commenced to furnish terminal service to the three railroad companies or their successors, and negotiations were entered into to determine the terms on which such terminal service should be rendered. These negotiations rsulted in the contract of May 10, 1889 (vol. II, p. 479). This contract provided that for a certain consideration the defendant company should furnish to the three railway companies terminal facilities and perform certain terminal services for a period of thirty years from and after May 1, 1888. Ever since the execution of this contract the defendant has furnished to the three railroads and their successors, terminal facilities and services as therein provided.

On April 8, 1890, for the purpose of making the title and ownership of the terminal property by the defendant company more clear and certain, a meeting of the stockholders (among whom were complainants' predecessors) was held, at which the articles of incorpora-

tion of the defendant company were amended and certain resolutions passed (vol. II, pp. 488-97).

During the whole period from May 1, 1888 (the date the defendant took possession of the property), to the commencement of this suit (in 1907), the defendant treated the terminal property as its own. It acquired additional property, made improvements and extensions, made contracts to furnish service to other companies, and made other contracts with complainant companies and their predecessors. Not only during this period did defendant company treat the property as its own, but it was so treated by complainants and their predecessors and all others who had any relation to the properties. The facts in the record sustaining this are so voluminous that it is impracticable to make specific reference to them here, but such reference will be made in our argument on the facts.

THE ISSUANCE AND OWNERSHIP OF THE STOCK IN THE DEFENDANT COMPANY.

Under the contract of January 8, 1882, the ownership of the then terminal property was as follows:

One-half in the Des Moines & St. Louis Company.

One-fourth in the Des Moines Northwestern Company.

One-fourth in the St. Louis, Des Moines & Northern Company.

This contract also contemplated that the parties advancing money to acquire and construct the terminal should receive first mortgage bonds for the money so advanced. The resolutions of the three railways passed January 1, 1885, authorizing a transfer of the

ownership of the terminal property to the defendant company, provided:

> "That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract, to convey, assign and transfer," etc. (Vol. II, p. 424).

Under these resolutions, presumably the bonds would go to the persons or companies advancing the money (which were the Wabash Company and General Dodge), and the stock distributed between the three railway companies parties to the contract of January 2, 1882, in the proportion heretofore mentioned, viz. ownership of the terminal property.

In the resolutions of November 5, 1887, authorizing a transfer to the defendant company by How and Dodge, trustees, it was provided that the transfer should be made upon the defendant company agreeing to give to the purchasing committee of the Wabash Company first mortgage bonds equal in amount to the money advanced by the Wabash Company in purchasing and improving the terminal property, paying taxes thereon with interest, together with three-fourths of the capital stock of the defendant company, and upon giving to General Dodge bonds equal in amount to the money advanced by him for the same purpose, with interest, and one-fourth of the capital stock of the defendant company.

The reason for authorizing the issuance of three-fourths of the stock to the Purchasing Committee and one-fourth of the stock to General Dodge was that the Purchasing Committee was in equity entitled to the

stock coming to the Des Moines & St. Louis Company as well as to the Des Moines Northwestern Company, while General Dodge represented the St. Louis, Des Moines & Northern Company.

After the transfer of the property to the defendant company, but before possession was taken, the amount of bonds to be issued for the property was ascertained and the issuance thereof was authorized and directed by the defendant company (vol. II, p. 478). No certificates of shares of stock were actually issued until April 8, 1890.

In the meantime, however, the firm of Polk & Hubbell, of Des Moines, had acquired through contracts with the Purchasing Committee the line of road formerly owned by the Des Moines Northwestern Company extending from Des Moines, through Panora, to Fonda, and a one-fourth interest in the terminal property in Des Moines; or in lieu of such one-fourth interest, one-fourth of the stock and bonds issued by the defendant company in payment for the terminal property (Exhibits 263, 264, 265, vol. IV, pp. 1573-6; ex. 60, vol. II, p. 613). This property Polk & Hubbell transferred to the Des Moines & Northwestern Railway Company on May 19, 1888 (vol. II, p. 619). From this time up to about April, 1890, the stock of the defendant company, though not issued, was owned as follows:

One-half by the Purchasing Committee, as representative of the Des Moines & St. Louis Company;

One-fourth by the St. Louis, Des Moines & Northern Company;

One-fourth by the Des Moines & Northwestern Company.

On April 8, 1890, a resolution passed at the meeting of the stockholders of the defendant company authorized the issuance of $400,000.00 of the capital stock of the defendant company in final payment for the terminal property, the same to be issued to the corporations and in the proportions above named (vol. II, pp. 494-6).

Just prior to this time the defendant F. M. Hubbell, and General Dodge, each bought of the Purchasing Committee certain bonds of the defendant company, and one-eighth of its capital stock (vol. IV, pp. 1599-1601). This sale was ratified by the directors of the Des Moines & St. Louis Company (vol. IV, p. 1434). The stock, therefore, when issued on April 8, 1890, was issued one share to each of the directors of the defendant company, and

To the Purchasing Committee	996 shares,
To the Des Moines & Northern Railway Company (successor to the St. Louis, Des Moines & Northern Railway Company)	998 shares,
To the Des Moines & Northwestern Railway Company (successor to the Des Moines Northwestern Railway Company	998 shares,
To F. M. Hubbell	500 shares,
To G. M. Dodge	500 shares.

(Vol. II, p. 711.)

Again, on June 5, 1890, F. M. Hubbell bought of the Purchasing Committee an additional 500 shares of stock in the defendant company (vol. IV, p. 1613), which shares were transferred on the books of the defendant company August 28, 1890 (vol. II, p. 711); the

transfer being ratified by action of the Des Moines & St. Louis Company on February 11, 1891 (vol. IV, pp. 1437-8).

On January 15, 1892, the shares of the Des Moines & Northwestern Company, the Des Moines & Northern Company, F. M. Hubbell and G. M. Dodge, amounting altogether to 3,500 shares (less the shares necessary to qualify directors), were transferred to the Des Moines, Northern & Western Railway Company, a consolidation of the Des Moines & Northern Company and the Des Moines & Northwestern Company (vol. II, p. 711).

On October 4, 1893, the Des Moines, Northern & Western Railway Company pledged 2,500 shares of this stock to F. M. Hubbell & Son, as collateral security on certain indebtedness (vol. IV, p. 1480). On January 29, 1894, the Des Moines, Northern & Western Railway Company sold these same shares to F. M. Hubbell & Son in satisfaction of certain indebtedness (vol. IV, pp. 1482-3). These 2,500 shares of stock were transferred on the books of the Des Moines Union Company to F. M. Hubbell & Son October 4, 1893, and have ever since stood in their name (vol. II, p. 711). The capital stock of the defendant company is now owned as follows:

Wabash Railway Company (the remote successor of the Des Moines & St. Louis Railroad Company)	500 shares.
Chicago, Milwaukee & St. Paul Railway Company (remote successors of the Des Moines Northern & Western Company)	1,000 shares.
F. M. Hubbell & Son	2,500 shares.
Making a total of	4,000 shares.

being all the outstanding stock. A few of the shares belonging to each of the above owners stand in the name of the directors of the defendant company, who represent the owners on the Board of Directors.

On this branch of the case the complainants allege that they are the real owners of the terminal property and that defendant company simply holds the title in trust for them, or that that ownership is subject to an easement in their favor which gives them the right to use the property in perpetuity for terminal purposes, upon payment of the actual cost of operation, maintenance and taxes, thus depriving the defendant company from having any beneficial ownership in the property. The real purpose of the suit is to obtain a decree which will render the 2,500 shares of stock owned by F. M. Hubbell & Son of no value.

The amended bill of complaint (Rec., Vol. I, p. 82 et seq.) made numerous charges of gross fraud against the respondents, accusing them of manipulating, falsifying and virtually forging the records of the Des Moines Union Railway Company and other companies involved, so as to sustain their claims, but there is not an iota of evidence in the record to support any of the charges, no evidence was offered with a view to support them and the records in question were received in evidence without objection and indeed were brought into the case by stipulation of the parties.

The amended bill of complaint also charges (Rec. Vol. I, p. 111) that the Hubbells, father and son, and their three other associates, at a meeting of the Directors of the Des Moines Union Railway Company held on March 12th, 1906, "voted to allow additional salaries as follows, namely: To the defendant Frederick C. Hubbell as President of the company, for the

years 1901, 1902, 1903, 1904 and 1905, $37,500, and to the defendant Frederick M. Hubbell, as Secretary of the company for the same years, the sum of $12,500."

The proceedings of the meeting mentioned are shown in the Record, Vol. II, pp. 333 to 336, and there is not a word of salary as to either father or son. On the other hand the evidence is undisputed that from the time the terminal company began operations down to the time of the trial, the father gave much of his time and care—and the son made it practically his exclusive occupation—to the conduct of the terminal's affairs and business. And this without a dollar of direct pay. It was done not altogether as a matter of public spirit; they had a large interest in the terminal company and hoped to profit by its welfare and prosperity. And so they labored unceasingly for its development and expansion. And the petitioners accepted these gratuitous services, well knowing that they were being rendered and why they were rendered.

The claim of the respondents is that a good and perfect title to the terminal property passed to the Des Moines Union Railway Company, and that petitioners are estopped from questioning such title by their conduct and laches.

To go into a detailed statement of facts at this point supporting these defenses would serve no useful purpose and would result in unnecessary repetition.

The decree of the Court of Appeals adjudged that the defendant company had a good and perfect title to the terminal property, and that complainants have no interest therein except that which is represented by the stock of the defendant company which they own. It is this portion of the decree which complainants bring up for review by their writ of certiorari.

POINTS AND AUTHORITIES.

I.

THE DEFENDANT, THE DES MOINES UNION RAILWAY COMPANY, ACQUIRED AND POSSESSES A PERFECT TITLE IN FEE SIMPLE TO THE TERMINAL PROPERTY.

The great object in the construction of all instruments is to ascertain the intention of the parties.

Mauran v. Bullus, 16 Pet. 527.
Calderon v. Atlas Steamship Co., 170 U. S., 280.
Insurance Co. v. Trefz, 104 U. S. 203.
United States v. Bethlehem Steel Co., 205 U. S. 119.
Lowber v. Bangs, 2 Wall, 736.
Van Ness v. City of Washington, 4 Pet. 232.
Potomac Steamboat Co. v. Upper Potomac Co., 109 U. S. 681.

II.

THE ARTICLES OF INCORPORATION OF THE DES MOINES UNION RAILWAY COMPANY AND AMENDMENTS THERETO ARE VALID.

Upon the organization of the Des Moines Union Railway Company those who by contract were entitled to shares of stock were actually stockholders, though no certificates evidencing such shares were issued. As between shareholders and the corporation, the issuance of certificates of stock is not necessary.

Thompson on Corporations, 2d ed., vol. 4, §§ 3455, 3507.
First Nat. Bank v. Gifford, 47 Iowa 583.

Morrow v. Gould, 145 Iowa 4.
Hawley v. Upton, 102 U. S. 316.
Penderey v. Carleton, 87 Fed. 41.

The amendments to the articles of incorporation adopted April 8, 1890 (V. II, 488-94), were valid and are binding upon the stockholders, because:

(a) It is a presumption of law that proper and valid notice of a corporate meeting has been duly given to each stockholder, and the meeting itself regularly and lawfully called.

Cook on Corporations, 6th ed., vol. 2, § 600.
Chase v. Tuttle, 12 Atl. (Conn.) 874.
Hill v. Ry. Co., 55 S. E. (N. C.) 854.
Porter v. Robinson, 30 Hun. 209.
Pitts v. Temple, 2 Mass. 538.
Benbow v. Cook, 20 S. E. (N. C.) 453.
Hardin & Sons v. Iowa Ry. & Const. Co., 78 Iowa 726.
Moore v. Church, 117 Iowa 33.

(b) The presumption is that the minutes of a stockholders' meeting or of a meeting of a Board of Directors are correctly and properly entered of record, and while it is allowable to contradict the records of a corporation or show that the records do not fully disclose all the proceedings, the rule is that the proof in such cases must be so convincing and satisfactory as to leave no doubt that the matter attempted to be interpolated into the record did actually occur.

Thompson on Corporations, 2d ed., vol. 2, §§ 1845-6.

Hawkshaw v. Supreme Lodge, 29 Fed. (C. C.), 770.

Thompson on Corporations, 2d ed., vol. 2, §§ 1850-1.

Cook on Corporations, 6th ed., vol. 2, §§ 600, 605, 610.

In the Matter of the Election of St. Lawrence Steamboat Co., 44 N. J. L. 534.

Dennis v. Joslin Mfg. Co., 36 Atl. (R. I.) 129.

Durbrow v. Hackensack M. Co., 71 Atl. 59.

Heintzelman v. Druids' Relief Assn., 36 N. W. (Minn.) 100.

Sanborn v. School District, 12 Minn. 1.

McDaniels v. Flower, 22 Vt. 274.

Lane v. Brainerd, 30 Conn. 565.

(c) The adoption of the amendments and the resolutions were acts of the stockholders (acts of complainants' predecessors as distinguished from the acts of the defendant corporation). The articles of incorporation constituted a contract between the stockholders, the terms of which they had the right to change in the manner therein pointed out, without the consent of the corporate entity.

Thompson on Corporations, 2d. ed., vol. 1, §§ 172, 312.

Jones v. Electric Co., 144 Fed. 765 (C. C. A.).

Heald v. Owen, 79 Iowa 25.

Traer v. Prospecting Co., 124 Iowa 112.

(d) The amendments to the articles were properly signed, acknowledged and recorded, and notice thereof was given as required by the Iowa statute.

The statute law in force on April 8, 1890, was as follows:

> "That any of the provisions of the Articles of incorporation may be changed at any annual meeting of the stockholders or special meeting called for that purpose; but said changes shall not be valid unless recorded and published as the original articles are required to be; and said changes in the Articles need only be signed and acknowledged by the officers of said Corporation." (Ch. 88, Acts 22d G. A. [1888].)
>
> "Previous to commencing any business, except that of their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators, and recorded in the office of the Recorder of Deeds of the county where the principal place of business is to be, in a book kept therefor; the Recorder must record such articles as aforesaid, within five days after the same are filed in his office, and certify thereon the time when the same was filed in his office, and the book and page where the record thereof will be found. The said articles and certificate of Recorder shall be then recorded in the office of Secretary of State, in a book kept for that purpose." (Ch. 23, Laws, 17th G. A. [1878].)
>
> "A notice must be published for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain: * * *" (Sec. 1613, Code of Iowa, 1897, in force on April 8, 1890.)

The purpose of these statutory provisions is to give to the world (which includes the stockholders), notice of the articles of incorporation and amendments thereto.

Dempster Mfg. Co. v. Downs, 126 Iowa 80.

It is a presumption of law that all stockholders assent to any change in the articles of incorporation.

Holmes v. Royal Loan Assn., 107 S. W. (Mo.) 1005.
Cook on Corporations, 6th ed., vol. 2, § 503.

A dissenting stockholder must act promptly.

Cook on Corporations, 6th ed., vol. 2, § 503.
Rabe v. Dunlap, 25 Atl. (N. J.) 959.
Synnott v. Cumberland Bldg. Loan Assn., 117 Fed. 379 (C. C. A.).
Big Creek Gap Coal & Iron Co. v. American L. & T. Co., 127 Fed. 625 (C. C. A.).
Thompson v. Lambert, 44 Iowa 239.
Foster v. Mansfield, etc., 146 U. S. 88.

The complainants cannot raise the question of the validity of these amendments, because they acquired their stock and all interest in the property subsequent to the adoption of such amendments.

Equity Rule No. 94.

III.

THE COMPLAINANTS ARE ESTOPPED FROM ASSERTING THAT THE TITLE TO THE TERMINAL PROPERTY IS NOT VESTED ABSOLUTELY IN THE DES MOINES UNION RAILWAY COMPANY, AND FROM CLAIMING THAT THE STOCK OF THE COMPANY HELD BY THE DEFENDANT, F. M. HUBBELL & SON, DOES NOT REPRESENT A VALUABLE INTEREST IN SUCH PROPERTY, BECAUSE ALL THE PARTIES HAVE ACTED UPON THAT THEORY SINCE 1888

(ALMOST TWENTY YEARS PRIOR TO THE COMMENCEMENT OF THIS SUIT), AND BECAUSE, RELYING UPON THE DEEDS, CONTRACTS, RESOLUTIONS, AND ACTS BY WHICH THE COMPLAINANTS' PREDECESSORS TRANSFERRED THE PROPERTY TO DEFENDANT, AND THE ACTS OF THE COMPLAINANTS IN RESPECT THERETO, THE HUBBELLS PURCHASED OF COMPLAINANTS' PREDECESSORS STOCK IN THE DEFENDANT COMPANY FOR A VALUABLE CONSIDERATION, AND DEVOTED MANY YEARS OF THEIR LIVES TO THE CONSERVATION AND BUILDING UP OF THE PROPERTY, WITHOUT OTHER COMPENSATION THAN THAT WHICH THEY WILL SECURE BY REASON OF THE INCREASE IN THE VALUE OF THEIR STOCK.

The doctrine of estoppel always applies where one relying upon the acts and representations, either active or passive, of another, changes his position in respect to the subject matter.

Encyc. U. S. Supreme Court Rep., Vol. 5, p. 939.
Morgan v. Railway Co., 96 U. S. 716.
Kirk v. Hamilton, 102 U. S. 68.
Linton v. Nat. Life Ins. Co., 104 Fed. 584.
Given v. Times Printing Co., 114 Fed. 92.
Wright v. Lieth, 146 Iowa 290.
Seberg v. Bank, 141 Iowa 99.
Anderson v. Buchanan, 139 Iowa 676.
Morgan v. Des Moines Union Ry. Co., 113 Ia. 561.

IV.

THE COMPLAINANTS ARE ESTOPPED FROM MAINTAINING THIS SUIT BECAUSE OF THEIR LACHES.

For nearly twenty years prior to the bringing of this suit complainants and their predecessors knew all the facts; knew that the Des Moines Union Railway Company claimed to be the absolute owner of this property, and for seventeen years prior to the bringing of the suit knew that the Hubbells were acting in the belief that the stock owned by them represented a valuable interest in the terminal property.

Under ordinary circumstances a suit in equity will not be stayed for laches before, and will be stayed after, the time fixed by the analogous limitation at law.

Wyman v. Bowman, 127 Fed. 257 (C. C. A.).
Williams v. Neely, 134 Fed. 1 (C. C. A.).
Railway Co. v. Stevenson, 135 Fed. 553 (C. C.).

Section 3447 of the code of Iowa, 1897, provides:

"Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

* * * * * * * * *

"* * * Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years."

Pomeroy, Eq. Jur. Vol. 5, Sec. 23 says:

> "No doctrine is so wholesome when wisely administered as that of lashes. It prevents the resurrection of stale titles, and forbids the spying out from the records of ancient and abandoned rights. It requires of every owner that he take care of his property, and of every claimant that he make known his claims. It gives to the actual and longer possessor security, and induces and justifies him in all efforts to improve and make valuable the property he holds. It is a doctrine received with favor, because its proper application works out justice and equity, and often bars the holder of a mere technical right, which he has abandoned for years, from enforcing it when its enforcement will work large injury to many."

Galliher v. Cadwell, 145 U. S. 368.

The title and ownership of property is to be determined by the law in force in the state in which the property is located.

Kerr v. Moon, 9 Wheat 565.
McCormick v. Sullivant, 10 Wheat. 192.

Section 2918 of the code of Iowa, 1897, provides:

> "Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law."

The statute of limitations commences to run as to resulting trusts at the time of the creation of the trust.

Boone v. Chiles, 10 Pet. 177, 222.
Speidel v. Henrici, 120 U. S. 377, 386.

If there was ever an express trust in this case, it was expressly repudiated at the time of the amendments to the articles of incorporation of the Des Moines Union Railway Company on April 8, 1890, and the passage of the resolutions at that meeting.

Suits to establish implied trusts fall within the class of cases in which federal equity courts will follow the courts of law in applying the statute of limitations.

Beaubien v. Beaubien, 23 How. 190, 207.
Speidel v. Henrici, 120 U. S. 377, 386.
Riddle v. Whitehill, 135 U. S. 621.
Abraham v. Ordway, 158 U. S. 416, 420.
Penn. M. L. I. Co. v. Austin, 168 U. S. 685, 696.
Baker v. Cummings, 169 U. S. 189, 206.

V.

THE SALE AND TRANSFER OF THE TERMINAL PROPERTY TO THE TERMINAL COMPANY WERE NOT VOID AS AGAINST PUBLIC POLICY.

The organization of terminal companies and terminal systems is a natural and logical development in centers of population and is recognized as good public policy by the courts.

Morgan v. Des Moines Union, 113 Ia. 561.
United States v. Terminal R. R. Assn. of St. Louis, 224 U. S. 401.
Attorney General v. Terminal R. R. Assn., 182 Mo. 284.
People ex rel. v. Chessman, 7 Colo. 376.
State ex rel. v. Martin, 51 Kans. 462.

Mayor v. Norwich R. R. Co., 109 Mass. 103.
Union Depot Co. v. Morton, 83 Mich. 265.
Secs. 2099, 2130, Code of Iowa, 1897.

But, assuming that the original transaction was *ultra vires* as against public policy, the transaction was a completed one nearly twenty years prior to the commencement of this suit, and the courts will not now disturb it.

St. Louis, Etc., R. R. Co. v. Terre Haute, Etc., R. R. Co., 145 U. S. 393.

ARGUMENT.

I.

THE DEFENDANT, THE DES MOINES UNION RAILWAY COMPANY, ACQUIRED AND POSSESSES A PERFECT TITLE IN FEE SIMPLE TO THE TERMINAL PROPERTY.

The solution of this question does not, we think, involve any difficult or seriously disputed questions of law, but simply an examination of the origin and evolution of the terminal property. In its consideration it is well to start at the beginning and consider the origin and growth of the property, step by step, to determine the objects and intentions of the various corporations and persons who had to do with the transaction.

The first item for consideration is the contract of December 8, 1880, between the Wabash, St. Louis & Pacific Railway Company and J. S. Polk and others, which provided for the organization of the Des Moines & St. Louis Railroad Company (the remote predecessor and grantor of the Wabash Railway Company), and the construction by that company of a line from Albia to Des Moines with funds to be furnished by the Wabash, St. Louis & Pacific Railway Company, which line when constructed was to be leased in perpetuity to the last named company (Vol. II, p. 396).

This contract is of no great importance except that it furnishes a starting point for the consideration of this case and the origin of the scheme out of which the terminal proposition grew. The line from Albia to Des Moines was constructed as contemplated in the contract, and leased to the Wabash Company.

On the same date the Wabash, St. Louis & Pacific Railway Company entered into a written contract with the Des Moines Northwestern Railway Company and the Narrow Gauge Construction Company (Vol. II, p. 400), which recites the fact that the Des Moines Company owned a railroad from Waukee, a point on the Des Moines & Fort Dodge Railroad about fifteen miles west of Des Moines, to Panora; recites the making of the contract between the Wabash Company and J. S. Polk and others heretofore referred to, contemplating the construction and lease of the railroad of the Des Moines & St. Louis Company, and the desire of the Wabash Company to obtain the business originating on the road of the Des Moines Company, and provides for the extension of the road of the Des Moines Company in a northwesterly direction and also to Des Moines, and among the provisions are the following (p. 406):

> "It is further mutually agreed by and between the parties above named, that if certain pending negotiations between the Wabash Company and the Des Moines & Fort Dodge Company shall result in the Wabash Company's acquiring control, by lease or otherwise, of the Des Moines and Fort Dodge Road, then the Des Moines Company shall have the right (upon terms to be fixed by agreement of the parties, otherwise to be settled under the general provisions herein made for arbitration) to extend its line into Des Moines by laying a third rail upon the Des Moines & Fort Dodge Road.
>
> It is further mutually agreed by and between the parties above named, that if the pending negotiations between the Wabash Company and the Des Moines & Fort Dodge Company shall fail, then the railroad of the Des Moines Company shall be

extended to a connection with the railroad of the Des Moines & St. Louis Company, at or near Des Moines, substantially under the provisions of the foregoing agreement, but with such modifications as the greater cost of such extension may require. The Des Moines Company shall in that case have full right of entry into Des Moines, by laying a third rail on the Des Moines & St. Louis Road, and full use of the terminal facilities of that road, upon terms to be settled by agreement between the Des Moines Company and the Wabash Company, or else under the arbitration elsewhere provided for herein.

It is further agreed on the part of the Wabash Company that if it shall require control of the Des Moines & Fort Dodge Road, then the Wabash Company will permit the Des Moines Company to lay down a third rail on the track of the Des Moines & St. Louis Road, from the terminus of the Fort Dodge Road, in the City of Des Moines, eastwardly far enough to reach such pork houses and other sources of freight as are on the east side of the City of Des Moines, and are reached by the tracks of the Des Moines & St. Louis Road."

On page 989 of volume III appears an entry on the books of the Wabash Company made in April, 1881, as follows:

"For the following payments for a/c of real estate in the City of Des Moines, Iowa, charged to Des Moines & St. Louis R. R. in the months of Feb'y, March and April, 1881, now transferred to real estate Des Moines, the property being held for joint account of the Des Moines & St. Louis and Des Moines & North Western Rys., as per letter of James S. Clarkson, Pt. filed herewith:"

And then follow various items of expenditure which had theretofore been made for a terminal property in the City of Des Moines and charged to the Des Moines & St. Louis Railroad Company.

The foregoing contracts and this entry show that it was originally contemplated that the terminal property in the City of Des Moines should be owned by the Des Moines & St. Louis Railroad Company and not by a terminal company and not jointly by that road and the Des Moines Northwestern Railway Company.

The entry on the books of the Wabash above referred to shows that this plan as originally contemplated was changed in April, 1881, to a plan which contemplated that the terminal property should be owned jointly by the Des Moines & St. Louis and the Des Moines Northwestern companies, because at that time the charge upon the Wabash books was changed from a charge against the Des Moines & St. Louis to a charge against Real Estate Des Moines, to be held for the joint account of the two companies named.

In April, 1881, there were adopted under the laws of the State of Iowa articles of incorporation of the St. Louis, Des Moines & Northern Railway Company (Vol. II, p. 729), for the purpose of constructing a line of railway from the City of Des Moines through Boone, Iowa, toward the north line of the state.

This company proceeded toward the construction of this line of road, and also a branch from Clive, a station about five miles west of Des Moines, to Waukee, and on January 23, 1882, it made a contract with the Des Moines Northwestern Railway Company by which it sold to the latter company the branch from Clive to Waukee, and a one-half interest in the line from Waukee to Farnham street in Des Moines (the western

limit of the terminal property), giving the Des Moines Northwestern entrance into the City of Des Moines.

This shows that the plan of the Wabash Company to acquire a control of the Des Moines & Fort Dodge line failed, and the entrance of the Des Moines Northwestern Company into Des Moines was secured through this contract with the St. Louis, Des Moines & Northern Railway Company.

On January 2, 1882, a contract was entered into between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, trustee (Vol. II, p. 411), which shows that another change was made in the plan for a terminal in the City of Des Moines and by which it was contemplated that the terminal property should be owned and operated jointly by the three railway companies—the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines Northwestern Railway Company.

This contract recited the fact that the three companies desired to own and operate jointly terminal facilities in the City of Des Moines and use the same in common; that certain purchases had been made of real property in the said city in the name of James F. How, individually, and James F. How, trustee, and Grenville M. Dodge, and certain additional property had been appropriated by the Des Moines & St. Louis Railroad Company, and the construction of buildings and other improvements thereon had begun. It was agreed that the expense thereof should be borne one-half by the Des Moines & St. Louis Company and one-fourth each by the other companies, and that a depot

company might be organized to take permanent charge of the property upon the terms set forth in the contract. It specifically provided that the title to said property should be and remain in a trustee to be named by agreement of the said companies, and subject to the joint use and occupation of all the railway companies upon the terms therein contained; that the Des Moines & St. Louis Company should be charged with the police control and supervision and maintenance of the property, and that the expense thereof should be apportioned among the companies upon a wheelage basis. Other provisions were made in the contract not necessary to be here mentioned.

It will be seen from the foregoing that up to this time three different schemes had been adopted for this terminal property:

First. that it should be owned exclusively by the Des Moines & St. Louis Railroad Company.

Second. That it should be owned jointly by the Des Moines & St. Louis and the Des Moines Northwestern Railway Company.

Third. That it should be owned jointly by the three companies parties to the contract last above mentioned.

A short time prior to this date, on December 1, 1881, the Des Moines & St. Louis Railroad Company mortgaged its property to the Central Trust Company of New York (Vol. II, p. 509). This mortgage specifically excepted the terminal property in the City of Des Moines, the exception being in the following language (p. 511):

> "except the real estate, buildings and improvements thereon lying and being within the corporate limits of the City of Des Moines."

thus showing that the terminal property was to be handled as a proposition separate from the main line of the Des Moines & St. Louis Road.

Counsel for petitioners devote much time and space to a discussion and an analysis of this contract and the rights of the railway companies thereunder. To our mind the rights acquired by the railway companies by this contract are simple and easily stated. By its terms the three railway companies became the beneficial owners of the property.

Here it is proper to note that the ownership of the three railway companies was not equal, but one-half by one and one-fourth by each of the others. The usual and ordinary rights and incidents of ownership were recognized by the parties. They contemplated use of the property by other railway companies, for which those other companies were to pay. And what was to be done with the money received from such sources? Was it to go to the three in equal measure? By no means. It was distributed among them in the ratio of ownership. Section 10 of the contract of January 2nd, 1882 expressly provides "the rental to enure to the companies hereto in the same proportion as the original outlay." Vol. II, p. 413.

Each Company owned an undivided interest in the property, with the right to use the whole property for railway purposes. Whether, as between the three railway companies, we term the right of one company to use the whole property for railway purposes an easement, or what not, is entirely immaterial. Considering the three railways together, they not only owned

the property, but had the right to direct the trustees, How and Dodge to transfer the legal title to them or to any one whom they might select. As a result, they had absolute dominion over the property, with the right to continue to use it in accordance with the strict terms of the contract, or to make any other disposition of it to which the three railway companies could agree. They might by agreement have placed the legal title in a trustee, reserving to themselves the beneficial ownership; they might have transferred the property to a third person, reserving in themselves an easement; or they might have made any other disposition of it upon which they could agree. In other words, their power of disposition of this property was unlimited because they were its owners. The question we have for solution is what disposition they in fact did make of it, and for this purpose we must examine their subsequent acts and from them and the surrounding circumstances ascertain the true intent of their acts.

In this connection, however, it must be noted that looking forward to possible changes in their terminal plans, as the future might develop the necessity therefor, the parties had carefully segregated the terminal property from their main lines, as see the provision in the Des Moines & St. Louis mortgage above noted, eliminating the terminal property therefrom, the deed and contract above noted between the St. Louis, Des Moines & Northern Company and the Des Moines Northwestern Company, which limited the transfer to property west of the terminal, and to the mortgage given by the St. Louis, Des Moines & Northern to the Mercantile Trust Company (Vol. II, p. 552), which only covered property extending "from the western

boundary line of the City of Des Moines," etc. (p. 554).

The significance of these changes in the plan for the terminal property, and its careful segregation from the main lines, lies in the fact that they indicate that the terminal plan was in a formative stage, and the parties wished to so manage it that any desired change might be made in the future. It is for us to determine if such changes were made.

Subsequent to the making of this contract of January 2, 1882, additional property was acquired, improvements made thereon, and the property for some years was used jointly by the St. Louis, Des Moines & Northern Railway Company and by the Wabash Company, lessee of the other two companies.

Among the things which were contemplated by these railway companies with respect to this terminal property, as shown by these contracts already referred to, was that other companies should be induced to use it to the end that the expense of operating it might be lessened. The impracticability of thus operating the terminal property and having two or more railway companies operating over it indiscriminately is apparent upon reflection, and it is apparent that its impracticability became impressed upon the persons engaged in operating it, for we find that in 1884 steps were taken to change the method of operation and to provide for its operation by a terminal company, and in this step we have the first evidence of a change of the plan as outlined in the contract of January 2, 1882.

At this point we are aided by a concession made by counsel for the Chicago, Milwaukee & St. Paul Railway Company on page 13 of their argument in the Court of Appeals, as follows:

> "It needs no railroad man to know that such use in common by three different companies, without any central head or management, would lead to confusion and to danger. It was quite natural, in fact necessary, that the control and management and in fact the operation of this property should be put in charge of some one individual, or some natural or artificial person."

In ascertaining the changes that were made in the terminal plans as outlined in the contract of January 2, 1882, we may therefore start with the concession that those plans had proved impracticable and the necessity for a change had become apparent.

At the instance of the three railway companies parties to the contract of 1882 a meeting of the incorporators of the defendant, the Des Moines Union Railway Company, was held in Des Moines, Iowa, at which were adopted the original articles of incorporation of the defendant company (Vol. II, pp. 416-23). The articles adopted set out by reciting the fact of the execution of the contract of January 2, 1882, and incorporate the contract as a preamble to the articles.

Counsel for petitioners have attempted to make much of the recitations contained in these articles of incorporation and in the minutes of the meeting at which they were adopted, but an examination of them will, we think, demonstrate that they support our view of this case. The first recitation is as follows (p. 416):

> "At a meeting held in Des Moines, Iowa, on the 10th day of December, 1884, for the purpose of organizing a Union Depot & Railroad Company to be run and operated in and around the City of Des Moines, Iowa, in pursuance of a contract heretofore, to wit: on the 2nd day of January, A. D. 1882, entered into * * *."

It will be noted that the purpose of this meeting is stated to be the organization of a "*Union Depot & Railroad Company to be run and operated in, around and about the City of Des Moines, Iowa.*" The contract of January 2, 1882, did not by its terms provide for a railroad company which should operate a railroad in and around the City of Des Moines, but only for a depot company which would simply have permanent charge of the property, without the power of ownership or operation. This demonstrates a change in the plans of the parties.

After setting out the contract the articles provide:

> "Whereas each of said railway companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said company, and " (p. 419).

This recitation did not accurately state the facts. As a matter of fact, neither one of the three railway companies had contributed a dollar directly toward the purchase or construction of this terminal property. The money used for its purchase and construction had all been furnished by the Wabash Company and by General Dodge. No one else had put a dollar into it. The only way in which the three railway companies, parties to the contract of January 2, 1882, put any money into it was that the Wabash Company had charged the money advanced to these three companies.

The articles then recite:

> "Whereas it was provided in the contract aforesaid that a Depot Company might be organized to

take permanent charge of the property, *and it was the understanding of the parties that such company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto.*"

This recitation shows one of two things: either that the contract of 1882 did not correctly state the understanding of the parties, or that the plan for the terminal had changed since the execution of that contract. It recites that "*it was the understanding of the parties that such company might acquire, operate and maintain said property.*" No such understanding can be found in the language of the contract. The contract provides that the property should be acquired by the three railway companies, though the title might be taken in the name of a trustee; that it should be operated by them jointly, and that it should be maintained by the Des Moines & St. Louis Railroad Company, while this recitation evidenced the fact that it was the understanding that the property should be acquired, operated and maintained all by a separate company.

The articles then continue (p. 420):

> "Now, therefore, for the *purposes aforesaid*, as well as for *those hereinafter expressed*, the undersigned hereby associate themselves in a body corporate, and adopt the following:"

The object, then, of organizing the defendant company was not merely to provide a depot company referred to in the contract, but for other purposes. One of the "purposes aforesaid" was that "such company might acquire, operate and maintain said property,"

and the purposes "hereinafter expressed" must be those which are subsequently contained in the articles of incorporation.

Article 1 provides that the name of the corporation shall be the Des Moines Union Railway Company. This name is significant in fixing the intention of the parties. It wasn't a mere depot company or a company organized for the purpose of holding the legal title to the terminal property in trust, but it was a corporation organized for the purpose of performing the duties and functions of a railway terminal company.

As will appear later there is great difference under the laws of Iowa between a depot company and a railway company. The Des Moines Union is a railway and terminal company.

Article 2 provides:

> "The general nature of the business to be transacted shall be the *construction, ownership* and *operation of a railway* in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stockyards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter I of Title IX of the Code, and the amendments thereto."

This article provides that this railway company shall exercise the following powers and duties not contemplated by the contract of January 2, 1882:

(1) The construction of a railway;

(2) The ownership of a railway;

(3) The operation of a railway;

(4) The construction of depots, freight houses, railway shops, repair shops, stockyards, and whatever else may be useful and convenient for the operation of a railway at the terminal point in Des Moines, Iowa;

(5) The ownership of such depots, freight houses, etc.;

(6) The use of such depots, freight houses, etc.;

(7) The transfer of cars from the line or depot of one railway to another;

(8) The transfer of cars from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots now constructed or hereafter constructed in or around the City of Des Moines;

(9) The possession of all powers conferred upon corporations for pecuniary profit by Chapter I, Title IX of the Code, and the amendments thereto.

None of these nine functions was contemplated by the contract of January 2, 1882. It is evident from these provisions that the plan of ownership and operation of the terminal property had changed since the making of that contract.

It is then provided in article 2 in part as follows (p. 420):

> "* * * All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882."

Much time and space has been devoted to a discussion of this provision by counsel for petitioners. In its interpretation we must give force and effect to other provisions in the articles of incorporation and the acts and conduct of the parties in relation thereto. This provision is purely interpretative in its character and cannot serve to qualify any provision of the articles which is clear and express in its terms, nor can it nullify any grant of power to the Des Moines Union Company clearly made by the articles. Manifestly, it cannot be construed to nullify or modify the power of the terminal company to construct, own and operate a railway in, around or about the City of Des Moines, because these powers are expressly granted. Manifestly, also, it cannot mean that the terminal property is to be owned or operated according to the terms of the contract of January 2, 1882, because that contract provides for the ownership by the three railway companies; provides for its operation by the three railroad companies jointly, and provides for police control, supervision and maintenance by the Des Moines & St. Louis Railroad Company.

From the beginning these parties had in mind the construction of terminal facilities in the City of Des Moines separate from their main systems, as well in ownership as in operation, which might be used by all of them as well as others in connection with the oper-

ation of their roads. This primary object was never departed from. The departures which were made were with respect to the method by which this primary object should be attained.

Article 3 provides:

> "*The capital stock of this corporation* shall be one million ($1,000,000.00) dollars, which shall be divided into shares of one hundred ($100.00) dollars each, and shall be paid in at such times and in such manner as the board of directors may determine, *and the board are authorized to receive in payment therefor the property and franchises* in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, trustee, Jas. F. How and Grenville M. Dodge."

This article clearly contemplates two things not contemplated by the contract of January 2, 1882:

First. That the stock should be paid for when issued.

Second. That it might be paid for by a transfer of the terminal property and franchises.

It needs no argument to show that these purposes were not contemplated by that contract, and that it evidences a change in the plan.

Under the contract of January 2, 1882, the three railway companies owned this terminal property, although it was contemplated that the title there to might stand in the name of the trustee. As such beneficial owners, and under that contract, they had power to control it because they owned it and because of the terms of the contract.

Counsel for the Wabash Company, speaking of what was intended to be represented by this stock, on page 39 of his Coprt of Appeals brief, frankly says:

> "* * * I think it axiomatic that a corporation takes absolutely that which is transferred to it in exchange for its shares of stock, and, accordingly, that the Depot Company *does not hold* the servient estate in trust, but absolutely."

The question here is, what was intended, by the article above quoted, should be received by the terminal company in exchange for "its shares of stock."

The article says, first, that it shall receive "the property and franchises in the City of Des Moines now held by the Des Moines & St. Louis Railroad Company."

Under the contract of January 2, 1882, the Des Moines & St. Louis Railroad Company owned a one-half interest in the terminal property, which included not only the real estate where absolute title had been acquired by deed, but also the easement or right of way over property acquired by condemnation proceedings or right of way deed; also the embankments, ties, rails, buildings, and other structures located upon the property and used in connection with the operation of the terminal; also the franchise or right to use the property for terminal purposes. All these were property and were the things that were contemplated should be transferred to the terminal company in exchange for its stock.

Likewise, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railroad Company owned and held each a one-fourth interest in the same property. James F. How and Grenville M. Dodge held the legal title to a por-

tion of the real estate. The whole property and every interest therein was owned and held by these three railroad companies and the trustees, and it was this property which it was contemplated should be transferred for the stock—therefore adopting the axiom stated by counsel for the Wabash; this article contemplated that the terminal company should take "absolutely" the whole terminal property "in exchange for its shares of stock."

It evidently was their desire to change the status of the property and turn it over to a separate corporation which should own and operate it, but in connection therewith they did not desire to lose their power of control and therefore it was in their opinion necessary to put something into the articles of incorporation by which a limitation should be placed upon the power of the terminal company to control the property, and in article 2 they provide:

> "* * * All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, trustee, and Grenville M. Dodge. The said company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other railway company—provided that the assent in writing of the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named."

And in article 4 it was provided:

"Four members of the board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the stockholders' meeting of this company by the secretary of one of the respective companies aforesaid and such certification shall be conclusive.

The provisions herein with respect to nomination for the board of directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the board of directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided."

Now, it wasn't necessary to put these provisions into the articles of incorporation if it was not intended to give the terminal company the title and ownership of the property. If the terminal company simply was to

hold the property as trustee, it would have no power to dispose of or encumber it without the consent of the beneficial owners. So these provisions, instead of showing that it was intended that the three railway companies should retain an interest in the property, show that it was intended that the terminal company should own the property, but these provisions were put in as a limitation upon the power of the corporation to alienate its property.

Now, of course, the adoption of these articles did not change the title or ownership of the terminal, but they clearly indicate the purpose of the parties instrumental in organizing it to transfer the ownership and title, just the same as the building of a house would indicate the purpose of the builder that some one should live in it.

These articles were adopted on the 10th day of December, 1884. On the 1st day of January, 1885, there were certain resolutions passed at meetings of the stockholders of the three corporations parties to the contract of January 2, 1882. To correctly understand what was intended by these resolutions it is well to consider first the resolutions adopted by the Des Moines Northwestern Railway Company. This company did not hold the legal title to any portion of the terminal property. The only interest it had in the property was that evidenced by the contract of January 2, 1882, under the terms of which it was the beneficial owner of a one-fourth interest.

The resolutions appear commencing at page 426 of volume II, and in them it is first

> "Resolved, that this company ratifies and approves the selection heretofore made of J. S. Polk and F. M. Hubbell to serve as directors of the Des Moines Union Railway Company in accordance with the provisions of article four (4) of the articles of incorporation of that company authorizing this company to nominate two members of the board of directors of said company."

In connection with this resolution it is important, for reasons which we will hereafter state, to note that from the organization of the Des Moines Union Railway Company down to the adoption of certain amendments to the articles of that company, the three railway companies parties to the contract of January 2, 1882, exercised the power given them in article 4 of the articles of incorporation, to nominate directors of the Des Moines Union Railway Company.

The resolution then continues:

> "Whereas, the Des Moines, St. Louis Roailroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How, and James F. How, trustee, on the 2nd day of January, 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines which had theretofore been held and used by certain of the individual parties hereto for certain purposes and upon certain conditions set out in said contract, and"

The only importance of this recitation is to indicate that the subject matter of the resolutions which follow.

The resolution then continues:

> "Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract, *to acquire, hold, use and enjoy* the real estate, property rights and franchises in the City of Des Moines east of Farnham street in said city of the aforesaid railway company and signatories of said contract acquired or held thereunder, and to carry out the purposes of the said contract of January 2nd, 1882."

Note the use of the word "*enjoy*" in connection with the above resolution. This corporation was organized not only to acquire, hold and use the real estate, but also to *enjoy* it. We take it that the word "acquire" used in this connection means to get the title to the property; the word "hold" means to be possessed of it; the word "use" means to operate it for the purpose of carrying on a railway business, and the word "enjoy" means to derive a profit or benefit from the acquiring, holding and using of the property. The things which it was contemplated this terminal commany was to "*acquire, hold, use, and enjoy*" were, *first*, the real estate; *second*, the property rights, and *third*, the franchises. These three words comprised all the interest which the three railroad companies or the trustees had in the terminal property.

The resolution then continues:

> "Now, Therefore, Resolved, That this company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company."

Note that this resolution accepts and ratifies the articles of incorporation of the defendant railway company, as in substantial accord and compliance with the terms of the contract. When they ratified the articles of the Des Moines Union Railway Company they ratified that portion which gave to that railway company the power to own, construct and operate a terminal property in the City of Des Moines, and the power to acquire the ownership of this particular property and pay therefor by an issuance of its stock, as well as any other portion of the articles of incorporation. And note, also, that by this resolution they undertook to make effective the purposes of the Des Moines Union Railway Company, which were to acquire the ownership, management and control of this terminal property, and to pay therefor by an issuance of its capital stock.

This resolution adopted by each of the three railway companies relative to the articles of incorporation, recites the execution of the contract of 1882, the adoption of the articles of incorporation, that it was such a corporation as contemplated in the contract, and that the corporation so contemplated was to acquire, hold,

The only importance of this recitation is to indicate that the subject matter of the resolutions which follow.

The resolution then continues:

> "Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract, *to acquire, hold, use and enjoy* the real estate, property rights and franchises in the City of Des Moines east of Farnham street in said city of the aforesaid railway company and signatories of said contract acquired or held thereunder, and to carry out the purposes of the said contract of January 2nd, 1882."

Note the use of the word "*enjoy*" in connection with the above resolution. This corporation was organized not only to acquire, hold and use the real estate, but also to *enjoy* it. We take it that the word "acquire" used in this connection means to get the title to the property; the word "hold" means to be possessed of it; the word "use" means to operate it for the purpose of carrying on a railway business, and the word "enjoy" means to derive a profit or benefit from the acquiring, holding and using of the property. The things which it was contemplated this terminal company was to "*acquire, hold, use, and enjoy*" were, *first*, the real estate; *second*, the property rights, and *third*, the franchises. These three words comprised all the interest which the three railroad companies or the trustees had in the terminal property.

The resolution then continues:

> "Now, Therefore, Resolved, That this company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company."

Note that this resolution accepts and ratifies the articles of incorporation of the defendant railway company, as in substantial accord and compliance with the terms of the contract. When they ratified the articles of the Des Moines Union Railway Company they ratified that portion which gave to that railway company the power to own, construct and operate a terminal property in the City of Des Moines, and the power to acquire the ownership of this particular property and pay therefor by an issuance of its stock, as well as any other portion of the articles of incorporation. And note, also, that by this resolution they undertook to make effective the purposes of the Des Moines Union Railway Company, which were to acquire the ownership, management and control of this terminal property, and to pay therefor by an issuance of its capital stock.

This resolution adopted by each of the three railway companies relative to the articles of incorporation, recites the execution of the contract of 1882, the adoption of the articles of incorporation, that it was such a corporation as contemplated in the contract, and that the corporation so contemplated was to acquire, hold,

use and enjoy all of the property in question; and then it is resolved that the railway company accepts and ratifies the articles of incorporation as in substantial accord and compliance with the terms and conditions of the contract of 1882, and the company "undertakes to discharge all the obligations imposed upon it by said contract, in order to make effective the *purposes of said Des Moines Union Railway Company.*"

The resolution then continues:

> "Resolved, That the proper officers of this company be authorized *upon the issuance to it of the share of the bonds and stock* of said Des Moines Union Railway Company to which it may be entitled under said contract to *convey, assign and transfer* to said company all its *right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property* in the City of Des Moines east of Farnham street in said city now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract."

Now, what was it, the transfer of which was intended by the stockholders to be authorized by this resolution? Was it something which it had, or something which it didn't have? The Des Moines Northwestern Railway Company did not have the *legal* title to a single shovelful of dirt, a single tie, a single rail or spike, or any other portion of the terminal property. What it had, and all it had was the beneficial interest in one-fourth of the property contemplated by the contract of January 2, 1882.

If it had been intended to authorize the transfer only of the legal title to the property, there would have been no occasion whatever for the passage of this resolution. What would have been necessary for such a purpose would have been a resolution authorizing the persons who held the legal title to make the transfer. The only purpose of this resolution was to authorize the transfer of something which it had, which as we have said, was the beneficial ownership of a one-fourth interest in the property, and this is exactly what the language of the resolution authorizes. It says:

> *"assign and transfer to said company all its right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines."*

which is covered by the contract of January 2, 1882.

What possible interest did or could the Des Moines Northwestern Railway Company have had in this property which was not authorized to be transferred by this resolution? What right, title or interest is reserved by the terms of this resolution? What more appropriate language could have been selected to express an intention to transfer the *ownership* of the property?

The resolutions speak of carrying out the purposes of the contract of January 2, 1882. That was precisely what they were doing, and doing it by transferring the terminal property to the terminal company and taking to themselves the stock of the terminal company. Through this stock ownership they could control the terminal company.

On pages 40 and 41 counsel for the Milwaukee Company in their Court of Appeals brief discuss the rights

of that company as the successor of the Des Moines Northwestern Railway Company (owner of the Fonda line), and assert that by the contract of January 2, 1882, the Des Moines Northwestern Company acquired a one-fourth interest in the terminal property, and then say:

> "Now, two questions arise. Could any conveyance or any act of the St. Louis Company and the Northern Company, or either of them, cut off or destroy this right of the Northwestern Company, which they had solemnly granted to it by the contract of January 2, 1882? Or has the Northwestern Company or its successors ever done anything that would destroy or convey away this right to the use of this property?"

The answer to the first query above quoted is, of course, no. The rights of the Northwestern Company could only be cut off by its own action or that of its successors. When we come to answer the second question as to what the Northwestern Company or its successors have done to convey its interest in this property, the anwer is easy.

In the Milwaukee's chain of title there appear the following owners of the property in the order named:

1. The Des Moines Northwestern Company.

2. Polk & Hubbell, who acquired the property in pursuance of a contract with the Wabash purchasing committee, and through a foreclosure of the original Des Moines Northwestern mortgage.

3. The Des Moines & Northwestern Railway Company, which acquired the property from Polk & Hubbell.

4. The Des Moines Northern & Western Railway Company, which acquired the property by the consolidation of the Boone and Fonda lines.

5. The Des Moines Northern & Western Railroad Company, which acquired the property through a foreclosure of a mortgage given by its immediate predecessor.

The act of the Des Moines Northwestern Railway Company by which a conveyance of the ownership of the property was authorized, consisted in the resolutions from which we have just quoted.

These resolutions are supplemented by the resolutions of 1887 hereafter referred to.

If the purchase price provided for in these resolutions had been paid to the Northwestern Company nd the conveyance authorized by this resolution made, no question could arise.

The thing actually done was this: Polk & Hubbell made a contract with the purchasing committee of the Wabash Railroad Company, which owned the Des Moines Northwestern bonds, by which the purchasing committee agreed to sell to Polk & Hubbell the Des Moines Northwestern Road extending northwesterly from Farnham street, and a one-fourth interest in the terminal property; title to be secured by a foreclosure of the Des Moines Northwestern line mortgage. By this contract, however, the purchasing committee retained the option of delivering to Polk & Hubbell one-fourth of the stock and bonds which it might receive from the terminal company in payment for the one-fourth interest in the terminal property, in lieu of conveying such interest in the terminal property.

This mortgage was foreclosed and Polk & Hubbell acquired the title to the Des Moines Northwestern Line through the foreclosure proceedings, and received from the purchasing committee one-fourth of the stock and bonds of the terminal company in lieu of one-fourth interest in the terminal property.

Polk & Hubbell transferred to the Des Moines & Northwestern Railway Company the Des Moines Northwestern or Fonda line, commencing at Farnham street, and one-fourth of the stock and bonds of the terminal company which they had received in lieu of an interest in the terminal property.

In this way the grantee of the Des Moines Northwestern Company received the purchase price for the former's interest in the terminal property, in lieu of receiving an interest in the terminal property itself.

As heretofore noted, there appears in the Milwaukee's chain of title the decree of foreclosure of the mortgage given by the Des Moines Northern & Western Railway Company, and the deeds executed in pursuance thereof. The Milwaukee Company have no rights which were not included in this foreclosure and these deeds. The mortgage referred to covered only the railroad property extending northwesterly from Farnham street, and the only interest ever possessed by the Des Moines Northwestern Company in the terminal property at Des Moines covered by this mortgage under which the Milwaukee holds was the interest represented by the stock acquired by Polk & Hubbell pursuant to their agreement with the Wabash purchasing committee.

Very clearly every right of the Des Moines Northwestern had thus been transferred to Polk & Hubbell, and that transfer was in the form of a transfer of the

consideration which was to be paid for the interest in the terminal property. There was no occasion for any direct conveyance by any one, of the interest of the Des Moines Northwestern in the terminal property, because no interest in that company appeared of record.

After the adoption of this resolution another one was offered and adopted which reads as follows:

> "Resolved, That the proper officers of the company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the company to the Des Moines Union Railway Company on the 1st day of January, 1885, or as soon thereafter as practicable, leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein." Vol. II, p. 427.

Taking these resolutions as a whole, it will be noted that there were two subjects covered by them—first, a sale and transfer of this property to the Des Moines Union Railway Company and the payment by that company in bonds and stock, the amount of which, so far as the bonds were concerned, could only be ascertained by an accounting between the companies. This would necessarily take some time. It was desired that the management of the property should be turned over to the defendant company at once, the reason being, we assume, that the impracticability of operating it in the manner in which it had theretofore been operated was pressing upon the parties. The last resolution pro-

vided for an immediate transfer of the possession, control and operation of the property, leaving the settlement between the parties, as authorized in the prior resolution, for future adjustment. Thus, as we have said, two objects were intended:

First. The immediate surrender of the possession and operation of the property; and

Second. A transfer of the ownership thereof and a settlement of the purchase price.

The same identical resolutions were on the same day passed by the stockholders of the St. Louis, Des Moines & Northern Railway Company (Vol. IV, pp. 1473-4), and by the stockholders of the Des Moines & St. Louis Railroad Company (Vol. II, pp. 430-2).

The only difference between the situation of the Des Moines Northwestern Company and the situation of the St. Louis, Des Moines & Northern and the Des Moines & St. Louis companies was that the title to a small portion of the terminal property stood in the name of each of the latter two companies, so that they not only owned the beneficial interest in the terminal property, in accordance with the contract of January 2, 1882, but they also held the legal title to a small portion of it.

The resolutions passed by the two latter companies authorized the transfer of not only the property to which these companies had the legal title, but also all their right, title and interest of whatever kind and character in the whole terminal, whether it stood in their names or the names of others. The effect of this was to authorize the transfer of the *ownership* of the property.

Supposing these resolutions had been immediately carried out and these railway companies had executed the deeds authorized: the effect would necessarily have been to have given to the defendant company the beneficial ownership of the whole terminal, but the legal title to only that portion of it which stood in the name of the St. Louis, Des Moines & Northern and the Des Moines & St. Louis companies.

On the same day the board of directors of the defendant, Des Moines Union Railway Company, held a meeting, a record of which appears on pages 432 to 435 of volume II. At this meeting certain resolutions were passed with respect to the subject matter under consideration.

The first paragraph of the resolution is as follows:

> "Whereas, the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, the Des Moines Northwestern Railway Company, G. M. Dodge and James F. How, both in his individual right and as trustee under the contract mentioned and set out in the Articles of Incorporation of this company, have by their o officers and by themselves, personally notified this company that they have each for themselves approved of the organization of this company, and have directed their officers, agents and trustees to surrender and deliver to this company the railroad property and franchises mentioned in said contract, and requested it to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in said contract, and that said railway companies and individual signatories have indicated their desire and purpose to transfer said property to this company in accordance with the terms of said contract."

This is the only intimation in the evidence that the trustees, How and Dodge, were at this time authorized to transfer any of this property.

The resolution then continues:

> "Whereas, it is desirable that this company should at once take possession of said property and maintain, control and operate the same, and that it should procure all necessary conveyances and transfers of the same as soon as practicable, and make provisions for and pay for said property so proposed to be conveyed to it, Now, Therefore, be it Resolved,"

It will be noted that the recitation last above set out, like the resolutions of the three railway companies, includes two propositions:

First. The immediate possession, maintenance, control and operation of the property; and

Second. Procuring all conveyances and transfers of the same and making provision for the payment of said property.

The resolution then continues:

> "First.
>
> That this company accepts the transfer and management and operation of said property in the City of Des Moines, east of Farnham street in said city, heretofore owned and controlled by the Des Moines & St. Louis Railroad, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as

practicable, and it hereby instructs its president to make such order as may be necessary to render such control and management effective, as provided in said contract."

It will be noted that this portion of the resolution does not say anything about the purchase or conveyance of the property, but only treats of the question of the immediate possession, control and management.

The resolution then continues as follows:

"Second.

"That the President, Vice President, Secretary and Treasurer of this company be, and they are hereby appointed a committee to confer with the several parties to said contract and agree with them severally upon the *terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this company with the title, control and management of said properties provided for in said contract of January* 2, 1882."

This portion of the resolution treats exclusively of the purchase of the property. It authorizes this committee to agree upon the terms and price at which the property is to be transferred and conveyed, and to procure the necessary conveyances and transfers to *fully* invest the defendant company with the *title*, control and management of the property. This is apt language to express the intention of the defendant company to acquire the ownership of this property, and there is nothing in it to suggest that it was contemplated that

the three railway companies were to retain any interest in the property, or that defendant was to pay merely for the privilege of holding the naked legal title.

The resolution then continues:

"Third.

That to enable this company to pay for the property and to maintain, operate and improve the same, and *purchase* other property necessary to carry out *its* objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same, the President and Secretary of this company are hereby authorized and directed to issue full-paid capital stock of this company, not to exceed one million ($1,000,000.00) dollars and not to exceed five hundred (500) bonds of this company, of the denomination of one thousand dollars ($1,000.00); the form to be agreed upon hereafter by this board.

And to secure said bonds, the President and Secretary are authorized and directed to execute, in the name of this company, a first mortgage or deed of trust, conveying all of said property so to be conveyed to this company or thereafter to be acquired, to a trustee therein named, the form of which deed of trust shall be hereafter determined by this board.

And when said committee shall have agreed with the said several parties to said contract as to the amount of bonds and stocks of this company necessary to be delivered to them, and each of them, in *payment* for said railroad property and franchises, the President and Secretary of this company shall deliver the same to said several parties as each appear to be entitled, on receipt of the conveyances and assignments of said property so to be made to this company."

Thus we find the defendant company arranging on its own account to raise the funds necessary to pay for the property and to improve the same and acquire other property necessary to carry out the objects of the defendant company, and authorizing the payment for said property upon the execution of the necessary conveyances. The intention of these three railway companies, which, according to complainants' 'theory, owned this property, to transfer the same in fee simple to the defendant company, and the intention of the defendant company to acquire the ownership thereof, could not be more clearly expressed than by the language used in these various resolutions, and these resolutions simply carry out the thought expressed in the articles of incorporation of the Des Moines Union Railway Company.

No action was immediately taken under these resolutions, probably because about this time the affairs of the Wabash Company were placed in the hands of a receiver and its property transferred to what is known in this record as the Purchasing Committee.

These resolutions, however, remained unrepealed until they were carried out by certain deeds executed by them to the defendant company in the early part of the year 1888, to which we will hereafter call attention.

The subject of the sale and transfer of this property to the defendant company came up at meetings of the directors of the three railroad companies, held on November 5 and 8, 1887, but before considering the action of these various companies at that date, we think it is well to call the court's attention to the mortgage or trust deed which was subsequently given by the defendant company to the Central Trust Company of New York, to secure an issue of bonds, a portion of

which bonds was subsequently delivered to the persons and corporations who had furnished the money for the purpose of acquiring and improving the terminal property. This mortgage appears commencing on page 459 of volume II, and is dated November 1, 1887. It was drawn by Col. Wells H. Blodgett, general counsel for the Wabash Company, one of the most able and conscientious lawyers who ever practiced in this court, and who was apt, as this record again and again shows, in selecting language which accurately conveyed the intention of the parties.

This mortgage, as it will be noted, was prepared before the resolutions of November, 1887, to which we have just referred, and before any transfer of the property was made, and expresses the understanding of Colonel Blodgett, as he looked into the future, of what was intended to be done with this property.

After reciting the date and the parties to the contract, the mortgage provides (p. 460):

> "Whereas: The Des Moines Union Railway Company is a corporation duly organized and existing under the laws of the State of Iowa, and as such is fully authorized to *locate, construct, own and operate* a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock yards and whatever may be useful and convenient for the operation of railways in said city, and the transfer of cars from the lines and depots of one railway to another, and from said depots to the various manufactories, warehouses, storehouses or elevators, and from one manufactory, warehouse, storehouse or elevator to another, as said depots, manufactories, warehouses, storehouses and elevators are

now constructed or may be hereafter constructed in or around the said City of Des Moines, Iowa, and for such purposes has full right to acquire by purchase and condemnation all such right of way, land and lots as are necessary and proper for the operation and construction of such line of railroad, and to provide itself with depot grounds, yards, shops and other terminal facilities adequate for handling of traffic to be transported upon such railroad, and"

If you will compare this recitation with the articles of incorporation of the Des Moines Union Railway Company, you will at once conclude that when Colonel Blodgett dictated this paragraph he had before him the articles of incorporation of the Des Moines Union Railway Company, and from them ascertained just the powers and purposes of that company.

Colonel Blodgett understood that this corporation was organized, not as a mere depot company for the mere purpose of holding the legal title to this property for the benefit of any one, but for the purpose of constructing, owning and operating a raiway in the City of Des Moines.

The mortgage then continues:

"Whereas, the Des Moines Union Railway Company has undertaken and partially completed the construction of a railroad in the City of Des Moines, Polk County, Iowa, extending from the main lines of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company to a connection with and across the line of various other railroads which center or terminate in the City of Des Moines, and to various manufactories and industries in said

city, and has purchased and owns various structures and buildings used for depots, railway shops, round houses and other structures suitable and useful for railway purposes, and has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said city, and valuable franchises from the City Council of said city, and"

Now the Des Moines Union Railway Company at this time hadn't undertaken and partially completed any railroad in the City of Des Moines or elsewhere. It hadn't purchased, acquired or owned, by condemnation or otherwise, any valuable real estate or franchises in the City of Des Moines or elsewhere. Up to this time it was simply a corporation which had been organized for the purpose of acquiring and owning these things, but Colonel Blodgett in drawing this particular paragraph was looking into the future and planning for doing the things which were afterward done and which gave to the Des Moines Union Railway Company the ownership of the very property to which reference is made in this mortgage. Nothing could more clearly show the intention of these parties than the language incorporated in this mortgage by the person who was furnishing the legal service necessary to carry out the objects of the persons and corporations engaged in this transaction. This wasn't a construction of what had been done, but an expression of what was intended to be done and what was in fact afterward done.

The mortgage then continues:

"Whereas, for the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and

desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds to the amount of eight hundred thousand ($800,000) dollars, to be dated on the 1st day of November, 1887, in accordance with the resolutions and orders of its Board of Directors at a duly called and authorized meeting thereof;"

The mortgage then proceeds by its terms to convey to the Central Trust Company the very property which was afterward transferred to the defendant company by appropriate deeds from the three railway companies.

Let us now examine the record and see whether or not the purposes so aptly expressed by Colonel Blodgett in this mortgage were carried out, and for that purpose we wish to call the court's attention to the resolutions of these railway companies passed in November, 1887—a few days after the date of the mortgage in question.

Before doing so, however, we wish again to remind the court that the resolutions already referred to and passed by these railway companies in 1885, authorized not the transfer of the legal title to this property by the trustees, but the transfer of the beneficial interests by the railway companies. In carrying out the plan which is evidenced by the mortgage above referred to, it no doubt came to the attention of the parties that the resolutions of 1884 were defective in that they did not authorize a transfer by the trustees, which was necessary to give to the defendant a perfect title to the property, and therefore the resolutions now referred to were passed by the railway companies.

The resolutions of the St. Louis, Des Moines & Northern Railway Company will be found on pages 435 and

436 of volume 11. The recite the fact that James F. How had acquired the title to certain property in the City of Des Moines with money furnished by the Wabash Company; that by an agreement between this company and the Wabash Company and others, it was intended that the said property should be transferred to the Des Moines Union Railway Company; and they then authorize Mr. How to transfer said property to the Des Moines Union Railway Company upon receiving from said company a stipulation that as soon as practicable thereafter the defendant railway company shall deliver to him first mortgage bonds to the amount of money advanced for the paymentof said property and improvements, with interest and taxes paid thereon, and also three-fourths of the stock of the Des Moines Union Railway Company, the said bonds and stock when received to be transferred by How to the Purchasing Committee of the Wabash Company. They also recite the fact that Grenville M. Dodge had purchased certain property as trustee, and the fact that in accordance with the contract above mentioned it was intended that said property should be transferred to the Des Moines Union Railway Company; and they then direct General Dodge to transfer said property to the Des Moines Union Railway Company upon receiving from said company a stipulation that as soon as practicable the railway company should deliver him bonds for the amount of money he had advanced in payment for the terminal property and improvements, interest and taxes, and also one-fourth of the capital stock of the Des Moines Union Railway Company.

In explanation of the fact that the Purchasing Committee was to receive three-fourths of the capital stock of the Des Moines Union Railway Company, it may be

noted that at this time the Purchasing Committee were entitled, in equity at least, to whatever was coming to the Des Moines & St. Louis Railroad Company and the Des Moines Northwestern Railway Company; and General Dodge was entitled to whatever was coming to the St. Louis, Des Moines & Northern Railway Company.

Similar resolutions were passed by the directors of the Des Moines & St. Louis Railroad Company (vol. II, pp. 437-9). There were present at the meeting of the Des Moines & St. Louis Company, among others, James F. How, Vice-President of the Wabash Company, and Col. Wells H. Blodgett, general counsel for the Wabash Company and the Purchasing Committee.

In addition to the resolutions similar to those passed by the St. Louis, Des Moines & Northern, the Des Moines & St. Louis Company passed the following resolution, which was offered by James F. How (vol. II, p. 439):

> "Resolved, that the President and Secretary of this company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from City of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second, 1882, entered into by and between this company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and others."

Thus again authorizing a transefr by the Des Moines & St. Louis Railroad Company of its beneficial inter-

est in the property which stood in the name of the trustees.

The record does not show the resolutions themselves that were passed at the time by the Des Moines Northwestern Railway Company, but the complainants offered in evidence a notice served by the Des Moines Northwestern Railway Company on the Des Moines Union Railway Company at this time, notifying the latter company that it had passed similar resolutions. This appears as plaintiffs' exhibit 15, page 442, volume II.

We therefore find in the record resolutions of the three railway companies, which, the complainants admit, were the real owners of this property, authorizing a transfer of the property both by these corporations and the trustees, in consideration of the defendants' capital stock and bonds, the latter representing the amount actually invested in the purchase and improvement of the property, with interest and taxes thereon.

In pursuance of these resolutions, James F. How executed and delivered to the Des Moines Union Railway Company three deeds, and G. M. Dodge and wife one deed, which appear in volume II, pages 446 to 454. The St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company each executed a deed to the Des Moines Union Railway Company, which deeds appear on pages 455 to 459 of volume II. These deeds were prepared or approved by Colonel Blodgett.

On January 31, 1888, James F. How, Vice-President of the Wabash, wrote to J. S. Polk, of Des Moines, Iowa, enclosing what he refers to as "deeds from General Dodge to the Des Moines Union Railway Com-

pany," which he says, "Colonel Blodgett has examined and pronounces all right" (vol. IV, p. 1587).

On the next day, Mr. Polk writes to Mr. How, saying:

> "Your letter of the 31st ult. enclosing two deeds, one from the St. Louis, Des Moines & Northern, and the other from G. M. Dodge, to the Des Moines Union Railway Company for certain property in Des Moines is received.
>
> We delivered to General Dodge the contract of the Des Moines Union Railway Company, to give him the bonds, and stock of the company when the same are issued, in payment for said terminals. If the deeds are satisfactory to you we will put them on record at once." (Vol. IV, pp. 1587-8.)

On February 13, 1888, Mr. How wrote to Mr. Polk as follows:

> "Encosed please find a deed from the Des Moines & St. Louis Ry. Co. to the Des Moines Union Ry. Co. for the property owned by the former Co. in Des. Moines. Please have same executed by Mr. Clarkson as President, and by Mr. Hubbell as Secretary and return same to me as Mr. Blodgett wishes to see that it is properly executed before it is put on record.
>
> *I understand that the Des Moines Northwestern Ry. make no deed as they have no property in Des Moines to transfer.* Am I correct about this? If not, I would like to see their deed before it is recorded." (Vol. IV, p. 1588.)

On February 21, 1888, Mr. Polk replied:

> "I herewith enclose deed from the Des Moines & St. Louis Railroad Company to the Des Moines Union Railway Company, which you forwarded to

us for execution. The same has been signed by Mr. Clarkson, and Mr. Hubbell, and propery acknowledged. Hope you will find it all satisfactory." (Vol. IV, pp. 1589-90.)

The deed from the St. Louis, Des Moines & Northern Railway Company appears on pages 455 and 456 of volume II, and after describing the particular pieces of property which stood on the record in the name of the St. Louis, Des Moines & Northern Railway Company, the deed continues:

> ... • • Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possesison, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singuar the above mentioned and described premises together with the appurtenances, unto the said parties of the second part and assigns forever."

The property which was transferred by this deed was a part of the terminal property. It is the theory of petitioners that the St. Louis, Des Moines & Northern Railway Company retained some interest in the property itself. In view of this contention, we would like to inquire what possible interest, easement or equity the St. Louis, Des Moines & Northern Railway Company could have had in this property that was not transferred by the terms of this deed. We are unable

to formulate or conceive of more apt and complete language to transfer every possible interest in real estate. This deed not only transferred the legal title, but whatever equity, right or easement the grantor had in the property. It clearly shows the intention to give to the Des Moines Union Raiway Company a perfect title to the property.

When we come to examine the deed of the Des Moines & St. Louis Railroad Company to the Des Moines Union Railway Company, we think there can be no question about it. It will be remembered that while, under the contract of 1882, the Des Moines & St. Louis Company owned a half interest in the terminal property, the title to only a small portion of it stood in its name. This deed, after describing the property which stood in its name, continues as follows (p. 458):

> "* * * And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, sidetracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have acquired by grant, donation, purchase or otherwise, and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance 'granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south aley in said city be-

tween Court Avenue and Vine Streets.' And the said Des Moines and St. Louis Railroad Company hereby covenants to Warrant and Defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it. Signed this 21st day of February, A. D. 1888."

What more appropriate language could have been selected to transfer to the Des Moines Union Railway Company not only the property specifically described in said deed, but all the railroad property which the grantor had in the City of Des Moines, and which, according to the theory of petitioners was a half interest in the property which stood in the name of How and Dodge? Note, also, that the Des Moines & St. Louis Railroad Company covenants to warrant and defend the premises against the lawful claims of all persons whomsoever, claiming by, through or under it. The plaintiff, the Wabash Railway Company, claims under it (the Des Moines & St. Louis Company).

The Des Moines Northwestern Railway Company did not make a deed because there was no property standing in its name. It had, however, as we have shown, authorized a transfer of all its interest in this terminal property, and it or its successors received the purchase price agreed upon, as we will hereafter show. Also, the St. Louis, Des Moines & Northern Railway Company or its successors, as well as the Des Moines & St. Louis Company or its successors, received the consideration.

These deeds were put upon record soon after their execution, and on May 1, 1888, the Des Moines Union Railway Company took possession of the terminal property and has ever since possessed and operated it.

The mortgage of the terminal property, which was prepared in Novmeber, 1887, before the actual transfer of the property to the Terminal Company, was now, after the transfer had been completed, executed and placed of record. The bonds secured by it were negotiable in form and were designed to be sold in the open market. Had there ensued a default and foreclosure what estate would have passed to the purchaser at the foreclosure sale? Certainly nothing less than an absolute estate. But it could not have been more than passed to the Terminal Company. And if that Company got only the legal title in trust, if the entire beneficial interest remained in the three railway companies, and that interest was inalienable, then the bonds and mortgage were nothing more than counters in a scheme of fraud. The right, title and interest of the Des Moines Union in this property, from the time it got it until now was what it was, when it made this mortgage. True it could not, under its articles of incorporation, encumber this property without the approval of the three railway companies, its stockholders, but this restriction upon the mode of its corporate action did not qualify its estate in its property. The railway companies approved the mortgage as required, but they did not extend its scope to their own property. They simply did "ratify and approve the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company upon all *its* property and franchises to secure the issuance, etc." (R. 474.)

We claim that by reason of the facts hereinbefore referred to—the articles of incorporation of the terminal company, the resolutions of the three railway companies proposing to sell the property to the terminal company, the resolutions of the terminal company

accepting this proposition, the execution and delivery of the deeds to the property, the payment of the purchase price to the parties entitled thereto, the taking possession of the property by the terminal company—the terminal company became the absolute owners of the terminal property, and that the ownership of the three railway companies in the terminal property was changed to the ownership of the capital stock of the terminal company.

THE CONTRACT OF MAY 10, 1889, AS BEARING UPON THE INTENTION OF THE PARTIES.

If there can now be any doubt who owned this property after May 1, 1888, let us see what the parties themselves had to say about it after the consummation of the transaction, because if they thought that the Des Moines Union Railway Company then owned this property, there is no occasion for the court to inquire further into it. Fortunately we have in the record the undisputed agreements of these parties with reference to the title, in a contract which was introduced by the complainants.

For some reason or other, counsel for complainants have never seemed to understand just what we claim for the contract of May 10, 1889, as applied to this branch of our case. Counsel for the Milwaukee, on page 59 of the Court of Appeals brief, says:

> "it is the contention of the defendants that this contract of May 10, 1889, killed that of 1882, and terminated all rights of the Railway Companies to use the property after May 1, 1918, because the supplemental contract covers a period of time up to that date only."

And counsel for the Wabash Company, on page 131, Court of Appeals brief, says:

> "Defendants have contended that by the execution of the contract of 1889 the Railway Companies intended to rest their right to use the terminal property on the provisions of that contract, and are by that contract estopped from asserting a claim to the terminal property adverse to the depot company, and have argued that the Railway Companies thereby released any claim to an easement in the terminal property."

Neither of these statements correctly states our position with relation to this contract. Our position is, *first*, that it having been deliberately prepared, considered, and executed by the parties, and approved by the formal action of their boards of directors, is of the highest value—of the greatest probative force—because of its interpretation of the intention of the parties by their prior transactions.

Second: It is of importance when we come to consider the defense of estoppel and laches, which we will hereafter discuss.

The title and ownership of this property were not transferred to the terminal company by reason of the contract of May 10, 1889, but by reason of the things that had gone before and to which we have referred.

Upon taking possession of the property by the defendant company, the question of the terms upon which the defendant should furnish to these railway companies terminal services became a subject of negotiation, which resulted in a written contract, dated May 10, 1889, between the defendant company as party of the first part, and the Des Moines & St. Louis Railroad

Company, the Des Moines & Northwestern Railway Company (successor of the Des Moines Northwestern Railway Company), and the St. Louis, Des Moines & Northern Railway Company, parties of the second part, which contract appears commencing on page 479 of volume II. This contract was drawn by Colonel Blodgett, general counsel of The Wabash Railroad Company and the Des Moines & St. Louis Railroad Company, who had guided these transactions and who knew the situation and what was intended by the parties. We therefore not only have the written statement of the interested parties as to the title to this property, so far as it is contained in this contract, but we have such written statement in the language of one who knew how to select words apt for the purpose of expressing his understanding.

The contract, after reciting the date and the parties to it, says:

> "Whereas, the said party of the first part (Des Moines Union Railway Company) is the owner of valuable terminal facilities in the City of Des Moines, Iowa, as hereinafter described; and"

Now neither Colonel Blodgett nor the parties to this contract, who were the only ones interested in it, had any doubt at this time as to who the owner of the property was. They agree that it was the defendant, the Des Moines Union Railway Company.

Th contract then says:

> "Whereas, the respective parties of the second part have railroads in the State of Iowa which terminate at, or run into and through said City of Des Moines, and in order to prevent unnecessary

expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the *terminal facilities of said first party;* and"

Again we have the agreed statement of these parties that the ownership was in the defendant.

The contract continues:

"Whereas, said party of the first part has become incorporated and organized under the laws of the State of Iowa for the purpose of *owning and operating* a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham Street, in the western part thereof; and"

There is no pretense here that the defendant corporation was organized for the purpose of acting as trustee or holding the naked legal title to this property, but on the contrary these parties agree that it was organized for the specific purpose of owning and operating this terminal property—something never contemplated in the contract of January 2, 1882.

The contract then continues:

"Whereas, said party of the first part, in pursuance of said charter has *acquired* and now *owns* a railway in said city, as above set forth, and has *already acquired* or *constructed* a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and *intends to acquire and construct more;* and"

This is the language selected by Colonel Blodgett and adopted by all the parties interested, to state the result of the transactions which we have been heretofore considering.

The contract then continues:

> "Whereas, said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and"

Why, let us inquire, were each of the parties of the second part desirous of acquiring by contract the right to use these terminals if they already had that right, as is claimed by counsel for petitioners?

The contract then continues:

> "Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties, and liabilities of each in regard to the whole subject-matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined.
>
> Now, therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows."

The contract then provides what the defendant company shall do in respect to acquiring further terminal property, improvements thereon, and the amounts which the tenant companies are to pay for the use of the property, and then provides that in consideration thereof the defendant company grants to the said second parties the use of the terminal property.

The contract goes into considerable detail as to how the property is to be managed, etc., not necessary here to refer to; provides how the capital stock of the defendant company shall be distributed among the three railway companies, and then says (section 27, p. 487):

> "Whereas, the parties of the second part have herein and hereby obligated themselves to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used, or to be hereafter issued and used by said first party in purchasing, improving and equipping the terminal properties herein described;
>
> Now, therefore, in consideration of the premises, the said first party hereby contracts and agrees to and with each of the second parties hereto, that it will not at any time hereafter issue or dispose of any of said bonds, except for the purpose of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in said City of Des Moines."

Note that the reason given in the contract for limiting the right of the defendant company to issue its bonds is that the parties of the second part had agreed to pay the interest on the bonds. If the parties of the second part thought they were the real owners of this property, they would have been interested in the principal of these bonds rather than in the interest on them. They were not interested in the principal because they were not the owners of the property, and their only obligation with respect to the bonds was the contract obligation to pay the interest.

Another significant thing about this contract is the provisions therein contained with respect to the sale and transfer of the capital stock of the terminal com-

pany and the assignment of the rights of either of the three railway companies acquired by the terms of the contract.

It will be remembered that the articles of incorporation of the terminal company placed no restriction on the right of its stockholders to sell and transfer its capital stock, or any part thereof, the result being that any stockholder might freely sell and transfer any portion of his stock. The three railway companies having intended to control the management and operation of the terminal property, the reason for their desiring to in some way limit the right to transfer this stock is apparent. It was therefore provided in section 24 of the contract (p. 485) as follows:

> "It is understood and agreed that the Des Moines & St. Louis Railroad Company, as the owner of one-half of the capital stock of the Des Moines Union Railway Company, may sell and transfer one-half of said stock, or one-quarter of the whole to such railway company as may be acceptable to a majority of the parties of the second part; in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of the second part."

It is now contended by petitioners that the terminal company was a "mere agency" for the railway companies, having no valuable interest in the terminal property, and therefore that the stock was "merely nominal and of nominal value," because it represented no valuable interest in the property. If this theory be true, what would any railway company have received

in consideration for the money paid for one-half of the terminal stock owned by the Des Moines & St. Louis Company? Merely the right to become a party of the second part to the contract of May 10, 1889, and the possession and ownership of some nicely lithographed pieces of paper. Its rights under the contract of May 10, 1889, would have expired at the end of thirty years from that date. As the owner of the stock, it would have had no rights because, as counsel claim, that didn't represent anything of value.

To illustrate: The record shows that negotiations were subsequenty entered into to sell this stock to the Chicago & North Western Railway Company and secure the entrance of that company on the terminal property. Supposing these negotiations had been successful and after the North Western Company had paid its money for this stock it had been told that this stock didn't represent anything of value and that the only right it gave was the right to become a party of the second part to this contract and the privilege of paying its share of the expenses during the existence of such contract; would the North Western Company have felt that it had been fairly dealt with?

We do not think the persons who were instrumental in these transactions and who conducted these negotiations had any such purpose in their mind, nor can we bring ourselves to think that the Purchasing Committee of the Wabash Company and the others who had relations with the subsequent sale of the stock of the terminal company to the Hubbells, which included Colonel Blodgett, James F. How, Charles M. Hays, and others, had in their minds any purpose of swindling Mr. Hubbell and General Dodge when they sold them stock in the terminal company.

It is apparent from these provisions in the contract, as well as the provisions of section 26 (p. 486), which related to a sale and transfer of stock, that the parties understood that this stock represented a valuable interest in the terminal property.

Again, by section 25 of the contract (p. 486), it was attempted to control the right of each of the three railway companies to assign and transfer the rights which they obtained under the terms of the contract. If we are to believe the present theory of counsel for petitioners the three railway companies didn't obtain any rights under this contract, notwithstanding the fact that the contract purports to grant them rights, because they say that the contract was merely a formality, that it was really an arrangement between the three railway companies to regulate, as between them, the use of the property. But it seems to us that this theory is too absurd to warrant further discussion.

That the present theory of petitioners with relation to their rights in the terminal property never occurred to anyone until the commencement of this suit is demonstrated by the fact that the three railway companies and their successors at all times thereafter, when transferring or mortgaging their interest or rights in the terminal property, described them as their rights acquired under the contract of May 10, 1889, and the contract of July 31, 1897 (the ratification contract), and the capital stock of the terminal company owned by them. And this is particularly true of the mortgage of The Wabash Company executed in 1889 under the guidance of Colonel Blodgett, to which more particular reference will hereafter be made.

What better evidence could we ask of ownership of this property than the contract or statement signed by

all the parties immediately or soon after the transaction by which the property was transferred to the defendant company, and a statement drawn by one who not only knew what the understanding was, because he had been a party to the transactions, but who had the capacity to accurately state it?

The contract of January 2, 1882, according to its language, contemplated that the terminal property should be owned by the three railway companies, though the title should stand in the name of a trustee, which might or might not be a corporation. Now what have we up to this point which evidences the fact that these three railway companies intended to and did change their plans from an ownership by the three railway companies, to an ownership by an independent corporation. Briefly stated, the facts are as follows:

1. The organization of a corporation at the instance of these three railway companies for the purpose of, and with the power to, own and operate a terminal railway in the City of Des Moines, Iowa, and with the express power of acquiring by purchase the ownership of the particular terminal in question. This corporation was the defendant, the Des Moines Union Railway Company.

2. The intention expressed prior to the transfer of the ownership of the property, that the Des Moines Union Railway Company should acquire the title to the property. This intention was expressed by the mortgage prepared by Colonel Blodgett on November 1, 1887, from the Des Moines Union Railway Company to the Central Trust Company, and afterward executed by the terminal company.

3. The resolutions of the three railway companies and of the terminal company passed in January, 1885, and November, 1887. These resolutions authorized the transfer of the ownership of the terminal property in consideration of its stock and bonds.

4. The deeds executed and delivered to the Des Moines Union Railway Company in 1888, by the terms of which every possible interest which the parties had in the property was transferred.

5. The payment of the agreed purchase price and delivery of the property.

6. The written statement prepared by Colonel Blodgett and executed by all the parties interested in the property, reciting the fact that the Des Moines Union Railway Company had by these transactions acquired the ownership of the property. This written statement was contained in the written contract of May 10, 1889.

This evidence is not the oral evidence of witnesses who attempt to state their recollections of transactions happening a quarter of a century prior to the time of the giving of their evidence, but consists of the solemn and formally executed instruments at the time the transactions occurred and about which there is no controversy.

If there is, however, any lingering doubt in the mind of the court as to the effect of the transaction in which this property was transferred to the defendant company, let us examine a transaction which occurred in the early part of the year 1890—less than two years after the property was delivered to the defendant company, and in which the actors were the same persons who had been active in the management of not only

the terminal property, but of the interests of the other railroads therein from the very beginning, and who, if anybody, knew and appreciated the situation. This transaction was the amendment to the articles of incorporation of the defendant company which was consummated on April 8, 1890.

AMENDMENTS TO ARTICLES OF INCORPORATION OF DES MOINES UNION RAILWAY COMPANY.

The complainants challenge the validity and effect of these amendments—a subject which we will discuss in a subsequent division of our brief—but for the present we are only inquiring as to the intention of the parties to the transaction by which this property was transferred to the defendant company, and for the present we will only consider the record in respect to these amendments for that purpose.

These amendments were adopted at an adjourned meeting of the stockholders of the Des Moines Union Railway Company held on April 8, 1890. A record of that meeting appears in volume II, commencing on page 488. There were present, among others, James F. How, Vice-President of the Wabash Company, and who had been intimately connected with this terminal transaction as a representative of the Wabash Company since its inception; C. M. Hays, who was general manager of the Wabash Company and had been with that company since 1883; A. B. Cummins, who was local attorney for the Wabash Company in Des Moines and represented it on the board of directors of the defendant company, and who was also general counsel for the defendant company. G. M. Dodge and Wells

H. Blodgett were both present by proxy, the former being represented by L. M. Martin, and the latter by J. F. How. Both General Dodge and Colonel Blodgett signed and acknowledged the amendment to the articles after they were authorized. There were also present F. M. Hubbell, L. M. Martin and F. C. Hubbell, all of whom had been familiar with the terminal proposition either from the beginning or during its early stages. these parties knew what was intended by the transactions under consideration, and they were all honorable, able and upright men.

After the organization of the meeting, C. M. Hays moved that article 2 of the original articles be stricken out and that there be enacted in lieu thereof the following (p. 490):

"Article 2.

The object of the corporation and the general nature of the business to be transacted shall be the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines, and also to lease terminal facilities to and furnish and perform terminal services for all railways whose lines reach or pass through or near the said

City of Des Moines, and the corporation shall possess all the power conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use."

This motion was adopted and thereby there was stricken out of the article all reference to the contract of January 2, 1882, and thereby the thought that it was intended that the defendant company should acquire absolute title to the property is corroborated.

L. M. Martin moved that article 3 be stricken out and the following enacted in lieu thereof (p. 490):

"Article 3.

"The capital stock of the corporation shall be two million dollars ($2,000,000.00) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; *four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds theretofore issued for that purpose constituting the fair value of said property when so acquired;* and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught.

Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions:

Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des

Moines & St. Louis Railroad Company, and the present owner of the property known as the Des Moines & St. Louis Railroad.

One thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and

One thousand shares to the Des Moines & Northwestern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, *and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property.* The remaining capital stock, to-wit: sixteen thousand shares, or any part thereof, shall be issued ony by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered."

This resolution was unanimously adopted by all present and language could not be conceived more appropriate to express the thought that the defendant company had acquired an absolute title to this property in consideration of the bonds and stock issued.

In order to protect the companies in the control of the defendant company through their stockholding interest, article 4, as amended, provided that the affairs of the company should be managed by a board of eight directors, but that at all future elections of directors it shall require the vote of more than seven-eighths of all the stock theretofore issued, to elect any director. Thus no new directors can be elected without the unanimous consent of all stockholders holding five hundred or more shares of the capital stock. This article also provided that in all matters other than the ordinary

operation of the property, the board of directors can only act upon the unanimous vote of eight members thereof, and gives the power to each director to delegate by written authority some other person to vote for him. The other amendments to the articles are immaterial for the purposes for which we are now considering them, except article 15 (p. 494), which provides as follows:

> "The proceedings of a meeting held December 10, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as part of the Articles of Incorporation of this Company, *are hereby repealed, stricken out and expunged.*"

It is interesting to note that the only reference to the contract of January 2, 1882, to be found in the record, from May 1, 1888, up to the time of the commencement of this suit (almost twenty years) is the reference found in the record of this meeting of April 8, 1890, when it was formally revoked.

The contract of January 2, 1882, could not, of course, be changed or abrogated by third parties. It was in that sense inviolate, but it was not any more than any other contract immutable and irrevocable by the unanimous agreement and action of the parties themselves. And here we have in these amendments to the articles of the Des Moines Union, an absolute revocation of the contract and the action making the revocation—the amendment to the articles—is not the

action of the Des Moines Union itself, but of its stockholders, and they are the parties and all the parties (or successors in right and title), to the original contract.

In addition to adopting the amendment to the articles of incorporation and authorizing their filing and publication, the following resolution, offered by A. B. Cummins, was passed by a unanimous vote of all the directors present: (P. 494.)

> "Whereas, by inadvertence, there appears to be some uncertainty in the records of the Company respecting the purchase price of the terminal property originally acquired by the company, and
>
> *Whereas, it was the agreement between all the parties in interest that said property, including the franchise incident thereto, should be purchased at its fair value, payable partly in first mortgage bonds and partly in capital stock fully paid up,* and
>
> Whereas, it was and is agreed that said property was fairly worth the sum of eight hundred sixty-one thousand two hundred and fifty-seven and 21-100 dollars, of which purchase price the Des Moines & St. Louis Railroad Company, the Wabash, St. Louis & Pacific Railway Company or its representative, the purchasing committee, the said purchasing committee being now the real owner of the Des Moines & St. Louis Railroad, together were and are entitled to four hundred and seventy thousand one hundred and ten and 80-100 dollars ($470,110.80) of said purchase price, the Des Moines Northwestern Railway Company was entitled to two hundred and fifteen thousand and fifty-eight and 40-100 dollars ($215,058.40) of said purchase price, the St. Louis, Des Moines & Northern Railway Company was entitled to one hundred thousand dollars ($100,000.00) of said purchase price. G. M. Dodge to seventy-four thousand and eighty-eight and 01-100 dollars ($74,088.-

61) of said purchase price and Polk & Hubbell to two thousand dollars ($2,000.00) of said purchase price, and

Whereas, by a settlement heretofore had and now confirmed, it appeared that of such purchase price the purchasing committee of the Wabash, St. Louis & Pacific Railway Company, being the real owner of the railroad known as the Des Moines & St. Louis Railroad, has received two hundred and seventy (270) bonds of one thousand dollars each. G. M. Dodge seventy-four bonds; Polk & Hubbell two (2) bonds and the Des Moines & Northwestern Railway Company, successor of the Des Moines Northwestern Railway Company, one hundred and fifteen (115) bonds, making in all four hundred and sixty-one bonds, and as a further part of such purchase price the company has paid to the purchasing committee, G. M. Dodge and the Des Moines Northwestern Railway Company two hundred and fifty-seven and 21-100 dollars in cash, and

Whereas, there still remains four hundred thousand dollars ($400,000.00) of the purchase price of said property yet unpaid, which sum is to be paid in capital stock, and

Whereas, by agreement between the several persons and corporations owning the said property prior to the said transfer, so much of the purchase price as was to be paid in capital stock was to be divided among three corporations, to-wit: one-half to the Des Moines & St. Louis Railroad Company, one-quarter to the St. Louis, Des Moines & Northern Railway Company and one-quarter to the Des Moines Northwestern Railway Company, and

Whereas, the purchasing committee of the Wabash, St. Louis & Pacific Railway Company is now the owner of the property of the Des Moines & St. Louis Railroad Company, including its proportion of stock, and the Des Moines & Northern Railway Company is now the owner of the property of the

St. Louis, Des Moines & Northern Railway Company, including its proportion of said stock, and the Des Moines & Northwestern Railway Company is now the owner of the property of the Des Moines Northwestern Railway Company, including its proportion of said stock, and

Whereas, the articles of incorporation have been amended so as to conform to the true intent of the several parties,

First. That the *purchase price* of the property originally acquired by the company, as above stated, be fixed at said sum of eight hundred sixty-one thousand two hundred fifty-seven and 21-100 ($861,257.21) dollars as of the date of the conveyance thereof.

Second. That the payment of a portion of such *purchase price* in first mortgage bonds, as above set forth, be confirmed and approved.

Third. That to complete the *payment of such purchase price*, the President and Secretary are hereby authorized to issue certificates for thirty-nine hundred and ninety-two (3992) shares of stock, which shares, including eight already issued on behalf of said parties, aggregate four thousand (4,000) shares, as follows:

To the purchasing committee of the Wabash, St. Louis & Pacific Raiway Company, nineteen hundred and ninety-six (1996) shares.

To the Des Moines & Northern Railway Company nine hundred and ninety-eight (998) shares, and to the Des Moines & Northwestern Railway Company nine hundred and ninety-eight (998) shares.

Fourth. That the proceedings heretofore had respecting the issuance of capital stock, so far as such proceedings are inconsistent with said amendments to the articles of incorporation or with this resolution, are hereby modified to conform heretofore."

This resolution and preamble were unanimously adopted by all the stockholders present. We have therefore set out here in detail the understanding of all the persons who were active in the transactions under consideration and in whose mind there is apparently no question but that the defendant company purchased something with its more than $861,000.00 which it paid, and that something which it purchased was the terminal property.

Not only was this the expression of the persons who were present at this meeting, but this was the expression of the railway companies themselves, who, as successors of the original parties to the contract, were present, because this was a stockholders meeting and this was the act of the stockholders, among whom were numbered these railroads, and not the act of the Des Moines Union Railway Company as a separate identity. But upon this thought we will enlarge in another division of our argument.

These amendments were adopted with great deliberation after full notice and information to all in anywise concerned. They seem to have originated with Mr. Cummins, who at the time was counsel for the Wabash, for the Des Moines Union, and for General Dodge, who was virtually the owner of the Des Moines and Northern. He suggested the need of amendments at the meeting of stockholders of the Des Moines Union on January 3, 1890. On January 22d he wrote to Col. Blodgett concerning the matter and proposed a conference. He discussed the matter with Mr. Hays, who was general manager of the Wabash. On January 27th he wrote to General Dodge enclosing a copy of the proposed amendments and discussing them. He spoke to Mr. Hubbell, who at first was opposed to them. (Rec.,

Vol. III, pp. 1210 to 1214.) Mr. Cummins, who testifies to this, produces the letters written by him at the time. And the records of the Company show the facts in greater detail.

At the meeting of January 3d Mr. How, then Vice-President of the Wabash, and Mr. Hays, General Manager of the Wabash, were present as Wabash representatives. Mr. How moved and it was carried "that the question of amending the articles of incorporation of this Company, as well as the question concerning the issuing of stock for the purchase price of the terminal property, be referred to attorneys, W. H. Blodgett and A. B. Cummins for their investigation and recommendation." (Rec., Vol. IV, p. 1307.) General Dodge presided at this meeting. He represented the Des Moines and Northern. F. M. Hubbell was present representing the Des Moines and Northwestern. Thus the three railway companies were all represented. The meeting adjourned to February 18th.

At the adjourned meeting Dodge, How, Hays and Blodgett were represented by proxy. The Secretary reported that he had notified each stockholder of the meeting and that amendments to the articles of incorporation would be offered. Mr. Cummins presented the amendments. On motion of Mr. Hubbell the meeting was adjourned to April 8th to give further opportunity to examine the amendments. (Rec., Vol. IV, p. 1311.)

At the April meeting the Wabash representatives present were How and Hays. Col. Blodgett was represented by proxy as was General Dodge. Mr. How presided. The remaining railroad representatives were present in person. At this meeting one by one the amendments were adopted. (Rec., Vol. II, pp. 488 et seq.)

Thus it was not until more than three months after the matter was broached and after every stockholder had had months of notice that the final action was taken. It will not now serve to say that they knew not what they did.

And when these articles were amended everybody in interest knew that stock of the Des Moines Union had on February 5, 1890, been sold to individuals, five hundred shares to General Dodge and the same number to F. M. Hubbell. At the directors' meeting of the Des Moines Union held on the same day as the stockholders' meeting Mr. Hays moved and the Board adopted the following resolution:

> "Resolved, That the shares of the capital stock of this corporation of the par value of fifty thousand dollars sold by the Purchasing Committee of the Wabash St. Louis & Pacific Railway Company to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Railroaad Companay, be approved and the transfer thereof to said Hubbell upon the books of the company be and the same is hereby ordered." (Rec. vol. IV, p. 1312.)

A like resolution respecting the sale of shares to General Dodge was offered by Mr. Cummins and was adopted.

Thus the amendments in questions were made with full knowledge that shares of stock of the Des Moines Union were held by individuals as well as by railway companies. This was in harmony with the laws of Iowa and by all concerned was regarded as consonant with the purpose of the parties in respect of the terminal property.

THE ISSUE, SALE AND TRANSFER OF THE CAPITAL STOCK OF THE DES MOINES UNION RAILWAY COMPANY.

The disposition of the capital stock which was issued by the defendant company in part payment for the terminal is important not only as bearing upon the intention of the parties in relation to title to the property, but also on the issue of estoppel which is set up in the defendants' answer.

It will be remembered that by the terms of its original articles, the defendant's capital stock was fixed at $1,000,000.00, all of which it was contemplated should be issued in payment for the terminal property. Likewise, the resolutions of January 1, 1885, authorizing the transfer of the ownership of the terminal property to the defendant, contemplated that defendant would issue its capital stock in payment therefor to the persons or corporations entitled thereto, who were presumably the three railroads parties to the contract of January 2, 1882, and this would be in the following proportions:

One-half to the Des Moines & St. Louis;

One-fourth to the Des Moines Northwestern;

One-fourth to the St. Louis, Des Moines & Northern.

In considering this issue, it is well to keep in mind that the Wabash Company was the owner of all the stock and bonds of the Des Moines & St. Louis Company and of one-half of the stock and all the bonds of the Des Moines Northwestern Company. It was also the lessee in perpetuity of the roads of these two companies. The result was that these two roads were sub-

stantially Wabash properties and they were in fact so treated by the Wabash Company. It is also well to keep in mind that General Dodge advanced all the money to build the St. Louis, Des Moines & Northern line, and a considerable part of the money to acquire the terminal property. As we have heretofore stated, the Wabash, St. Louis & Pacific Railway Company became insolvent and its property placed in the hands of a receiver about 1884, in a proceeding to foreclose a general mortgage given by that company. In the process of this foreclosure proceeding a purchasing committee composed of James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, and representing the bondholders of the Wabash Company, was organized, who acquired title by foreclosure sale to all of the property of the Wabash Company, including the interest of that company in the Des Moines & St. Louis and the Des Moines Northwestern companies in the early part of 1886. (See deed Mercantile Trust Company to Purchasing Committee, Vol. II, pp. 706-8, and deed Wabash, St. Louis & Pacific Railway Company to Purchasing Committee, Vol. II, pp. 536-42.)

This Purchasing Committee as alleged in the amended bill of complaint had power under the agreement creating it to purchase and hold all of the mortgaged property • • • "It being provided in said agreement that said Purchasing Committee might, after the foreclosure of said mortgaged properties, dispose of the same in such manner as they might deem to be for the best interests of the holders and owners of said bonds, or organize or cause to be organized new corporations to take title to and operate said railroad properties for the use and benefit of said bondholders." (Rec., Vol. I, pp. 63 and 64.)

On October 9, 1886, the firm of Polk & Hubbell of Des Moines entered into a written contract with the Purchasing Committee (Vol. IV, pp. 1573-4), by which the latter agreed to secure title to the railroad of the Des Moines Northwestern Railway Company by foreclosure of the trust deed thereon, and sell the same, including "a one-fourth interest in the terminal property at Des Moines," to Polk & Hubbell for $450,000.00, the same to be paid in first mortgage bonds secured by a mortgage on that part of the "railway lying between Farnham Street" (the western limits of the terminal property) "and the Town of Fonda." This agreement was ratified by the directors of the Wabash Company (Ex. 264, Vol. IV, pp. 1574-5).

On September 10, 1887, the Purchasing Committee and Polk & Hubbell entered into a supplemental agreement with respect to this (Vol. IV, pp. 1575-6). One of the purposes of this supplemental contract was to provide that Polk & Hubbell should further secure the $450,000.00 to be paid to the Purchasing Committee, by giving them a lien upon the one-fourth interest in the terminal property. This provision in the contract reads as follows (p. 1576):

> "Simultaneously with the conveyance above mentioned of one-fourth interest in the terminal property at Des Moines, the same shall be mortgaged back to the purchasing committee for the further security of the said $450,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, *the bonds and stock received from the Terminal Company in exchange for said one-fourth interest shall be transferred in lieu of the property* to Messrs. Polk & Hubbell, or their assignees."

By the terms of this contract the purchasing committee retained the option of doing either one of two things in carrying out the contract by which they agreed to transfer to Polk & Hubbell "a one-fourth interest in the terminal property at Des Moines;" either,

First. Transfer to Polk & Hubbell a one-fourth interest in the terminal property itself; or

Second. In the event "the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above," to transfer to Polk & Hubbell "the bonds and stock received from the Terminal Company in exchange for said one-fourth interest * * * *in lieu* of the property."

Now it is perfectly clear that a transfer of the stock and bonds of the Terminal Company could not be "in lieu of the property" unless the Terminal Company acquired a good title to the property. This contract was made September 10, 1887, less than two months prior to the time we find Colonel Blodgett in St. Louis preparing the mortgage of the Terminal Company reciting the fact that the Terminal Company has acquired and owns the terminal property. It shows clearly what was in the minds of the parties as to the disposition of the title and ownership of the terminal property. They were looking forward to transferring the title and ownership to the Terminal Company.

In carrying out this contract there was a delivery of one-fourth of the stock and bonds of the defendant company "in lieu of" one-fourth of the terminal property (testimony of F. M. Hubbell, Vol. III, pp. 1007-9).

On February 5, 1890, F. M. Hubbell contracted to purchase of the "purchasing committee" certain bonds and a one-fourth interest in the capital stock of the Des

Moines Union Railway Company (Ex. 297, Vol. IV, p. 1599). Immediately following the making of this contract it was agreed between Mr. Hubbell and General Dodge that the latter should participate in the purchase of the stock and bonds (testimony of F. M. Hubbell, Vol. III, pp. 1009-10). This was followed by making separate contracts with the purchasing committee (testimony of F. M. Hubbell last above referred to, and Exs. 298-300, Vol. IV, pp. 1600-2). This sale of stock was ratified at a meeting of the board of directors of the Des Moines & St. Louis Railroad Company, held April 8, 1890 (Ex. 185, Vol. IV, p. 1434). The purchasing committee accounted to the complainant, the Wabash Railroad Company, for the money paid by Hubbell and Dodge for this stock (Vol. IV, p. 1543, at top of page, and Ex. 244, Vol. IV, p. 1558). Now, what did the purchasing committee, the Wabash Company and the Des Moines & St. Louis Company intend to sell Messrs. Hubbel and Dodge when they took and retained their money for stock in the defendant company? Did they intend thereby to transfer to them a valuable interest in the terminal property, or were they simply intending to transfer some nicely lithographed paper which didn't represent anything? The natural inference is that they intended to transfer something of value, and if they had any other intention they did not advise Hubbell or Dodge of it. Did they act intelligently? The purchasing committee owned and had for years owned and managed the Wabash property. The persons present at the meeting of the directors of the Des Moines & St. Louis Company which ratified the sale of this stock were James F. How, vice-president of the Wabash Company; C. M. Hays, general manager of the Wabash Company;

A. B. Cummins, local attorney for the Wabash Company; F. M. Hubbell, H. S. Priest, general attorney for the Wabash Company, and George S. Grover, assistant general attorney for the Wabash Company (Vol. III, pp. 1011-12). Certainly these people knew what was intended by the transaction which culminated in the transfer of the terminal property to the defendant company.

Again on June 5, 1890, Mr. Hubbell made a contract with the purchasing committee by which he bought $50,000.00 of the Des Moines Union bonds and 500 shares of Des Moines Union stock for $57,736.00 (Vol. IV, p. 1613). The bonds at this time were worth about ninety cents on the dollar (Ex. 248, Vol. IV, p. 1561). This sale of stock was ratified by a resolution of the board of directors of the Des Moines & St. Louis Company on February 11, 1891 (Ex. 187, Vol. IV, p. 1437). The money paid for these bonds and this stock came into the hands of the purchaing committee (Vol. IV, p. 1560), and the committee accounted to the complainant, the Wabash Company, for the same (Vol. IV, p. 1543).

Does it now lie in the mouth of the Wabash Company to say that this stock was not intended to represent any valuable interest in the terminal property, when its predecessor, the purchasing committee, sold it to Hubbell for a valuable consideration, which consideration passed to the Wabash Company which now retains it? It can only represent a valuable interest in the terminal property if the Terminay Company acquired a good title to the property.

In this connection see the letter of O. D. Ashley, president of the Wabash Company, and one of the purchasing committee, to Mr. Hubbell, of April 5, 1890

(Vol. IV, pp. 1602-3), in which, speaking of the proposed sale of this second 500 shares of stock in the defendant company, which it will be remembered left in the hands of the purchasing committee one-eighth of such capital stock, Mr. Ashley says:

> "It must be understood, of course, that a one-eighth interest in the capital stock shall be sufficient to represent a proprietorship in the company according to the understanding we had when you were here."

The capital stock could not represent a proprietorship unless the corporation owned the property.

On January 15, 1892, all the capital stock of the defendant company held by the Des Moines & Northwestern, the Des Moines & Northern, F. M. Hubbell, and General Dodge, aggregating 3,500 shares (except a few shares standing in the name of the directors), was transferred to the Des Moines, Northern & Western Railway Company (Vol. II, p. 711), a consolidation of the Des Moines & Northern and the Des Moines & Northwestern companies.

On October 4, 1893, the Des Moines, Northern & Western Railway Company pledged 2,500 of these shares of stock in the Des Moines Union Company to F. M. Hubbell & Son to secure certain indebtedness to that firm (Vol. IV, pp. 1480-1), and on January 29, 1894, it sold this same stock to F. M. Hubbell & Son in satisfaction of certain indebtedness (Vol. IV, pp. 1482-3). At this last meeting there were present the following stockholders of the Des Moines, Northern & Western Railway Company: F. M. Hubbell, L. M. Martin, A. B. Cummins, A. N. Denman and H. D. Thompson, who constituted all the stockholders of that

company except General Dodge, who held 5,000 shares; W. R. Warfield, who held 50 shares, and F. C. Hubbell, who held one share. F. C. Hubbell is a defendant in this suit and is not complaining; W. R. Warfield has never complained, and General Dodge was told of this sale within a few days thereafter and ratified it (Vol. III, pp. 1017-8). This stock was transferred on the books of the defendant company to F. M. Hubbell & Son on October 4, 1893, and has ever since stood in that name.

The first interest, either direct or indirect, which the complainant, the Chicago, Milwaukee & St. Paul Railway Company, acquired in the Des Moines, Northern & Western Railway Company was by virtue of the two contracts of March 15, 1894 (Ex. 80, Vol. II, p. 838; Vol. IV, p. 1618), which were not, however, executed until several months after that date and to which we will make more extended reference in another division of our argument. Prior to this the Chicago, Milwaukee & St. Paul was advised in writing that the Des Moines, Northern & Western Company owned only 1,000 shares of stock in the defendant company and that five-eighths of the stock was owned by individuals (Vol. IV, p. 1617).

The letter is as follows:

"February 22, '94.

Mr. Roswell Miller, President,
Chicago, Milwaukee & St. Paul Railway Company, Chicago, Ill.

Dear Sir:—

Your favor of the 20th is received and noted. Enclosed I send you a copy of the Articles of Consolidation and Incorporation and Trust Mortgage of the Des Moines, Northern & Western Railway

Company. There has been bonds issued on this property to the amount of $2,770,000. I have no printed copy of the articles of incorporation of the Des Moines Union Railway Company, but will say they were drawn by our attorney, Mr. A. B. Cummins, and I think are all right, and if important to you, can have a copy made and sent you. The amount of bonds authorized by that corporation is $800,000, bearing 5 per cent interest, of which amount $612,000 have been issued. I enclose plat of Des Moines Union. We have about five miles of right of way occupied by about twenty miles of track. *The Des Moines, Northern & Western Railway Company own one-fourth of the capital stock of the Des Moines Union Railway Company. The Wabash owns one-eighth and five-eighths is owned by individuals.*

If you desire any further information I shall be glad to furnish it.

Yours truly,
(Signed) F. M. Hubbell,
President.

It therefore appears without controversy that the defendant company issued in payment for this property $400,000.00 of its fully paid capital stock, all of which went to the predecessors of the complainants: that their predecessors sold five-eighths of this stock for money, upon the theory that it represented a valuable interest in the property, and that this money is still retained by complainants. So far as the predecessors of the Wabash were concerned, they were either honest or dishonest. If they were honest, they intended that Hubbell and Dodge, when they bought this stock, should get something for their money, which intention necessarily involves the thought that the Terminal Company held a good title to the property. If they

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were dishonest, their successors have received the money and have no standing in this Court. We prefer to think they were honest, and there is nothing in the record to lead us to think otherwise.

So far as the Chicago, Milwaukee & St. Paul Company is concerned, their predecessors thought they were parting with something of value when they disposed of this stock, and that company acquired its interest with full understanding of the situation.

At the end of this argument will be found two diagrams—one showing the various changes in the ownership of the capital stock, and one showing the transfers of the capital stock.

It will no doubt be said, as it has been, that there was a great disparity between the value of this stock and the price paid for it. Nothing could be further from the fact at the time. The three railway enterprises had culminated in disaster, as indicated by the multiplicity of foreclosure shown by the record. They could none of them pay the interest on their bonded debt. Take, for example, the Des Moines Northwestern. It had a narrow gauge line from Des Moines to Fonda, a distance of about 113 miles, and it had a one-fourth interest in the Des Moines terminal property. The line of railroad, not the terminal interest, was mortgaged to secure $800,000.00 of general Wabash bonds. So early as 1887 it was in arrears for interest upon this debt in the sum of $300,000.00, showing that it had never paid a penny of return on the investment. The Wabash virtually owned this property, but it was a burden and not a benefit. The purchasing committee made an agreement with Polk and Hubbell which came to this: the railroad was to be cleared by foreclosure proceedings of all its old bur-

dens and turned over to them, together with one-fourth interest in the terminal property, or the equivalent in stocks and bonds of the Terminal Company if one was formed. Polk and Hubbell were to pay for this by bonding the railroad for $450,000.00 and turning over the bonds to the purchasing committee. They were not to incur any personal liability. In other words, the bonded debt and interest was scaled down more than 54 per cent, and then with the terminal interest given to Polk and Hubbell. Nor was this all. A little later the bonded debt was scaled down to $400,000.00, which F. M. Hubbell agreed personally to pay, as follows: $112,000.00 in terminal bonds, which he had gotten in the purchase, and the remainder in his individual notes, so that he got the railroad and one-fourth of the stock of the Terminal Company for $288,000.00.

A Terminal Company serving three railroads of this kind as its principal business, and bound to render that service at cost was not a very promising institution. The only chance for value in its stock in view of the contract of 1889 was in what are called "surplus earnings," as to which we will speak presently.

General Dodge was identified with railroad construction and operation all his life, and so was optimistic with respect to such enterprises and capable of appreciating their value. And he was interested in these Des Moines roads from the beginning. What did he think of this terminal stock? In 1894, after the Hubbells had acquired the stock, they now hold from the Des Moines, Northern & Western Railroad Company, a large block of whose shares the General held. Mr. Hubbell met him and showed him the record of the transaction and told him "that Hubbell & Son had bought this (terminal) stock of the company, and he expressed

himself satisfied." And Mr. Hubbell offered to let him have an interest in the stock with him, but he said he did not want it. "He said he thought it would be valuable at some time, but he did not want to invest in it." (Rec., Vol. III, p. 1018.)

The "surplus earnings" were revenues derived from the rent of property not immediately required for railroad uses, and payments for switching services rendered, not under contract, for other outside railroad companies and for transportation over the terminal lines. At the beginning they were insignificant and negligible.

There was no issue as to these which called for a full and detailed showing, but there is enough in the record to show substantially what they were. We submit what is shown, omitting cents.

December, 1889	$151.	Rec.,	Vol.	II,	p.	273.
January, 1890	160.	"	"	"	"	273.
February, 1890	168.	"	"	"	"	274

During this month Hubbell made his first purchase of stock.

May, 1890 $218. Rec., Vol. II, p. 276.

Hubbell now made his second purchase.

December, 1890 $200. Rec., Vol. II, p. 278.

For the eleven months from January 1, 1891, to December 1st of that year, $3,763 (Rec., p. 281), or on the principle of average $4,116 for the entire year, or at the rate of about 1 per cent on the issued stock.

There is no showing for the period from December 1, 1891, to January 1, 1898. For the years following,

until controversy arose between the parties, the figures are as follows:

1898	$10,825.	Rec.,	Vol.	IV,	p.	1371.
1899	17,211.	"	"	"	"	1371.
1900	21,333.	"	"	"	"	1384.
1901	25,643.	"	"	"	"	1385.
1902	29,922.	"	"	"	"	1386.
1903	35,570.	"	"	"	"	1387.
1904	46,752.	"	"	"	"	1388.
1905	54,763.	"	"	"	"	1389.
1906	61,081.	"	"	"	"	1397.
1907	75,513.	"	"	"	"	1406.

Not one dollar of these earnings was distributed as dividends. The money, $280,880.00, explicitly shown, and the revenues for eight years not so shown, was applied to improvements of and additions to the property, the remainder $176,715.00 appearing and being carried as "surplus earnings" at the time the evidence closes.

The evidence shows conclusively that these surplus earnings, insignificant at first, increased after the Hubbells acquired their stock, slowly at the beginning and more rapidly later as the terminal properties were improved and expanded, and as the City of Des Moines grew and the volume of its business increased, and during this period of eighteen years, covered by the evidence, the enterprise was in the charge of the Hubbells, the father as secretary and the son as president, the father giving much of his time, and the son most of his to their official duties, and this without salaries, and with no other compensation than would in the future come to them as to the other stockholders from the increased welfare and prosperity of the enterprise in which they were embarked.

When the Wabash purchasing committee sold this stock its value was problematical and entirely speculative. If the future was as the past it was worth nothing. They preferred the price for which they sold at the time. Now that the future has justified the faith of the Hubbells, they want to regain the property they sold and obtain the price for which they sold it.

Ever since May 1, 1888, the terminal property has been treated by everybody as the absolute property of the defendant company.

The defendant company took possession of the property on May 1, 1888, and has ever since possessed and operated it.

The corporate action of the defendant company from the time of its organization to January 8, 1900, in so far as it does not appear in complainants' testimony, appears in defendants' exhibits, volume IV, pages 1297 to 1413. We do not intend at this time to refer to it in detail. Its examination will disclose the undisputed fact that at all times the defendant treated this property as its own. It bought the original terminal property and paid for it. It acquired other property, took the title in its own name in fee simple; improved the property on its own motion and according to its own ideas, and paid for it with its own money. It elected its own directors and its own officers, made its own contracts, and in every way conducted its own business. At no time did the defendant do a single act recognizing any rights of the complainants or their predecessors in the property, except the rights which they possessed by reason of their stock interest. In examining this record, bear in mind that at all times there was on the board of directors of the defendant

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company one or more persons representing the stock of the complainant, the Wabash Company or its predecessors, and two or more directors representing the stock interests of the complainant, the Chicago, Milwaukee & St. Paul Railway Company, or its predecessors.

But the interesting question is, how has this property been treated by the complainants and their predecessors since May 1, 1888?

First, as to the Wabash Company (and in considering this it is interesting to note how this property was treated by the Wabash Company before and after May 1, 1888, and to note what, if any, change is apparent in its relation to the property at that date):

At a meeting of the executive committee of the Wabash Company, held December 26, 1882 (Ex. 227, Vol. IV, p. 1529), a resolution was passed authorizing the transfer to the Mercantile Trust Company of New York of certain property to secure certain indebtedness, and among the property scheduled is "Real Estate in Des Moines, $300,000."

At a meeting of the purchasing committee, held August 6, 1886 (Ex. 240, Vol. IV, p. 1555), the terminal property in Des Moines is referred to as follows:

> "And the sale to include only one-quarter of the terminal property formerly owned by the Wabash Railway Company and General Dodge; this sale leaving the purchasing committee or the new Wabash Company in possession and ownership of one-half of said terminal property."

We have already shown how Polk & Hubbell in October, 1886, made a contract with the purchasing commit-

tee to purchase the property of the Des Moines Northwestern Company and "a one-fourth interest in the terminal property at Des Moines" (Ex. 263, Vol. IV, p. 1573), and how in a supplemental contract the purchasing committee had secured the option of delivering "in lieu of" the property, one-fourth of the stock and bonds of the terminal company.

Under date of February 25, 1888, Mr. Charles M. Hays, general manager of the Wabash Western Railway Company, made his annual report, which was embodied in the annual report presented to the stockholders on March 13, 1888, as follows (Ex. 229, Vol. IV, p. 1532):

> "There has also been erected during the year an addition of fifteen stalls to roundhouse at Moberly at a cost of $15,625.79
> Fifteen-stall roundhouse at Des Moines, Iowa (which will be conveyed, with other property at that point, to the Des Moines Union Railway Co.) $12,472.96"

Thus it appears that prior to the execution and delivery of the deeds to the Terminal Company, the terminal property is referred to and treated by the parties as property of the Wabash Company, although the title to most of it stood in the name of trustees.

A very different attitude is shown on the part of this complainant and its predecessors in relation to this property after May 1, 1888.

On March 5, 1889, Mr. How writes to F. M. Hubbell (Ex. 290, Vol. IV, p. 1595) as follows:

> "I am in receipt of your letter of Mar. 2nd. As the property referred to in your letter now be-

longs to the Des Moines Union Ry. Co., I think that Co. should pay the interest on the mortgage and will also arrange to take care of the principal. The last payment of interest was made in the month of Jan'y, 1886."

Again on April 1, 1889, he writes (Ex. 292, Vol. IV, p. 1596):

"I have just returned from the East and am in receipt of your letter of the 23d ult. I think that the interest due on the deed of trust on the lot *owned* by the Terminal Co. referred to in your letter should be paid and an arrangement made to continue the deed of trust on the property at a lower rate of interest. Of course the interest now due and to become due should be paid by the Terminal Co."

Again he writes to Polk & Hubbell under date June 28, 1889 (Ex. 294, Vol. IV, p. 1597):

"I am in receipt of yours of June 26th calling attention to certain bills for delinquent taxes on railroad property in Des Moines. Any such bills that are a lien on the property transferred to the Des Moines Union Ry. Co. should be paid by that Co., *all the property having been bought for that Co. and since been transferred to it.*

I am also in receipt of a letter from Mr. Hubbell of same date referring to your letter and speaking of a similar tax certificate held by him on the same property. Will you please show this letter to him."

These letters were written very shortly after the transfer of the property, and were written by James F. How, who had been the moving spirit in this matter during all the years since 1881, who knew the in-

tent of the transaction, and he seems to have no doubt as to who owned this property.

We have already shown the facts in relation to the amendments to the articles of incorporation of the defendant company of April 8, 1890, and the resolutions passed that day with respect to the title to this property and the payment of the purchase price therefor by the defendant company, and the part which was taken in the same by James F. How, vice-president; Charles M. Hays, general manager ,and Wells H. Blodgett, general counsel of the Wabash Company, all of whom were familiar with the transaction, were active in promoting the terminal organization, and knew what was intended.

Again on May 20, 1890, Mr. How wrote Mr. Hubbell as follows (Ex. 304, Vol. IV, p. 1612):

> "I am just in receipt of yours of the 17th, giving list of certain property that you have purchased in Des Moines, which you offer to sell to the Des Moines Union Raiway Company at the price you paid for same, with interest from the date of purchase, said offer to be accepted at any time within thirty days of the date of your letter. *As I understand it, this question will have to be acted upon by the board of directors of the Des Moines Union Railway Company, and I suppose your letter is written with the idea of ascertaining how Mr. Hays and myself would vote on the question at such a meeting. It is our opinion that your offer should be accepted, provided the Des Moines Union Railway Company can pay for the property in their bonds at par, with accrued interest.*"

This doesn't sound as though Mr. How had in mind that the ownership of this property was in the complainants or their predecessors.

On June 6, 1890, General Dodge wrote Mr. Hubbell as follows (Ex. 305a, Vol. IV, p. 1614):

> "I duly received yours of May 17th in re. property you have bought at Des Moines. I would like to have you send me a map showing this property. I think the Des Moines Union Railway Co. should take it as soon as they can raise the money to do so on their bonds."

Note the letters of Charles M. Hays to Mr. Hubbell, dated April 28, 1892, and April 22, 1893 (Exs. 306-7, Vol. IV, pp. 1616-7), in the latter of which he says:

> "While it seems to me that it is desirable that the lot should be owned by the Des Moines Union Company, we are not in such position that we feel we can conveniently advance the amount that would be chargeable to us on usual basis for distributing the expense of such purchase. *I think since you are now the largest holder in Des Moines Union bonds and stock*, you should sell the lot to the company and take bonds at par for same. As a director of the Des Moines Union Company I am willing to approve getting lot in this way, but I am not willing to approve of it on basis of each company contributing its proportion of the purchase price and taking bonds therefor."

If the Hubbell stock-holding interest was intended to be of no value to him, why should he sell the lot to the company and take its bonds therefor?

There will be found among defendants' exhibits voluminous correspondence passing between the defend-

ant company and the Wabash Company and its predecessors, covering the period from May 1, 1888, to the time of the commencement of this suit. It would unnecessarily extend this argument to refer to this correspondence in detail. With respect to it we desire to say that there isn't a single letter passing between the parties in this period of twenty-three years which does not either tacitly or expressly recognize the absolute ownership of the defendant company, and no intimation at any time that the Wabash Railroad Company or its predecessors claimed any interest in the property whatever, except that to which it was entitled by reason of its being the owner of some of the defendant's shares of stock. We will content ourselves with here calling attention to a few of the more solemn and formal acts of the Wabash Company and its predecessors, which show conclusively that no claim was made to any interest in this property other than the stock-holding interest.

CORPORATE ACTS OF WABASH COMPANY.

At a meeting of the board of directors of the Des Moines & St. Louis Railroad Company held in New York on March 16, 1899, there were present the following persons: O. D. Ashley, Edgar T. Welles, Cyrus J. Lawrence, Thomas H. Hubbard and J. C. Otteson. Ashley, it will be remembered, was president of the Wabash Company, and he with Edgar T. Welles and Thomas H. Hubbard had been three of the members of the purchasing committee. Otteson was secretary of the Wabash Company. These persons were familiar with the history of the terminal property and the intention of the parties with respect thereto. At this

meeting (see Ex. 192, Vol. IV, pp. 1446-9), a resolution was passed authorizing the execution of a deed from the Des Moines & St. Louis Railroad Company to the complainant, the Wabash Company, of the property of the former company, which was described in the resolution and in the deed so authorized as follows (pp. 1448-9):

> "commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the counties of Polk, Marion and Monroe to the town or City of Albia, in Monroe County, a distance of about sixty-seven miles, * * * and especially including all the rights and leasehold and other interests of the first party under a contract dated May 10, 1889, between the Des Moines Union Railway Company of the first part and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, of the second part."

According to the complainants' theory, the Des Moines & St. Louis Railroad Company owned a one-half interest in the terminal property, but it will be noted that this deed does not purport nor attempt to convey any interest in the terminal property whatever, except the interest it had under the lease of May 10, 1889, and in describing its railroad property it describes it as commencing at the point where its tracks connect with the tracks of the Des Moines Union Railway Company.

On January 1, 1899, the Wabash Railroad Company gave a mortgage to the Central Trust Company of

New York (Ex. 530, Vol. IV, p. 1928). This mortgage was prepared by Colonel Blodgett (testimony of Colonel Blodgett, Vol. II, p. 379), who had been the guiding spirit in the terminal transaction and was fully familiar with the situation. This mortgage covered what is known as the Des Moines division, the northerly terminus of which is at Des Moines. Among the recitations in the mortgage is the following:

> "And, whereas, the company owns the entire capital stock of the Des Moines & St. Louis Railroad Company, consisting of twenty thousand (20,000) shares of the par value of one hundred ($100) dollars each, *and five hundred (500) shares of the capital stock of the Des Moines Union Railway Company* of the par value of one hundred ($100) dollars each."

The property is described in the mortgage as follows (p. 1929):

> "commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the counties of Polk, Marion and Monroe to the town or City of Albia, in said County of Monroe, a distance of about sixty-seven miles; * * * *also five hundred (500) shares of the capital stock of the Des Moines Union Railway Company, of the par value of one hundred (100) dollars each;* * * * *and also all the leasehold rights and privileges of the company to use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in or near said City of Des Moines, including also the rights and interests of the company in and to a certain terminal contract, dated the 31st day of July, 1897, and made by* and between the Des

Moines Union Railway Company, the company and the Des Moines Northern & Western Railroad Company, and in and to another contract, dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines & St. Louis Railway Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company."

The mortgage further provides:

"The company agrees at the time of the execution of these presents to deliver to and deposit with the trustee the above-mentioned terminal contract, dated the 31st day of July, 1897, * * * and also the other above-mentioned contract, dated the 10th day of May, 1889, * * * together with an assignment or assignments by the company to the trustee of all its rights and interest in and to said contracts, and the consents to such assignment or assignments of the remaining above-mentioned parties to said contracts or of their successors or assigns.

* * * * * * * *

And the company further agrees at the time of the execution of these presents to deliver to, and deposit with, or cause to be delivered to, and deposited with the trustee, duly endorsed in blank, the above-mentioned shares of stock of the * * * Des Moines Union Railway Company, * * * and also a consent to the assignment or mortgage by these presents to the trustee of the above-mentioned shares of stock of the Des Moines Union Railway Company, which consent is to be given by the above-mentioned Des Moines Northern & Western Railroad Company, party to the above-mentioned terminal contract of the 31st day of July, 1897, or its successors or assigns."

It will be noted that this mortgage does not purport to cover any interest in the terminal property itself. It describes the complainants' property as commencing at a point at or near the eastern limits of the City of Des Moines, where it connects with the tracks of the Des Moines Union Railway Company, and then for the purpose of transferring to the mortgagee whatever rights it has with respect to the Des Moines Union Company or its property, it specifically and with great care provides for a transfer of the 500 shares of the capital stock in that company and the contracts by which it is entitled to be furnished terminal service by the defendant company for the period of thirty years from and after May 1, 1888. The man who drew this mortgage, and the parties who executed it, never suspected that the complainant had any interest in this terminal property except the interest represented by its share of the capital stock and its interest as a lessee or tenant under the terms of the operating contract.

The things we have called attention to are only a very few of the very many things appearing in this record which show that at no time between May 1, 1888, and the commencement of this suit did the Wabash Company, or any of its predecessors, or any of its officers, have the least suspicion that that company had any interest in the property in controversy other than its interest as a stockholder, or that the shares of stock held by the defendant, F. M. Hubbell & Son, were "merely nominal and of nominal value."

THE RELATION OF THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND ITS PREDECESSORS TO THE TERMINAL PROPERTY.

Going now to the history of the relations sustained by the complainant, the Chicago, Milwaukee & St. Paul Railway Company, and its predecessors, to the terminal property since May 1, 1888.

It will be remembered that the Des Moines Northwestern Railway Company in February, 1881, gave a mortgage to the Central Trust Company (Vol. II, p. 605) to secure certain general mortgage bonds of the Wabash Company.

It will also be remembered that in 1886 Polk & Hubbell made a contract and supplement thereto with the purchasing committee by which the committee undertook to foreclose the Des Moines Northwestern mortgage, acquire title to the property of that company, and sell the same, together with a one-fourth interest in the terminal property, or "in lieu thereof," one-fourth of the stock and bonds of the terminal company.

In pursuance of that contract, the purchasing committee caused the Central Trust Company to bring a suit in the District Court of the United States for the southern district of Iowa to foreclose that mortgage. The decree in the case appears in complainants' testimony (Vol. II, pp. 609-13). The decree describes the property as "being a line of railway extending from Farnham street, Des Moines, Iowa, through the counties of Polk, Dallas," etc. (p. 610). The deed to Polk & Hubbell executed in pursuance of the sale under that decree (Vol. II, pp. 613-5) describes the property (p. 614) as "being a line of railway extending from Farn-

ham street, Des Moines, Iowa, through the counties of Polk, Dallas," etc.

Farnham street was the western terminus of the terminal property, and this line of road extended westerly from that street. It will be seen that the Des Moines & Northwestern Railway Company, by virtue of this decree and these deeds, acquired title simply to the railway property commencing at Farnham street, the westerly limit of the terminal property.

On April 8, 1890, when the capital stock of the defendant company was issued, one-fourth thereof (1,000 shares, less two shares standing in the name of the two directors representing that company) was issued to the Des Moines & Northwestern Railway Company (Vol. II, p. 711), and thereby the Des Moines & Northwestern Railway Company acquired the only interest it had in the terminal property outside of the interest which it had as a tenant under the contract of May 10, 1889.

It will be remembered that the St. Louis, Des Moines & Northern Railway Company, which owned the line from Des Moines to Boone, on August 1, 1881, gave a mortgage to the Mercantile Trust Company (Vol. II, p. 552), which described the property (p. 554) as

> "all its railroad extending as aforesaid, from the western boundary line of the City of Des Moines, in Polk County, Iowa, by way of Clive in said county, through the counties of Polk, Dallas and Boone," etc.

The western boundary line of the City of Des Moines was almost a mile west of Farnham street, the western boundary line being what is now known as Twenty-eighth street, and Farnham street being now known

as Sixteenth street. This left a piece of road extending from Farnham street to West Twenty-eighth street which was not covered by this mortgage, nor did the mortgage purport to cover any interest which the St. Louis, Des Moines & Northern Company had in the terminal property. For the purpose of extending the lien of this mortgage to cover the omitted property, the St. Louis, Des Moines & Northern Railway Company executed a supplemental mortgage to the Mercantile Trust Company (Vol. II, pp. 561-3), which after reciting the execution of the original mortgage says:

> "Whereas, there was omitted from the description of the property conveyed by said mortgage a part of the road of the party of the first part which should have been included, and
>
> Whereas, the board of directors of the party of the first part has this day authorized its president, and assistant secretary, to execute and deliver a supplement to said mortgage so that said omitted property shall be included in said mortgage.
>
> Now, therefore, the St. Louis, Des Moines & Northern Railway Company, by this indenture doth grant, bargain, sell and convey unto the Mercantile Trust Company, as trustee, and to its successor or successors in trust, all that portion of its line of railroad lying between Farnham street, in the City of Des Moines, and the western corporate limits of said city, being situated in the County of Polk and State of Iowa, together with all the appurtenances thereto belonging or therein included, and *also all its interest of whatever kind in the obligation or stock of the Des Moines Union Railway Company*, and all its property of whatever name or nature not included and covered by said original mortgage."

It will be noted that by this supplemental mortgage the only interest which is attempted to be transferred in the terminal property is the obligation or stock of the defendant company.

This mortgage was foreclosed by an action in the District Court of the United States for the southern district of Iowa, the bill of complaint therein appearing in complainants' testimony (commencing on page 563, Vol. II), and which bill of complaint, referring to this supplemental mortgage, describes the interest in the terminal property thereby conveyed as being the obligations or stock of the terminal company (p. 565). The decree in the case, which appears in complainants' testimony (commencing at page 578, volume II), describes the property in the same way. The deed executed to Solon Humphreys and J. T. Granger in pursuance of the decree describes the property in the same way (Vol. II, pp. 584, 589).

In November, 1889, articles of incorporation of the Des Moines & Northern Railway Company were adopted (Vol. II, pp. 592-6). On November 23, 1889, Solon Humphreys and others, who had purchased this property at the foreclosure sale, deeded it to the Des Moines & Northern Railway Company (Vol. II, pp. 596-7), the deed describing the property as follows:

> "* * * The line of railway and franchises (except the franchise to be a corporation) formerly belonging to the St. Louis, Des Moines & Northern Railway Company, extending from Farnham street in the City of Des Moines, County of Polk and State of Iowa, through the Town of Clive and the counties of Polk, Dallas and Boone to the City of Boone * * * *and all its interest in the stock of the Des Moines Union Railway Company.*"

On April 8, 1890, when the defendant company's certificate of shares were issued, 1,000 shares (less two shares issued to the directors of the defendant company) were issued to the Des Moines & Northern Railway Company.

At a meeting of the stockholders of the Des Moines & Northwestern Railway Company, held October 12, 1891 (Ex. 129, Vol. IV, p. 1456), a lengthy resolution was adopted looking to the consolidation of the properties of the Des Moines & Northwestern and the Des Moines & Northern companies. In examining this resolution it is interesting to note that wherever the properties of these two companies are referred to they are described as commencing at Farnham street, in the City of Des Moines, and extending in a westerly and northwesterly direction, and wherever their interest in the terminal property is concerned it is referred to as "shares of stock" of the defendant company. References are made to these matters in the following paragraphs of the resolution and the contract which is made a part of it: third (p. 1459), fourth and fifth (p. 1460), ninth, tenth and eleventh (p. 1461), fifteenth (p. 1463), and fourth paragraph of contract (pp. 1468-9). Nowhere in this resolution is any reference made to any claim on the part of these companies that they owned any interest in the terminal property itself.

Carrying out this resolution, articles of consolidation and incorporation of the Des Moines, Northern & Western Railway Company were adopted on the 14th of December, 1891 (Ex. 64, Vol. II, p. 624). By the terms of the second article (pp. 625-6) the property of the two constituent companies, the Des Moines & Northern Company and the Des Moines & Northwestern Company, became the property of the Des Moines, North-

ern & Western Railway Company, the consolidated corporation.

The objects of the new corporation were stated in part as follows (pp. 625-7):

> "(1) To own, complete, extend, improve, maintain, and operate the line of railway heretofore owned and operated by the Des Moines & Northwestern Railway Company, extending from Farnham street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas to Fonda, in said last-named county.
>
> (2) To own, complete, extend, improve, maintain and operate the line of railway heretofore owned and operated by the Des Moines & Northern Railway Company, extending from Farnham street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas and Boone, to the City of Boone, in said last-named county.
>
> . . . . . .
>
> (10) *To purchase, own and sell capital stock of the Des Moines Union Railway Company, or any other company owning or operating terminal grounds, tracks or stations.*"

As we have already shown, upon the organization of this company, all the capital stock of the defendant company theretofore owned by the Des Moines & Northwestern Company, the Des Moines & Northern Company, by G. M. Dodge and by F. M. Hubbell, aggregating 3,500 shares, were transferred to and became the property of the Des Moines Northern & Western Railway Company.

On December 14, 1891, at a meeting of the stockholders of the Des Moines, Northern & Western Railway Company (Ex. 208, Vol. IV, p. 1476), a resolution was passed authorizing the giving of a mortgage to the Metropolitan Trust Company of New York. A part of that resolution is as follows (pp. 1477-8):

> "Be it therefore resolved; that the Des Moines, Northern & Western Railway Company, the consolidated corporation hereinbefore referred to, shall duly execute and acknowledge a trust mortgage to the Metropolitan Trust Company of the City of New York, as trustee, which mortgage shall convey, under the usual terms and conditions, all its railroad extending from Farnham street, in the City of Des Moines, County of Polk, and State of Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, Iowa, to Fonda, in said last-named county, and also extending from Farnham street aforesaid over the same line to Clive, in the County of Polk, and thence through the counties of Polk, Dallas and Boone, Iowa, to the City of Boone * * * *also a one-fourth interest in the capital stock of the Des Moines Union Railway Company; but it is expressly understood and agreed that said mortgage shall not convey an additional five-eighths interest in the capital stock of the said Des Moines Union Railway Company, of which the said company is the owner.*"

In pursuance of this resolution, the Des Moines, Northern & Western Railway Company on the 15th day of December, 1891, executed a mortgage to the Metropolitan Trust Company of New York, which appears as exhibit 65, on page 633 of volume II. This mortgage described the property covered by it in the terms of the resolution above quoted (p. 637).

It will be remembered, as we have heretofore shown, that this five-eighths of the capital stock of the Des Moines Union Railway Company (2,500 shares) was transferred to F. M. Hubbell & Son on the 4th day of October, 1893, and has ever since stood upon the books of the defendant company in that name.

The first interest, either direct or indirect, which the Chicago, Milwaukee & St. Paul Railway Company had in the transactions under consideration, or in any of the companies interested in said transactions, grew out of two contracts dated March 15, 1894, one of which is a contract between that company and Frederick M. Hubbell and Frederick M. Hubbell & Son, and appears as complainants' exhibit 80 (commencing at page 838 of volume II), and the other of which appears as defendants' exhibit 309 (p. 1618, Vol. IV), and which was between the Des Moines, Northern & Western Railway Company and the Chicago, Milwaukee & St. Paul Railway Company. These contracts, however, were not actually executed until the 17th of July, 1894 (see testimony of F. M. Hubbell near bottom of page 1018, volume III).

The negotiations leading up to the making of these contracts were conducted by Mr. Hubbell, representing himself and the Des Moines Northern & Western Railway Company, and Roswell Miller, president of and representing the Milwaukee Company (testimony of F. M. Hubbell near top of page 1019, volume III).

By the terms of the contract between the Des Moines, Northern & Western Company and the Chicago, Milwaukee & St. Paul Company (Ex. 309, Vol. IV, p. 1618), the former company was to receive a division of the through rate on joint business, at percentages fixed in the contract and depending upon the origin and desti-

nation of the freight. In consideration of the execution of this contract, F. M. Hubbell and F. M. Hubbell & Son entered into the contract with the Chicago, Milwaukee & St. Paul Railway Company heretofore referred to (Vol. II, p. 838), by which the Hubbells made a present to the Chicago, Milwaukee & St. Paul Railway Company of 16,800 shares of the capital stock of the Des Moines, Northern & Western Railway Company and agreed to sell it an additional 6,468 shares at any time between January 1, 1897, and the first Monday in April, 1899, for $46,200.00. The thing which induced the making of these contracts on the part of the Hubbells is detailed by Mr. F. M. Hubbell (near the top of page 1020, volume III) as follows:

> "Some time during the summer of 1893, the Milwaukee Company notified the Des Moines, Northern & Western Railway Company that the divisions in freight interchanged between the two companies would be reduced from 50 per cent to 25 per cent. This great reduction in the division would prevent the Des Moines, Northern & Western Railway Company from earning its interest and operating expenses; and rather than submit to bankruptcy and a foreclosure, we made this arrangement in order to obtain an increase in the division in favor of our company to 40 per cent, hoping thereby that we could earn sufficient revenue to pay operating expenses and interest on the bonds."

As we have heretofore shown, before the making of this contract and during the negotiations which led up to it, Roswell Miller, president of the Milwaukee Company, was advised that the Des Moines, Northern & Western Railway Company only owned 1,000 shares of stock in the defendant company, and that five-eighths

of the defendant's capital stock was owned by individuals (see letter of F. M. Hubbell to Roswell Miller, Ex. 308, Vol. IV, p. 1617).

It was further provided in sections 4 and 5 of the contract last above referred to (pp. 839-40) that under certain conditions the mortgage heretofore referred to and given by the Des Moines, Northern & Western Railway Company to the Metropolitan Trust Company, should be foreclosed and the property transferred to the new corporation, in which event the interest of the Milwaukee Company in the capital stock of the new corporation should be the same as its interest in the capital stock of the present corporation.

Afterward a suit was brought in the Circuit Court of the United States for the southern district of Iowa to foreclose the mortgage given by the Des Moines, Northern & Western Railway Company to the Metropolitan Trust Company, and in this suit a decree was entered which appears, commencing on page 645 of volume II, in which decree the property upon which a lien was established was described as

> "a certain line of railroad extending from Farnham street, in the City of Des Moines, in Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to the Town of Fonda, in said last-named county, and also of a line of railroad extending from Clive to the County of Polk, through the said county to the City of Boone, in the County of Boone, and State of Iowa, * * * *Also a one-fourth interest in the capital stock of the Des Moines Union Railway Company, it being by the said mortgage expressly understood and agreed that the said mortgage did not embrace or convey an additional five-eighths interest in the capital stock of said Des*

Moines Union Railway Company of which the said Des Moines Northern & Western Railway Company was the owner."

In pursuance of this decree a sale was had at which the property was purchased by G. M. Dodge, F. M. Hubbell and F. C. Hubbell. A report of this sale appears as Complainants' Exhibit 67 (commencing on page 651, volume II), in which report the property sold is described in the terms used in the decree. This sale was approved, and on the 8th of February, 1895, the Commissioner made a Commissioner's deed to G. M. Dodge and others constituting the purchasing committee, in which the property transferred was described as in the decree (Ex. 69, Vol. II, p. 654).

On the 1st day of January, 1895, the articles of incorporation of the Des Moines, Northern & Western Railroad Company were adopted (Ex. 70, Vol. II, p. 657), in which the objects and purposes of the corporation were described in part as follows:

"First. To own, complete, extend, improve, maintain and operate the line of railway heretofore owned and operated by the Des Moines Northern & Western Railway Company, extending from Farnham street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to Fonda, in said last-named county; also extending from Clive, in the County of Polk, through the counties of Polk, Dallas, and Boone, to the City of Boone, in said last-named county.

* * * * * * * *

Twelfth. *To purchase, own and sell capital stock of the Des Moines Union Railway Company, or any other company owning or operating terminal grounds, tracks or stations."*

To this corporation G. M. Dodge and the other members of the purchasing committee transferred this property by deed appearing as Complainants' Exhibit 71 (Vol. II, p. 663), in which the property was described as in the deed from the Commissioner to them. In none of these records or documents is any reference whatever made to any possible interest (except through the stock) in the terminal property.

About the time of the execution of this deed there was held a meeting of the board of directors of the Des Moines, Northern & Western Railroad Company (Ex. 215, Vol. IV, p. 1487) in which it was resolved to purchase of G. M. Dodge and others constituting the purchasing committee this railway property, which was described as follows:

> "A certain line of railroad extending from Farnham street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to Fonda, in the said last-named county; and also extending from Clive, in the County of Polk, through the counties of Polk, Dallas and Boone to Boone, in the County of Boone, and State of Iowa, • • • also a one-fourth interest in the capital stock of the Des Moines Union Railway Company."

At the same meeting it was resolved (p. 1490) to execute a mortgage to the Metropolitan Trust Company of New York as trustee, upon the property which was described as heretofore set out.

At a meeting of the stockholders of the Des Moines, Northern & Western Railroad Company, on March 5, 1895, certain resolutions were passed on this same subject, in which the property was described as in the deed and former resolution (Ex. 216, Vol. IV, p. 1492).

The Des Moines, Northern & Western Railroad Company after it acquired the property gave a mortgage to the Metropolitan Trust Company of New York (Vol. IV, p. 1518) in which the property was described:

> "All its railroad, extending from Farnham street, in the City of Des Moines, County of Polk, and State of Iowa, through the counties of Polk, Dallas, * * * *also a one-fourth interest in the capital stock of the Des Moines Union Railway Company.*"

By the seventh section of the contract of March 15, 1894, between Hubbell & Son and the Chicago, Milwaukee & St. Paul Railway Company, it was provided (Vol. II, p. 841) that the board of directors of the Des Moines, Northern & Western Railway Company should consist of three persons who should be nominated by the St. Paul Company, and four persons to be nominated by Hubbell & Son.

At the annual meeting of the stockholders of the Des Moines, Northern & Western Railway Company, held on January 3, 1895 (ex. 214, vol. IV, p. 1486), this portion of the agreement was carried out and E. P. Ripley, A. J. Earling and P. M. Myers, representing the St. Paul Company, were elected upon the board of directors of the Des Moines, Northern & Western Railway Company, and thereafter three or more representatives of the Milwaukee were upon the board of directors of that company or its successor, the Des Moines, Northern & Western Railroad Company, and during these years the representatives of the St. Paul Company, and particularly Mr. Roswell Miller, president of that company, were active in the management of the affairs of the former company. In this way they

not only became familiar with the affairs of the Des Moines, Northern & Western Railway and Railroad Company, but also with the relations between that company and the defendant, the Des Moines Union Railway Company. They knew that the only interest which the Des Moines, Northern & Western Company had in the Des Moines Union Company was the interest represented by the 1,000 shares of stock which the former had in the latter (ex. 308, vol. IV, p. 1617). They were familiar with the foreclosure of the mortgage upon the property of the Des Moines, Northern & Western Railway Company, the organization of the Des Moines, Northern & Western Railroad Company, and the steps by which the property of the former was transferred to the latter, and had certified copies of all the records in respect thereto. They were furnished with copies of the articles of incorporation of the defendant, the Des Moines Union Railway Company, advised as to what property it owned, and furnished with copies of the contract of May 10, 1889, and the ratification thereof of July 31, 1897. (See the following exhibits of defendants, vol. IV: 317 and 318 (p. 1628); 319 and 320 (p. 1630); 321 (p. 1631); 322 (p. 1632); 323 (p. 1634); 324 and 325 (p. 1636); 326 (p. 1637); 339 (p. 1650); 340 (p. 1651); 341 (p. 1652); 342 (p. 1654); 343 and 344 (p. 1655); 345 (p. 1657); 415 (p. 1763); 416 (p. 1764); 417 and 418 (p. 1765); 419 and 420 (p. 1766); 421 (p. 1767); 425 (p. 1770).)

In the year 1898 the Chicago, Milwaukee & St. Paul Railway Company acquired all the outstanding capital stock and bonds of the Des Moines, Northern & Western Railroad Company for the purpose of consolidating the line of the latter company with its own line of railroad.

At the annual meeting of the stockholders of the Des Moines, Northern & Western Railroad Company held January 5, 1899 (ex. 219, vol. IV, p. 1498), the board of directors elected consisted of W. G. Collins, A. J. Earling, C. A. Goodnow, Burton Hanson, F. M. Hubbell, F. C. Hubbell and P. M. Myers, all of whom, except the two Hubbells, were officers of the Chicago, Milwaukee & St. Paul Railway Company.

At a meeting of the board of directors of the Des Moines, Northern & Western Railroad Company held in Chicago on April 24, 1899, at which were present the members of the board of directors above named, except the two Hubbells (ex. 220, vol. IV, p. 1499), there was laid before the board of directors a proposition made by the Chicago, Milwaukee & St. Paul Railway Company looking toward the consolidation of the property of the two companies, a part of such resolution being as follows (p. 1503):

> "Resolved, that the Des Moines, Northern & Western Railroad Company be, and is hereby requested to sell and convey to this Company all its railroad and property and for this purpose to make, execute and deliver, through its proper officers, a good and sufficient deed of conveyance, conveying and transferring to this Company all its railroad and property of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges and immunities of every kind, howsoever derived, in consideration of the sum of One Dollar and of the cancellation and surrender by this Company of all the above mentioned mortgage bonds of the Des Moines, Northern & Western Railroad Company, amounting in the aggregate to the sum of $2,933,000, with the interest due thereon, and of the payment of all other lawful debts of said Company; and this Company

hereby agrees that, upon the delivery to it of such deed, it will cancel and surrender the said mortgage bonds and will assume and pay all other lawful debts of said Des Moines, Northern & Western Railroad Company, and hold said Company free and clear and harmless therefrom."

Upon consideration of this proposition, the directors of the Des Moines, Northern & Western Railroad Company passed a resolution accepting this offer and calling a meeting of the stockholders for the purpose of considering it (p. 1504). It will be noted that this proposition of the Milwaukee was to acquire all the property of the Des Moines, Northern & Western Railroad Company of whatever character. This stockholders' meeting was held on May 8, 1899 (ex. 222, vol. IV, p. 1508). At this meeting the stockholders authorized the transfer of the property of the Des Moines, Northern & Western Railroad Company to the Milwaukee Company, and authorized the execution of a deed transferring the same, a part of which reads as follows (p. 1512):

"Whereas, the Des Moines, Northern & Western Railroad Company now owns and operates a certain line of railroad, commencing at the east line of Section Seven (7), Township Seventy-eight (78) North, Range Twenty-four (24) West, in the City of Des Moines, Polk County, Iowa, and thence extending in a general northwesterly direction, via Clive in said County, through the Counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, to Fonda in said last named County; and also a line of railroad extending from Clive, in said County of Polk, through said County of Boone, in the County of Boone; said lines of railroad hav-

ing an aggregate length of about one hundred and fifty miles, all in the State of Iowa;

* * * * * * * * * *

and also one-fourth interest in the capital stock of the Des Moines Union Railway Company."

The east line of section 7 referred to in this deed was coincident with the west city limits of the City of Des Moines at that time and what is now known as Twenty-eighth Street, which is approximately a mile west of what was formerly known as Farnham Street and now known as Sixteenth Street. This was the form of the deed approved by the stockholders of the Des Moines, Northern & Western Railroad Company in carrying out the proposition to transfer to the Milwaukee Company all its property, and shows clearly that at this time no claim was made that that company owned any interest in the terminal property other than that represented by its stock. This deed was executed as authorized, delivered to the Chicago, Milwaukee & St. Paul Railway Company, and filed for record (ex. 74, vol. II, p. 673).

As above noted, this deed from the Des Moines, Northern & Western Railroad Company to the complainant, the Milwaukee Company, described the line of road as commencing at the east line of section 7, whereas, all former transfers and mortgages of the property had described it as commencing at Farnham Street. To correct this error in the description, a special meeting of the stockholders of the Des Moines, Northern & Western Railroad Company was held on June 12, 1907 (ex. 75, vol. II, p. 678). This was more than eight years after the execution of the deed last above referred to, during which eight years the Chi-

cago, Milwaukee & St. Paul Railway Company had had two representatives on the board of directors of the defendant company.

At this meeting a resolution was passed reciting the fact that by the transactions of 1899 heretofore referred to, it was the intention to transfer to the Milwaukee Company all the railroad and property of the Des Moines, Northern & Western Railroad Company "of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges and immunities of every kind, howsoever derived," and reciting the fact that through some error or oversight the deed described the property as commencing at a point on the east line of section 7, instead of "Sixteenth Street (formerly called Farnham Street), in the said City of Des Moines," and then states:

> "Now, Therefore, Be It Resolved, that for the purpose of correcting such error and carrying out the purpose and intent of this Company to convey to the said Chicago, Milwaukee & St. Paul Railway Company its *entire* property as aforesaid, the President and Secretary of this Company be required and directed to execute and deliver to the Chicago, Milwaukee & St. Paul Railway Company, a deed in due form of law, of that part of the said tracks and right of way omitted as aforesaid, to-wit: That part of said tracks, right of way and fixtures between the said Sixteenth Street (formerly called Farnham Street) and the said Western Avenue or Twenty-eighth Street, inclusive, in the said City of Des Moines."

In pursuance of this resolution a correction deed was executed, delivered and recorded (ex. 76, vol. II, p. 680).

If the complainants, as successors of the three railroads parties to the contract of January 2, 1882, are the real owners of the terminal property, and the title thereto is simply held by the defendant company in trust, or if they have an easement in the property which entitles them to the use and occupation thereof in perpetuity for railway purposes, or any other interest therein except as represented by the capital stock in the defendant company owned by them, it is singular that no such thought is contained in the deeds by which the property was transferred to the terminal company, and it is singular that in the various transfers and mortgages of these properties through which complainants trace their title, no reference is made to such an interest in the terminal property, and it is singular that wherever in these transfers or mortgages any reference is made to their interest in the terminal property, it is always referred to as that of owners of the capital stock in the defendant company.

The necessary and legitimate inference is that from May 1, 1888, up to the time of the commencement of this suit, none of the parties suspected that the defendant company did not have an absolute title to this property. The various parties to these transactions were the ablest lawyers and shrewdest business men among those who for many years had carried on the largest enterprises in the Middle West, and this record shows that during all these years in these various instruments they have with the greatest care particularly described the properties in which these various companies have been interested, and all of them have been drawn upon the theory that the terminal property was the absolute property of the defendant company.

THE NEGOTIATIONS WITH RESPECT TO A RENEWAL OR EXTENSION OF THE TERMINAL CONTRACT OF MAY 10, 1889.

By the year 1896 there had come a change in the situation. The railroad companies, original parties to the contract of May 10th, 1889, were no longer operating the railways and were either dead or in a dying condition. Their successors, the Wabash Company and the Des Moines, Northern and Western, had come into the contract arrangement apparently as a matter of course, but some of the parties interested doubted that these companies were bound by the contract. This doubt somewhat discredited the bonds of the Des Moines Union Company on the market and as the Wabash was a holder of these bonds and wanted to dispose of them, it wanted that doubt removed.

So, on December 26, 1896, Mr. Ashley, as President of the Wabash, wrote to Mr. Hubbell, as Secretary of the Des Moines Union, as follows (Rec., vol. IV, p. 1673):

> "Permit me to remind you of our understanding to the effect that you would have prepared at once a new agreement for the tenant companies of the Des Moines Union Railway Co. to sign; this new agreement being considered necessary on account of the foreclosure of the Des Moines & Northwestern. I understand that the agreement will be exactly as before, except that the time must be made to correspond with the life of the bonds, or to be made for a period to extend beyond their maturity.
>
> I write now for the purpose of urging the immediate preparation of this agreement, as without it we cannot well dispose of our bonds. When it is ready please forward it to Colonel Blodgett, asking him to examine the same and to send it to me

as soon as possible. I should not suppose it would take long to have the agreement prepared and as time in this case is of importance I hope you will see that the paper is gotten under way at once. Perhaps you have already taken the matter in hand and if so, so much the better."

Mr. Hubbell took up the matter at once with Mr. Cummins, who in turn entered into corrsepondence with Colonel Blodgett. Various changes were proposed and discussed upon the one side and the other, and the outcome was the contract of July 31st, 1897, called the Ratification Agreement (Rec., vol. II, p. 506).

This, it will be seen, followed substantially the suggestion of Mr. Ashey that "the agreement will be exactly as before."

The agreement recites the contract of 1889 and annexes a copy. It notes the passing from the scene of the old railroad companies and that the successor companies had both been using the terminal property and had recognized the contract of 1889 as binding upon them and then proceeds:

"Whereas, it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines, Northern & Western Company;

"Now, Therefore, in consideration of the premises and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named, that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Wabash Company and the Des Moines, Northern & Western Company."

There follow stipulations, first by the Wabash and then by the Des Moines, Northern and Western, that the Company will make the payments provided with respect to its railroad, and that when it ceases to operate its road, its obligation under the contract shall cease and pass to its successor company.

It was aso provided that so much of the contract of 1889 "as relates to the issuance and distribution of the capital stock of the said Des Moines Company (the terminal) is no longer binding, and that the capital stock of the said Des Moines Company is as follows:

The Purchasing Committee of the Wabash, St. Louis and Pacific Railway Company	500 shares,
The Des Moines, Northern and Western Railroad Company	1,000 shares,
F. M. Hubbell & Sons	2,500 shares."

There follows a statement of a few qualifying shares for directors which we need not consider.

This agreement was made at the instance of the Wabash Company and it was a party thereto, and the Des Moines, Northern and Western, predecessor of the Milwaukee, and on whose Board of Directors the Milwaukee then had three members, was also a party, and as we shall show, the Milwaukee must have known and did know all about the Ratification Agreement and hence of the agreement of 1889.

And here again the ownership of the terminal property of the Des Moines Union and the relation of the other companies to it as tenants were fully recognized.

It will be remembered that in 1898 the Milwaukee Company acquired all the outstanding stock and bonds of the Des Moines, Northern & Western Railroad

Company. A portion of this stock and bonds was purchased of the defendant, F. M. Hubbell & Son (exs. 413, 414, vol. IV. pp. 1759-90). According to these letters, the sale of these bonds and stock was to be closed up on the 6th of December, 1898. On December 2, 1898, Mr. Miller, President of the Chicago, Milwaukee & St. Paul Railway Company, wrote to Mr. Hubbell the following letter (ex. 418, vol. IV, p. 1765):

> "I observe that the contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company is only for 20 years. I think it should be for 50 years. Have you any objection to extending it for so long?"

In carrying out the agreement to sell to the Milwaukee these bonds and stocks, Mr. Miller met Mr. Hubbell in New York, December, 1898, and there requested Mr. Hubbell to agree that the defendant company would extend to the Des Moines, Northern & Western the operating contract of May 10, 1889, for 100 years (testimony of F. M. Hubbell, vol. III, pp. 1023-4). With respect to it, Mr. Hubbell testified (near the top of page 1024):

> "He was ready to buy our bonds and stock if I would write him a letter that the Des Moines, Northern & Western Railroad Co. should give him a contract with the Des Moines Union the same as the present contract for one hundred years. He pressed me hard to sign such a letter, I refused and told him that I would come back to Iowa and see if we could get him a contract extending the contract of July 31st, 1897."

This testimony of Mr. Hubbell's is corroborated by a letter which Mr. Hubbell on that day wrote to his brother-in-law, H. D. Thompson, and to his son, which appears as defendants' exhibit 421 (vol. IV, p. 1767).

As a result of this request on the part of Mr. Miller, a contract was prepared by Mr. Cummins, which appears as defendants' exhibit 430 (vol. IV, p. 1772). In this contract it was recited that the defendant company owned and operated the terminal company. This contract was submitted to Mr. Miller and to the general counsel of the Milwaukee Company, George R. Peck, but the same was never consummated because there were some provisions in the contract upon which they could not agree, but no question was ever raised as to the correctness of the recitations in the contract to the effect that the terminal property was owned by the defendant company.

From time to time thereafter attempts were made by the defendant company on the one hand, and the complainants on the other, to agree upon a new terminal contract, but they were unsuccessful, not because any question was ever raised about the absolute ownership of the terminal property by the defendant company, but because they were unable to agree upon the compensation which was to be paid by the complainants for the use of the terminal. (See vol. IV, exs. 454 (p. 1800); 455 (p. 1801); 456 and 457 (p. 1802); 458 and 459 (p. 1803); 460 (p. 1804); 466 and 467 (p. 1807); 468 (p. 1808); 471 (p. 1810); 479 (p. 1818); 480 (p. 1819); 481 (p. 1820); 484 (p. 1822); 485 (p. 1823); 486 and 487 (p. 1825); 488 (p. 1826); 492 (p. 1828); 493 (p. 1829); 494 (p. 1830); and 495 (p. 1832).)

In addition to this, the defendant company from time to time entered into contracts with other railway

companies, by which it agreed to furnish such other railway companies terminal services. These agreements are, one with the Chicago, St. Paul & Kansas City Railway Company (ex. 524, vol. IV, p. 1871), one with the Chicago Great Western Railway Company (ex. 526, vol. IV, p. 1879), one with the Iowa Central Railway Company (ex. 526a, vol. IV, p. 1894), one with the Chicago, Burlington & Quincy Railroad Company (ex. 527, vol. IV, p. 1901), one with the Des Moines, Iowa Falls & Northern Railway Company (ex. 528, vol. IV, p. 1911), and one with the Des Moines & Fort Dodge Railroad Company (ex. 529, vol. IV, p. 1920).

In each one of these contracts the terminal property is described as being owned by the defendant company, in almost the identical language that is used for that purpose in the contract of May 10, 1889, with the complainants' predecessors. Each one of these contracts was approved by directors of the defendant company who represented complainants and their predecessors upon the board of that company, because the articles of incorporation of the defendant company provide that no such contracts can be made unless they are approved by the unanimous vote of the board of directors. In fact, no question was ever raised after May 1, 1888, up to the time of the commencement of this suit in 1907, with respect to the ownership of this property by the defendant. It is impossible to find a single word in this record to show that complainants or their predecessors at any time between those two dates ever claimed to have any interest in the terminal property of any kind or character, except the interest which is represented by the stock which they hold, and the record is full of contracts, deeds, resolutions, letters and other transactions recognizing the ownership

of the defendant by the plaintiffs and their predecessors.

So far we have discussed this case for the purpose of ascertaining the intent of the parties by the transactions which resulted in the transfer of the title, ownership and possession of the terminal property to the defendant company in the year 1888. We will now go to another phase of the case, but in doing so we do not wish to be understood as thinking we have at all exhausted the subject of intent. To exhaust this subject we would have to refer to every item of evidence contained in this long record, because there isn't a thing in the record from the time of the original inception of the terminal company down to the bringing of this suit, which does not evidence the intent to give to the defendant company a perfect title to the property. The things to which we will call attention in subsequent divisions of our argument will all bear upon the question of intent, as well as upon other phases of the case which we will discuss.

II.

THE AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE DES MOINES UNION RAILWAY COMPANY ENACTED APRIL 8, 1890, AND THE RESOLUTION PASSED BY THE STOCKHOLDERS AT THAT MEETING.

Brief reference has heretofore been made to these amendments and resolutions, and the court no doubt understands in a general way their nature. It will be remembered that of those who were present at this meeting, James F. How, Vice-President of the Wabash Company, Charles M. Hays, General Manager of the

Wabash Company, and F. M. Hubbell, Secretary of the defendant company, were active in the transactions of 1884, 1887 and 1888, in which the title and ownership of the terminal property were transferred to the defendant, and knew what was thereby intended; and these amendments and the resolutions clearly show that it was understood by these persons and the others who were present at the meeting, that it was intended by the transactions heretofore referred to, to vest in the defendant company an absolute title to the property. But upon this phase of the situation we need not enlarge at this time.

If the court, in view of the facts to which we have heretofore called its attention, believes that the result of the transactions which culminated in the surrender of the property to the defendant company on May 1, 1888, was to vest in the terminal company a good title to the property, the amendments to the articles of incorporation above referred to are not of great importance, but if there is any lingering doubt in the mind of the court as to the nature of defendant's title, then a consideration of these articles and resolutions becomes important for the reasons which we will hereafter point out.

It is the claim of complainants, as we understand it, that notwithstanding the fact that the defendant company was organized as a corporation for pecuniary profit for the purpose of acquiring, owning and operating the terminal property, and notwithstanding the fact that by the resolutions of 1884 the three railway companies who, plaintiffs claim, were the beneficial owners of the property, authorized the transfer of the ownership thereof to the defendant company, and notwithstanding the fact that the resolutions of 1887 author-

ized the trustees to transfer the property to defendant without any reservations, upon being paid the agreed purchase price therefor, and notwithstanding the fact that the Des Moines & St. Louis Railroad Company executed and delivered to the defendant company a warranty deed to the property, and notwithstanding the fact that the St. Louis, Des Moines & Northern Railway Company executed and delivered to the defendant company an absolute deed to the property without reservations, and notwithstanding the fact that How and Dodge executed deeds to that portion of the property standing in their names, without any reservations, and notwithstanding the fact that the defendant paid to the parties entitled thereto the purchase price agreed upon, and notwithstanding the fact that from May 1, 1888, down to the commencement of this suit, every person and corporation connected with the transaction treated the property as the absolute property of the defendant company; yet by reason of the fact that there was incorporated as a recitation in the original articles of incorporation of the defendant company a copy of the contract of January 2, 1882, and an attempt made in articles 2 and 4 of defendants' articles of incorporation to limit the power of the defendant to alienate the property, and by reason of certain references to the contract of January 2, 1882, in the resolutions of 1887, the defendant company acquired the title to the property in trust only and for the benefit of complainants' predecessors, or acquired the title subject to an easement in favor of complainants' predecessors to use the property in perpetuity for terminal purposes.

Our answer to this contention is, if there is any question about the effect of the transactions resulting in the transfer of the property to the defendant company in

1888, that question was forever set at rest by the action of the stockholders of April 8, 1890. In other words, the effect of this action was to quiet the title to the property in the defendant company, if theretofore there was any question about the title.

For the convenience of the court, we here set out in paralel columns the sections of the original articles of incorporation upon which complainants base their claim, and the corresponding articles as amended on April 8, 1889 (vol. II, p. 489), also sections ratifying the purchase of the terminal property, and the section striking from the original articles of incorporation the contract of January 2, 1882:

ORIGINAL.	AMENDED.
"Article 2.	"Article 2.
The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight-houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Ia., as well as the transfer of cars from the line or depot of one railway to an-	The object of the corporation and the general nature of the business to be transacted shall be the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of

other, or from the various manufactories, warehouses, store-houses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter 1, of Title IX, of the Code, and the amendments thereto. All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, Trustee, and Grenville M. Dodge. The said Company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company—provided that the railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators or other source of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines, and also to lease terminal facilities to and furnish and perform terminal services for all railways whose lines reach or pass through or near the said City of Des Moines, and the corporation shall possess all the power conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

sheet in writing of the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

Article 3.

The capital stock of this corporation shall be One Million ($1,000,000.00) Dollars, which shall be divided into shares of one hundred ($100.00) Dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge.

Article 3.

The capital stock of the corporation shall be two million dollars ($2,000,000.00) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds theretofore issued for that purpose constituting the fair value of said property when so acquired; and all resolutions and proceedings of

the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught.

Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions:

Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company, and the present owner of the property known as the Des Moines & St. Louis Railroad.

One thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and

One thousand shares to the Des Moines & Northern Railway Company successor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the

aforesaid property. The remaining capital stock, to-wit; sixteen thousand shares, or any part thereof, shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued and shall be fully paid either in money or property at its fair market value, before certificates thereof shall be executed and delivered.

The stock shall be transferable only on the books of the Company by and with the consent of three-fourths of all the Directors except in case the transferee of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

Article 4.

The affairs of the Company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of

Article 4.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons, who shall be elected by the stockhold-

each year. The provisional Board of Directors, who shall hold office until the first Thursday in January, A. D. 1886, shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the Stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive.

The provision herein with respect to nomination for the Board of Directors shall apply to and be enjoyed by any ers at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday of January of each year, and they shall hold their offices for one year and until their successors are elected and qualified, but at all future elections of Directors, it shall require the votes of more than seven-eighths of all the stock theretofore issued to elect any director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contract, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings and to do all such other things as may be proper or necessary for the corporation to do, but with respect to the matters above mentioned and all other matters except the ordinary operation of the property, the Board of Directors can act only upon the unanimous vote of the eight members thereof, and in order to facilitate the transaction of business,

grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided.

The Directors shall elect, from their number, a President, Vice President, Secretary and power is expressly conferred upon each of the Directors to delegate by written authority, some other person to act or vote for him, and in his stead.

Provided that such authority shall be filed with the Secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an Executive Committee, but such selection must be made by the vote of at least seven members. The duties and powers of such Committee shall be defined in the By-Laws.

The Board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must be elected and such by-laws enacted by the unanimous vote of the eight members of the Board. All vacancies occurring in the Board shall be filled by the stockholders at a special meeting in the manner heretofore provided for the election of Directors.

Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

Article 14, as adopted April 8, 1890, is as follows:

"Article 14.

The purchase of the property heretofore conveyed to the corporation, the conveyance made in pursuance thereof, the execution of Trust Mortgage to the Central Trust Company of New York, dated February 28th, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 196 at page 525 and the issuance of bonds secured by the same are hereby approved, ratified and confirmed."

Article 15, as adopted April 8, 1890, is as follows:

"Article 15.

The proceedings of a meeting held December 10, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged."

As we understand it, it is the claim of complainants that these amendments were invalid and ineffective, for the following reasons:

1. Because at this time (April 8, 1890), no certificates of shares of stock had been actually issued by the defendant company, and therefore there were no stockholders who could amend the articles.

2. Because the persons who were present at the meeting and purported to represent the complainants' predecessors, had no authority to act for them.

3. That the amendment to the articles of incorporation and the passage of the resolutions referred to were the acts of the defendant company, and that such action by the defendant company could not affect any interest which complainants' predecessors had in the property.

4. That the published notice of the amendment of the articles is insufficient as to Article II. This objection is made for the first time in this Court.

Our contention is as follows:

(a) The stockholders were the persons and corporations who were entitled to the stock of the defendant company under the articles of incorporation and contracts by which the defendant acquired title to the terminal property and the persons who were representing them. The issue of the actual certificates of shares of stock was not necessary in order to constitute them stockholders.

(b) The stockholders had both actual and constructive notice of the meeting and the purpose thereof. The presumption is that the stockholders were lawfully represented at the meeting, and the evidence fails to overcome this presumption.

(c) That the adoption of the amendments and the resolutions were acts of the stockholders (acts of complainants' predecessors) as distinguished from the acts of the defendant corporation, and the plaintiffs and their predecessors were bound thereby.

(d) These amendments to the articles were properly signed, acknowledged and recorded and notice thereof was given as required by the Iowa statute. The complainants and their predecessors had both actual and constructive notice thereof. They carried on the business of the defendant corporation under these amendments for the period of seventeen years before the commencement of this suit, and are now estopped by their laches to raise the question of the validity of these amendments.

(e) The complainants acquired the stock which they hold in the defendant company long after the adoption of these amendments and the resoution referred to, and cannot now raise any question as to their validity.

(f) The adoption of these amendments and this resolution, and the acquiescence of the plaintiffs and their predecessors therein and the continuous conduct by them of the business of the corporation in accordance therewith for the period of seventeen years, is one of the strong grounds of estoppel urged by the defendants, the Hubbels, as against the complainants' right to a decree which would destroy the value of the 2,500 shares of stock which they own in the defendant company.

(g.) The published notice of the amendments was sufficient in every respect and in any event the amendments made are good as between the parties.

We will consider these grounds in their order:

(a) AS BETWEEN THE STOCKHOLDERS AND THE CORPORATION, THE ISSUANCE OF A CERTIFICATE OF STOCK IS NOT NECESSARY.

The general rule laid down by

Thompson on Corporations, 2d Ed., Vol. 4, § 3455,

is as follows:

"Sec. 3455. *Certificate merely a muniment of title*—Broadly speaking, a share certificate is merely the paper representative of an incorporeal right of a stockholder. It is nothing more than the symbol or paper evidence of a proprietary right. It stands on a footing similar to other muniments of title. In other words, the act of subscribing for the shares gives title to the subscriber, and the certificate neither constitutes nor is necessary to it; it is only evidence of title. The certificate transfers nothing from the corporation to the stockholder, but only affords him the evidence of his rights. * * * An original proprietor and subscriber for shares, having paid his installments thereon, has a complete title, though there has been no formal entry in the books of the corporation passing the stock to his credit. * * *"

"Sec. 3507. *Issuance of certificate not necessary to constitute relation of stockholder*—While a contract and an intention to assume the relation is necessary to make one a stockholder, the rule is that a certificate is not required to constitute this relation. It has been expressly held that, 'it is not essential that a certificate should have issued in order to create the relation of stockholder, provided a contract to take stock has been duly made, or provided the rights, privileges and emol-

uments of a stockholder had been enjoyed, with the consent of the corporation.' The certificate is not in itself property, but is merely the symbol or paper evidence of property, and the proprietary right may exist without the certificate. A person may acquire the rights and incur the liabilities of a shareholder, both to the corporation and to its creditors, although no certificate has in fact been issued. In other words, one who has subscribed for stock and fulfilled the annexed conditions, or one to whom stock has been apportioned, has all the rights of a stockholder, though no certificate has been issued to him. It follows that a subscription cannot be rescinded on the ground that certificates had not been isued to the subscriber. Among other things he may vote at corporate elections, and hold corporate offices. He has the power to transfer his stock, and to receive dividends, and is liable to assessment on his shares, and to creditors for the debts of the corporation to the same extent as though certificates had been issued to him. * * * The issuance of a certificate to a person and his receipe of the same raises the presumption that he owns the share."

This is the rule in Iowa.

First Nat. Bank v. Gifford, 47 Iowa 583.

"The former owner of the stock, Mr. Ochs, delivered the certificate held by him to Porter, and the stock was assigned by the former to the latter by means of what is termed a transfer ticket, and an entry thereof was made in the transfer book of the bank. No certificate was ever issued to Porter, and the Ochs certificate was cancelled, or at least the defendant does not claim that it was ever assigned to him.

It is useless to consider what would be the rights of the defendant if a certificate had been executed

to Porter, and by him assigned to the defendant, and no transfer entered on the books of the bank, for no such state of facts is presented by the finding.

As between Porter and the corporation, he was the undoubted owned of the stock. No certificate was required to perfect his title. It mattered not whether one ever was issued. He being the owner, and the bank not chargeable with notice of defendant's rights, Porter had the right to sell and transfer said stock, and the bank was bound to recognize his transferee as owner. Whatever title Porter had was obtained by Smith and Whitaker.

It seems to us that the transfer on the books of the bank was sufficient to make Porter's title full and complete. A stock certificate would be only additional evidence of his title, but it was by no means essential."

Morrow v. Gould, 145 Iowa, 4.

"It follows from the foregoing definitions that shares of stock represent an interest in the earnings and property of the corporation and that a certificate is not stock itself but only a convenient representation of it for one may be a stockholder without having a certificate issued to him."

In *Pendery v. Carleton*, 87 Fed. 41,

the rule is laid down by Thayer, Circuit Judge, as stated in the syllabus, as follows:

"A mining company contracted with complainant for the purchase of his interest in certain mining property, in consideration of a certain proportion of its capital stock, which stock, however, was never issued to him. Later, the board of directors, in good faith, order a sale of all the company's stock to pay the expenses of development, and pur-

chased it themselves, but without taking undue advantage of any other interested parties. Finally, the property, proving of little or no value for mining purposes, was sold—the sale being an advantageous one—and the proceeds divided among themselves by the directors, who believed themselves to be the only shareholders. On suit against the directors for an accounting, held, that complainant was the equitable owner of the agreed amount of stock, and was entitled to such proportion of the net proceeds of the sale as his stock bore to the total capital of the company, and no more, with interest from the date of filing the amended bill asking for such accounting."

This Court, in *Hawley v. Upton*, 102 U. S. 316, said:

"It cannot be doubted that one who has become bound as a subscriber to the capital stock of a corporation must pay his subscription if required to meet the obligations of the corporation. A certificate in his favor for the stock is not necessary to make him a subscriber. All that need be done, so far as creditors are concerned, is that the subscriber shall have bound himself to become a contributor to the fund which the capital stock of the corporation represents. If such an obligation exists, the courts can enforce the contribution when required. After having bound himself to contribute, he cannot be discharged from the obligation he has assumed until the contribution has actually been made, or the obligation in some lawful way extinguished. These are elementary principles."

And in *Jellenik v. Huron Copper Mining Co.*, 177 U. S. the Court said, l. c. 13:

"The certificates are only evidence of the ownership of the shares, and the interest represented by the owner."

Applying the rule to this case, the St. Louis Des Moines & Northern Railway Company, the Des Moines & St. Louis Railroad Company and the Des Moines Northwestern Railway Company, by virtue of certain resolutions passed by the boards of directors of those companies and certain notices served on the Des Moines Union Railway Company in November, 1887 (exs. 11, 12, 13, 14 and 15, vol. II, pp. 435-443 incl.), became subscribers to the capital stock of the Des Moines Union Railway Company. The Des Moines Union Railway Company accepted these subscriptions by virtue of the action of its board of directors on November 8, 1887 (ex. 102, vol. II, p. 259). The three subscribers for this capital stock caused the same to be paid for by the execution of deeds (exs. 17, 18, 19, 20, 21 and 22, vol. II, pp. 446-59 incl.) and thereafter they, or their successors, were stockholders in the Des Moines Union Railway Company, although no certificates were actually issued until April 8, 1890.

It will be noted that the resolution of the Des Moines & St. Louis Railroad Company (ex. 12, vol. II, p. 437) authorized its proportion of the stock to be issued to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company.

While this resolution of the Des Moines & St. Louis Railroad Company may not of itself have bound the Purchasing Committee as stockholders, yet this action was ratified by the Purchasing Committee by selling and transferring a portion of the stock and accepting the issuance of the stock at the time it was issued in April, 1890.

And from the day of the incorporation of the company down to the last day to which this record recites

they and their successors acted consistently as the stockholders of the company.

(B) THE STOCKHOLDERS HAD BOTH ACTUAL AND CONSTRUCTIVE NOTICE OF THE MEETING AND THE PURPOSES THEREOF. THE PRESUMPTION IS THAT THE STOCKHOLDERS WERE LAWFULLY REPRESENTED AT THE MEETING, AND THE EVIDENCE FAILS TO OVERCOME THIS PRESUMPTION.

It was provided in the original artices of incorporation of the defendant company as follows (vol. II, p. 422):

"Article 9.

> These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation—published in the City of Des Moines, Iowa."

By the provisions of article 4 (p. 421), the annual meeting of the stockholders was fixed on the first Thurday of January of each year. At the annual meeting of the stockholders, held on January 3, 1899 (ex. 107, vol. IV, p. 1705), The Wabash Railroad Company and the Des Moines & St. Louis Railroad Company were present in the manner pointed out by the articles of incorporation, and nominated directors to represent those companies as provided by said articles.

Likewise, the Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company were present and nominated directors representing those companies (p. 1306). At this meeting the following resolution was adopted (p. 1307):

> "James F. How moved that the question of amending the Articles of Incorporation of this Company as well as the question concerning the issuing of stock for the *purchase price* of the terminal property be referred to Attorneys W. H. Blodgett & A. B. Cummins for their investigation and recommendation."

The meeting then adjourned to the 18th day of February, 1890. At this adjourned meeting on February 18, 1890, there were present in person F. M. Hubbell, L. M. Martin, F. C. Hubbell and A. B. Cummins, and by proxy G. M. Dodge, J. F. How, C. M. Hays and W. H. Blodgett. At this meeting the following record was made (ex. 109, vol. IV, p. 1311):

> "The secretary reported that notice of the meeting had been duly published and also reported that he had, pursuant to the articles of incorporation, notified each stockholder of the time, place and object of this meeting, which notice contained the amendments proposed to be offered to the articles of incorporation.
>
> Upon motion of A. B. Cummins the report of the Secretary was adopted and this meeting declared to be duly and legally called, for the purpose of considering and adopting or rejecting amendments to the Articles of Incorporation.
>
> Thereupon A. B. Cummins presented certain amendments to the Articles of Incorporation.
>
> Thereupon F. M. Hubbell moved that the meeting of stockholders do now adjourn for the pur-

pose of having further opportunity to examine said amendments, to meet on Tuesday, the 8th day of April, 1890, at ten o'clock a. m., which motion being seconded, was unanimously carried and thereupon the meeting of stockholders adjourned to meet as aforesaid."

The record of the second adjourned meeting of the stockholders of the defendant company, held on April 8, 1890, appears as plaintiff's exhibit 28 (commencing on p. 488, vol. II). A portion of said record is as follows (p. 489):

"There were present in person:

J. F. How,	representing One Share
C. M. Hays,	representing One Share
F. M. Hubbell,	representing One Share
L. M. Martin,	representing One Share
F. C. Hubbell,	representing One Share
A. B. Cummins,	representing One Share

There were present by proxy:

G. M. Dodge, by L. M. Martin, representing One Share.

W. H. Blodgett, by J. F. How, representing One Share.

There were also present the Des Moines & Northwestern Railway Company, successors to the Des Moines Northwestern Railway Company, by F. M. Hubbell, President.

The Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, by A. B. Cummins, Vice-President.

The Des Moines & St. Louis Railroad Company by J. F. How, President.

J. F. How, President, presiding.

Thereupon, by an examination of the records and the books of the Company, it was determined that all the stockholders of said Company were

present either in person or by proxy duly filed with the Secretary of the Company."

The rule of law with reference to the presumptions indulged in favor of the recitations contained in a corporate record is so well settled that we do not need here to do more than call to the attention of the court the authorities cited in that portion of our brief devoted to this subject. Applying that rule to this record, it appears:

1. That this meeting was duly and legally called.

2. That due and legal notice of the proposal to amend the articles of incorporation of the defendant company, as the same appear to have been amended at this meeting, was given to all the stockholders of the company.

3. That all of the stockholders of the defendant company were present or represented at this meeting.

4. That the articles were amended as provided by the resolution passed at that meeting, and the officers and directors of the corporation were duly authorized to execute said amendments and give notice thereof as provided by the statutes of Iowa.

Other facts bearing upon the regularity of this meeting and the notice and knowledge of the stockholders with respect thereto, and the carrying out of the resolutions by the proper execution and filing of said amendments, will be referred to in the division of our brief relating to the acts of the parties under said amendments.

THE ADOPTION OF THE AMENDMENTS AND RESOLUTIONS WERE ACTS OF THE STOCKHOLDERS (ACTS OF COMPLAINANTS' PREDECESSORS), AS DISTINGUISHED FROM THE ACTS OF THE DEFENDANT CORPORATION, AND THE COMPLAINANTS AND THEIR PREDECESSORS WERE BOUND THEREBY.

It is the claim of petitioners, as we understand it, that even assuming the meeting of April 8, 1890, was properly called and organized, and that all the stockholders were present and represented, yet the act of amending the articles of incorporation was the act of the defendant corporation, and that the defendant could not thereby change the relations they claim theretofore existed between their predecessors and the defendant company with respect to the property in question; that is, they say that by reason of the transactions which resulted in transferring the property in question to the defendant, the title of the defendant was merely that of a trustee for the benefit of their predecessors, who were the beneficial owners, and the defendant could not by this action affect the interest of *cestuis que trustent.*

The error in complainants' theory grows out of a misconception of the function and effect of the adoption of the amendments to the articles of incorporation and the failure to distinguish between the effect of the action of a corporation and the action of its stockholders. It is true, of course, that a corporation cannot by its own action affect its relations or contracts with third parties without the consent of such third parties, except in so far as such action may be urged by way of estoppel. But the acts of the stockholders of April 8,

1890, were not the corporate acts of the defendant company within the meaning of this rule. They were rather the acts of complainants' predecessors, who were the stockholders in defendant company and who, the complainants claim, owned the beneficial interest in the property. This thought must be perfectly clear when we come to consider the nature of articles of incorporation and the transactions of stockholders of a corporation.

When two or more persons get together to organize a corporation under the laws of Iowa, the act of such persons is their individual act and not at all the act of the corporation about to be organized. By adopting their articles they make a contract between themselves and between the corporation and themselves, and between the corporation and the state. In making this contract they reserve the power to amend these articles of incorporation; that is, they reserve the power to change the terms of this contract at their own volition and without consulting the corporate entity, and when they meet, as provided by the terms of their contract, and change the contract by amending the articles, such act is of their own volition and without consulting the corporate entity.

The rule with relation to the nature of articles of incorporation is laid down in

> *Thompson on Corporations* (2d Ed.), Vol. 1, sec. 172,

as follows:

> "Articles of association on the one hand may be said to constitute the contract of association between the stockholders, at the same time defining

the character and extent of the business in which the corporation shall engage, while on the other hand the general laws constitute the grant from the state, to those organizing the corporation, of the franchise or right of organizing the corporation and accomplishing the purposes agreed upon."

Again, the same authority, in section 312, lays down the rule:

"It is now universally conceded that the charter of a corporation is a contract. It is also very generally conceded that the charter is a contract in different aspects: (a) it is a contract between the state and the corporation; (b) between the state and the stockholders; (c) between the corporation and the stockholders; (d) between the state and third persons who have dealt with the corporation on the faith of the terms of the grant; (e) between the stockholders themselves."

In the case of

Jones v. Electric Co., 144 Fed. 756 (C. C. A.),

Judge Sanborn lays down the rule as follows (p. 770):

"The relation of a stockholder to his corporation, to its officers and to his co-stockholders is one of contract and of confidence. By the acceptance of his shares of stock, he agrees to assume the liability and to discharge the duties imposed upon a stockholder by the law. The statutes, charter and the by-laws of the corporation, as well as the settled law of the land at the time he takes his stock are read into and become a part of his agreement. The provision of the statutes of Missouri that a manufacturing corporation might be consolidated with another corporation whose objects and business were of the same nature upon the consent of

three-fifths of the owners of its stock was a part of the agreement of the complainant and a consolidation made by the officers and owners of the requisite amount of the stock of his corporation by the faithful exercise of the powers thus granted was neither void in itself nor voidable at his option because it was but the performance of the agreement which he made with them."

The Supreme Court of Iowa, in the case of

Heald v. Owen, 79 Iowa 25,

lays down the rule:

"The articles of incorporation were adopted long before the indebtedness to the bank was contracted and the rights of the parties, as between themselves, were fixed by the articles of incorporation, at least from the time they were adopted by the association. The articles of incorporation were not recorded as required by section 1060 of the code and it is claimed that for this reason the stockholders are liable for the debts of the association. It is averred by the appellants that the articles of incorporation are of no validity whatever, but it is to be remembered that this is an action between stockholders. Their contractual relations as between themselves are to be found in what they adopted as their agreement. It was in writing and denominated 'articles of incorporation' and either signed or adopted by the stockholders."

Again the same court, in the case of

Traer v. Lucas Prospecting Co., 124 Iowa 112,

said:

"When a person becomes a shareholder in a corporation he assents to the transaction of the business expressly or impliedly authorized by its char-

ter and, therefore, if the charter authorizes the sale or other disposition of all of its property, he cannot complain."

Applying this rule to the case at bar, when the plaintiffs' predecessors organized the defendant, the Des Moines Union Railway Company, they entered into a contract between themselves, as well as with the corporation and with the state. By the terms of this contract the stockholders reserved the power to change the contract by means of changing the articles of incorporation in the manner pointed out in the articles themselves. By the act of the stockholders' meeting of April 8, 1890, the stockholders exercised this power to change the terms of this contract. They had the right to change the contract as between the stockholders themselves, as well as between the stockholders and the corporation, so long as such action did not conflict with any statutory provision of the state, and they had the right to do this without consulting the corporate entity, because such was the right obtained by the provisions of the original articles. The stockholders were bound by whatever changes they made in this contract, and by these changes in the contract they changed their existing relations with the corporation. It seems to us that the soundness of this proposition cannot be questioned.

Therefore, when they struck out article 2 of the original articles and adopted a new article 2, as shown by the record, they abandoned all that part of the original article 2 that was not contained in the substituted article, and therefore abandoned any claim with respect to the contract of January 2, 1882, which might have been made under the article as originally adopted; and by the adoption of articles 3 and 4 in place of the orig-

inal articles numbered the same, they abandoned any right to control the alienation of the property in controversy as provided in the original articles, and adopted a method of controlling the defendant corporation which consisted in requiring the election of directors to be made by a more than seven-eighths vote of the outstanding stock, and requiring that all major action of the board should be by unanimous vote; and by the adoption of articles 14 and 15 they ratified the purchase by the defendant of the property in controversy and abandoned any and all claims which could be made under the contract of January 2, 1882.

By the adoption of the resolutions appearing on pages 494 to 496 of volume II, these stockholders (complainants' predecessors) declared:

1. That the original agreement between them and the defendant corporation was that the defendant purchased the property in controversy "including the franchises incident thereto," at its fair value, payable partly in first mortgage bonds and partly in capital stock of the company.

2. That these bonds had been issued and received by the persons entitled thereto.

3. That there still remained to be paid the sum of $400,000.00 upon said purchase price, which sum was to be paid in the capital stock of the defendant company.

4. They determined who was entitled to receive such capital stock.

5. That the articles of incorporation had been amended to conform to the true intent of the several parties.

6. They authorized the issuance of the capital stock which was to be issued as a part of the purchase price.

7. They modified and amended all prior proceedings so as to comply with the action at that time taken by the stockholders.

This action, as we have stated, was the action of the stockholders, the plaintiffs' predecessors. They had the right to make this contract changing the terms of the prior contract, and they had the right to do it without the assent of the defendant corporation, because they had reserved that right in the original contract. There was an adequate consideration for it and as we will hereafter show, they have ever since acted in pursuance of the amended contract (the amended articles of incorporation).

THESE AMENDMENTS TO THE ARTICLES WERE PROPERLY SIGNED, ACKNOWLEDGED, RECORDED, AND NOTICE THEREOF WAS GIVEN AS REQUIRED BY THE IOWA STATUTE. THE COMPLAINANTS AND THEIR PREDECESSORS HAD BOTH ACTUAL AND CONSTRUCTIVE NOTICE THEREOF. THEY CARRIED ON THE BUSINESS OF THE DEFENDANT CORPORATION UNDER THESE AMENDMENTS FOR THE PERIOD OF SEVENTEEN YEARS BEFORE THE COMMENCEMENT OF THIS SUIT, AND ARE NOW ESTOPPED BY THEIR LACHES TO RAISE THE QUESTION OF THE VALIDITY OF THESE AMENDMENTS.

We have already called to the attention of the court the corporate record in relation to these amendments,

and we will here content ourselves with referring to some of the evidence there is in the record showing both actual and constructive knowledge with respect to these amendments outside of the corporate record itself.

It will be remembered that at the annual meeting of the defendant company in January, 1890, the subject of the amendments was referred to Colonel Blodgett and to Mr. A. B. Cummins. The testimony of Mr. Cummins will be found commencing on page 1293 of volume III. The substance of his testimony on this subject is as follows (commencing p. 1296):

> "I never heard any suggestion from anybody connected with the property or the proceedings, that the Des Moines Union Railway Company was not the owner of the property referred to. This, however, does not cover the suggestions that I myself made to persons who were interested in these companies concerning the title to the property at the time I was engaged in preparing certain amendments to the articles of incorporation, and before that time. My answer is intended only to relate to suggestions made by other persons with whom I was connected, than myself.
>
> The suggestions I made began very soon after I became the counsel for the Des Moines Union Railway Company, and while I cannot recall the dates or places, I know that I made them at the meetings of the directors, meetings of the stockholders, and individually to everybody who was connected with the Des Moines Union Railway Company, or those companies which were then called the tenant companies. In order to answer the question intelligently, it seems to me it would be necessary for me to state the situation as I recall it, because that situation was the subject of repeated conferences and conversations with these

various representatives of these several companies.

In the first part of the year 1890, and before that but after I had become thoroughly familiar with the affairs of the Des Moines Union Railway Company, this is the way in which it was presented to me: First, as to the tenant companies, the Des Moines & St. Louis Railroad Company had practically passed out of existence. It was the owner of one-half of the capital stock of the Des Moines Union Railway Company at that time.

I am not pretending to repeat what I told the stockholders. I am stating the situation as it appeared then to me, and that situation I discussed with all the people connected with this company at various times, and it was that situation which led up to the proposition on my part to amend the articles of incorporation. I made that proposition, and the title to the property was one of the phases of the proposition. I have already said the Des Moines & St. Louis Railroad Company was practically out of existence. It was the nominal owner of one-half the capital stock in the Des Moines Union Railway Company, except as that title had passed to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company; and the original articles of incorporation specifically provided that certain interests were to nominate a certain number each of directors. The Des Moines & Northwestern Railway Company had purchased of the Purchasing Committee a one-fourth interest in the stock of the Des Moines Union Railway Company. It was in trouble, that is to say, it was finding great difficulty in making its revenue meet its expenses. Nobody knew what was ahead for that company. The St. Louis, Des Moines & Northern Railway Company was also the owner, from the beginning, as I remember it, of one-fourth interest in the stock of

the Des Moines Union Company; it likewise was on the verge of bankruptcy. It was impossible to predict with any certainty what would become of it or its interest in the Des Moines Union Company, and this situation presented, as I thought, a very serious question.

I knew at that time that negotiations were pending between Mr. Hubbell and the Purchasing Committee for the purchase of a part of the one-half of the capital stock then held by the Purchasing Committee. The Purchasing Committee seemed to be anxious to dispose of a portion of this stock, and looking forward to the conduct of the Company in the future, it seemed to me that readjustment of that phase of the articles of incorporation I have referred to was absolutely necessary. More than that, it was discussed among all these people, that, inasmuch as the project of the union depot had been brought into existence, it was hoped that all the railroads in Des Moines could be brought into these terminals; that it would be very wise to have it so arranged that each railroad that might come into the depot in the future might become the owner of one-eighth of the capital stock. I thought that hope or expectation could never be realized without an amendment to the articles of incorporation, as it is evident that it could not be. Moreover, the original articles provided for a capital stock of one million dollars, and as I understood these articles, that stock was to be issued as a part of the purchase price of the property. The articles had been subsequently amended so as to increase the capital stock to two million dollars, and in that amendment it was specifically provided that the board of directors might receive in payment for this stock the property which had theretofore been conveyed—speaking of theretofore, at the time I made these suggestions to the Des Moines Union Railway Company.

I was always somewhat opposed to issuing capital stock without consideration and I did not believe that the property was worth any such amount and that to issue it in that way would impose, if disaster should come, a liability upon its owners, and would frustrate in a measure the hope of getting into this Des Moines Union Railway Company as stockholders as many of the railroads entering Des Moines as could be brought in. This was the standpoint as viewed, I thought, by the stockholders; but from the standpoint of the Des Moines Union Railway Company the situation was even more complicated and unsatisfactory.

And now I come to the specific answer to the question that was put to me. The Des Moines Union Railway Company was ignoring entirely, as it seemed to me, both as to ownership and as to management, the contract out of which the Des Moines Union Railway Company grew, namely, the contract of 1882. It had abandoned the terms of the contract as to the title of the property and as to the method of operation and management.

I am testifying to the substance of what I told these people and told all of them. The Des Moines Union was ignoring the articles of incorporation which in themselves, as I thought then and said then, were inconsistent with the contract of January, 1882. I told them that the contract provided for a title of the property in trust for the three companies which had signed it and for the joint use and occupation limited by Farnham Street in the west part of the city, and the company was claiming to own and operate a property extending to the west border of the city, and in the contract the Des Moines & St. Louis Railway Company, the company that had really no active functions, was charged with certain management and control of the property, and the other companies were required to pay to it whatever sums they were

obliged to pay for the use of the property. And furthermore, the contract and the articles seemed to contemplate in certain very important matters that there should be a formal preliminary approval by three independent companies before it could take action.

The substance of it was that I said that in view of the original articles, in view of the conveyances that had been made to the Des Moines Union Railway Company of the property which was originally in the names of Gen. Dodge and Mr. Hiow, both individually and as trustee, and possibly some in the name of one of these other companies, or both of them, and that the Des Moines Union Railway Company had paid in its bonds for the original outlay for this property and had provided in its articles for the issuance of capital stock for the remainder of the purchase price, if any, that it was imperative to clear up the title and get rid of any question of doubt respecting the ownership of the Des Moines Union Railway Company and its right to manage its own property. These were the reasons which led up to my suggestion that there ought to be an amendment to the articles of incorporation that would put this company beyond any question in the ownership and control of its property just as any other corporation would be, leaving the interests which had been created in favor of the Des Moines & St. Louis Railroad Company and the Des Moines Northern Railway Company and the St. Louis, Des Moines & Northern Railway Company to be represented by the stock as in the case of other corporations, and the only suggestion that I ever heard from anybody in all my connection with any of these companies regarding the title to the property was the suggestion that I made myself arising out of the circumstances that I have stated.

I prepared a draft of the amended articles of incorporation that were finally adopted April 8, 1890, and I wrote Col. Blodgett the letter of date January 22, 1890. (This is the letter in which Col. Blodgett is advised that the stockholders of the terminal company had referred the question of amendments to Col. Blodgett and Mr. Cummins. See volume III, p. 1210.)

Prior to April 8, 1890, the draft of the amended articles of incorporation as it was afterwards adopted, was submitted to Col. Blodgett as the representative of the legal department of the Wabash interests, and I had a conference with him about it, and possibly more than one. I also discussed the matter with Mr. Hays (p. 311). I also wrote to Gen. Dodge about it in a letter dated January 27, 1890. (This is a letter in which Gen. Dodge was sent a copy of the proposed amendments, and in which it is stated that Mr. Hubbell was at first disposed to oppose the amendments. See p. 1211.)

These amendments were not suggested by Mr. Hubbell. They were entirely my own suggestion and came about in the way that I have already related. With regard to Mr. Hubbell's opposition, my recollection is that Mr. Hubbell—conservative then as now, never disposed to move very rapidly into the future—was opposed to my proposition, as I thought, without any good reason (p. 1212).

So far as I know, every interest in the terminal property concurred in and was in favor of the adoption of the amended articles before the meeting was held at which they were adopted. I was not aware of any opposition at all at that time. In fact, I know that they had all consented to it. In connection with the proposed amendments I had prepared a resolution, or series of resolutions, carrying out my general proposition, which had been submitted to all, I believe, who were interested in

the matter and was understood to be a part of the thing to be done at the meeting just as we understood the amendments were to be adopted. I do not remember who suggested the exact amount of four hundred thousand dollars. I only know that I had suggested that it ought to be a great deal less amount than two million dollars and ought to be an amount that could fairly be said to represent, together with the bonds, the value of the Des Moines Union Railway Company property at the time the company was organized in 1884.

During the discussion that preceded this meeting and at this meeting there was no suggestion by anybody that the Des Moines Union Railway Company was not to acquire the absolute title for this property for which it was issuing this stock and these bonds. On the contrary, everybody there knew the very purpose, or one of the purposes, for adopting the amended articles of incorporation was to remove all doubt or any doubt on that subject and to abrogate the contract of 1882.

I prepared the preambles and resolutions at my own suggestion. I did it because it was the next step to be taken to clear up the matters that I was endeavoring to clear up in the amendment to the articles of incorporation. I recited that these people were present because they were present, and my understanding was that the eight directors and the three companies owned all of the capital stock of the Des Moines Union Railway Company. Neither of the Hubbells had anything to do with the preparation of the resolution, nor the incorporation of any part of it, unless it were to furnish me with the information that was necessary in order to draft it. I recall in this connection that between the time the resolution was passed for the preparation of amendments to the articles and this meeting to which you have just referred, the Purchasing Committee had sold a portion of the stock of the Des Moines Union Railway Company

to Mr. Hubbell and, as I remember it, a portion of it to General Dodge.

All of the persons who are recited to have been present upon that occasion had information from me with regard to the articles of incorporation, the amendments to the articles of incorporation and the resolution to which reference has been made, and in addition to those who were present, Col. Blodgett had information of these things from me, and General Dodge had information of these things from me, and my recollection is that Mr. Ashley also had information from me.

There was no attempt to conceal the transaction. On the other hand, as far as I was concerned, I made every possible effort that everybody connected with the whole matter should be fully and completely informed, and I drew the resolutions as specific as they are and as long as they are in order that there could be no possible controversy about it."

On cross examination Mr. Cummins testified on this subject (p. 1237):

"I suggested that the articles of incorporation should be amended months before I knew that Mr. Hubbell was negotiating for any stock or that he had any idea of buying any part of the stock, as I now recall it."

There is no testimony to contradict that of Senator Cummins as to the manner in which the subject of the articles arose and the publicity of the matter, or as to the fact that everybody was consulted and thoroughly informed with respect thereto, but on the contrary all the evidence corroborates his testimony.

There are a few other significant facts shown by the record to corroborate the theory that the stockholders

and parties interested in the corporate affairs of the terminal company had proper notice of the proposed amendments to the articles of incorporation and consented thereto and acquiesced therein.

It will be noted that article 4 of the original articles of incorporation of the terminal company (exs. 5½ and 6, vol. II, p. 421), which provides for the election of directors, contained the following provisions:

> "Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.
>
> The fact that a candidate has been duly nominated shall be certified to the Stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive."

This is a very peculiar and unusual provision in relation to the election of directors. It appears that the first meeting of the stockholders of the terminal company for the purpose of electing directors, so far as is shown by the record, was on March 31, 1888 (ex. 26, vol. II, p. 476). At this meeting James F. How nominated four directors on behalf of the Wabash Company and the Des Moines & St. Louis Railroad Company and the Wabash Western Railway Company; F. M. Hubbell nominated directors on behalf of the Des Moines Northwestern Railway Company, and G. M. Dodge nominated directors on behalf of the St. Louis, Des Moines & Northern Railway Company. These directors so nominated were elected.

The next annual meeting of the stockholders of the terminal company was held on January 8, 1889, and a like proceeding was had; A. B. Cummins nominated four directors on behalf of the Wabash Company and the Wabash Western Railway Company; Mr. Hubbell nominated two directors on behalf of the Des Moines & Northwestern Railway Company, and L. M. Martin nominated two directors on behalf of the St. Louis, Des Moines & Northern Railway Company (ex. 106, vol. IV, p. 1304).

At the next annual meeting of the stockholders of the terminal company, held January 3, 1890 (ex. 107, vol. IV, p. 1305), a like proceeding was had.

We quote from the record as follows:

> "* * * J. F. How on behalf of the Wabash Railroad Company operating the Des Moines & St. Louis Railroad Company, nominated Jas. F. How, C. M. Hays, W. H. Blodgett and A. B. Cummins to be voted for as directors of the Des Moines Union Railway Company to represent the said Wabash Railroad Company, it having been certified to this meeting by the Secretary of the Wabash Railroad Company and Des Moines & St. Louis Railroad Company that the above named gentlemen had been duly nominated as candidates for directors in this Company on behalf of the Wabash Railroad Company, and the Des Moines & St. Louis Railroad Company."

A like record was made with respect to nominations by G. M. Dodge on behalf of the Des Moines & Northern Railway Company and by F. M. Hubbell on behalf of the Des Moines & Northwestern Railway Company.

It will, therefore, be noted that down to this time this peculiar method of nominating directors was followed.

The amendments to the articles of incorporation of the terminal company adopted April 8, 1890, changed the method of nominating directors and provided the usual method in that respect. (See article 4 of the amendments to the articles of incorporation, ex. 303, vol. IV, p. 1604.)

At the next annual meeting of the stockholders of the terminal company, held February 11, 1891 (ex. 115, vol. IV, p. 1318), no certificates of these various railroads were presented certifying the nomination for directors as was required by the original articles, but the various stockholders appeared in person or by proxy and the directors were elected as they are ordinarily elected at corporate meetings. At no time after the annual meeting, held on January 3, 1890, were any certificates of the secretaries of these railway companies presented certifying the nomination of directors as provided for in the original articles, but on the contrary at all meetings after that the ordinary and usual method was followed as provided in the amendments. The necessary conclusion from this is that all the railroads and all the stockholders knew of and acquiesced in and ratified the amendments to the articles of incorporation.

Again, as we have already shown, the Des Moines & St. Louis Railroad Company had authorized that portion of the stock that was coming to that company to be issued to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, which, upon acceptance of the stock, or acquiescence there in by the Purchasing Committee, constituted such Purchasing Committee stockholders in this company. It will be remem-

bered that prior to the adoption of these amendments to the articles, Mr. Hubbell and General Dodge had bought of the Purchasing Committee each one-eighth of the capital stock of the terminal company. One of the agreements in connection with this purchase (ex. 300, vol. IV, p. 1601), was that the articles of incorporation should be so amended as to permit one director of the terminal company to be nominated by any person or corporation holding one-eighth of the stock. At this time Colonel Blodgett was one of the directors nominated by the Wabash interests as representing it (ex. 197, vol. IV, p. 1306). At the conclusion of the meeting of April 8, 1890, at which the articles of incorporation were amended (ex. 28, vol. II, p. 496), the resignation of Colonel Blodgett as director was accepted and Mr. H. D. Thompson, a brother-in-law of Mr. Hubbell, was elected to fill his place. Undoubtedly this was done in pursuance of the agreement entered into with the Purchasing Committee, as heretofore stated, at the time it sold this stock to Mr. Hubbell and to General Dodge, and the necessary inference is that the Purchasing Committee was advised of this meeting, its purpose, and that the resignation of Colonel Blodgett was presented at the suggestion of such committee.

Again it is shown by complainants' testimony that Mr. How and Mr. Hays, both of whom were present at the meeting and voted for the adoption of these amendments, represented the Wabash interests, whatever they were (vol. II, p. 242).

Again it will be remembered that the authorized capital stock of the terminal company was $1,000,000.00, which was raised to $2,000,000.00 by an amendment adopted November 1, 1887 (vol. IV, p. 1298).

By the resolutions of January, 1885, and November, 1887, by which the transfer of the property to the terminal company was authorized, it was provided that as a part of the purchase price there should be issued all of the defendant's capital stock.

At a meeting of the board of directors of the Des Moines & St. Louis Railroad Company, held on April 8, 1890 (the same day on which the articles of the defendant company were amended), and at which were present James F. How, C. M. Hays, A. B. Cummins, F. M. Hubbell, H. S. Priest and George S. Grover, all of whom, except Mr. Hubbel, were either officers or attorneys of the Wabash Company, the following proceedings were had (ex. 185, vol. IV, p. 1434):

> "C. M. Hays offered the following resolution and moved its adoption:
>
> Whereas, the purchasing committee of the Wabash, St. Louis & Pacific Railway Company has sold to F. M. Hubbell one-eighth and to G. M. Dodge one-eighth of the stock of the Des Moines Union Railway Company, and
>
> Whereas, the entire capital stock of said company owned by the company, issued as a part of the purchase price thereof, has been fixed at Four Hundred Thousand Dollars,
>
> It is therefore now
>
> Resolved, that the said sale by the said Purchasing Committee be and the same is hereby ratified, confirmed and approved by the Des Moines & St. Louis Railroad Company."

How did the Des Moines & St. Louis Railroad Company ascertain that that portion of the purchase price of the terminal property which was to be paid in defendant's capital stock had been fixed at $400,000.00? All of the proceedings prior to April 8, 1890, had pro-

vided that the capital stock to be issued in part payment of the purchase price was the full capital stock authorized by the defendant to be issued, which was originally $1,000,000.00, and subsequently $2,000,000.00. The only place where it was fixed at $400,000.00 was at the meeting of the stockholders of the defendant company, held on April 8, 1890, and it must have been from this record that the Des Moines & St. Louis Company ascertained this fact. It therefore necessarily follows that the Des Moines & St. Louis Railroad Company had knowledge of the proceedings of the stockholders of the defendant company on April 8, 1890, by which the articles of the defendant company were amended, and the amount of the capital stock to be issued in part payment for the property was fixed at $400,000.00.

On the same day there was issued to the Purchasing Committee of the Wabash Company, 1,000 shares of stock of the defendant company (less two shares of stock, standing in the name of directors), (ex. 79, vol. II, p. 711).

Bearing in mind that the resolutions of November, 1887, authorized the issuance to the Purchasing Committee of 15,000 shares of stock of the defendant company as a part of the purchase price, of what was the Purchasing Committee put upon its inquiry when it received this 1,000 shares of stock? This was adequate notice to the Purchasing Committee that some change had been made in the plan and it was up to the Purchasing Committee to make inquiry, and if it had done so it would have discovered the action of April 8, 1890, if it didn't already know about it.

At the annual meeting of the stockholders of the Des Moines Union Railway Company held February 11,

1891, which was the first annual meeting after the adoption of the amendments of April 8, 1890, there were present G. M. Dodge, James F. How, C. M. Hays, F. M. Hubbel, L. M. Martin, F. C. Hubbell and A. B. Cummins, all in person, and the Purchasing Committee of the Wabash Company by James F. How, proxy, the Des Moines & Northwesteri Railway Company by F. C. Hubbell, vice-president, and the Des Moines & Northern Railway Company by G. M. Dodge, president (ex. 115, vol. IV, pp. 1318-9). At this meeting the following proceedings were had:

> "The President stated the first business of the meeting to be the reading of the minutes of the previous meeting of the stockholders held during the year 1890, and the minutes of the directors' meetings and of the Executive Committee, and thereupon called upon the Secretary to read the same, which was done.
>
> Mr. A. B. Cummins moved that the proceedings of the stockholders' meeting and the meetings of the board of directors and of the Executive Committee be approved. The motion was seconded and carried."

It will be remembered that certificates of stock had been issued prior to this meeting.

There was no controversy but that plaintiffs' predecessors were present at this meeting by their proper representatives, so at this time they were all advised of the amendments to the articles of incorporation of April 8, 1890, and the action was formally approved. An examination of the corporate records of the defendant company will disclose that from April 8, 1890, down to the time of the commencement of this suit the business of the defendant company was carried on under

the amendments of April 8, 1890, and no question was ever raised about their validity. (See vol. IV, commencing p. 1314.)

The amendments to the articles of incorporation as adopted April 8, 1890, appear as defendants' exhibit 303 (vol. IV, pp. 1604-10). They were signed and acknowledged by F. M. Hubbell, F. C. Hubbell, A. B. Cummins, Horace Seeley, L. M. Martin, Charles M. Hays, James F. How, Wells H. Blodgett, G. M. Dodge and H. D. Thompson (p. 1604), and were filed for record in the office of the county recorded of Polk County, Iowa, on April 23, 1890, and in the office of the secretary of state on May 12, 1890 (p. 1610), as required by the statute of Iowa.

Notice of these amendments was properly published as required by the statutes of Iowa (exs. 614-5, vol. IV, pp. 2010-1).

By chapter 88 of the acts of the twenty-second General Assembly (1888), in force on April 8, 1890, it was provided:

> "That any of the provisions of the Articles of Incorporation may be changed at any annual meeting of the stockholders or special meeting called for that purpose; but said changes shall not be valid unless recorded and published as the original articles are required to be; and said changes in the Articles need only be signed and acknowledged by the officers of said Corporation."

By chapter 23 of the laws of the seventeenth General Assembly (1878), in force on April 8, 1890, it was provided:

> "Previous to commencing any business, except that of their own organization, they must adopt articles of incorporation, which must be signed and

> acknowledged by the incorporators, and recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept therefor; the recorder must record such articles as aforesaid, within five days after the same are filed in his office, and certify thereon the time when the same was filed in his office, and the book and page where the record thereof will be found. The said articles and certificate of recorder shall be then recorded in the office of secretary of state, in a book kept for that purpose."

Section 1613 of the code of 1897 was in force on April 8, 1899, and provided for the publication of notice of the adoption of the articles of incorporation.

The purpose of this statute is to give to the world (which includes the stockholders), notice of the articles of incorporation and amendments thereto.

In the case of

Dempster v. Downs, 126 Iowa, 80,

the Court said:

> "Every one who acquires certificates of stock must be assumed to know that they were issued by virtue of articles of incorporation, and that these may be found in the office of the Secretary of State. Indeed, the very object of requiring the filing and recording of the articles is to give them the same publicity, as nearly as may be, as statutory charters, and render them easily accessible to all who may be interested in ascertaining their contents. These articles are expressive of the relative obligations of the company and stockholders, and inhere in the certificates of stock, in whosesoever hands they may come."

If the provisions of the articles of incorporation and amendments stand upon the same basis and must be taken notice of by all the world, including the transferees of the stock, certainly the filing, recording and giving notice of the amendments is constructive notice of the provisions thereof to all stockholders.

In passing, we may call the court's attention to the fact that petitioners acquired their stock and whatever interest they have in this property long after the adoption of these amendments, and, therefore, come squarely within the doctrine of the above case, but of this we will have more to say at a later time.

Not only does the record show that complainants and their predecessors had actual and constructive notice of these amendments to the articles, but it is a presumption of law that all stockholders assent to any change in the articles of incorporation.

Holmes v. Loan Assn., 107 S. W. (Mo.) 1005.
Cook on Corporations, (6th Ed.) Vol. 2, sec. 503.

THE PUBLICATION OF THE AMENDMENTS.

The objection made by counsel to the sufficiency of the published notice of the Amendments is without validity. The Statute of Iowa, Code of 1897, Sec. 1613, requires the published notice of incorporation to show,

1. The name of the corporation and its principal place of business.

2. The general nature of the business to be transacted.

3. The amount of capital stock authorized and the times and conditions on which it is to be paid in.

4. The time of the commencement and termination of the corporation.

5. By what officers or persons its affairs are to be conducted, and the time when and manner in which they will be elected.

6. The highest amount of indebtedness to which it is at any time to subject itself.

7. Whether private property is to be exempt from corporate debts.

Sec. 1615 requires amendments to be published "as the original articles are required to be."

Article two of the Articles of Incorporation of the Des Moines Union, both original and as amended comes under the second head of Section 1613, "the general nature of the business to be transacted." As to this there was no change. It was and continued to be that of a terminal railway. The allusion to the contract of 1882 did not affect this. And this was expressly decided by the Supreme Court of Iowa in Morgan vs. Des Moines Union Ry. Co., 113 Iowa 561. The Court, l. c. 565, said:

> "That defendant was incorporated under the general law is made apparent by the terms of its articles of which the following is a part: Art. II. The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of the depots, freight houses railway shops, repair shops, stock yards, and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars

from the line or depot of one railway to another, or from the various manufactories, warehouses, storehouses, or elevators to each other, or to any of the railways or depots thereof now constructed or to be hereafter constructed in or around the City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter 1 of title IX of the Code and the amendments thereto.' These articles were afterward amended, *but in no way was the language set out qualified in the amendment.*"

Counsel cite this case as if it held that the attempted amendment failed because of insufficient publication. But the Court decided nothing of the kind. It decided that the Amendment which was made, one by elimination of a mere solecism, did not qualify "the general nature of the business to be transacted," so that it was, not less than it had been, "a railway corporation" with all the powers of such a corporation. So under paragraph 2 of Section 1613 of the Code there was nothing to be published. The reference to the agreement was an incongruity, an obsolete thing recognized as such by the parties and as such removed from the articles.

In Thornton vs. Balcom, 85 Ia. 198, the articles provided as to the total of indebtedness of the corporation that it "shall not at any time exceed three hundred dollars, except by a majority vote of the stockholders present at a called or annual meeting." The published notice declared simply that "the indebtedness of the company shall not exceed three hundred dollars at any one time." The Court, l. c. 201, said:

> "It is claimed that this is not a true statement of the amount of the authorized indebtedness. It appears to us that it is just such a statement as the law required. It was the amount of indebtedness then authorized, and it was wholly unnecessary to publish the manner in which the limit of indebtedness might thereafter be increased or diminished."

The statutes of Iowa do not requre publication of the articles in full, nor even of a summary of them, but only the seven enumerated points, or the substance of them. And so as to amendments. Everything enumerated in them and affected by the amendments was contained in the notice. There was much in the amendments which had no place in the notice. And so it was as to the reference to the 1882 agreement. It would be a veracious bull to say that as to this silence was the only statement required.

As between the stockholders, it was not necessary that any publication should be made. They had notice. They knew what had been done, for they participatedi in making the amendments and acted under them for years.

Heald v. Owen, 79 Iowa 95.

A DISSENTING STOCKHOLDER MUST ACT PROMPTLY.

If the complainants have any standing in this court to question the validity of the amendments of April 8, 1890, it must be in their capacity as stockholders of the defendant company. The question of the validity of a corporate action of this kind cannot be raised by one having merely contractual relations with it, but can only be raised by a stockholder or the state.

The general rule is laid down by

Cook on Corporations (6th Ed.), Vol. 2, sec. 503, as follows:

> "A stockholder may be estopped from objecting to an amendment by his express or implied acquiescence therein. Any acts indicating an acceptance by him of the amendment bind him and bar his suit. Acquiescence may sometimes grow out of his silence or delay under circumstances that called on him to dissent if he so intended. A court of equity will go far to aid a dissenting stockholder where he applies promptly and before large investments and many changes are made on the faith of the acts complained of. But laches will not be tolerated by the court, especially where important interests are involved."

In the case of

Rabe v. Dunlap, 25 Atl. (N. J.) 959, the suit was to invalidate a consolidation of two companies because beyond their corporate powers. The Court said (p. 961):

> "The stockholders of a corporation have an indisputable right to have the property of the corporation applied and used exclusively for the purpose specified in its charter, and any attempt by its managers to appropriate it to any other purpose is a usurpation of power and a violation of the rights of the stockholders. * * * But stockholders, to be entitled to the summary interference of the court in cases where they seek protection against acts which are merely in excess of the power of the corporation, and are not prohibited by law, must be diligent. They must apply so recently after the doing of the act of which they complain

that the court may stop or undo the wrong to them without doing equal or greater wrong to some other person. The principle which must control the action of a court of equity in cases where the defense is laches was laid down by Lord Camden, many years ago in these words: 'Nothing can call forth the activity of a court of equity but conscience, good faith and reasonable diligence. Where these are wanting the court is passive, and does nothing. Laches and neglect are always discountenanced, and therefore, from the beginning of his jurisdiction, there was always a limitation to suits in equity.' * * *

Or, stated with greater brevity, and in its simple essence, the rule is this: If he wants protection against the consequences of an *ultra vires* act, he must act for it with sufficient promptness to enable the court to do justice to him without doing injustice to others."

The general rule is laid down by Circuit Court Judge Lurton, in an opinion in the Circuit Court of Appeals, Sixth Circuit, in the case of

Synnott v. Cumberland Bldg. Assn., 117 Fed. 379 (C. C. A.),

in which case it was claimed that the action complained of was invalid, so far as complainant was concerned, because complainant's proxy in voting at the stockholders' meeting exceeded his power as expressed in the proxy.

Referring to the question under consideration, Justice Lurton said (p. 385):

"We deem it unnecessary to express any opinion as to the conclusive effect upon Mrs. Synnott of the action of Hayward in participating in the

doing of business not included in the notice for the adjourned meeting, because we are of the opinion that whether her agent could waive the sufficiency of the notice of the business undertaking at that meeting or not, nothing but the most active diligence in repudiating what was there done in her name and by her apparent consent can void the consequences of her agent's action. That action was held on January 17, 1898. This bill was filed May 1, 1899. For more than a year no protest was made to the action of her agent, and, indeed, the bill filed contains no word of complaint that he had exceeded his authority or that the meeting had exceeded the notice or call made for it.

An effort has been made to excuse Mrs. Synnott for her inaction by the claim that she did not know of the action taken at the January meeting until shortly before her bill was filed. Mrs. Synnott does not testify at all. Her husband says he acted for her in looking after her stock. He states that he cannot say definitely when he got the informaiton as to what had been done, but thinks it was several months afterward. Mr. Synnott was an old and expert building and loan man, and though he lived in another state, it is hardly credible to suppose that he long remained in ignorance of so important and public an action as that affecting this common stock.

* * * * * * * * *
* * * * * * * * *

It will not do to say that no change occurred in the attitude of the company between that action and the filing of the bill. We may take notice that the shares in such companies are constantly changing hands, and new shares being issued at short periods, constituting new series of stock. It may well be presumed that the elimination of the special powers of this common stock by the apparent consent of the stockholders would be an important

> factor in all the future issues of new stocks and sales of old. Mrs. Synnott should have actively repudiated what was apparently done for her. Until she did so every one had a right to suppose that she had agreed to permit her shares to stand upon a plane of equality with other prepaid shares of what is called installment stock and to act upon that theory."

The rule is laid down in the case of

> *Big Creek Gap Coal & Iron Co. v. American Loan & Trust Co.*, 127 Fed. 625 (C. C. A.)

as follows (p. 629):

> "* * * The stockholders must be charged with such knowledge as would have come to them in the exercise of due diligence and attention to their business interests, and in this case to business interests of very large magnitude."

In the case of

> *Thompson v. Lambert*, 44 Iowa 239,

complaint was made of the act of an agricultural association in making a donation to a railroad company. Complainants Thompson and Cressler were not present at the meeting at which the donation was authorized, but knew that such was being discussed.

With respect to the promptness with which they should have acted, the court said (p. 247):

> "Under these circumstances we are of the opinion that Thompson and Cressler had sufficient knowledge to put them on an inquiry. They knew it was proposed in some way to have the Agricultural Society aid in building the railway, and in-

quiry prosecuted with diligence and a fair degree of earnestness to obtain information, would have developed the fact as to the proposal to guarantee the notes and execute the mortgage. There is nothing tending to show there was any secrecy intended, nor was the proposition in any manner concealed. But knowing the matter was talked about and canvassed, Thompson and Cressler did nothing to prevent the consummation of the claimed illegal act, and to which they were opposed until the commencement of this action in December, 1872. They had sufficient knowledge of what was proposed to be done to warrant them in applying for an injunction as early as March, 1871, and had they done so before the loan was effected, their standing and the question for determination would have been very different.

The stockholder of a corporation who seeks to prevent the consummation of an illegal corporate act, or to avoid it, should be swift to make known his desires and assert his rights through the tribunals appointed for that purpose."

The Supreme Court of the United States in one case (*Foster v. Mansfield, etc., R. Co.*, 146 U. S. 88), has laid down the rule as follows (p. 96):

"The bill in this case was dismissed in the court below upon the ground of laches, and also for want of equity. * * *

As the alleged fraudulent sale of this road, which constitutes the gravamen of the bill, took place August 28, 1877, and the bill was not filed until August 30, 1887, ten years thereafter, there is certainly a presumption of laches, which it is incumbent upon the plaintiff to rebut. His reply is that he did not discover the fraud until a few months before the filing of the bill. * * *

> The defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands, not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts. Especially is this the case where the party complaining is a resident of the neighborhood in which the fraud is alleged to have taken place, and the subject of such fraud is a railroad with whose ownership and management the public, and certainly the stockholders, may be presumed to have some familiarity."

It appears, therefore,

First. That the presumption is that all the stockholders had notice of this meeting at which the articles of incorporation were amended and had a copy of the proposed amendments.

Second. That the recitals contained in the minutes of the meeting are presumptively correct, and, therefore, that the stockholders had notice of the meeting and the proposed amendments and that they were all represented in person or by proxy.

Third. It is presumed that all stockholders consented to the enactment of the amendments and acquiesced therein.

Fourth. The filing, recording and giving notice of the amendments as provided by statute, is notice to the world of such amendments.

Fifth. That the stockholders are charged with notice of everything which they might have learned by the

exercise of reasonable diligence, and that in order to challenge the validity of these amendments it was necessary for them to act promptly, or, as the Supreme Court of Iowa put it, "*swiftly.*"

For more than seventeen years the defendant company, its officers, directors and stockholders (including complainants and their predecessors) acted under these amendments and acquiesced therein and no question was ever raised about their validity until the commencement of this suit. Certainly the complainants are far from having acted "swiftly" as they were required to by the rules of law above set out.

COMPLAINANTS ARE NOT IN A POSITION TO COMPLAIN OF THESE AMENDMENTS, BECAUSE THEY ACQUIRED THEIR STOCK AND WHATEVER INTEREST THEY HAVE IN THE TERMINAL COMPANY, SUBSEQUENT TO THE ENACTMENT OF THE SAME AND AFTER THE SAME WERE FILED, RECORDED AND PUBLISHED, AS REQUIRED BY STATUTE.

So far as the Wabash is concerned, the interest which it now claims to have in the property in controversy belonged originally either to the Des Moines & St. Louis Railroad Company or to the Wabash, St. Louis & Pacific Railway Company, and for the purposes of this proposition it doesn't matter which.

On the 25th day of April, 1888, the Wabash, St. Louis & Pacific Railway Company transferred to James F. Joy, Ossian D. Ashley, Edgar T. Welles and Thomas H. Hubbard, known as the Purchasing Committee, all its property (ex. 45, vol. II, p. 536). After describing the specific property, this deed by its terms (p. 540) in-

cludes "also all the property, rights, interests and choses in action acquired by said Wabash Railroad Company after June 1st, 1880, whether hereinbefore described or not." This would be sufficient to transfer to the Purchasing Committee whatever rights the Wabash, St. Louis & Pacific Railway Company had in the property in controversy.

As we have heretofore shown, the Des Moines & St. Louis Railroad Company authorized the issuance of its share of the stock to the Purchasing Committee and all the parties recognized the title of the Purchasing Committee to the stock.

On June 1, 1889, about nine years after the amendments to the articles of incorporation, the Des Moines & St. Louis Railroad Company transferred to the complainant, The Wabash Company, all the property of the first named company (ex. 44, vol. II, p. 533), and included in the deed is the following:

> "does grant, bargain, sell, assign and set over unto the Wabash Railroad Company, its successors and assigns forever, all of its said line of railroad and right of way as the same now is, or may be hereafter constructed, or acquired in said State of Iowa, commencing at a point in or near the City of Des Moines, *where said road connects with the tracks of the Des Moines Union Railway Company*, and extending from thence * * * to the town or city of Albia in Monroe County, * * * and all its rights, privileges and franchises and all other things, real and personal, now owned, or used, or that may be hereafter owned or used by the party of the first part in connection with the line of railroad above described and herein and hereby granted, *and especially including all the rights and leasehold and other interests of the first party under a contract dated May 10th, 1889, between the*

Des Moines Union Railway Company of the first part and the Des Moines and St. Louis Railroad Company, the Des Moines and Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, of the second part."

Whatever interest in the property in controversy was acquired by the complainant, The Wabash Company, from the Des Moines & St. Louis Railroad Company was acquired by virtue of this deed. On August 18, 1898, the Purchasing Committee transferred to The Wabash Company, all the property acquired and then owned by the Purchasing Committee. Whatever interest the complainant, The Wabash Company, acquired from the Purchasing Committee in the property in controversy was acquired by virtue of this deed and by the transfer of the stock of the terminal company to the Continental Trust Company on March 23, 1899, which latter company held the same as security for the indebtedness of the Wabash Company.

On the 1st day of May, 1899, Chicago, Milwaukee & St. Paul Railway Company acquired from the Des Moines, Northern & Western Railroad Company (ex. 74, vol. II, p. 673), its interest in the property in controversy, which is described (p. 675) "*and also a one-fourth interest in the capital stock of the Des Moines Union Railway Company.*"

It appears, therefore, that for a period of about nine years complainants' predecessors acted under the articles of incorporation of the terminal company, as amended on April 8, 1890, and that complainants for another period of eight years after acquiring their interest in the stock, themselves acted under said articles before they brought this suit.

The ninety-fourth equity rule provides as follows:

> "Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action."

This rule is carried forward in substantially the same language as equity rule number twenty-seven, taking effect February 1, 1913.

This proceeding, so far as it relates to the validity of the amendments to the articles of incorporation of April 8, 1899, is a proceeding by the stockholders of the terminal company founded on alleged rights which may properly be asserted by the corporation, that is, the stockholders in the terminal company having the power to amend the articles of incorporation, have the power to repeal such amendments or to declare them invalid and of no effect, if such is true. The proper forum to which the complainants should make their first appeal is the annual meeting of the stockholders. This has never been done, although seventeen such annual meetings were held subsequent to the adoption of the amendments and before the commencement of this suit. During all these years the subject of the validity of

these amendments never seems to have been mentioned by any one to any one, or to have been thought of by any one until the value of this property became so great as to excite the cupidity of complainants.

The purpose of the enactment of the rule was twofold: *first*, to prevent collusive suits being brought in the United States courts, and, *second*, to establish the equitable rule of law that one who has bought into a corporation may not complain of the acts of the corporation prior thereto, because he bought with actual or constructive knowledge of the situation, and because any other rule might permit a holder of stock to challenge the act of the corporation even though his stock had been voted in favor of such act.

The second reason for the rule above indicated applies with twofold force when we come to consider the validity of the amendments to the articles of incorporation enacted prior to the acquisition of the stock by complainants. In the first place, the amendments having been executed, acknowledged, recorded, and notice having been given as provided by law, subsequent stockholders have constructive notice of the amendments; and in the second place, complainants do not claim to have been deceived with respect to these amendments or to have been ignorant of them. Under these circumstances, it seems to us that with respect to this particular issue complainants come squarely within the terms of equity rule XCIV, for both of the reasons suggested, and for this reason if for no other they are not entitled to relief with respect to these amendments.

III.

THE COMPLAINANTS ARE ESTOPPED FROM ASSERTING THAT THE OWNERSHIP OF THE TERMINAL PROPERTY IS NOT VESTED ABSOLUTELY IN THE DES MOINES UNION RAILWAY COMPANY, AND FROM CLAIMING THAT THE STOCK OF THE COMPANY HELD BY THE DEFENDANT, F. M. HUBBELL & SON, DOES NOT REPRESENT A VALUABLE INTEREST THEREIN.

As we have heretofore indicated, the real purpose of this suit is to secure a decree which will make the capital stock held by the defendant, F. M. Hubbell & Son, of no value. If the complainants owned all the stock in the defendant company, then the question of whether it had a perfect title to the terminal property would be of no importance, because in either event the complainants would own the beneficial interest. Therefore, they seek a decree which will give them a direct interest in the property and which would destroy the value of the stock.

The doctrine of equitable estopped is well settled in the courts of the United States and in the State of Iowa, as well as in other courts of last resort. In order to meet the rule, the following facts must appear:

1. Representations, either active or passive, on the part of the persons against whom the rule is sought to be enforced.

2. A reliance upon such representations by the person or persons in whose favor the doctrine is invoked.

3. Acts of such persons resulting in changing their position.

In the

Encyclopedia of the U. S. Supreme Court Rep., Vol. 5, p. 239,

the editor of that work refers to the principle as follows:

> "The principle of estoppel *in pais* or by the act of the party is an important one in the administration of the law. It is founded in reason and justice and in a wise and salutary policy. It is a means of repose. It promotes fair dealing. It accomplishes that which ought to be done between man and man, and is not permitted to go beyond this limit. It is available only for protection, and cannot be used as a weapon of assault. It cannot be made an instrument of wrong or oppression, and it often gives triumph to right and justice where nothing else known to our jurisprudence can, by its operation, save them from defeat or secure those ends. It is akin to the principle involved in the limitation of actions, and does its work of justice and repose where the statute cannot be invoked."

In the case of

***Morgan* v. *Railway Co.*, 96 U. S. 716,**

the court lays down the rule as follows (p. 720):

> "The appellee insists that the record discloses a case of estoppel *in pais*, and that the appellant is thereby barred from maintaining the claim which he seeks to enforce in this litigation. The principle is an important one in the administration of the law. It not infrequently gives triumph to right and justice where nothing else could save

them from defeat. It proceeds upon the ground that he who has been silent as to his alleged rights, when he ought in good faith to have spoken, shall not be heard to speak when he ought to be silent. *The Bank of the United States vs. Lee*, 13 Pet. 107.

He is not permitted to deny a state of things which by his culpable silence or misrepresentations he had led another to believe existed, and who has acted accordingly upon that belief. The doctrine always presupposes error on one side and fault or fraud upon the other, and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage. *Merchants' Bank vs. State Bank*, 10 Wall. 604."

In the case of

Kirk v. Hamilton, 102 U. S. 68,

the court says (p. 75):

"In the view we take of the case, it is unnecessary to pass upon these several objections. If it be assumed that the record of the suit of *Moore & Co. vs. Kirk, etc.*, was, of itself, insufficient in law to divest Kirk of title to the premises in dispute, or to invest Hamilton with title, the question still remains, whether the facts disclosed by the first bill of exceptions do not constitute a defense to the present action.

After the confirmation of the sale of April 19, 1864, before any deed had been made, and while the cause was upon reference for a statement, as well of the trustee's account as for distribution of the fund realized by the sales, Kirk it seems, appeared before the auditor, by an attorney, and made objection to the allowance of the simple-contract debts which had been proven against him in his absence. So far as the record discloses, no other objection to the proceedings was interposed

by him. Undoubtedly, he then knew, he must be conclusively presumed to have known, after he appeared before the auditor, all that had taken place in that suit during his absence from the District, including the sale of the premises in dispute, which took place only a few months prior to his appearance before the auditor. If that sale was a nullity, the court, upon application by Kirk, after his appearance before the auditor, could have disregarded all that had been done subsequently to the first sale, discharged Hamilton's bond, returned the money he had paid, and, in addition, placed Kirk in the actual possession of the property. No such application was made. No such claim was asserted. No effort was made by him to prevent the execution of a deed to the purchaser at the second sale. So far as the record shows, he seemed to have acquiesced in what had been done in his absence. In 1868, three years after his return to the city, and two years after Hamilton had secured a deed in pursuance of his purchase he became aware that Hamilton was in actual possession of the premises, claiming and improving them as his property. He personally knew of Hamilton's expenditures of money in their improvement, and remained silent as to any claim of his own. Indeed, his assertion while the improvements were being made, of claim to only three feet of ground next to the adjoining lot upon which he resided, was in effect, a disclaimer that he had, or would assert, a claim to the remainder of the lots 7 and 9 which Hamilton had purchased at the sale in April, 1864, and his subsequent declaration that he was in error in claiming even that three feet of ground, only added force to his former disclaimer of title in the premises. Hamilton was in possession under an apparent title acquired, as we must assume from the record, in entire good faith, by what he supposed to be a valid judicial sale, under the sanction of a court of general jurisdiction.

The only serious question upon this branch of the case is whether, consistently with the authorities, the defense is available to Hamilton in this action of ejectment to recover the possession of the property. We are of opinion that the present case comes within the reasons upon which rest the established exceptions to the general rule that title to land cannot be extinguished or transferred by acts *in pais* or by oral declarations. 'What I induce my neighbor to regard as true is the truth as between us, if he has been misled by my asservation,' became a settled rule of property at a very early period in courts of equity. The same principle is thus stated by Chancellor Kent in *Wendell vs. Van Rausselaer*, 1 Johns (N. Y.) Ch. 344: 'There is no principle better established, in this court, nor one founded on more solid considerations of equity and public utility, than that which declares, that if one man, knowingly, though he does it passively, by looking on, suffiers another to purchase and expend money on land, under an erroneous opinion of title, without making known his own claim, shall not afterwards be permitted to exercise his legal right against such person. It would be an act of fraud and injustice, and his conscience is bound by this equitable estoppel.' p. 354."

In

Linton v. Nat. Life Ins. Co., 104 Fed. 584,

Judge Sanborn states the rule as follows (p. 589):

"* * * One who by his acts or representations or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist, and the latter rightfully acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts, is thereby conclusiveley estopped from interposing such denial."

In the case of

Given v. Times Printing Co., 114 Fed. 92,

the same authority states the rule as follows (p. 95):

> "No principle is more universal in the jurisprudence of civilized nations, no principle is more equitable in itself or more salutary in its effects, than that one who, by his acts or representations, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist, and the latter rightfully acts on such a belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts, is thereby conclusively estopped to interpose such denial. This principle is equitable, because it forbids the untruthful or culpably negligent deceiver from profiting by his own wrong at the expense of the innocent purchaser or contractor who believed him. It is salutary because it represses falsehood and fraud. It rests on the solid foundation of our common sense of justice, which revolts at the idea of rewarding the intentional or culpably negligent deceiver at the expense of the innocent purchaser who believed him."

In this latter case this rule was applied to a sole stockholder in a corporation who had sold his stock without disclosing the fact of the existence of an indebtedness of the corporation to him.

The rule in Iowa is laid down as follows:

> "Where a party by his conduct induces another to act to his own disadvantage he will not afterwards be permitted to change his position."

Wright v. Leith, 146 Iowa 290.
Seberg v. Bank, 141 Iowa 99.
Anderson v. Buchanan, 139 Iowa 676.

It will be remembered that in February, 1890, the defendant, F. M. Hubbell, and G. M. Dodge each purchased of the Purchasing Committee one-eighth (or 500 shares) of the capital stock of the defendant company, for which they paid a valuable consideration, which consideration was finally received by The Wabash Company; that in June of the same year, the defendant, F. M. Hubbell, purchased an additional 500 shares from the Purchasing Committee; that this stock became the property of the Des Moines, Northern & Western Railway Company, and that in 1892 the defendant, F. M. Hubbell & Son, acquired from the Des Moines, Northern & Western Railway Company 2,500 shares of the stock of the defendant company, which ever since said date has stood upon the books of said company as owned by F. M. Hubbell & Son; that during all the years since 1890, up to the commencement of this suit, the defendant, F. C. Hubbell, devoted substantially all his time to the growth, management and development of the terminal property, and the defendant, F. M. Hubbell, a large share of his time to such purpose, without any compensation whatever, except as might accrue to them by reason of the increase in the value of the property and the resulting increase in the value of their stock.

Upon this branch of the case, what we have for consideration is, what acts were done or representations made, either active or passive, by complainants and their predecessors, leading the defendants to believe, and authorizing them to believe that the defendant company had a good title to the property in controversy, and therefore that their stock represented a beneficial interest therein and induced them to part with

their money and devote years to the development of the terminal property.

As we have already said, the contract of January 2, 1882, did not contemplate the organization of a terminal railway, but rather a terminal property which might be used jointly by the parties to that contract and such others as might thereafter join. What is there in the record to show a change in this plan and upon which defendants had a right to rely?

The articles of incorporation of the defendant company adopted in 1884 were, as we have already shown, adopted at the instance of, and specifically ratified by the three railroad companies parties to the contract of January 8, 1882.

After setting out this contract as a part of the preamble, those articles provide (vol. II, p. 419):

> "Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was *the understanding of the parties* that such Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto."

Were the defendants required to understand from this that the beneficial interest in this property was still to remain in the three railroads parties to the contract of 1882, and that the terminal company was to only acquire a naked legal title to the property, or were they justified in believing that this evidenced a change in the plan? Note that this recital states the fact that the contract provises "*that a Depot Company might be organized to take permanent charge of the property,*" but that it was the "*understanding*" (not the contract

of the parties), that such company might "*acquire*," etc. This latter was something outside of the contract and an understanding which the parties were proceeding to carry out.

Likewise the next recital:

> "Now, Therefore, for the purposes aforesaid, *as well as for those hereinafter expressed*, the undersigned hereby associate themselves in a body corporate, and adopt the following:"

Were they required by this to understand that this corporation was being born simply for the purpose of carrying out literally the contract of 1882, or were they justified in believing that there were some other purposes, to-wit, "those hereinafter expressed"?

Note the provisions of article 2, which provide that the general nature of the business to be transacted shall be the "*construction, ownership and operation of a railway*, in, around and about the City of Des Moines, Iowa," including the ownership of depots, freight houses, etc., and the business of transferring cars, none of which was contemplated by the contract of January 2, 1882. By these articles the terminal company assumed the powers and incurred the obligations of a common carrier—something which was not contemplated by that contract. Were not the defendants authorized from this to believe that a change was contemplated in the terminal plans, as indicated by that contract?

Again, examine article 3 of the original articles of incorporation (vol. II, p. 420), which fixes the capital stock at $1,000,000.00 and authorizes its issuance and authorizes the board

"to receive in *payment* therefor the *property* and *franchise* in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge."

Now the contract of January 2, 1882, did not contemplate that the terminal property should be acquired by an independent corporation, or that the franchise incident to the terminal property should be acquired by a terminal corporation, but this article indicates that at this time it was contemplated that both the terminal properties and the franchises incident thereto should be acquired by the defendant company in consideration of the issuance of its capital stock. Ought the defendants to have understood from this that no change had been made in the plan as evidenced by the contract of January 2, 1882?

These were acts of the three railroads parties to the contract of January 2, 1882, and complainants' predecessors, which were specifically authorized and afterward specifically ratified by action of their boards of directors. By the adoption of these articles there was created a corporation for pecuniary profit under the laws of the state of Iowa, for the specific purpose of acquiring the terminal property and the "*franchises*" connected therewith.

A mere depot company organized in strict accord with the 1882 contract or in strict accord with the statutes of Iowa, Section 2099, Code of 1897, authorizing the formation of depot companies is something very different from the terminal company which the parties did in fact create by their articles of incorporation.

The Company in fact formed was organized under the general incorporation laws of the State and was vested with all the powers of a railroad company and this none the less so, that its lines were all within the limits of the City of Des Moines, and that it possessed among its powers, the distinctive powers of a depot company.

A depot company under the laws of Iowa is restricted as to the manner and extent of acquiring property and also as to the functions it may perform. In the case of Morgan against this very company, 113 Iowa 561, the crucial question was as to the character of it, whether a mere depot company or a railway company. Of a depot company, the Court said:

> "It is not intended that it shall operate locomotives or cars. Its purpose is to construct buildings and tracks for use by railway companies."

As to railway companies the Court said:

> "There is no reason for assuming that a railway company could not also, irrespective of this act (Depot Act) construct a union depot, or that in so doing it would lose any of the powers it possessed under the general incorporation Act."

It was contended that because this railway was confined within the city limits and its business was principally a terminal business, it was therefore not a railway, but a depot company. As to this the Court said:

> "We hardly think it is meant that a railway's rights are to be measured by its length. Nor do we believe that length of line alone fixes the character of such a corporation. This (the Des Moines Union) is solely a commercial railway, and as such it is invested with the rights given by statute alike to all incorporations of that character. The num-

ber of tracks which they may lay is not limited by statute, and it would seem contrary to public policy that such limitation should be made. They are and should be allowed to provide facilities for doing the business required by public demand."

What were the defendants authorized to believe and understand from the resolutions passed by the three railroad companies parties to the contract of January 2, 1882, on the 1st day of January, 1885? The resolutions were exactly alike and we need consider only one set of them.

One of the resolutions passed by the stockholders of the St. Louis, Des Moines & Northern Railway Company at this time was as follows (vol. II, p. 423):

"Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated, and provided in the aforesaid contract to *acquire, hold, use and enjoy the real estate property, rights and franchises in the* City of Des Moines, east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882."

What did the defendants have a right to believe from this action? The right to use the terminal property for the purpose of carrying on a terminal business was a *franchise* which was possessed by the three railway companies in the City of Des Moines by reason of their having devoted the terminal property to terminal purposes; and it was this franchise, as well as the property itself, which the complainants' predecessors say in

this resolution it was contemplated should be acquired by the terminal company.

The resolution then, after having specifically ratified the articles of incorporation of the terminal company, proceeds as follows:

> "Resolved: That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City, now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract."

Let us inquire what possible interest complainants' predecessor, the St. Louis, Des Moines & Northern Railway Company, could have possessed in the terminal property which was not authorized by this resolution to be transferred to the defendant company. This resolution covered all the property held by any of the signatories to the contract of January 2, 1882, and authorized the transfer of all the "*right, title and interest of whatever name and character*" the St. Louis, Des Moines & Northern Railway Company had in said property or franchises.

As we have said, identical resolutions were passed by the two other railroads parties to the contract.

Again, note the resolutions which were passed by the defendant company on the same day (vol. II, p. 4325), a part of which is as follows:

> "That the President, Vice President, Secretary and Treasurer of this Company be, and they are hereby, appointed a Committee to confer with the several parties to said contract and agree with them severally upon the *terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company*, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the *title, control and management* of said properties provided for in said contract of January 2nd, 1882."

Were the defendants authorized to believe that it was the understanding of the defendant company that it was to get transfers which would "*fully invest*" the defendant company with the "*title*" to the terminal property, or should they have understood that this language contemplated that the three railroads parties to the contract of January 2, 1882, would still continue to be the beneficial owners of the property?

These resolutions were known to Mr. Hubbell, because he was a director in, and secretary of each of these companies, and they stood unrepealed on the record and were acted upon by the execution of the deeds of 1888.

Again, take the resolutions of November, 1887, by which the trustees, How and Dodge, were authorized to transfer the legal title to the defendant company upon payment of the purchase price therefor. These resolutions were passed and notice thereof was given to the defendant company, whereupon that company, acting

through its board of directors, after reciting the giving of said notice, resolved as follows (vol. IV, p. 1280):

> "Therefore, It Is Resolved, That on receipt from the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railway Company and from James F. How, Trustee, and G. M. Dodge, of deeds to this Company of the property standing in their name in the City of Des Moines, that the officers of this Company be authorized to issue to said James F. How and G. M. Dodge, respectively, an agreement to deliver to them, as soon as prepared, bonds for the amount of money with interest and taxes added, which will be shown by them, at that time, to have been expended by or through them for or on the property referred to."

By this resolution and an additional resolution passed at the same time, which we have not taken the space to quote, the defendant company accepted the proposition made to it by the three railroad companies and agreed, in consideration of a transfer of the property, to pay therefor the full amount which the three railroad companies, or others in interest, had invested in the terminal property, together with interest and taxes, and in addition thereto issue to them defendant's capital stock. There was in this resolution no reservation to the three railroad companies of any interest in the terminal property.

So we see that not only was a corporation organized for the specific purpose of acquiring the title to this property and the franchises incident thereto, but that a transfer of such property and the franchises incident thereto was properly authorized by all of the cor-

porations interested therein, and this without any reservations of any kind. Let us now see what was actually done to carry out these resolutions.

Deeds were duly executed and delivered to the defendant company by How and Dodge. Of course, How and Dodge being merely trustees, could not on their own motion have transferred to the defendant company a good title, but their deeds taken in connection with these resolutions and the actual payment of the purchase price, would and did of themselves transfer a perfect title. However, we are not required to rely upon these deeds. Fortunately, both the Des Moines & St. Louis Railroad Company and the St. Louis, Des Moines & Northern Railway Company executed deeds to this property, the former covering all the property, and the latter a portion thereof.

The deed of the Des Moines & St. Louis Railroad Company, after describing the particular property which stood in its name, continued as follows (vol. II, p. 458):

> "And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor."

Now what was the purpose of putting in the deed this clause, and to what property did it refer? The deed had already contained a description of the specific property which stood on the record in the name of the Des Moines & St. Louis Railroad Company, and therefore this clause must have referred to some other property. Under the contract of January 2, 1882, the Des Moines & St. Louis Railroad Company was the beneficial owner of one-half of all the terminal property, no matter in whose name it stood, and it was the

only party who could authorize or transfer such beneficial interest. Therefore, this clause in the deed must have reference to that portion of the terminal property in which the Des Moines & St. Louis Railroad Company owned a beneficial interest of one-half which did not stand in its name, and this thought is emphasized by the following language of the deed (p. 458):

> "together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchise and rights it may have acquired by grant, donation, purchase or otherwise, and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance 'granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said City between Court Avenue and Vine Street.'"

Upon this terminal property had been constructed embankments, bridges, turnouts, sidetracks, buildings and other structures, and of one-half of this the Des Moines & St. Louis Railroad Company was the beneficial owner under the contract of January 2, 1882, and this deed was for the purpose of transferring to the defendant company this beneficial ownership.

The deed then continues (p. 458):

> "And the said Des Moines and St. Louis Railroad Company hereby covenants, *to warrant and defend* the said premises against all the *lawful claims of all persons whomsoever, claiming by, through or under it.*"

When the defendants examined this deed and noted that it not only described the property which stood in the name of the Des Moines & St. Louis Railroad Company, but also included all the property of every kind and character owned by that company in the City of Des Moines, or in which it had any interest, and that it warranted the title to said property against all persons claiming by, through or under it, what reason did they have to believe that there was reserved to that company any possible interest in this property?

The deed of the St. Louis, Des Moines & Nothern Railway Company (ex. 21, vol. II, p. 455) is no less significant. After describing the specific property which stood in its name, this deed continues:

> "* * * Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singular the above mentioned and described premises together with the appurtenances, unto the said parties of the second part and assigns forever."

Upon reading this deed, ought the defendants to have believed that by the terms thereof the St. Louis, Des Moines & Northern Railway Company retained any interest of any kind in this property? If this language does not convey all and every possible interest which that company had in the real estate described, what language could be conceived which would effect that purpose?

The next act of the parties was the making of the contract of May 10, 1889, the parties to which were the defendant company on the one hand, and the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & Northwestern Railway Company (successor to the Des Moines Northwestern Railway Company) on the other (vol. II, p. 479).

This contract, in so far as it relates to the title and ownership of the property, is as follows:

> "Whereas, the said party of the first part (the Des Moines Union Railway Company) is the owner of valuable terminal facilities in the City of Des Moines, Iowa, as hereinafter described; and
>
> Whereas, the respective parties of the second part have railroads in the State of Iowa which terminate at, or run into and through said City of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party; and
>
> Whereas, said party of the first part has become incorporated and organized under the laws of the State of Iowa *for the purpose of owning and op-*

erating a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham Street, in the western part thereof; and

Whereas, said party of the first part, in pursuance of said charter has *acquired* and now *owns* a railway in said city, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, said second parties are each desirous of having the right to use said terminals in connections with their respective railroads; and

Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject-matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance and repairs, shall be stated and defined.

Now, therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows:

Section One. The party of the first part agrees to proceed with reasonable dispatch, and whenever its board of directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said City of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots, round houses, shops, water tanks, and yard appurtenances, as the board of directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase or otherwise such additional real estate as may be necessary.

Section Two. The amount of such additional grounds and the form, character and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement and repairs thereof, shall in all matters not otherwise specifically provided for herein, be determined by the board of directors of said first party."

Here is the language of the parties themselves (the predecessors of complainants) put in writing a little more than a year after the transfer of the property to the defendant, by their own counsel.

Now, if the second parties to this contract (complainants' predecessors) were the beneficial owners of this property, why did they state in this contract that the Des Moines Union Railway Company was the owner of it, and why, if they were the beneficial owners of this property or entitled to use the same for railway purposes in perpetuity, were they contracting with the Des Moines Union Railway Company for such use or anything more than the mode of operating the property? And why, if the defendant company was organized merely for the purpose of holding the naked legal title to this property, do they recite the fact that it was organized for the purpose of owning and operating a line of railway in the City of Des Moines? And why do they state that in pursuance of its charter it has already acquired and owns a railway and intends to acquire and construct more? And why do they recite the fact that the parties of the second part (complainants' predecessors) are desirous of having the right to use said terminals in connection with their respective railroads, if they already had that right? And why, if the

Des Moines Union Railway Company was a mere agency for these three railroad companies, do they provide that the question of the extent of property to be acquired and constructed shall be vested in the board of directors of the Des Moines Union Railway Company?

If the court has any lingering doubt in its mind on the subject under consideration, examine now the proceedings of April 8, 1890, by which the articles of incorporation of the defendant company were amended, and the proceedings leading up thereto.

Upon a little reflection, the causes leading up to this action, and the purposes thereof, become perfectly apparent. The items to which we have called the court's attention demonstrate an intention on the part of all parties to give to the defendant company a perfect title to the property in controversy, notwithstanding the fact that as originally contemplated by the contract of January 2, 1882, the beneficial ownership of the property was to be in the three railroad companies parties thereto. An ambiguity had crept into the record by reason of the fact that the contract of January 2, 1882, had been included in the articles of incorporation as a preliminary recital thereto. We are not here going to set out the proceedings of April 8, 1890, as they have heretofore been quite extensively referred to in two different places in our brief. They concededly show an intention to forever put at rest any question about the title to the terminal property. The persons who took part in the meeting were the persons who knew what had been intended, because they had been the actors from the beginning. Complainants and their predecessors conducted the affairs of the defendant corporation under these amended articles of incorpor-

ation for more than seventeen years prior to the commencement of this suit. Read them and then answer the question of whether or not the defendants were authorized to believe that the defendant had a good title to the property in controversy, and that the capital stock of the defendant company represented a beneficial interest therein.

Let us now turn to the sale and transfer of the stock in the defendant company. The first transaction to which we will call attention is the contracts by which Polk & Hubbell acquired for the Des Moines & Northwestern Railway Company the line of road extending from Des Moines to Fonda and formerly owned by the Des Moines Northwestern Railway Company, and a one-fourth of the capital stock of the terminay company.

It will be remembered that by the terms of the contract of October 9, 1886 (ex. 263, vol. IV, p. 1573), Polk & Hubbell agreed to purchase of the Purchasing Committee the line of railway formerly owned by the Des Moines Northwestern Railway Company, and a one-fourth interest in the terminal property. By a supplemental agreement made the 10th day of September, 1887 (ex. 265, vol. IV, p. 1575), it was agreed in part as follows (p. 1576):

> "Simultaneously with the conveyance above mentioned of one-fourth interest in the terminal property at Des Moines, the same shall be mortgaged back to the Purchasing Committee for the further security of the said $145,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, the *bonds and stock received from the Terminal Company in exchange for said one-fourt*

interest shal be transferred *in lieu of* the property of Messrs. Polk & Hubbell, or their assignees, or transferred by them to the Committee, to be held by the Committee as a further security for the payment of the $450,000 above mentioned."

Now, by the terms of this contract the Purchasing Committee agreed to transfer to Polk & Hubbell a one-fourth interest in the terminal property, without any reservation whatever, on "*in lieu thereof,*" the stock and bonds received from the terminal company in exchange for said one-fourth interest. It is apparent that one-fourth of the stock and bonds couldn't be equivalent to one-fourth of the property unless the corporation issuing the stock and bonds had a perfect title to the property.

It will be remembered that in February, 1890, Mr. Hubbell and General Dodge each purchased of the Purchasing Committee certain bonds of the Des Moines Union Company and one-eighth of its capital stock, and this purchase was formally ratified at a meeting of the directors of the Des Moines & St. Louis Railroad Company held April 8, 1890, at which were present James F. How, C. M. Hays, F. M. Hubbell, A. B. Cummins, H. S. Priest and George C. Grover, all of whom, except Mr. Hubbelel, were officers or attorneys for the complainant, The Wabash Company. We have already shown that the purchase price for this stock was paid to the Purchasing Committee and by them paid to the complainant, The Wabash Company, and that the latter still retains this purchase price. We have also shown that the contract covering this purchase was prepared or revised by Colonel Blodgett. Now what were the members of the Purchasing Committee and

Colonel Blodgett, Mr. Hays, Mr. How, and the attorneys of The Wabash Railroad Company trying to do when they sold this stock to Hubbell and Dodge? There is no room for question here. On the one side they were selling, and on the other were buying, what on both sides was believed to be of substantial value.

In this connection, it is important to note that the action of the Purchasing Committee was specifically ratified by the board of directors of the complainant, The Wabash Company, after the same had been reported to it by the Purchasing Committee and investigated by E. B. Pryor, then assistant auditor of the railroad company. Commencing on page 1540 of volume IV will be found a report made by the Purchasing Committee to the board of directors of the Wabash Company on August 16, 1898, in which it makes an accounting to the railroad company of all its doings. The Purchasing Committee reports the sale of the stock and bonds of the Des Moines Union Railway Company and accounts for the proceeds thereof (see top of p. 1543), and again reports the amount received as interest on bonds and stock of the Des Moines Union Railway Company (see p. 1544, near bottom of page). Upon presentation of this report to The Wabash Company, Mr. E. B. Pryor, assistant auditor, makes an affidavit that he has examined in detail the books and accounts of the Purchasing Committee, as well as the attached report, and he believes the same to be correct (near bottom of p. 1551).

Passing upon this report, the board of directors of The Wabash Company state in part as follows (p. 1552):

"Whereas, Said report, and the form of said conveyance and assignment are satisfactory to the Board of Directors; Now, Therefore, Be It

Resolved, That said final report and statement of the accounts and doings of said Committee under said agreements, be, and the same hereby are approved."

How can The Wabash Railroad Company, which received and retains this money, now claim that the stock didn't represent anything of value?

The same remarks apply to the subsequent transaction of June, 1890, by which Mr. Hubbel purchased of the Purchasing Committee an additional 500 shares of stock in the defendant company, as to the details of which we do not here need to go.

It will be remembered that all the stock acquired by Mr. Hubbell and General Dodge from the Purchasing Committee afterward became the property of the Des Moines, Northern & Western Railroad Company, and that about October, 1893, F. M. Hubbell purchased of this Company 2,500 shares of this stock, which was immediately transferred to F. M. Hubbell & Son on the books of the defendant company and has ever since so remained. F. M. Hubbell & Son paid a valuable consideration for this 2,500 shares of stock and paid it to the predecessor of the Chicago, Milwaukee & St. Paul Railway Company, and that Company acquired its first interest in its predecessor with full knowledge that these 2,500 shares of stock had been transferred to F. M. Hubbell & Son, and that the only interest which its predecessor had in the terminal property or the terminal company was the interest represented by the 1,000 shares of stock which its predecessor then had and which is now owned by the complainant, the Mil-

waukee Company. Subsequently the Milwaukee Company acquired the property of its predecessor by purchase, and never suspected that it thereby acquired any interest in the terminal property except that represented by this 1,000 shares of stock.

Among the things upon which the Hubbells were justified in relying, as indicating that the complainants and their predecessors claimed only a stock interest in the property, is the fact that from the very beginning (May 1, 1888), the affairs of the defendant company were managed by its own stockholders, its board of directors and its officers. It acquired additional real estate, it constructed depots, buildings, tracks and other terminal facilities, made contracts with the complainants, their predecessors and other parties and performed all its obligations to the public as a common carrier.

In every way, for a period of nearly twenty years prior to the bringing of this suit, the defendant treated this property as its own, and all this with the knowledge of the complainants and their predecessors, because at every annual stockholders' meeting the complainants or their predecessors were present, as shown by the record, and at each of these meetings there was read for the information of the stockholders the minutes of all the meetings of the directors and the executive committee since the last preceding annual stockholders' meeting, and the action of such directors and executive committee was formally approved.

Not only this, but the record shows that from the time F. M. Hubbell & Son acquired this stock in 1893, it was voted by them at each stockholders' meeting for the purpose of managing the affairs of the defendant company, and no question was ever raised with respect

to their right so to do. In other words, the defendants, with the knowledge and acquiescence of complainants and their predecessors, treated this stock as though it represented a valuable interest in this property, and because thereof they gave their time for the best part of their lives to the development and improvement of this property without any compensation whatever except that which will accrue to them by reason of the increase in the value thereof. Not only this, but the question of the ownership of this stock by F. M. Hubbell & Son was specifically brought to the attention of the complainants and their predecessors.

It will be remembered that the twenty-sixth section of the contract of May 10, 1889 (vol. II, p. 486), which was executed before any certificates of stock were issued, provided that the stock of the defendant company should be issued one-half to the Des Moines & St. Louis Company, and one-fourth each to the Des Moines & Northwestern Company and the St. Louis, Des Moines & Northern Company.

Subsequent to the date the defendant, F. M. Hubbell & Son, acquired the 2,500 shares of stock in the defendant company and the same were transferred upon the books of the defendant company to F. M. Hubbell & Son, negotiations were had for the renewal or extension of the operating contract of May 10, 1889.

Several drafts of such a contract were prepared and considered by the defendant and by the complainant, The Wabash Company.

These proposed agreements appear in volume IV as defendants' exhibits 382 (p. 1694), 383 (p. 1703), 384 (p. 1712) and 385 (p. 1713). In each one of these drafts appears the following as a part of the last section (pp. 1702, 1711, 1722 and 1733):

"It is further understood and agreed that this contract is entered into in lieu of and as a substitute for a certain agreement entered into on the 10th day of May, 1880, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern, and the St. Louis, Des, Moines & Northern Railway Company, * * * and that the capital stock of the said Des Moines Union Railway Company therein mentioned is now rightfully held as follows, to-wit:

The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company	500 Shares
The Des Moines, Northern & Western Railroad Company	1,000 Shares
F. M. Hubbell & Son	2,500 Shares

Of the above shares belonging to said Purchasing Committee, two shares stand upon the books of the Company as follows: Joseph Ramsey, Jr., One Share, and H. L. Magee, One Share.

Of the shares belonging to the Des Moines, Northern & Western Railroad Company two shares stand upon the books of the Company as follows: A. B. Cummins One Share, F. M. Hubbell One Share.

Of the shares belonging to the said F. M. Hubbell & Son five shares stand upon the books of the Company as follows:

F. M. Hubbell,	One Share.
F. C. Hubbell,	One Share.
H. D. Thompson,	One Share.
A. N. Denman,	One Share.
C. Huttenlocher,	One Share."

These proposed contracts were discussed and criticized by the officers and attorneys of the complainant,

the Wabash Company, and the defendant, the Des Moines Union Company, and various changes were from time to time proposed, but at no time was any question raised about the correctness of this portion of the proposed contracts reciting the ownership of the capital stock.

The making of this new contract took the shape of what is known as the ratification contract of July 31, 1897.

This contract had the following provision in it referring to the issuance of stock provided for in the contract of May 10, 1889 (vol. II, p. 508):

> "*But it is expressly provided that so much of the said contract (contract of May 10, 1889), a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:*
>
> The purchasing committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.
>
> The Des Moines, Northern & Western Railroad Company, 1,000 shares.
>
> F. M. Hubbell & Son, 2,500 shares.
>
> Of the above shares belonging to said purchasing committee, two shares stand upon the books of the company as follows: Joseph Ramsey, Jr., 1 share; and H. L. Magee, 1 share.
>
> Of the shares belonging to the Des Moines, Northwestern Railroad Company, two shares stand upon the books of the company as follows: A. B. Cummins, 1 share; and F. M. Hubbell, 1 share.
>
> Of the shares belonging to said F. M. Hubbell & Son, five shares stand upon the books of the company as follows: F. M. Hubbell, 1 share; F. C.

Hubbell, 1 share; C. Huttenlocher, 1 share; H. D. Thompson, 1 share; A. N. Denman, 1 share."

This contract was signed by the plaintiff, The Wabash Company, by O. D. Ashley, president, as well as by the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company. Its execution was authorized and ratified at a meeting of the directors of The Wabash Company held October 5, 1897, and a copy of it spread upon the records of that company (ex. 237, vol. IV, p. 1540). Its execution was also ratified at a meeting of the board of directors of the Des Moines, Northern & Western Railway Company, predecessor of the Chicago, Milwaukee & St. Paul Railway Company, on September 7, 1897 ex. 145, vol. IV, p. 1357).

The things to which we have called attention are only a portion of the things sustaining the proposition that the defendants were at all times authorized to understand that the ownership of the terminal property by the defendant company was conceded and recognized at all times by the complainants and their predecessors. The court can open this record at any place and find evidence to sustain this theory.

It seems hardly worth while to discuss the question of whether or not the defendants relied upon these acts and representations of the complainants and their predecessors, and whether they changed their position relying thereon. Mr. Hubbell testified as to their reliance and there is no evidence to dispute it, and it is undisputed that the defendants, F. M. Hubbell and F. C. Hubbell, parted with their money for this stock, and that they have devoted a great share of their lives to the conservation and building up of the terminal prop-

erty without hope of reward except such as may grow out of the increase in the value of the stock.

The time and effort spent by the Hubbells in conserving, extending and transacting the business of the terminal company is no small or insignificant item. The testimony of Mr. F. M. Hubbell as to the services performed by him appears in volume III, commencing at the bottom of page 1036 and continuing to about the middle of page 1039. According to his testimony, he has been active in financing the defendant company, in extending and building up its property, in negotiating contracts for tenant companies other than complainants and their predecessors, and in many other ways has helped to develop the property. The testimony of defendant F. C. Hubbell on this subject appears commencing near the bottom of page 1195 and extending to about the middle of page 1197 of volume III. An examination of this testimony and the voluminous correspondence and other documents contained in defendants' book of exhibits will disclose the fact that Mr. F. C. Hubbell, who became president of the defendant company in January, 1892, has ever since said date devoted substantially all his time to the prosecution of its business. While his title has been that of president, he has in fact been performing the duties of general manager and purchasing agent. Not only this, but the devotion of the Hubbells to the interests of the Des Moines Union, the satisfactory character of their services, the success that has attended their efforts to develop the property and promote its interests, or the time and effort devoted by them thereto, is not, and cannot be questioned by the complainants.

IV.

THE COMPLAINANTS ARE ESTOPPED BY THEIR LACHES FROM THE BRINGING AND MAINTAINING OF THIS SUIT.

For the purpose of this question it is necessary to refer to the statute of limitations of the State of Iowa. Section 3447 of the Code of Iowa, 1897, provides:

> "Actions may be brought within the times herein limited, respectively, after their causes accrue and not afterwards, except when otherwise specially declared. * * *
>
> Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years."

As we understand the doctrine of laches, the cause of action contained in this bill would be barred at the end of five years from the time it accrued, unless complainants should allege and prove facts which would make it inequitable to follow the rule of law on that subject.

The subject of laches as applied to this case, and the facts bearing thereon, have necessarily been inferentially discussed in our entire argument, and specific reference to the doctrine as applied to the amendments to the articles of incorporation of April 8, 1890, has been made in our discussion of those amendments. We may, therefore, include a more general discussion of the subject here.

As we understand complainants' theory, one of their claims is that the property in controversy is charged

with a trust in their favor. It is necessary, then to consider the character of the alleged trust, because if the trust is an express one then the statute of limitations does not commence to run until there is a disclaimer of the trust, but if the trust is an implied one the statute of limitations commences to run and therefore the doctrine of laches applies at the time the trust relation attached.

In order to determine the character of this alleged trust, it is necessary to consider the title to the property in controversy, and the law of the State of Iowa, in which the property is situated, with respect thereto.

The rule on this latter subpect is stated by this court in

Kerr v. Moon, 9 Wheat. 565,

in the following language (p. 569):

> "It is an unquestionable principle of the general law that the title to and disposition of real property must be exclusively subject to the laws of the country where it is situated."

Again, in the case of

McCormick v. Sullivant, 10 Wheat. 192,

the court, speaking of the title to certain lands in the State of Ohio, said (p. 201):

> "By the law of the State of Ohio, lands lying in that state may be devised by last will and testament in writing, but before such will can be considered as valid in law it must be presented to the court of common pleas of the county where the land lies for probate and be proved by at least two of the subscribing witnesses. If the will be

proved and recorded in another state according to the laws of that state, an authenticated copy of the will may be offered for probate in the court of the county where the land lies, without proof by the witnesses, but it is liable to be contested by the heirs at law as the original might have been.

It is an asknowledged principle of law that the title and disposition of real property is exclusively subject to the laws of the country where it is situated, which can alone prescribe the mode by which the title to it can pass from one person to another."

Having determined that the title to this property depends upon the law of the State of Iowa, and therefore the question of whether or not it is subject to a trust, and if so, the character of the trust, must be determined by such law, let us examine the statutes and decisions of Iowa.

Section 2918 of the Code of 1897, which has been in force since long before the conception of the terminal scheme, provides as follows:

> "Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law."

Under this section, clearly the property in controversy is not charged with an express trust in the hands of the defendant company, because no declaration of trust was ever executed by it as provided by this statute.

But what we understand complainants to claim is that by reason of certain provisions in article 2 of the

original articles of incorporation of the defendant company, and by reason of incorporating therein as a preamble thereto the contract of January 2, 1882, the property in controversy in the hands of the defendant company is charged with a resulting trust.

As we understand the rule with respect to resulting trusts, the statute of limitations commences to run at the time of the creation of the trust, or, to apply the doctrine of laches in determining the time within which the trustee will be protected, the time commences to run at the time of the creation of the trust.

In the case of

Boone v. Chiles, 10 Pet. 177, 222,

the court said:

> "Though time does not bar a direct trust as between trustee and *cestui que trust*, till it is disavowed; yet where a constructive trust is made out in equity, time protects the trustee, though his conduct was originally fraudulent and his purchase would have been repudiated for fraud. * * * So where a party takes possession in his own right and was *prima facie* the owner and is turned into a trustee by matter of evidence merely."

And in the case of

Speidel v. Henrici, 120 U. S. 377, 386,

the court said:

> "In the case of an implied or constructive trust, unless there has been a fraudulent concealment of the cause of action, lapse of time is as complete a bar in equity as at law."

But whatever the rule may be with respect to the character of the alleged trust in question, or when the statute commences to run, as applied to implied or resulting trusts, the rule is established by all the authorities, that the time commences to run at least as soon as there has been a repudiation of the trust. As to this proposition, we will not take the time here to quote from the authorities, but a few of them will be found in our brief.

It is clear from the record in this case that if the property in controversy was ever charged with a trust in the hands of the defendant company, that trust was expressly repudiated on April 8, 1890. We have already called the court's attention to what occurred on that date, and we may here content ourselves with summarizing it as follows:

1. On that date the defendant company, at a meeting of its stockholders, eliminated from its articles of incorporation the contract of January 2, 1882.

2. It amended its articles of incorporation by eliminating therefrom all those provisions by which it had been attempted to restrict the power of the defendant company with respect to the alienation of its property, or which in any way qualified the defendant's title.

3. It amended its articles of incorporation so as to deprive complainants' predecessors of the power to nominate the members of the defendant's board of directors.

4. It passed resolutions expressly declaring that the defendant company was the absolute owner of the property in controversy.

5. The amendments to its articles of incorporation were properly executed, filed and recorded, and notice thereof was published as required by statute.

6. Not only did complainants and their predecessors have the notice of these transactions with which they were charged by reason of the execution, filing and recording of these amendments, and giving notice thereof, but at the next annual meeting of the stockholders of the defendant company at which complainants' predecessors were present as stockholders, the proceedings of April 8, 1890, were read, so that their special attention was called thereto.

7. The affairs of the defendant company were carried on under these amendments to the articles of incorporation for more than seventeen years after the adoption of these amendments and these resolutions, before any complaint was made thereof.

It appears, therefore, that seventeen years prior to the commencement of this suit the defendant expressly repudiated any trust in relation to this property, if one existed, and therefore, under the rule as established by the courts, the complainants must fail on account of their laches.

But the doctrine of laches, as applied to this case, may be considered in even a broader aspect. The doctrine as laid down in

Pomeroy's Equity Jurisprudence, Vol. 5, Sec. 23,

is as follows:

> "No doctrine is so wholesome when wisely administered as that of laches. It prevents the res-

urrection of stale titles, and forbids the spying out from the records of ancient and abandoned rights. It requires of every owner that he take care of his property and of every claimant that he make known his claims. It gives to the actual and longer possessor security, and induces and justifies him in all efforts to improve and make valuable the property he holds. It is a doctrine received with favor, because its proper application works out justice and equity, and often bars the holder of a mere technical right, which he has abandoned for ears, from enforcing it when its enforcement wil ork large injury to many. The equitable rule that one who is negligent shall not have relief, and the barring of proceedings after the lapse of stated periods of time by statutory enactments, ar alike based upon public policy, as well as upon con erations affecting only individual rights. It is to the public interest that stability in the title to property should exist, and that all uncertainties and disputes as to the ownership of the land should be speedily put at rest. Hence, there lies at the foundation of the principle that the lapse of time will become a defense to the title of one in possession of property not only consideration for his rsonal rights and equities, but also a recognitio of the higher public interests which can only be subserved by putting at rest, as speedily as possible, all doubts and uncertainties touching the title to realty to which end it is the duty of courts to discourage delays in the assertion of conflicting claims thereto."

The rule was laid down and applied by this court in the leading case of

Gallikey v. Cadwell, 145 U. S. 368,

which involved the title to some real estate in the City of Tacoma in the following language:

... • • The laches of the appellant is such as to defeat any rights which she might have had, even if these prior questions were determined in her favor, and in this respect it is worthy of notice that there has been in a few years a rapid and vast change in the value of the property in question. It is now an addition to the City of Tacoma. The census of 1880 showed that to be a mere village, the population being only 1,098. The census of 1890 discloses a city, the population being 36,006. Of course, such a rapid increase during this decade implies an equally rapid and enormous increase in the value of property so situated as to be an addition to the city, and the question of laches turns not simply upon the number of years which have elapsed between the accruing of her rights, whatever they were, and her assertion of them, but also upon the nature and evidence of those rights, the changes in value, and other circumstances occurring during that lapse of years. The cases are many in which this defense has been invoked and considered. It is true that by reason of their differences of fact no one case becomes an exact precedent for another, yet a uniform principle pervades them all. They proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that because of the change in condition or relations during this period of delay it would be an injustice to the latter to permit him to now assert them. • • •

But it is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitation, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some

change in the condition or relations of the property or the parties."

Applying the principle announced in this case to the case at bar, we are unable to conceive how counsel for complainants are going to avoid its application. It will be noted that the three principal elements which form the basis of the doctrine are:

First. The party to whom laches is imputed has knowledge of his rights and an ample opportunity to establish them in the proper forum.

Second. That by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned.

Third. That because of the change in condition during the period of delay it would be an injustice to the latter to permit him to now assert them.

The rights of complainants and their predecessors with respect to the matters set up in the bill, if any they ever had, have been known to them since their inception. The contract of 1882; the fact that the Wabash Company and General Dodge advanced the money to originally acquire the terminals; the incorporation of the terminal company; the resolutions and deeds of 1885, 1887 and 1888; the contract of May 10, 1889, and the ratification thereof July 31, 1897; the amendments to the articles of incorporation of April 8, 1890, and the resolutions passed at that time; have all been known by complainants and their predecessors from the time of such transactions, because they were all parties thereto and had both actual and constructive notice thereof. During all these years the terminal

company has treated this property as its own, and with such knowledge on the part of the complainants and their predecessors, the management of the affairs of the terminal company has been controlled by its stockholders. There has been no reason why complainants or their predecessors could not at any time have brought their suit in the proper forum, to establish the rights set up in the bill, if the same existed. So that the first element supporting the doctrine conclusively appears.

For nearly twenty years prior to the bringing of this suit, the terminal company had possession of this property under contracts and deeds which purported to give it an absolute title. For nearly twenty years, with the knowledge and acquiescence of the complainants and their predecessors, the terminal company has treated this property as its own. For nearly twenty years the affairs of the terminal company have been managed and controlled by its stockholders in the ordinary and usual way. For more than sixteen years prior to the bringing of this suit, the terminal company, with the knowledge and acquiescence of complainants and their predecessors, have been acting under the articles of incorporation as amended April 8, 1890, at which time the contract of 1882 was formally repudiated.

Under these circumstances, the respondents in this case had good reason for believing that the rights which are set up in the bill, if they ever existed, were worthless and had been abandoned, not only because of the failure of the complainants and their predecessors to bring their suit in the proper forum to establish their rights, but also because they treated this property during this period as the absolute property of the ter-

minal company. The second elementary basis of the doctrine, therefore conclusively appears.

Both the condition of this property and the relations of the parties thereto have been changed during this time. Commencing with May 1, 1888, the date when the terminal company took possession of the property, that company has from time to time acquired additional property as a part of the terminal, paid for it with its own funds, improved the same, and the property, because of the fostering care of the terminal company and its officers, especially the respondents, the Hubbels, has increased very largely in value, as shown by the increased and increasing "surplus earnings" (see p. ..... of this brief). The relation of the stockholders to the property has changed. The Hubbells have bought stock of the predecessors of both complainants; and the complainants and their predecessors have had the benefit of the money and still retain it. The Hubbells have sold their interest in the northern lines to the complainant, the Chicago, Milwaukee & St. Paul, upon the theory that such northern lines owned one-fourth of the stock of the terminal company, and that five-eighths of it was owned by F. M. Hubbell & Son. For twenty years the two Hubbells have devoted a very large portion of their time in caring for and developing the property of the terminal company, without any compensation, except what they receive by reason of the increase in the value of their stock. To enter a decree such as is prayed for in the bill would not only be inequitable and an injustice to the respondents in that it would deprive the terminal company of property which it has bought under a contract with the complainants and their predecessors and for which it has paid the full market value, and deprive

the Hubbells of what they have contracted and paid for, and the fruits of their labor for more than twenty years, but would give to the Chicago, Milwaukee & St. Paul Railway Company a large and valuable property for which it has never paid a cent and which it never suspected it was purchasing, and which it was plainly told it was not purchasing, and would give to the complainant, The Wabash Company, property which it and its predecessors have sold and for which it has received and retained the price. The third element of the doctrine is, therefore, established.

The case of

Abraham v. Ordway, 158 U. S. 416, 420,

involved the title to some real estate in the City of Washington. The court discussed the doctrine of laches quite fully, and in holding that under this doctrine complainant's suit was barred, says, in part, as follows:

> "The relief sought cannot be given consistently with the principles of justice, or without encouraging such delay in the assertion of rights as ought not to be tolerated by courts of equity. Whether equity will interfere in cases of this character must depend upon the special circumstances of each case. Sometimes the courts act in obedience to statutes of limitations; sometimes in analogy to them. But it is now well settled that, independently of any limitation prescribed for the guidance of courts of law, equity may, in the exercise of its inherent powers, refuse relief where it is sought after undue and unexplained delay, and when injustice would be done in the particular case, by granting the relief asked. It will in such case decline to extricate the plaintiff from the po-

sition in which he has inexcusably placed himself, and leave him to such remedies as he may have in a court of law."

It will be noted that in the case at bar there is no attempt, either in the bill or in the testimony, to furnish any excuse for the delay in bringing this suit.

Suits to establish implied trusts fall within the class of cases in which the federal equity courts follow the courts of law in applying the statute of limitations.

Beaubein v. Beaubein, 23 How. 190, 207.
Speidel v. Henrici, 120 U. S. 377, 386.
Riddle v. Whitehill, 135 U. S. 621.

The case of

Speidel v. Henrici, supra,

was one in which was involved an accounting for a trust fund. Upon the doctrine of laches, we quote from the opinion of the court (p. 386) as follows:

> "In the case of an implied or constructive trust, unless there has been a fraudulent concealment of the cause of action, lapse of time is as complete a bar in equity as at law. *Hovenden v. Annesley*, 2 Sch. & Lef., 607, 634; *Beckford v. Wade*, 17 Ves. 87. In such a case, Chief Justice Marshall repeated and approved the statement of Sir Thomas Plummer, M. R., in a most important case in which his decision was affirmed by the House of Lords, that 'both on principle and authority, the laches and non-claim of the rightful owner of an equitable estate, for a period of twenty years (supposing it the case of one who must within that period have made his claim in a court of law, had it been a legal estate), under no dis-

ability, and where there has been no fraud, will constitute a bar to equitable relief, by analogy to the statute of limitations, if, during all that period, the possession has been under a claim unequivocally adverse, and without anything having been done or said, directly or indirectly, to recognize the title of such rightful owner by the adverse possessor.' *Elmendorf v. Taylor*, 10 Wheat. 152, 174; *Cholmondeley v. Clinton*, 2 Jac. & Walk. 1, 175, and 4 Bligh, 1.

Independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them. 'A court of equity,' said Lord Camden, 'has always refused its aid to stale demands, where the party slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith and reasonable diligence: where these are wanting, the court is passive, and does nothing. Laches and neglect are always discountenanced, and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court.' *Smith v. Clay*, 3 Bro. Ch. 640, note. This doctrine has been repeatedly recognized and acted on here."

For a full discussion of the principle as applied by this court, see

Penn M. L. I. Co. v. Austin, 168 U. S. 685, 696.
Baker v. Cummings, 169 U. S. 189, 206.

To sum up the doctrine of laches as applied to this case:

A cause of action of this character is barred by the statutes of the State of Iowa five years fro
accrues.

The rule in the federal equity court is that a cause of action arising under the laws of the State of Iowa will be barred by laches at the expiration of five years, unless the complainants show some good excuse for not bringing their suit within that time. No such excuse is offered in this case.

So far as the Wabash Railway Company is concerned, no trust ever existed in favor of that company, unless it was because of the fact that that company furnished a large proportion of the money with which to purchase the original properties. This would be a constructive trust against which the statute ran a long while ago.

If it be claimed that an express trust was created in favor of the three railroads parties to the contract of 1882, that trust was terminated by the organization of the terminal company, followed by the passage of the resolutions of 1887, and the execution and delivery of the deeds to the terminal company in pursuance thereof, the payment of the purchase price, and the execution of the contract of 1889 and the ratification contract of 1897.

Any possible claim for an express trust was expressly repudiated by the amendments to the articles of incorporation of April 8, 1890, which were placed upon record and published as required by law, and of which complainants and their predecessors had both actual and constructive notice. In any view of this case the doctrine of laches applies.

V.

THE SALE AND TRANSFER OF THE TERMINAL PROPERTY TO THE TERMINAL COMPANY WERE NOT VOID AS AGAINST PUBLIC POLICY.

Counsel for petitioners assert the principle which we accept as sound that a railroad company may not disable itself from the performance of its public functions and hence they conclude it may not divest itself of any property which it has acquired for public purposes. The conclusion does not follow.

Public policy requires nothing of the kind and general usage is to the contrary.

There is scarcely a railroad company in the country that has not from time to time parted with some of its property, and has performed its public functions all the better for so doing. Tracks have been taken up and the land has been sold or abandoned, in order to get a new line with lower grades, with less curvature or to diminish the length of the line between two places.

For a proper terminal system in a large city, which means a unitary system, it is absolutely necessary that the lines entering it part with some of their urban property. Union terminals were not and could not well be built in the beginning of railroad construction. It was in Des Moines as in other cities. The different lines of railroad reaching it or passing through it, were not all built at the same time, but at intervals of years. Each line as it came in acquired its own terminals, which proved upon many accounts to be a bad plan. It was expensive in construction and in operation. It was inconvenient to the traveler

sightly and dangerous to the inhabitants. And so Union Terminals suggested themselves and everywhere were countenanced and encouraged by statutory enactment.

The City of Washington has its Union Terminals and this involved withdrawing from railroad use large tracts of land in the city. When the new station building was erected, the old stations were abandoned. And this was done under sanction of Acts of Congress.

The respondent, the Des Moines Union Railway Company, has for itself and for what it has done and is doing, the sanction of the statutes of Iowa as expressly declared by the Supreme Court of the State in the case of Morgan against the Company, 113 Ia. 561.

Union Terminals being desired by the railroad companies and by the public whoever will may participate in creating them. A corporation for the purpose is practically indispensable. And it must be a distinct institution. The railroad companies contribute money or property. Individuals may do the same. But this will not be in equal proportion. Bonds or stocks or both are issued in consideration of the money or the property contributed and appropriately in the measure of the contribution. The contributors are entitled to a return upon their investments. They are property in this respect as is any other form of investment, subject only to the restriction, which is not applied to property, not charged with a public use, that the return is not all they can get, if left entirely to themselves, but that the return may be only a reasonable one upon the value of the property.

So here the railroad companies did not disable themselves from the performance of their public duties. They simply contributed, as it was to their interest

and the public interest to do, to the construction of Union Terminals in the City of Des Moines.

U. S. v. Terminal Ass'n, 224 U. S. 401.

The cases cited by counsel, Thomas vs. Railroad Co., 101 U. S. 71, and Central Transportation Co. vs. Pullman Co., 139 U. S. 26, are not in point, because of the radical difference in the facts.

And here are transactions completed many years ago and the courts will not disturb them upon the suggestion of want of power in the parties at the time.

In St. Louis R. R. Co. vs. Terre Haute R. R. Co., 145 U. S. 393, the contract by which one of the companies transferred its railroad and equipment, as well as its franchise to maintain and operate the road, to the other, was assailed for want of power to make it. Assuming that the contract was *ultra vires*, the Court said, p. 406:

> "It does not, however, follow that this suit to set aside and cancel the contract can be maintained. If it can, it is somewhat remarkable that, in the repeated and full discussions which the doctrine of *ultra vires* has undergone in the English courts within the last fifty years, no attempt has been made to bring a suit like this. The only cases cited in the elaborate briefs for the plaintiff, or which have come to our notice, approaching this in their circumstances, are in American courts not of last resort, and present no sufficient reasons for maintaining this suit. • • •
>
> The general rule, in equity, as at law, is *In pari delicto potior est conditio defendentis;* and therefore neither party to an illegal contract will be aided by the court, whether to enforce it or to set it aside. If the contract is illegal, affirmative relief against it will not be granted, at law or in

equity, unless the contract remains executory, or unless the parties are considered not in equal fault, as where the law violated is intended for the coercion of the one party and the protection of the other, or where there has been fraud or oppression on the part of the defendant. *Thomas v. Richmond*, 12 Wall, 349, 355; *Spring Co. v. Knoulton*, 103 U. S. 49; Story Eq. Jur., sec. 298.

While an unlawful contract, the parties to which are *in pari delicto*, remains executory, its invalidity is a defense in a court of law; and a court of equity will order its cancellation only as an equitable mode of making that defense effectual, and when necessary for that purpose. Adams on Eq., 175. Consequently, it is well settled, at the present day, that a court of equity will not entertain jurisdiction to order an instrument to be delivered up and cancelled, upon the ground of illegality appearing on its face, and when, therefore, there is no danger that the lapse of time may deprive the party to be charged upon it of his means of defense. • • •

When the parties are *in pari delicto*, and the contract has been fully executed on the part of the plaintiff, by the conveyance of property, or by the payment of money, and has not been repudiated by the defendant, it is now equally well settled that neither a court of law nor a court of equity will assist the plaintiff to recover back the property conveyed or money paid under the contract. *Thomas v. Richmond*, above cited; *Ayerst v. Jenkins*, L. R. 16 Eq. 275, 284. For instance, property conveyed pursuant to a contract made in consideration of the compounding of a crime, and the stifling of a criminal prosecution, and therefore clearly illegal, cannot be recovered back at law, nor the conveyance set aside in equity, unless obtained by such fraud or oppression on the part of the grantee, that the conveyance cannot be con-

sidered the voluntary act of the grantor. • • •

In the case at bar, the contract by which the plaintiff conveyed its railroad and franchise to the defendant for a term of nine hundred and ninety-nine years was beyond the defendant's corporate powers, and therefore unlawful and void, of which the plaintiff was bound to take notice. The plaintiff stood in the position of alienating the powers which it had received from the State, and the duties which it owed to the public, to another corporation, which it knew had no lawful capacity to exercise those powers or to perform those duties. If, as the plaintiff contends, the contract was also beyond its own corporate powers, it is certainly in no better position. In either aspect of the case, the plaintiff was in *pari delicto* with the defendant. The invalidity of the contract, in view of the laws of which both parties were bound to take notice, was apparent on its face. The contract has been fully executed on the part of the plaintiff by the actual transfer of its railroad and franchise to the defendant; and the defendant has held the property, and paid the stipulated consideration from time to time, for seventeen years, and has taken no steps to rescind or repudiate the contract.

Upon this state of facts, for the reasons above stated, the plaintiff, considered as a party to the unlawful contract, has no right to invoke the assistance of a court of equity to set it aside. *And so far as the plaintiff corporation can be considered as representing the stockholders, and seeking to protect their interests, it and they are barred by laches.* *Harwood v. Railroad Co.*, 17 Wall. 78; *Graham v. Birkenhead &c. Railway*, 2 Hall & Twells 450, S. C. 2 Macn. & Gord. 146; *Flooks v. Southwestern Railway*, 1 Sm. & Gif. 142, 164; *Gregory v. Patchett*, 11 Law Times (N. S.) 357.

> This case is not like those in which the defendant, having abandoned or refused to perform the unlawful contract, has been held liable to the plaintiff, as upon an implied contract, for the value of what it had received from him and had no right to retain. *Spring Co. v. Knowlton*, 103 U. S. 49; *Logan County Bank v. Townsend*, 139 U. S. 67, and cases there cited.
>
> But the case is one in which, in the words of Mr. Justice Miller in a case often cited in this opinion, the court will not disturb the possession of the property that has passed under the contract, but will refuse to interfere as the matter stands. *Pennsylvania Railroad v. St. Louis, Alton & Terre Haute Railroad*, 118 U. S. 290, 316, 317. See also *Union Trust Co. v. Illinois Midland Co.*, 117 U. S. 434, 468, 469; *Central Transportation Co. v. Pullman's Car Co.*, 139 U. S. 24, 56, 57, 61."

The rule established in the cited case has never been repudiated or departed from or modified by any subsequent opinion of the Supreme Court of the United States or any other court of last resort, and is the established law in this forum.

THE ORAL TESTIMONY.

The court will observe that we have made little use of the oral testimony in arguing this case. The transactions from the very beginning down to the time of the trial of this suit are fully shown by contemporaneous documentary evidence, and about this documentary evidence there is no dispute, as it was all agreed to by counsel. It has been our thought that oral testimony of transactions taking place anywhere from fifteen to thirty years prior to the time of taking the oral testimony was of very little value as compared with docu-

mentary evidence of the same transactions about which there is no dispute. And this is especially true when the testimony is with respect to ordinary transactions of very busy men, such as was the case in the case at bar.

The unreliability of the testimony of Mr. Hays, Colonel Blodgett, and Mr. Pryor is demonstrated by an examination of their evidence. In the first place, the questions propounded to them are ingeniously stated in order to permit them to testify to their conclusions. Their cross examination discloses the fact that when it comes to any fact they have no reliable recollection about it. For instance, take the testimony of Colonel Blodgett: He testified that he didn't know of the sale of stocks and bonds by the Purchasing Committee to Mr. Hubbell for a good many months after the sale had taken place (vol. II, p. 371), and yet he drew the contract providing for the sale (ex. 298, vol. II, p. 1600). Now Colonel Blodgett was honest in this matter, but he had simply forgotten it.

Take the testimony of Mr. Hays (vol. II, p. 229). An examination of it will disclose that he attempted in his direct examination to testify to certain facts, but his cross examination shows that he had no accurate recollection about them.

The same is true with respect to the testimony of Mr. Pryor, who attempted to testify to things which happened in Des Moines many years before he was ever in Des Moines.

With reference to the testimony of Mr. F. M. Hubbell, his testimony would be of some value if it were necessary to use it, because it was based upon entries which he made in a diary at the time the transactions occurred and with which he refreshed his recollection.

but we have scarcely referred to his testimony because the same facts are so much more satisfactorily shown in the documentary evidence.

Counsel for the Wabash lay great stress upon the oral testimony of the parties that they didn't intend by the amendment to the articles of April 8, 1890, to affect the title to the terminal property. The fact is that none of them at the time thought there was any question about the title to the terminal property. They all understood that the title was in the terminal company and they simply were amending these articles and the record for the purpose of having them conform to the facts as they all understood them.

TITLE OF HUBBELL AND SONS TO THE SHARES OF STOCK.

Counsel for petitioners challenge the title of Hubbell and Son to the stock they hold in the Des Moines Union, and charge that the shares were obtained by fraud from the Des Moines, northern and Western Railway Co. (Brief, p. 171 *et seq.*)

Nobody interested in the last named Company as creditor or shareholder complains and why should the Milwaukee which acquired its interest long after and with full knowledge of the facts?

The consideration paid may seem small at this time, but that was in January, 1894, when the prospects for all these properties were very unpromising. But if it was not a fair price, that was the grievance of shareholders or creditors. General Dodge was next to the Hubbells the principal shareholder and was advised of the facts at the time and invited to share in the purchase, but declined to do so (Rec. Vol. III, p. 1018).

Other shareholders were all satisfied and in the twenty-six years that have passed, no note of discontent has been heard from any of them.

The creditors have all been paid. The Metropolitan Trust Company has no complaint to make. It never had a lien upon this stock for it was in express terms excluded from its mortgage (Rec., Vol. II, p. 637). Moreover, the mortgage debt of the Metropolitan Trust Company has long since been paid.

All the grievances complained of by counsel are the concern of people who feel no grievance and who do not complain.

The Wabash of course had no right to complain; it had no interest in this stock at that time. Indeed, fifteen hundred shares of it had once been held by the Wabash and had been sold by it. And in the ratifying contract of 1897 this shareholding of the Hubbells in the Des Moines Union was explicitly set forth, recognized and affirmed.

This argument was in principal part in type when the brief for petitioners was received and in the main we must rely upon what we have set out in anticipation of its argument. Some matters of omission and of commission, however, we call attention to.

REPORTS TO THE EXECUTIVE COUNCIL.

There is an attempt to make much of the reports made by the Des Moines Union to the Executive Council for purposes of taxation.

These reports will be found on pages 719 to 724, volume II, of the record.

These reports were made upon blanks prescribed by the state. Schedule 5 calls for a statement of "gross

earnings for the year," and is followed by a form divided into columns headed:

Name of line	a
From passengers	b
From freight	c
From express service	d
From mail service	e
From telegraph service	f
From track rent	g
From car rent	h
Miscellaneous	i

Now, the Des Moines Union, while incorporated in name as a railway company and being an operating company, had no earnings from any of these sources because it did not at that time do an independent business in any of these respects, but was rendering a terminal service for which it received compensation in the manner provided in the contract subsisting between it and the railway companies, and in explanation of the fact that it had no earnings to report of the kind called for, it made the statement that it was simply "a representative company," acting as an agency at Des Moines for the three railway companies. We conceive this characterization to be an entirely appropriate one for any terminal company, as it certainly is an agency through which the railway companies perform a part of the functions which they have undertaken to perform, and in respect of these operations performed by a terminal company, the terminal company is responsible as a principal to the shipping or traveling public. And as to each one of the railway companies using a terminal railway, that terminal is a part of its line in respect of each and all of the transactions in which it employs that terminal. So the terminal company may

well be called a representative and an agent, and some explanation was required to show why it had no specific earnings of the kind called for by the report, and there is nothing in this recital which could possibly operate by way of estoppel in behalf of any one. Its effect as evidence can be of no force whatever, because in the same report the Des Moines Union Railway Company states itself to be the owner of all of the terminal property which is here in question. The case is parallel with that, for example, of the Pullman Company, which, as to the public, is an agency of the railroad companies over which its cars are operated, employed by the railroad company as a convenient means of furnishing certain falicities to the traveling public; and the railroad company is responsible to its passengers in like manner and to the same extent as if the railroad company itself owned and operated the cars. It is a matter of general knowledge that these cars are owned by the Pullman Company, and also that the operation of the car itself, as distinguished from the operation of the train, is by the Pullman Company and not by the railroad company; but the fact that the Pullman Company is the agent of the railway company and that the railway company is responsible for its acts, does not at all impair the ownership of the cars by the Pullman Company, and neither does the fact of ownership of these cars by the Pullman Company and the operation of them by that company, relieve in any sense the railroad company from responsibility to the passenger.

Counsel say, p. 149, that:

> "It is significant that the report signed and verified on February 16th, 1894, immediately succeeding the transaction of January 29, 1894, by which

Hubbell acquired his five-eighths interest in the Des Moines Company, states that the Des Moines Company "is the owner of the property hereinbefore described" (Rec., p. 724).

This is a plain intimation that the prior reports contained no such statement, else it could not be significant.

The record, page 719, contains a stipulation for the purpose of abbreviation that all the reports from 1888 to 1894 are in substantially the same form and "that each contains * * * a description of its real and personal property." The stipulation is further to the effect that the "real property so described includes by specific description each of the lots and parcels of ground described in the following deeds," being the deeds by which How, Dodge, and the St. Louis, Des Moines and Northern Railway Company and the Des Moines & St. Louis Railroad Company had made the conveyance of the terminal properties to the Des Moines Union Company, and including all the land the Des Moines Union had acquired up to that time.

Of course, if there was significance in the fact that the reports first included a statement that the Des Moines Union owned this terminal property, after Hubbells acquired these shares, then too there was significance in the stipulated fact that the reports made by the Des Moines Union from the very first, that made for 1888, and for each and every year thereafter, contained the same statement. But the significance is of another kind.

The change made in the reports was simply that made under the head of general remarks. As to this Mr. Cummins says:

"A. I had nothing whatever to do with the operation of the Des Moines Union Railway Company; knew nothing about the details of its operation. At the time of the first report to which my attention was called, was presented to me, Mr. Hubbell, F. C. Hubbell, who I think then was President of the Company, was away from Des Moines, and I signed that report without even reading it. I think I ought to apologize to everybody for having done it; but I was a busy man, and it came up to me in a perfunctory sort of a way, and I did it. When the other came on, in some way or other, I don't remember how it was, my attention was called to that subject, and I myself prepared and put on it, my recollection is, the slip pasted over; anyhow, it was put in as a substitute for the remarks that were in the report as it came to me, and which were probably identical with those contained in the previous report that I had signed."

The case of the Chicago, Milwaukee & St. Paul Company vs. Des Moines Company, 165 Ia. 35, is cited on a question of estoppel but with suggestions of bad faith on the part of the Hubbels. The issues in that case are in no sense involved here and we have only to say that the claim of the Des Moines Union was based upon the facts that it had purchased and paid for the portion of the Railway in question, had expended large sums in maintaining and improving it and that when the Milwaukee bought the Northern lines, it was advised that the Des Moines Union claimed ownership of the tract between Farnam and Twenty-eighth Streets. The good faith of the Hubbells in attempting to sustain the ownership of the Des Moines Union in that litigation is evidenced by the fact that the decree of the trial court adjudged the title to be in the Des Moines Union and

there was a dissenting opinion in the Supreme Court approving that title.

There are a number of matters as to which it seems to us, counsel should have stated their views. Among these are the following:

(1) If the organization of the defendant Company was for the *sole* purpose of providing the corporate trustee referred to in the contract of 1882, as claimed on pages 99-100 of their argument, why did they organize a corporation having the power and assuming the obligation of a Railway Company and why did they organize a corporation for pecuniary profit?

(2) If it was the purpose to transfer to the defendant Company simply the legal title to the Terminal property then why the following:

(a) Why did the Des Moines Northwestern Railway Company, in whose name the title to no part of the Terminal stood, in January, 1895, pass a resolution authorizing its officers to transfer to the Terminal Company all of its interests in the Terminal Company of whatever kind and character?

(b) Why did the Northwestern Company, the Northern Company and the St. Louis Company, each, in their resolutions of January, 1885, authorizing their officers to convey this property, use this language:

> "convey, assign and transfer to said company all its right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the sig-

natories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract." (Rec., Vol. II, p. 427.)

(c) Why did Col. Blodgett, whose integrity and ability are unchallenged, who had lived these transactions and who knew the intention better than can counsel or the Court, in preparing the deed of the St. Louis Company in carrying out these resolutions, prepare a warranty deed, and why did he formulate it so as to convey not only the property which stood in the name of that Company but also "all of the real estate within the City of Des Moines * * * also all its embankments, bridges, side tracks, * * * all its railroad property acquired or to be acquired and everything appurtenant to said railroad" (p. 458).

(d) Why did the Northern Company in its deed after describing the property which stood in his name use the following language:

> "Together with all and singular the tenements, herditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, etc." (p. 456).

(e) Why was it provided in the original articles of incorporation of the defendant Company that its capital stock should be issued in payment for the [illegible] property?

(f) Why was it recited in the contract of May 10th, 1889, that the defendant Company owned this property?

(3) If the contract of May 10th, 1889, was supplemental to the contract of January 2, 1882, why does it not recite this fact?

INACCURATE STATEMENTS AS TO WHAT THE RECORD CONTAINS.

On page 35 of the brief, counsel say the resolutions of November 5th and 8th, 1887, were addressed to the same object as the resolution of January 1, 1885, namely: the transfer of the trust properties to the Des Moines Company as corporate trustee. Substantially the same assertion is made at numerous other places in the brief. This is not true. The resolutions of January, 1885, do not purport to authorize Howe and Dodge as trustees or otherwise to convey any property but are restricted to the authorization of the three Railway Companies to a transfer of the ownership of the properties. The resolutions of 1887 are directed solely to Howe and Dodge as trustees except that the St. Louis Company is again authorized to transfer the ownership.

On pages 44 and 45 and at several other places in the brief it is asserted that at a meeting of the directors of the Des Moines Union Railway Company, held March 31st, 1888, a resolution was passed directing Col. Blodgett to prepare a thirty-year contract supplemental to the contract of January 2, 1882, and that the contract of May 10th, 1889, was prepared and executed in pursuance of that resolution and therefore counsel denominate the contract of 1889 as the "sup-

plemental contract." The facts are not as asserted by counsel. The resolutions are as follows:

"Resolved, That the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company, or their successors or assigns, shall pay the operating expenses, taxes and interest on bonds that are or may be issued, after deducting any amount received from other sources for *rental*, pro-rated on a wheelage basis, and that said payments, including interest charges, shall be made monthly, and when for any reason, said Companies, or either of them, shall be or become in default in the making of any such payment, or any part thereof, on the day when the same shall be or become due and payable as aforesaid, interest shall be collected upon amount so in default to the time same shall be fully paid and satisfied.

Resolved, That Col. W. H. Blodgett be requested to prepare an agreement for *three* years from May 1st, 1888, based on the above resolution and covering in detail the conduct and operation of the Des Moines Union Railway Company. Said agreement to be approved and executed by all the lines now holding an interest in the property.

Said agreement shall provide that if at the end of six months from date of same, either party to the contract shall feel that the terms of same are unjust to them, and give notice to that effect, it shall be a matter for readjustment.

Resolved, That the terms and conditions on which the several lines now interested, or which may hereafter become interested, shall enjoy the use of these terminals, be fully set forth in a supplemental agreement to be made and executed between the Des Moins Union Railway C[illegible] each of the lines using the said terminals."

The first contract mentioned is not to be for *thirty* years, but for *three* years. And the second contract which is referred to as supplemental is manifestly to be supplemental to the three years' agreement. The agreement of 1882 is not mentioned from beginning to end of the proceedings. The actual conclusion of the matter was that the parties determined to make one bite of the cherry and so they drew up the contract of May 10th, 1889, to be effective from May 1st, 1888, and to run for thirty years. And this contract was comprehensive and complete in itself and not supplemental to anything else. And in no document and in no letter or record entry is it referred to as supplemental. That designation came in with this litigation and is the contribution of counsel.

On pages 26 and 27 counsel state the provisions contained in the Articles of Incorporation of the defendant company. They call the defendant always the "Depot Company." They put the name in quotation marks and italicize it as if it were quoted from the articles.

The fact is that the defendant Company is not referred to as the "*Depot Company*," in the Articles of Incorporation, the amendments thereto, or in any resolution, contract, deed, or other document found in the Record.

Referring to the Stockholders' Meeting of April 8th, 1890, at which the Articles of the defendant Company were amended, counsel, on page 55, say it is conceded that no one held a proxy representing the persons and interests whom the Record showed were represented at that meeting and in support thereof refer to Mr. Hubbell's testimony on pages 1165-9. What Mr. Hubbell testified to was that at the time of taking his deposi-

tion in May, 1911, more than twenty-one years after the Meeting of April 8th, 1890, he was unable to find these proxies. Again referring to this same Meeting of the Stockholders, counsel on page 126, say, "no conference, however, took place between Blodgett and Cummins; Cummins alone redrafted the proposed amendments to the Articles." With respect to this Senator Cummins testified "it (the draft of amended articles of incorporation) was submitted to Col. Blodgett and I had a conference with him; possibly more than one" (p. 1201).

On page 90 counsel say, "after the concentration of the trust properties in the Des Moines Company no equitable tenant in common in such trust properties ever conveyed, released or otherwise relinquished to the Des Moines Company its equitable estate therein." This statment is substantially repeated on pages 108 and 153. While it would not be correct to say that so far as these statements assert that the three railway companies did not after once transferring this property to the defendant Company, again transfer it, they are not true, these statements are misleading in that they tend to induce the belief that the three Railway Companies did not at any time transfer the ownership to the defendant Company.

Company.

The transfer of the ownership was the result of the resolutions of 1885 and 1887 and the deeds executed in pursuance thereof and the payment therefor by the Terminal Company. All these transactions were at or prior to the concentration of the ownership in the Des Moines Company.

Speaking of "surplus earnings," counsel say, on page 186, "although the Record does not show the

amount of these accumulations at the present time, the testimony having been taken a number of years ago, it seems proper to state to the Court that these accumulations now amount to approximately Two Million Dollars ($2,000,000.00)." There is nothing in the Record to sustain this statement and it is not true as a matter of fact. The Record does show that a substantial sum is involved in this issue.

DEFECTIVE STATEMENT OF AGREEMENT OF 1882.

In their many references to and statements concerning the agreement of 1882, counsel for petitioners never quote, never mention and never refer to a significant clause in the tenth paragraph. This paragraph provides for the use of the terminal railroad by companies whose roads do not extend to Des Moines and that this may be had by any such company upon payment of a fair sum for rental and its proportion of the maintenance account." Up to this point counsel are free in quotation and comment. But the paragraph proceeds, "the rental to enure to the Companies hereto in the same proportion as the original outlay." Here is a distinct assertion of proprietary right and interest. The Company that owns a one-half interest in the property is to receive one-half the rental, and the company that owns but one-fourth is to receive but one-fourth of the rental. The rental is not to go to the reduction of operating expenses, but is in the nature of what the parties later called surplus earnings. And so if they had organized a depot company on the plan of this agreement, the stock representing the property would have had the benefit of these rentals. True the

parties did not organize such a company and being all agreed they were not bound to do so, and so too they might subsequently agree as they did to a different disposition of this particular rental, but the clause goes to show that the contributions to the enterprise as invested capital, and as well the stock afterward issued on account of such capital investment, as such stock was to have a value as property. So all consideration of this provision of the agreement was studiously avoided by counsel.

So, too, counsel avoid all mention of the letter of Hubbell to Miller, February 22nd, 1894. They argue and assert by implication that the Milwaukee Company was not informed as to the shareholding in the Des Moines Union Company. This letter was written at the very beginning of the negotiations that resulted in the Milwaukee finally acquiring the Northern lines, and before it had invested a dollar or done anything in the premises. In this letter Mr. Hubbell says:

> "The Des Moines Northern and Western Railway Company own one-fourth of the capital stock of the Des Moines Union Railway Company. The Wabash own one-eighth, and five-eighths is owned by individuals."

To bring this letter into the discussion would make absurd any suggestion that the Milwaukee Company was not fully advised of the rights of Hubbell and Son and that it did not buy subject to those rights. So the letter was left out of consideration as the easiest way of dealing with it.

Counsel say that our position results in a disregard of the terms on which local aid was voted t[illegible]ern line by some of the townships through which it

passed. It is not for the Milwaukee to make such a defense. If such an issue had any place here, the Milwaukee Company would have no standing, for it would have no right to the line. One of the conditions on which aid was voted was that "said railroad shall never pass under the control of any of the lines constituting what is known as the Chicago pool or of the Chicago, Milwaukee and St. Paul R. R. Company" (Rec., Vol. II, p. 789). As the people who voted the aid are not complaining of what has been done here, no one else has any warrant for assuming to speak in their behalf.

RELATION OF MR. CUMMINS TO THE TRANSACTION.

It is repeated over and over again in the brief of counsel that Mr. Cummins was the personal counsel of F. M. Hubbell and Son and in such way as to suggest that he acted in their behalf rather than in behalf of the Wabash and the Des Moines Union, whose counsel he also was, in the transactions in which he had part. But the evidence is conclusive that everything done or advised by him was done in the open, after long notice and full knowledge by all concerned. He did not come into the situation until in 1888. He had nothing to do with the contract of 1882 nor with the organization of the Des Moines Union, nor yet with the sale and transfer to it of the terminal properties. He did not draft the contract of 1889. Nor had he aught to do with the sale of the Des Moines Union stock to Hubbell and General Dodge. Col. Blodgett drew up the papers covering that transaction. The rough draft of the memorandum of sale of the stock is in evidence. (Rec., Vol. IV, p. 1600.) It is admittedly in part in

the handwriting of Hubbell and in part in the handwriting of Col. Blodgett (p. 1601). Mr. Cummins was not so much as present.

The important transaction in which Mr. Cummins had considerable part was the amendment of the Articles of Incorporation. This matter was months under way. It was under consideration at various meetings of the Company, stated and adjourned. It was the subject of correspondence and of discussion in personal conferences. The amendments were adopted only after grave consideration and the fullest deliberation and when the strong men of the interests other than Hubbell's were present, Col. How, for many years Vice President of the Wabash, and Hays, one of the ablest and most progressive railroad men in the country. General Dodge was not present in person, but he had been fully informed and he approved and was present by proxy. And when it came to the execution of the Articles in form for recording, General Dodge, Col. Blodgett, Col. How and Charles M. Hays signed and acknowledged the articles as officers and directors of the Des Moines Union. To say that these men were in any way misled or that they knew not what they did is the sheerest nonsense. They none of them ever said so. These men were all of them save Col. How, living while this suit was pending. The testimony of Col. Blodgett and Mr. Hays was taken. Neither of these men said that they did not understand the amendments at the time of their adoption or that any misrepresentations were made to them by anybody. Their recollection of matters is dim as is natural after so many years, but there is no impeachment of the integrity of anything that was done. And, indeed, the [illegible] of the Des Moines Union Company and the character of its

title to the property it held and the nature of its rights and interests therein were all fixed before Mr. Cummins came upon the scene.

The subtle suggestion of anything inviting criticism or distrust of his conduct is as baseless as the gross charges of the forgery of records made in the amended bill of complaint and abandoned without attempt at proof.

We pass now to a consideration of the question of "surplus earnings," the subject of the cross petition.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON,
Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Respondents.

No. 279

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

STATEMENT, BRIEF AND ARGUMENT FOR PETITIONERS

STATEMENT.

In discussing the questions involved in this cross-petition for certiorari we will continue to designate the parties as we have done in the case involving the main issue, believing that this will avoid confusion, the Milwaukee and the Wabash Companies as petitioners or

complainants and the Des Moines Union Railway Company and the individual parties as respondents or defendants.

The issue here is as to what are known in the record as

SURPLUS EARNINGS,

being moneys received by the defendant company as compensation for switching services rendered companies other than the complainants or their predecessors, rentals from property owned by the defendant company and not at the time needed for terminal purposes, rental for station privileges, etc.

A very considerable portion of this fund was used to acquire additions to and make improvements on the terminal property, done by consent of all parties at the time. The unexpended balance of the fund, in the treasury of the defendant company on January 1st, 1907, the last date as to which we have testimony, was $125,276.78 (Vol. IV, p. 1397). The record does not show the subsequent accumulations.

The question is who is entitled to this fund, the Des Moines Union Railway Company or the Milwaukee and the Wabash Companies?

This controversy involves the construction of the contract of May 10, 1889 (vol. II, p. 479). By the terms of this contract the defendant agreed, for the period of thirty years from May 1, 1888, to furnish to complainants' predecessors terminal facilities and certain terminal services. In consideration of this it was agreed:

> "Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay

to said party of the first part a sum of money to be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round houses, transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be *deducted* therefrom the amount, if any, which *other* railway companies may be under obligation to pay by *virtue of contracts for the use of said property*, or parts thereof, for the preceding month, and the *remainder* shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage

of all said second parties during such preceding month."

The question is, whether the complainants are entitled to credit for the items making up this fund, such items not being items "which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof."

The Circuit Court of Appeals held that this fund belonged to complainants and it is this provision of the decree which defendants bring up for review by their petition for certiorari.

ASSIGNMENTS OF ERROR.

The Circuit Court of Appeals erred in holding:

"I That the contention of petitioners that the only character of credit items to which the respondents were entitled under the contract "were such as were paid by some other railway by virtue of a contract for the use of the property" while a strict construction of the exact wording of the contract is not "a fair construction of the spirit of the agreement."

II. That its conclusion as to what was the "spirit of the agreement was based upon or warranted by the history of the transaction.

III. That its construction of the contract giving the surplus earnings to the respondents was justified by the reading of the contract in its entirety.

IV. And in its order, judgment and decree directing the District Court of the United States for the Southern District of Iowa to so modify its decree "that the surplus earnings belong to the railways, and to appoint a master under instructions to ascertain the part due each upon a wheelage basis."

POINTS AND AUTHORITIES.

I.

THE CONTRACT OF MAY 10, 1889, WAS CLEAR AND UNAMBIGUOUS, AND ITS INTERPRETATION DOES NOT REQUIRE A CONSIDERATION OF THE ACTS OF THE PARTIES THEREUNDER.

Where the meaning of a contract is clear in the eye of the law, the courts will not resort to the acts of the parties for its construction.

Railroad Co. v. Trimble, 10 Wall. 367.
Russell v. Young, 94 Fed. 45 (C. C. A.).
Ralya v. Atkins, 61 N. E. (Ind.) 726.
Comptograph Co. v. Buroughs Co., 179 Ia. 83, l. c. 108.

A written instrument is ambiguous only when found to be of uncertain meaning by persons of competent skill and information.

Comptograph Co. v. Burroughs Co., supra.

II.

THE CONTRACT OF 1889 WAS RATIFIED IN ALL ITS TERMS BY THE CONTRACT OF 1897.

III.

IF RESORT IS HAD TO THE CONDUCT OF THE PARTIES AS A CONSTRUCTION OF THE CONTRACT, IT WILL BE FOUND THAT THE FUND WAS DEALT WITH ALWAYS AS BELONGING TO THE DEFENDANT COMPANY AND DISPOSED OF AS IT DIRECTED UNTIL JUST BEFORE THIS SUIT WAS BROUGHT.

ARGUMENT.

I.

THE CONTRACT OF MAY 10, 1889, WAS CLEAR AND UNAMBIGUOUS AND ITS INTERPRETATION DOES NOT REQUIRE A CONSIDERATION OF THE ACTS OF THE PARTIES THEREUNDER.

In the conduct of its business as a terminal company, the Des Moines Union Railway Company from time to time moves cars from and to industries located on its lines, for carriers other than complainants, for which it makes and collects a charge. It also leases certain pieces of its property not needed at present, for railway purposes, for which it collects rentals. It also leases certain portions of its union depot, for which it collects rentals. The funds received from these sources are what have been known in this record and in the books of the terminal company as "surplus earnings."

The Des Moines Union Company took possession of the terminal property May 1, 1888, as already shown, and began the operation thereof.

On May 10, 1889, the defendant company entered into a written contract with the predecessors of complainants, by which it granted to them a certain qualified use of the terminal property and agreed to furnish to them certain terminal services (vol. II, p. 479). In section 3 of the contract (p. 481) it was agreed that plaintiffs' predecessors should pay for such terminal services a monthly sum to be ascertained in a particular manner, and then section 4 of the contract provides:

"Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which *other railway companies* may be under obligation to pay by *virtue of contracts* for the *use* of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month."

The Circuit Court of Appeals said with respect to our position in this argument that "this latter contention is a strict construction of the exact wording of the contract" (Rec., vol. V, p. 2115). There is nothing in any other provision of the contract to qualify or impair the force of "the exact wording of the contract."

Where a contract itself is clear and unambiguous, extraneous facts cannot be resorted to for the purpose of construction. This is the accepted rule.

In the case of

Railroad Co. v. Trimble, 10 Wall 367,

this Court, in discussing the effect to be given to the acts of the parties in construing a contract, l. c. 377, said:

"• • • Where there is doubt as to the proper construction of an instrument, this feature of the case is entitled to great consideration; but where its meaning is clear in the eye of the law, the error of the parties cannot control its effect. In this view of the subject, conceding that Trimble took this conveyance, not out of abundant caution and to solve in his favor a doubt which might otherwise possibly arise against him, but because he deemed

it necessary to give him a title which he did not already possess, his legal rights in this controversy are just what they would have been if that instrument had not been executed."

The case of

Russell v. Young, 94 Fed. 45 (C. C. A.),

involved the construction of a contract between an attorney and his client with respect to compensation for legal services. One of the claims made by the plaintiff in the case was that the contract had been construed by the act of the parties. The opinion was written by Circuit Judge Lurton, and referring to the question under consideration, he says (p. 47):

"Plaintiff offered to prove that he had deducted 7½% of every cash collection made by him and remitted the remainder to Mr. Carlisle with a statement showing that he had retained 7½% as compensation for the collection of the particular remittance, and that no exception had ever been taken by Mr. Carlisle to this construction of the contract. This evidence was offered for the purpose of showing that the parties had construed the contract according to the present contention of plaintiff in error. The evidence was rejected upon the ground that the contract was not doubtful and needed no such sidelight in its interpretation. Evidence as to the particular construction by the parties of a doubtful or ambiguous instrument is often of great importance, but such evidence can never control the effect unless the legal meaning is doubtful. *Railroad Co. vs. Trimble*, 10 Wall. 367, 377; *Lang Co. vs. Doll*, 35 Md. 89; *Fogg vs. Insurance Co.*, 10 Cush. 337. To give effect to a written agreement according to an erroneous construction placed upon it by the parties would not be to con-

strue, interpret and enforce the written agreement upon which the action is brought, but to enforce a new and different contract."

The case of

Ralya v. Atkins, 61 N. E. (Ind.) 726,

was a suit upon a contract which, it was claimed, had been construed by the acts of the parties. Referring to this subject the court says (p. 728):

"• • • This action is founded on the contract in writing, executed by the parties, and it is sought to enforce the same as executed, not modified by any oral agreement or otherwise. It is true that when the terms of a contract are of doubtful or ambiguous meaning, the construction placed on the same by the parties by their conduct and acts may be shown for the purpose of arriving at their true intention. The construction placed on such contract by the parties is entitled to great weight and may be controlling. • • • When, however, the contract is free from ambiguity and its meaning is clear, such rule is not applicable. • • • In *Morris vs. Thomas*, 57 Ind. 322, this court said: 'If there is any obscurity, uncertainty or ambiguity in the terms of a contract, then the acts of the parties in connection therewith, as suggested by appellant's counsel, would furnish valuable aid in the construction of the contract; but where, as in this case, the terms of the contract are plain, intelligible and free from doubt and uncertainty, rules of construction are unnecessary and of no possible service. In such a case it is certainly not the province of the courts by any rules of construction to make another and entirely different contract for the parties from that one they made for themselves."

In the recent case of

Comptograph Co. v. Burroughs Co., 179 Ia., l. c. 108,

the Supreme Court of Iowa had to say upon this subject the following (p. 473):

> "we understand the law to be that where the parties to an agreement have acted upon a certain interpretation of it, this interpretation will not be followed by the courts where the contract is not ambiguous, since a construction contrary to the plain meaning of the instrument is necessarily erroneous, and the parties are not bound by their erroneous construction of it. Spencer v. Millisack, 52 Iowa, 31, 2 N. W. 606; also Railroad Company v. Trimble, 10 Wall. (77 U. S.) 367, 19 L. Ed. 948. But where there is doubt as to the proper construction of an instrument, the construction put upon it by the parties is entitled to consideration. Railroad Company v. Trimble, supra.
>
> A written instrument is ambiguous only when found to be of uncertain meaning by persons of competent skill and information. 1 Greenleaf on Ev. (Lewis Ed.) § 298."

Turning now to an examination of the contract of May 10, 1889, for the purpose of determining whether or not it is ambiguous with respect to the subject matter of this inquiry. Two things must be kept in mind, because, in the language of the Supreme Court of Iowa, "a written instrument is ambiguous only when found to be of uncertain meaning by persons of competent skill and information." *(Comlograph Co. v. Burroughs, supra.)*

One of these facts is that the charter of the Des Moines Union Railway Company contained, among other things, the following (vol. II, p. 420):

> "The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including * * * the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, store-houses or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines."

When the Des Moines Union Railway Company accepted this charter it not only acquired the powers, but assumed the obligations of a common carrier, and included in this was the power and obligation to perform switching services not only for complainants and their predecessors, but for any other railroad or shipper who desired transportation over its line. In other words, the duties and obligations of the Des Moines Union Railway Company were not confined to serving the railways parties to the contract of May 10, 1889, but it owed the duty of performing the services of a common carrier for any other railway company with which it might connect, or any shipper who desired to use its line for transportation. For these services the Des Moines Union Railway Company was entitled to compensation. Not only this, but it had long been the custom of railway companies to lease privileges in their depots, to charge storage for baggage, etc. It was therefore certain that from these sources the defendant company would receive an income, whether great or small.

The other fact is that this contract of May 10, 1889, was drawn by Col. Wells H. Blodgett, then general solicitor for The Wabash Company, who, as the record shows, had been exclusively employed in the railroad service for years prior to the drawing of this contract and therefore knew the sources of revenue upon which the defendant company might depend.

Knowing by whom this contract was drawn, we would naturally expect to find it clear and unambiguous and its provisions stated in no uncertain terms, and in this expectation we are not disappointed. The language selected by Colonel Blodgett to evidence the agreement is as follows (vol. II, p. 481):

> "Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which *other railway companies* may be under obligations to pay by virtue of *contracts* for the *use* of said property, or parts thereof, for the preceding month."

Now there are three things which must appear before the complainants are entitled to have a credit upon their accounts, and these three things are the following:

(a) The sums must be paid by other railway companies.

(b) They must be paid by virtue of a contract.

(c) They must be paid for the use of the property.

The idea that the complainants are entitled to credit for any items which do not come within the above clas-

sification is excluded by the very language of the contract following that above quoted, which is as follows:

> "and the *remainder* shall be paid by the parties of the second part."

The word "remainder" means the aggregate of the sums ascertained as provided in section 3 of the contract, after deducting the items specifically authorized in section 4.

It is undisputed that almost from the beginning the terminal company did receive payments from other railway companies by virtue of the contracts for the use of this property, and that these sums have been consistently credited upon the bills of the complainants and their predecessors.

For instance, the record shows that the Chicago Great Western Railway Company has for many years paid large sums annually for the use of the terminal property, and that likewise other railroad companies are paying such items, but all these sums, as we have said, have been credited to the complainants and their predecessors.

Upon this subject Mr. E. B. Pryor, a witness for the complainants, and vice president of The Wabash Company, and who had examined the books of the terminal company for the purpose of qualifying himself as a witness, testified in substance:

The Wabash, and the Chicago, Milwaukee & St. Paul Railroad Company, are the only present users of the terminals who are successors to the original parties of the second part to the contract of May 10, 1889. The other railroads which are now using the terminals, or parts of them, are the Chicago, Great Western, the

Chicago, Burlington & Quincy, the Minneapolis & St. Louis Railroad Company, and the St. Paul & Des Moines Railroad Company. The amounts which these companies are under obligation to pay by virtue of their contracts for the use of the property for the preceding month, using the language of the contract, 'are deducted from the bills rendered to your Company and the Chicago, Milwaukee & St. Paul Railway Company.' Among these amounts the Chicago Great Western Railroad Company, and its predecessor, the Chicago Great Western Railway Company, has been paying one-third of all the taxes as a part of the rent, which it pays, and an amount equal to one-third of the maintenance and other amounts which are specifically set out in the contract. (Vol. II, p. 353.)

We have, therefore, the situation that it was perfectly apparent that the terminal company would have earnings of the character which make up the fund in controversy, and we have a contract drawn which specifically confines the credits to which the complainants are entitled, to items other than those under consideration, and the contract excludes the items under consideration by specifically providing that the remainder should be paid by the tenant companies. Language more appropriate to carry out what was in the mind of the parties could scarcely be selected.

Even if we resort to the conduct of the parties as an aid to construction, the result is the same.

As we understand counsel for petitioners they do not really contend that the contract is ambiguous, but ignoring the rule of law which we have cited they contend that the conduct of the parties under the contract put a construction upon it which gives to them these surplus earnings.

What was that conduct? We concede that at the beginning the Des Moines Union credited these earnings, then very small, to the railway companies. Why it did this the record does not show. There is no testimony indicating that there was any discussion of the subject. These earnings belonged to the Des Moines Union and it could do with them what it pleased. The ultimate beneficiaries of these revenues at that time were very much the same whether they went to the Des Moines Union or to the tenant companies.

The first record action taken with respect to them was the resolution of the Des Moines Union of February 11th, 1891 (Rec., Vol. II, p. 497), as follows:

> "It is ordered that the rents collected for the use of the Company's real estate and the switching charges paid in be credited on bills of *the different tenant companies occupying this company's terminals*, giving to each company its share ascertained by wheelage."

Now this had been done for a few months previously. This resolution was the action of the Des Moines Union, disposing in the way indicated of its own revenues. The credit, it is to be observed, was to be allowed to all the tenant companies, including the Chicago, St. Paul & Kansas City Company, which was neither a shareholder in the Des Moines Union nor a party to the contract of 1889. If by that contract these revenues belonged to the petitioners' predecessors, the Des Moines Union had no right to give them in part to the C., St. P. & K. C. Company, for it was not a party to the contract. What that Company paid under its own contract with the Des Moines Union was [illegible] contract of 1889 to be deducted from the expense

charges against the other railway companies, and it was entitled to nothing on the score of receipts by the Des Moines Union on switching and rental accounts. But the Des Moines Union had the right to make concessions from its own revenues to any or all of its tenant companies. That the C., St. P. & K. C. Company shared in the credits to the tenant companies, so long as they were allowed is shown by Rec., Vol. II, p. 279 to 313.

This concession for whatever reason made ceased January 7th, 1892, less than three years after the contract of May, 1889, when the directors of the Des Moines Union passed the following resolution (Rec., Vol. II, p. 499):

> "Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills, which come in before it receives its monthly revenue from the tenant companies:
>
> Therefore, be it resolved that until the further action of the Board, the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purposes."

In other words, the Des Moines Union wanted a working capital fund and got it by its own action in withdrawing from the tenant companies, all of them, what before it had allowed them.

And this new order was to continue until further action of the Des Moines Union. Strange that the disposition of these revenues whatever that might be, should from the beginning be determined by the sole action of the Des Moines Union if it was not the owner of them.

No action was ever had respecting these revenues by any other company until many years after, in 1906, when this suit was in the brew.

And after January, 1892, these revenues were never again credited to any of the tenant companies, but they were used entirely in the acquisition of additional property, in improvements and in the accumulation of surplus.

The first reference to surplus earnings in the record after the passage of the resolution of January 1, 1892, is contained in the record of a meeting of the board of directors of the terminal company held May 26, 1894, (ex. 130, vol. IV, p. 1338), where it was resolved to pay what is known as the Hill mortgage of $4,000 out of this fund. At this meeting the only Wabash representative present was its local attorney, Mr. A. B. Cummins.

At the meeting of the board of directors held June 7, 1894, at which Charles M. Hays, general manager of the Wabash Company, was present, the following appears in the record:

> "The records of the meeting held May 26th, 1894, were read and the proceedings therein set forth were, on motion, unanimously approved and agreed to with the exception of the Resolution to pay the mortgage upon lot seven (7) in block fifteen (15) of the Original Town of Fort Des Moines amounting to $4,000.00, out of the funds on hand realized from rents of real estate and from switching cars. On motion to approve this part of the record, Mr. Hays wanted further time." (Ex. 132, vol. IV, p. 1340.)

At a meeting of the board, held July 10, 1894, the following appears of record (ex. 133, vol. IV, p. 1341):

> "On motion of F. M. Hubbell, the treasurer was directed to pay the Abbie Bechtel mortgage of two thousand dollars ($2,000) with accrued interest thereon, upon the south forty-four (44) feet of lot ten (10) in block thirty-five (35) Fort Des Moines, Iowa, upon which is situated in part, the Freight House of this Company; and upon payment of same to have the mortgage cancelled of record, provided, however, that the written consent of Chas. M. Hays could be procured."

On June 19, 1894, Mr. Hays wrote Mr. Hubbell as follows (see cross examination of Hays, vol. II, p. 256):

> "Referring to the M. L. P. Hill note of $4,000 which you reported at a meeting of directors of the Des Moines Union Railway Company, held June 7th, as having been paid by you, which you suggested should be taken out of the surplus earnings of the Des Moines Union Railway, and upon which I withheld my vote until I could consult with President Ashley, of the Purchasing Committee, *after discussion of the matter with Mr. Ashley and General Solicitor Blodgett, they concur in the opinion that a proper disposition of the payment will be to charge it to the surplus earnings as proposed*, and you may therefore be governed accordingly. Please ascertain from treasurer and advise me what balance this still leaves in the hands of the treasurer to the credit of 'surplus earnings.'"

And again on August 9, 1894, Mr. Hays wrote Mr. Hubbell (see vol. II, p. 256) as follows:

> "I have yours of the 7th showing surplus earnings of Des Moines Union Railway on hand July 1st of $15,312.89, and after paying note of L. P. Hill of $4,000 interest, $180, $11,132.89 on hand, I approve of your application of $2,000 of this amount to the payment of the Abbie-Bechtel mortgage."

Defendants' exhibits 312 to 316 inclusive (vol. IV, pp. 1623-7), are letters passing between Mr. Hubbell and Mr. Hays in October and November, 1894, in reference to the application of surplus earnings to the payment of the indebtedness on the Heath property, which application Mr. Hays approved.

In pursuance of this correspondence the board of directors of the terminal company, at a meeting held November 14, 1894 (ex. 135, vol. IV, p. 1343), at which Mr. Hays was present by proxy to A. B. Cummins, a resolution was passed appropriating out of the surplus earnings $10,775.00 to apply upon said indebtedness and to pay the balance of said indebtedness, amounting to $40,000.00, and evidenced by unmatured notes out of the surplus earnings as the notes became due, and the following was also enacted:

> "The words 'Surplus Earnings' as herein used, mean that fund arising from the rentals of such real estate and from switching charges."

On November 19, 1894, the same subject was considered by a meeting of the board of directors of the terminal company (ex. 136, vol. IV, p. 1344).

At the annual meeting of the stockholders held February 14, 1895 (ex. 138, vol. IV, p. 1347), there were present, among others, C. M. Hays, general manager of the Wabash Railroad, Mr. H. L. Magee, a representative of the Wabash, the Purchasing Committee of the Wabash by Charles M. Hays, proxy, and the Des Moines Northern & Western Railroad Company by F. M. Hubbell, president. The following appears in the record:

> "On motion, the minutes and proceedings of all meetings of the Board of Directors and Stockholders held during the year 1894, were read and approved and all of the acts of the Board of Directors and Officers done during year 1894, were confirmed and ratified."

In August, 1896, Mr. J. Ramsey, Jr., then vice president and general manager of The Wabash Railroad Company, wrote to F. C. Hubbell, president of the Des Moines Union Railway Company (ex. 357, vol. IV, p. 1666), as follows:

> "This will be handeed you by Mr. Pryor, our assistant auditor, whom I have requested, in company with Mr. Garrett to go to Des Moines, and look over the methods and cost of operating the joint terminals.
>
> I do not do this because I have any doubt or apprehensions as to the property being handled in the best way possible for the interests of all, but only in order to fully post myself on the whole situation at that point.
>
> I find our company has not been in the habit of receiving any statement from the Des Moines Union, other than the one showing the cost of operation, and we have no information, whatever, as to the revenues of the company, their general dis-

position, etc., nor any of the detailed information which I think we should have in order to keep properly informed.

Will you kindly have the officers of the Des Moines Union furnish Messrs. Pryor and Garrett every opportunity necessary for them to become properly posted in the premises."

From this it appears that at this time the new vice-president and general manager of the Wabash learned all the facts as to the way in which the business of the Terminal Company was conducted, what its revenues were and how its accounts were kept.

II.

THE RATIFICATION CONTRACT OF 1897.

Of greatest significance here is the history of the proceedings which ended in the contract of July 31st, 1897.

The original railway companies parties to the contract of 1889 were no longer operating their respective properties and question seems to have arisen as to whether the contract was binding upon their successors. This doubt affected the market value of the Des Moines Union bonds, which in large part were held by the Wabash Company. Mr. Ashley, President of the Wabash, wanted that doubt removed. On December 28th, 1896, he wrote to Mr. Hubbell as Secretary of the Des Moines Union as follows (Rec., vol. IV, p. 1673):

"Permit me to remind you of our understanding to the effect that you would have prepared at once a new agreement for the tenant [illegible] of the Des Moines Union Railway Co. to [illegible], this new agreement being considered necessary on ac-

count of the foreclosure of the Des Moines & Norwestern. I understand that the agreement will be exactly as before, except that the time must be made to correspond with the life of the bonds, or to be made for a period to extend beyond their maturity.

I write now for the purpose of urging the immediate preparation of this agreement, as without it we cannot well dispose of our bonds. When it is ready please forward it to Colonel Blodgett, asking him to examine the same and to send it to me as soon as possible. I should not suppose it would take long to have the agreement prepared and as time in this case is of importance I hope you will see that the paper is gotten under way at once. Perhaps you have already taken the matter in hand and if so, so much the better."

On February 3, 1897, Mr. Hubbell wrote to Colonel Blodgett (ex. 367, vol. IV, p. 1679), enclosing the proposed new contract prepared by Mr. Cummins. This proposed contract is defendants' exhibit 383 (vol. IV, p. 1703).

It is significant to note that so far as the passages in the proposed contract under which the subject of surplus earnings arises are concerned, the proposed contract which Mr. Cummins prepared and which was forwarded to Colonel Blodgett was identical with the contract of May 10, 1889, the provision being contained in section 3 as follows:

"Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, which shall embrace every item of expense or liability of whatsoever name or character, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligations to pay by virtue of con-

tracts for the use of said property or parts thereof, for the preceding month, and the *remainder* shall be paid by the Des Moines & St. Louis Company," etc.

Immediately upon this proposed contract coming into the hands of Colonel Blodgett, the question of what was to be done with the surplus earnings was raised. The form of the question, however, was not as to who was entitled to the surplus earnings under the contract of May 10, 1889, but what change could be made in the contract so as to entitle the tenant companies to such surplus earnings, or a portion thereof. It seemed to be conceded that under the contract of May 10, 1889, the surplus earnings belonged to the terminal company, and it was Colonel Blodgett's idea that this feature of the contract should be changed.

In a letter of Colonel Blodgett to Mr. Hubbell dated March 26, 1897 (ex. 377, vol. IV, p. 1687), Colonel Blodgett encloses two forms of section 3 which he proposes to be inserted in place of section 3 as prepared by Mr. Cummins. These forms are exhibits 378 and 379 (vol. IV, pp. 1688-91), and provide for crediting the surplus earnings upon the accounts of the tenant companies. If these tenant companies were entitled to credit for these surplus earnings under the provisions of section 3 of the contract as prepared by Mr. Cummins, which we have shown are the same provisions as are contained in the contract of 1889, then, of course, it was unnecessary for Colonel Blodgett to insist upon any change in this section. The clear inference is that in the opinion of the parties neither the proposed contract as drawn by Mr. Cummins, nor the [illegible] 1889, entitled the tenant companies to these [illegible]

The subject of the surplus earnings was threshed out by the parties, as will be ascertained by the following exhibits (vol. IV): 367-a, 368 (p. 1680), 375-6 (pp. 1684-7), 382 (p. 1694), 377 (p. 1687), 378 (p. 1688), 379 (p. 1689), 380 (p. 1691), 381 (p. 1692), 384 (p. 1712), and 385 (p. 1723).

It will be noted from an examination of these exhibits, that nowhere do the Wabash officials take the position that they were entitled to a credit for these surplus earnings, either under the contract of 1889, or because of any alleged construction put thereon by the acts of the parties, but their contention is that in this new contract a change shall be made with respect to the surplus earnings, which would give to the tenant companies such earnings, or a portion thereof.

The result of the conferences and negotiations was what is known as the ratification contract of July 31, 1897 (vol. II, p. 506), which was a ratification and adoption of the contract of May 10, 1889, except as therein changed, and no change was made in the language of the latter contract under which the question of surplus earnings arises.

This ratification contract was executed by the Des Moines Union Railway Company on the one hand, and by the complainant, The Wabash Railroad Company, and by the Des Moines Northern & Western Railroad Company (predecessor of the Chicago, Milwaukee & St. Paul Railway Company) on the other.

This contract, referring to the contract of May 10, 1889, provides among other things as follows:

> "And the Wabash Company for itself agrees to make the *payments therein provided for at the times and in the manner prescribed for the said*

Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company."

The Complainant, the Wabash Company, agreed therefore, to make payments to the Des Moines Company, not according to any modification of the contract of May 10, 1889, or any subsequent construction thereof, but strictly, as *"therein provided."* It was provided in the contract of May 10, 1889, that the Des Moines & St. Louis Company would pay its share of all the expenses of the Des Moines Company ascertained on a wheelage basis, except there should

> "be deducted therefrom the amount, if any, *which other railway companies* may be under obligation to pay by virtue of *contracts* for the *use* of said property or parts thereof, for the preceding month."

It therefore appears that the attempt to change the contract with respect to the disposition of the surplus earnings was abandoned, and it was agreed that the Wabash Company should pay in accordance with the terms of the original contract.

With respect to the predecessor of the Chicago, Milwaukee & St. Paul Railway Company, the contract provided (p. 508):

> "And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein, and as though it had been named in and was a party to the said contract when originally made, and to pay to the said Des Moines

> Company *at the times and in the manner therein prescribed* the sums of money which may become due, *computed according to the terms and provisions of the said contract with respect to a tenant company.*"

Here is the Des Moines, Northern and Western bound like the Wabash to pay at the times and in the manner prescribed by the contract of 1889 the sums of money which might become due, computed according to the terms and provisions of that contract.

What Mr. Ashley wanted in the new contract was placed there. The obligation imposed upon the tenant companies by the contract of 1889 were expressly assumed by their successors.

III.

SUBSEQUENT CONDUCT OF THE PARTIES.

The primary purpose of this contract of July, 1897, was, as we have said, to help the salability of the bonds of the Des Moines Union Company on the general market. The Wabash Company held the largest block of these bonds and evidently wished to dispose of them. So far as concerned the Des Moines Union Company and the tenant railway companies and their relations *inter sese* the contract of 1889 needed no amendment because there was the tacit agreement between all of them that the railway companies had succeeded to the rights of their predecessors in this contract. But a prospective purchaser of bonds would desire something more than this and that would be a binding obligation upon the railway companies to perform the terms of the contract and to make the payments therein prescribed, and so the contract of 1897 was made and this purpose of improving the credit of the bonds was

accomplished. But there was another thing that might be done to help to this same end of making bonds salable and that was to list them upon the New York Stock Exchange, where merchants in such wares most do congregate, and Mr. Hubbell, on behalf of the Des Moines Union with the approvel and aid of Mr. Ashley as President of the Wabash Company, made application in due form to the Stock Exchange for the listing of these bonds. The rules of the Exchange seemed to require that the resources available for payment of the bonds, principal and interest, shall be disclosed, so that dealers in them, buyers and sellers, may be able to form some opinion as to their intrinsic value.

The Record, Vol. 4, pages 1734 and following, contain a full history of this listing of the bonds. The Stock Exchange required a "complete financial statement of said corporation for a period covering at least one year before its reorganization: i. e., a detailed statement of its earnings and receipts from every source, a detailed account of all expenditures and the amount of its outstanding indebtedness in detail of every description and a balance sheet of its books, etc., etc." (p. 1736).

Responding to this requirement, the Des Moines Union Railway Company on September 28, 1897, in its application to the Committee on Stock List of the New York Stock Exchange, set forth its ownership of the terminal properties and the various functions which it performed and then said (p. 1744):

> "The terminal facilities offered by this Company are at present shared by the Des Moines & St. Louis R. R. (owned by the Wabash R. R. Co.), the Chicago Great Western Railway, and the Des Moines, Northern & Western Railroad. Each of

these companies for itself has agreed to pay monthly, as rental for the facilities used, a sum equal to one month's interest on the outstanding bonds, besides they pay for their proportion of the expense of operation. *In addition, the Company derives considerable revenue for switching cars for other railroads (not tenants) and in rents for the use of various portions of the property.*"

In this same application it made a statement of receipts and expenditures for the year ending July 30, 1897, as follows:

"RECEIPTS AND EXPENDITURES
For the year ending June 30, 1897.

RECEIPTS.

Amount Rec'd from The Wabash R. R. Co. on wheelage basis	$31,251.14
Amount Rec'd from Des Moines N. & W. Ry. Co. on wheelage basis	58,447.66
Amount Rec'd from Chicago G. W. Ry. Co. on a wheelage basis	47,190.71
Amount Rec'd for outside switching and rent of real estate	10,282.42
	$147,172.00

EXPENDITURES.

Interest paid on First Mtge. Bonds	$28,450.00
Taxes for year ending June 30th, 1897	6,260.25
Conducting Transportation	66,147.27
Maintenance of Way Structures	15,935.55
Maintenance of Equipment	13,679.33
General Expenses	6,390.11
	$136,889.51
Surplus	$10,282.49"

This application was forwarded by Mr. F. M. Hubbell as Secretary of the Des Moines Union Railway Company to Mr. Ashley as President of the Wabash Company and by Mr. Ashley was presented to the proper Committee of the Stock Exchange and by that Comittee it was approved and bonds were listed as desired.

Here is a statement made for the use of the investing public and we have here the direct statement in the text of the application that in addition to the sums which the Railway Companies have agreed to pay monthly "the Company (the Des Moines Union) derives considerable revenue for switching cars for other railroads not tenants and in rents for the use of various portions of the property." And in the statement of receipts and expenditures for the preceding year we have set forth in detail what the Des Moines Union received from each of the tenant companies and the additional item of revenue "for outside switching and rent of real estate, $10,282.42." Deducting the various charges to which the revenues of the Des Moines Union were subject there was left the surplus of $10,282.49, the amount received for outside switching and rent of real estate. This puts the matter absolutely beyond controversy. These surplus earnings belong to the Company which owned the property from which they were derived and they were morally pledged to every purchaser of one of these bonds as resources out of which the bonds, interest and principal, might be paid.

The contract of 1897 ratified the terms of the contract of 1889 in every respect. It made two changes of any kind and only two. The first was a change as to parties. It substituted living and active parties for

those who had become defunct or moribund. And it set out in full and in detail the shareholding in the Des Moines Union Railway Company. This second change showed the ownership of the stock to the extent of 2,500 shares, a majority of all, in private hands, owned by F. M. Hubbell and Son. The contract in its entirety was one of value to the Des Moines Union as such, and to its shareholders ratably, for it recognized in the property of the Des Moines Union the ordinary and usual incidents of property, that is the right of the owner to the rents, issues and profits thereof. The contract was one of value during its term, to the Des Moines Union because it reserved to that company the earnings that it derived from switching done by it for outside parties and the rentals received from property not in railroad use. And so it was of value to the shareholders, and equally so, whether these earnings were distributed as dividends or reinvested in the property. And this contract was made, ratifying that of 1889 according to its very terms, with the Hubbells asserting their ownership, which indeed was undisputed, of the 2,500 shares of the capital stock of the Terminal Company, and asserting, what was agreed to, the ordinary and usual rights incident to such ownership. Nothing here was furtively done, but everything desired upon the one side or the other was openly proclaimed. Nor was anything done in haste. Beginning the matter in December, 1896, it was not concluded until July 31st, 1897. Here was a case where counsel was perhaps little needed, for the representatives of the parties interested were men capable and experienced in such affairs. But counsel attended at every stage. And when it was concluded so far as adjustment between the parties was concerned on July 31st, 1897, they pro-

ceeded to deal with the public, consistently with the arrangement between themselves, in their listing of the securities upon the Stock Exchange of New York. And between themselves they did the same.

The execution of this contract was ratified by the directors of the Des Moines Northern & Western Railroad Company on September 7, 1897 (ex. 218, vol. IV, p. 1497), and by the directors of the Wabash Company October 5, 1897 (ex. 237, vol. IV, p. 1540).

At no time, either before or after the execution of the ratification contract, did The Wabash Company make any claim to these surplus earnings until just prior to the commencement of this suit, and as a step preliminary thereto.

Turning now to the attitude of the Chicago, Milwaukee & St. Paul Railway Company with respect to these surplus earnings, it will be noted that its predecessors never at any time made any claim to them. The first interest, either direct or indirect, which the Milwaukee Company acquired in the property of its predecessors was by virtue of a contract with F. M. Hubbell & Son, made in 1894, and which was negotiated between Mr. Roswell Miller, president of and representing the Chicago, Milwaukee & St. Paul Railway Company, and Mr. F. M. Hubbell, representing F. M. Hubbell & Son and the Des Moines Northern & Western Railroad Company. During the negotiations leading up to this contract, Mr. Miller was advised by Mr. Hubbell that the only interest which the Des Moines Northern & Western Railway Company had in the terminal property was the interest represented by its 1,000 shares of stock, and that 2,500 shares of stock in the terminal company was owned by the defendant, F. M. Hubbell & Son.

The Milwaukee Company in 1899, having acquired all the outstanding stock and bonds in the Des Moines Northern & Western Railway Company, took the title to the property of the latter company and consolidated such property with its own, and thereafter the Milwaukee Company had such interest in the terminal company as it acquired from the Des Moines Northern & Western Company.

On November 22, 1898, Roswell Miller, president of the Milwaukee Company, wrote Mr. Hubbell (ex. 411, vol. IV, p. 1758), in reference to the terminal contract, evidencing the fact that he had examined and understood the contents thereof.

On January 16, 1899, Mr. Myers, who was then secretary of the Des Moines Northern & Western Railroad Company, and also secretary of the Milwaukee Company, wrote asking for additional copies of this contract.

On March 7, 1904, one H. G. Haugan, who seems to have been a new comptroller of the Milwaukee, writes to Mr. J. A. Wagner, defendant's superintendent, the following (ex. 504, vol. IV, p. 1843):

> "I understand that at the Des Moines Union station there are a number of offices rented, also news stand, lunch room and other privileges which are not accounted for in your monthly statements and bills. I believe you are also collecting rents on certain property on which we have to pay our proportion of taxes.
>
> I do not remember having seen any statement or account of rents collected by your company.
>
> It seems to me that these rents, etc., should be applied towards paying part of the operating expenses similar to the manner in which the business is conducted at the Union Depots at Chicago, Omaha, St. Paul and Kansas City."

On March 22, 1904, Mr. Wagner replies to Mr. Haugan as follows (ex. 505, vol. IV, p. 1843):

> **"Replying to your letter of March 7th, our auditor sends your Mr. Winne each month a statement of all rentals of the character to which you refer. These rentals have nothing whatever to do with the proportion of the expense to be paid by your company. Our monthly bills against you for such expenses are made out in strict accord with our terminal contract. We have frequently in the past few years, explained the matter to the various officials of your company in response to their inquiry."**

Of course the letter of Mr. Haugan to Mr. Wagner above quoted cannot be considered as a protest on the part of the Milwaukee to the terminal company's retaining these earnings, nor a claim that the tenant companies were entitled to them under any contract. His thought that they should be credited with these earnings is based, not upon the contract, but upon the fact that the Milwaukee had some different sort of an arrangement with respect to terminal property at other places. This correspondence, however, shows two things:

First. **That the Milwaukee Company knew of these earnings, because the terminal company was furnishing to the auditor of the Milwaukee Company a statement of them each month; and**

Second. **That the Milwaukee Company knew they were not being credited with these earnings, and the reason therefor was that the Des Moines Union Company was claiming the right to them under the contract.**

Further, it appears that the question of the surplus earnings was threshed out between the Des Moines Union Company and the Milwaukee Compnay some four or five years prior to the correspondence above quoted.

On December 2, 1898, Mr. Roswell Miller, president of the Milwaukee Company, wrote to Mr. Hubbell the following letter (ex. 418, vol. IV, p. 1765):

> "I observe that the contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company is only for 20 years. I think it should be for 50 years. Have you any objections to extending it for so long?"

This was during the negotiations between the Milwaukee and Mr. Hubbell, the result of which was that the Milwaukee acquired all the stock and bonds of the Des Moines Northern & Western Railroad Company preparatory to consolidating the property of the latter company with that of the Milwaukee, and shows that the president of the Milwaukee was familiar with the contract of May 10, 1889, and the ratification contract of July 31, 1897. An examination of defendants' exhibits 420 (vol. IV, p. 1766), 321 (p. 1767), 425, p. 170), 430 (p. 1772), 456 and 457 (p. 1802), 458 and 459 (p. 1803), and 460 (p. 1804) will demonstrate, as we have said, that this whole question of surplus earnings was threshed out in an attempt on the part of the officers of the Chicago, Milwaukee & St. Paul Railway Company to have the contract of May 10, 1889, extended for a period of thirty years. In these negotiations the complainant, the Milwaukee Company, became

thoroughly familiar with the situation with respect to these surplus earnings; with the contract of May 10, 1889, and July 31, 1897, and with the attitude of the respective parties with relation to surplus earnings. These negotiations were abandoned in the latter part of 1899 by reason of the parties being unable to agree upon the terms of the proposed extension. No claim was made in any of these negotiations that the complainants or their predecessors were entitled to these surplus earnings under the existing contracts, but the attitude of the defendant company with respect thereto was acquiesced in.

At a meeting o fthe stockholders of the Des Moines Union Railway Company held January 4, 1900, at which there were present, among others, C. A. Goodnow and A. J. Earling, officers of the Chicago, Milwaukee & St. Paul Railway Company, each holding one share of stock, and the Chicago, Milwaukee & St. Paul Railway Company by A. J. Earling, president, holding 998 shares of stock, and the Continental Trust Company of New York by F. M. Hubbell, proxy, holding 498 shares of stock (ex. 156, vol. IV, p. 1370), there was presented the report of J. A. Wagner, superintendent, showing the use of the surplus earnings by the Des Moines Union Railway Company in acquiring additional real estate and improvements, and this report was approved upon motion of Mr. Earling.

Again, at a meeting of the stockholders of the Des Moines Union Railway Company held January 5, 1906, at which were present the Chicago, Milwaukee & St. Paul Railway Company holding 998 shares of stock, and E. W. McKenna and W. J. Underwood, officers of the Chicago, Milwaukee & St. Paul Railway Company, each holding one share of stock, and F. A. Delano and

E. B. Pryor, officers of The Wabash Railroad Company, each holding one share of stock (ex. 164, vol. IV, p. 1383), there was presented the report of the superintendent of the Des Moines Union Railway Company for the years 1900, 1901, 1902, 1903, 1904 and 1905, which showed the use of the surplus earnings by the Des Moines Union Railway Company for the purpose of acquiring additional property and improvements, and no objection was made to the appropriation of this fund by the defendant company.

It is interesting to note that when objection was made to the use made of the surplus earnings by the Des Moines Union Railway Company, it was not made by one who had aught to do with any of the contracts, articles of incorporation or amendments thereto, or of any of the dealings of any of the companies with any of these, from 1882 down to 1906, and not until "there arose a new king over Egypt, who knew not Joseph." The first demand for the surplus earnings of petitioners was at a meeting of the directors of the Des Moines Union Company on March 12th, 1906, and the names of those noted as present on behalf of the tenant companies are new names. Dodge, Ashley, How, Hays, Blodgett, Ramsey, Priest and Grover are none of them there (Rec., Vol. II, p. 333 *et seq.* Counsel were present, Vrooman for the Milwaukee and Travons for the Wabash Company and made demand for the earnings in identical terms and this may be said to be the inception of the suit. The demand, presented in writing recites that "the repeated requests heretofore made upon you for the distribution and crediting to the tenant companies of the receipts from real estate rentals, switching charges, etc., having been ignored, etc.," an assertion utterly barren of support in fact.

The original bill was filed February 5th, 1907, and the testimony was closed on the last day of 1912. Here was no haste, but ample time for bringing forward any and all existing testimony. And a record was made during this period of nearly six years which extends to five printed volumes and twenty-one hundred printed pages, and we challenge the production from that record of anything savoring of a demand by the tenant companies of these surplus earnings or of an assertion of a right to them by those companies or any of their predecessors prior to March 12th, 1906. Neither in the oral testimony, nor in the correspondence of the officials of the various companies, nor in the records of the directorate or company meetings is evidence of any such demand to be found.

From 1892 to 1906 these surplus earnings were appropriated as of right by the Des Moines Union Company to its own uses, and the other companies concerned acquiesced in and assented thereto. Specific acts of such appropriation have been cited by us, but no protest appears against any of them. More than fourteen years of accord between the conduct of the parties and the literal terms of the contract of 1889 conclusively shows that the interpretation of the contract according to its very terms is the right one.

We respectfully submit that upon both branches of the case the merits are with the defendants to the original suit, and we pray for a decree accordingly.

JAMES L. PARRISH and
FREDERICK W. LEHMANN,
Counsel for the Des Moines
Union Railway Company, F.
M. Hubbell, F. C. Hubbell
and F. M. Hubbell & Son.

CAPITAL STOCK
DES MOINES UNION RAILWAY COMPANY

TOTAL ISSUED $400,000 **1-8 = $50,000**

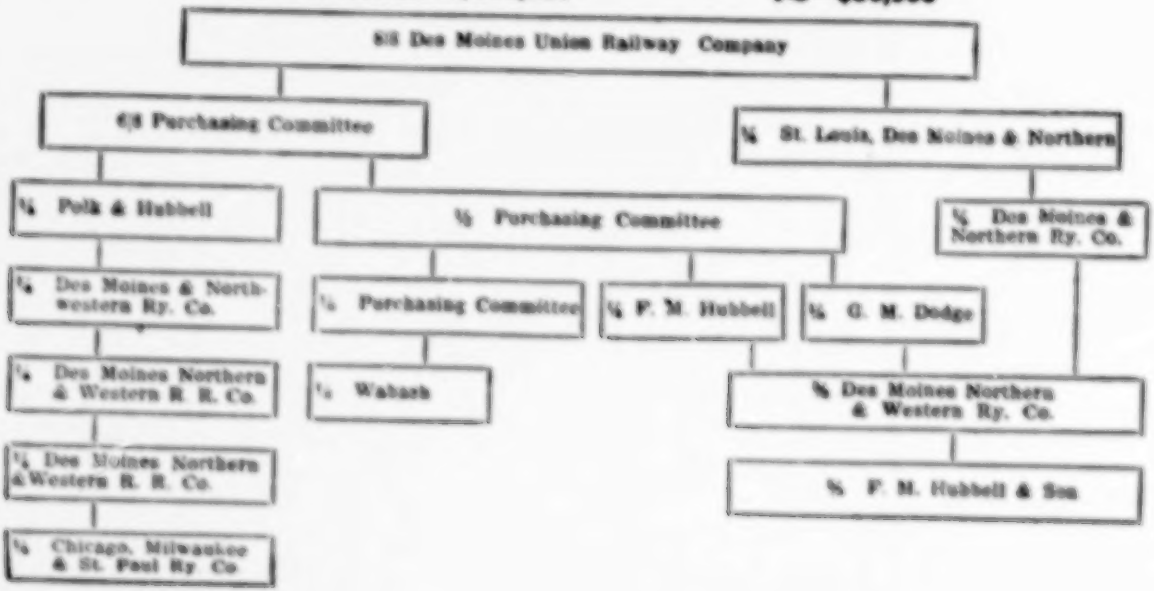
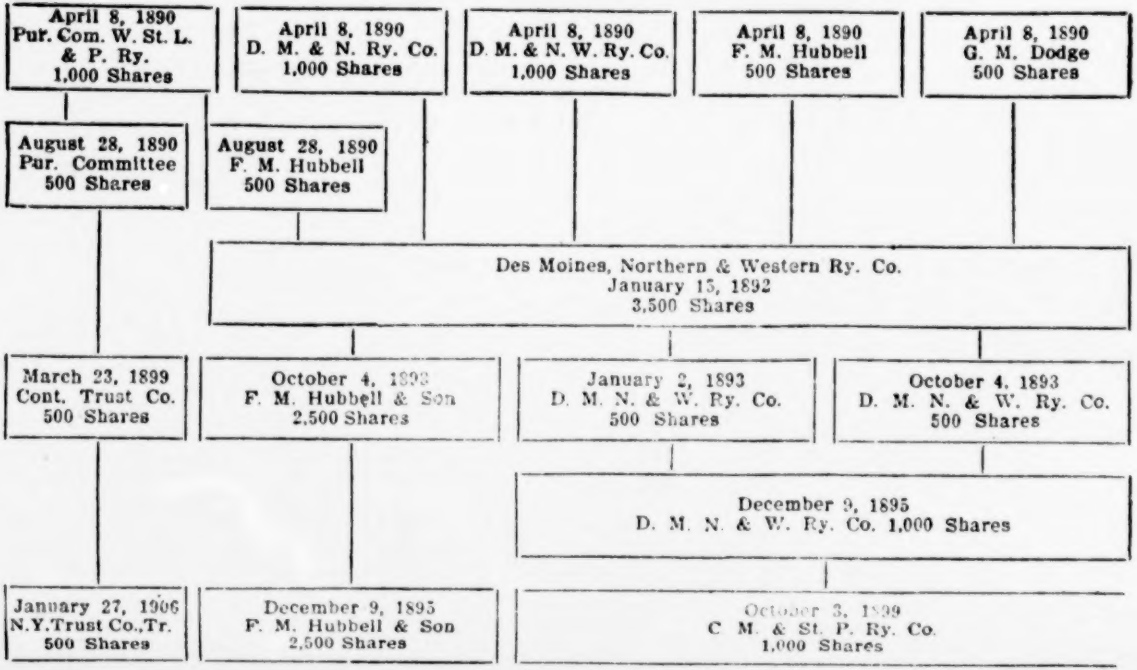


DIAGRAM SHOWING TRANSFER OF STOCK OF DES MOINES UNION RAILWAY COMPANY



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JAMES D. MAHER,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 1[illegible]66

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,

Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL *et al.*,

Respondents.

No. [illegible]67

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL *et al.*,

Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

JOHN C. COOK,
BURTON HANSON,
Counsel for Chicago, Milwaukee & St. Paul Railway Company.

WINSLOW S. PIERCE,
LAWRENCE GREER,
ROBERT J. CARY,
F. C. NICODEMUS, JR.,
Counsel for Wabash Railway Company.

C. G. Burgoyne Printing Business, 39-41 Cortlandt St., New York

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 278.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL et al.,
Respondents.

No. 279.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL et al.,
Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Respondents.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

REPLY BRIEF OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

The brief and argument filed in this cause by counsel for the Des Moines Union Railway Company and F. M. Hubbell and F. C. Hubbell, is not

responsive in its fundamentals to the brief filed by the complainants. Where reference is made to the argument of the complainants, comment is addressed to quotations, detached from their context, taken from the separate briefs filed by them in the Circuit Court of Appeals.

No attempt has been made to approach the issues upon the theory followed by the majority opinion of the Court of Appeals, or upon the basis of the argument presented by the complainants in the analysis of the facts offered in answer to such theory or of the several points made respecting the same.

Nor do we find in their brief any reference whatsoever to the dissenting opinion of Circuit Judge Hook.

One gathers from a reading of the brief that the conclusions of counsel are based upon the supposition that the trust admittedly created by the contract of January 2, 1882 was abandoned because of the incorporation of the Des Moines Company, and of the conveyance to such Company of the various terminal properties acquired by the temporary trustees.

In this respect counsel have not attempted to reply to the reasons presented in the brief of the complainants showing that the incorporation of the Des Moines Company, the several resolutions of its stockholders and directors, the resolutions of the proprietary companies and the deeds of conveyance, made to the Des Moines Company as a result thereof, were a development in corporate form of the trust created by the parties to the contract of January 2, 1882.

The brief is based wholly upon the supposition that the trust created by the contract of January

2, 1882 would necessarily be destroyed because of the several conveyances in fee simple to the Des Moines Company of the terminal properties, the titles to which were assembled in the names of the temporary trustees.

All subsequent discussion is based upon this supposition.

For instance, the analysis of the Amendments to the Articles of the Des Moines Company proceeds on the stated theory that they represent the thought that it was intended that the defendant company theretofore acquired absolute title to the terminal properties, and that thus such amendments are corroborative thereof.

In view of such a situation, it is submitted that it would serve no useful purpose in clarifying argument to review in detail the several points attempted to be made by counsel for the Hubbells. It is submitted that they have all been anticipated and adequately answered in the original brief filed on behalf of the complainants, and that therefore this reply can be made responsive in the best sense by analyzing a case recently decided by this Court, showing that counsel for the Hubbells have wholly misconceived the true principles governing the issues involved.

In the case of *Chicago, Milwaukee and St. Paul Railway Company* vs. *Minneapolis Civic and Commercial Association*, 247 U. S. 490 this Court determined the status of the parties in the instant case upon a set of facts so coincident in fundamentals and detail with the facts now before the Court that the opinion there rendered could be applied without substantial alteration as decisive of the case at bar.

This Court in an opinion written by Mr. Justice Clarke delivered June 10, 1918, subsequent

to the decision of the Circuit Court of Appeals in this case held that the Minneapolis Eastern Railway Company, a Company developed in the interest of two trunk lines entering Minneapolis, which jointly owned its capital stock, was not an independent corporation and had no power to publish tariffs covering service over its lines which the proprietary companies themselves might render.

Although the decision is fresh in the minds of the Court, a brief restatement of the facts will emphasize its coincidence with the case at bar.

The Minneapolis Eastern Railway Company, referred to herein as the Eastern Company, was organized under the laws of Minnesota as a railway company to construct and operate a railway from Minneapolis to St. Paul. It was organized as an independent corporation by a group of mill owners, and, unlike the Des Moines Company, it was not organized by, or in the interest of, or to take title to properties owned by the other railway companies which became its proprietors.

After the organization of the Eastern Company had been completed, but before any right of way had been acquired or any construction work done, the Chicago, Milwaukee & St. Paul Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, referred to herein collectively as the proprietary companies

> "came into exclusive control of the corporation and a board of directors satisfactory to them was elected, with the result that the only road which the company ever built or operated (omitting small fractions) was one mile of main track and one mile and a half of yard track and sidings in the City of Minneapolis" (p. 494).

Although the Eastern Company, like the Des Moines Company, was incorporated as a railroad company, and not as a terminal company, it became in point of fact the corporate instrumentality of the proprietary companies whereby, to avoid duplicating terminal facilities in a congested district, they were enabled

> "to construct and operate but one track to the group of industries to be served, instead of each building and maintaining its own track, and to construct and use that track in common so that each might have the benefit of it as fully as if it were the sole owner" (p. 500).

There is here to be noted a significant point of difference in the facts of the two cases:

The Des Moines Company was organized for the sole purpose of holding legal title to the facilities in Des Moines to be used in common by the railway companies which became the owners of its stock, and this purpose was declared in the definite provisions of the contract of January 2, 1882, which was embodied in its Articles of Incorporation as the statute law of its existence. No such declaration of purpose was made by the Eastern Company either at the time of its incorporation or subsequently, but this Court nevertheless found as a fact that such was the purpose for which it was originally acquired and afterwards utilized by the proprietary companies; and made this finding by reason of a series of acts and circumstances which, curious as it may seem, are strikingly like those which the Circuit Court of Appeals held in the case at bar, effected an unintended and unexpected destruction of the proprietary interests of the present complainants or their predecessors in the properties held by the Des Moines Company.

We quote further from this Court's opinion:

"Almost immediately after the organization of the Eastern Company, the three companies entered into a written contract, effective for over 39 years, until May 1, 1918, which is of much significance in determining the decisive fact in the case, as we have stated it.

"This contract provides:

(1) That only 300 shares of the authorized 10,000 shares of capital stock of the Eastern Company shall be issued, and of these, 75 shares each must be issued to the Omaha and Milwaukee Companies, 145 shares to a trustee for the Eastern Company, and the remaining 5 shares shall be issued as qualifying shares to directors. The 145 trust shares 'shall not be transferable except by the written consent of all (3) said parties hereto, and any transfer thereof without such consent shall be void and of no force or effect.'

(2) The Eastern Company shall execute in proper form 150 bonds of $1,000 each and a mortgage on all the property and franchises of the company to secure their payment. The Milwaukee and Omaha Companies agree each to purchase, at 80% of their par value, one-half the amount of such of these bonds as it may be necessary to issue to pay for the right of way, construction and equipment of the railroad;

(3) That the Milwaukee and Omaha Companies shall have 'equal and the same rights in and to the said railway . . . in all respects;' that they shall pay the same charge for switching their respective cars by said railway, and that no partiality or favor shall be shown to either;

(4) That the superintendent having charge of the operation of the railroad, shall be appointed 'by the consent and mutual agreement of all the parties to these presents;'

(5) That the Eastern Company shall

charge all parties one dollar for switching each loaded car, but a rebate of fifty per cent. of this charge shall be made to the Milwaukee and Omaha Companies;

(6) If any other company having equal facilities with the Eastern Company for reaching mills in Minneapolis shall promptly and satisfactorily do the switching for the second and third parties (the Milwaukee and Omaha companies) then the Eastern Company with the written consent of the Omaha and Milwaukee Companies, will do switching for such railroad companies over the said railroad of the Eastern Company on the same terms that switching is done for the said second and third parties (the Milwaukee and Omaha Companies) over such railroad but without rebate to any company" (pp. 495-496).

The agreement here summarized is so similar in its basic aspects as well as in detail to the supplemental agreement of May 10, 1889, between Des Moines Company and its proprietors, as strongly to suggest that it may have been utilized as a model by the draftsman of the latter instrument.

Like the supplemental agreement of May 10, 1889, it provided for the issue of the stock of the company in quarters, each quarter representing or evidencing a proprietorship equivalent to an equitable tenancy in common, one of these quarters being allotted to each of the proprietary companies and the surplus quarters being issued to a "trustee for the Eastern Company." The nature of the trust is not disclosed, but it is not improbable that the parties intended that the surplus quarters might be sold to other trunk line companies desiring to use the facilities of the Eastern Company, as in the instant case was provided in

section twenty-four of the supplemental Agreement of May 10, 1889.

Provision was also made for the control and operation of the properties of the Eastern Company by representatives of the two proprietary companies, the stipulations in this respect being substantially the same as those provided in sections eleven, twelve and thirteen of the Supplemental Agreement of May 10, 1889.

Summarizing the effect of the above mentioned provisions of the Agreement, this Court said:

> "It deprived the Board of the power: to issue the capital stock of the company and to finance its affairs; to select a superintendent to operate the company's two and one-half miles of track, by requiring that such selection be made only with the consent and mutual agreement of the three companies; to make mutual agreements for the interchange of business with any other company except with the mutual consent of the Milwaukee and Omaha Companies; and it renders one-half (save five shares) of the stock which it permits to be issued, transferable only with the written consent of the Milwaukee and Omaha Companies. Thus, the making of this contract was an obvious surrender by the Eastern Company of substantially all freedom of corporate action and an assumption of control over that company by the Milwaukee and Omaha Companies, which converted it largely into a mere agency or instrumentality for doing their bidding" (pp. 496-497).

It will be recalled that the Des Moines Company was repeatedly declared by the Hubbells to be precisely such an agency or instrumentality in the reports made year after year under oath to the taxing authorities of the State of Iowa, which re-

ports were made subsequent to every transaction which they now claim was destructive of the trust.

This Court then recites certain acts of administrative control exercised thereafter by the proprietary companies, among these being the division of an accumulated surplus of $95,000 equally between the two proprietary companies in the form of a stock dividend, the purchase by the proprietary companies in equal proportions of certain refunding bonds issued by the Eastern Company, and submits the following conclusion:

> "With the facts thus summarized, it is difficult to conceive of a plan for the control of a jointly owned company and for the operation of a jointly owned track more complete than this one is and it is sheer sophistry to argue that, because it is technically a separate legal entity, the Eastern Company is an independent public carrier, free in the conduct of its business from the control of the two companies which own it and therefore free to impose separate carrying charges upon the public" (p. 498).

Without underestimating the difficulty of conceiving as an original proposition a plan of joint control more complete and effective than the plan above outlined, credit for such an accomplishment is due the organizers of the Des Moines Company for the following reasons, among many others:

> (a) The Des Moines Company was created without corporate power or capacity to take title to the terminal properties in Des Moines, except upon a trust to hold the same in perpetuity "subject to the joint use and occupation of" the proprietary companies, for its Articles of Incorporation are premised upon the terms of the contract of January 2, 1882, which is recited in the same in full as a preamble, and it is further provided that all powers

exercised by such Company shall be in accordance with the terms and the spirit of the aforesaid contract.

There was no such limitation upon the corporate power of the Eastern Company.

(b) The original Articles of Incorporation of the Des Moines Company vested the management of the affairs of the Company in a Board of eight Directors, all of whom were to be nominated by the proprietary companies, or any grantees or assignees of either of them, and the Board of Directors was not permitted to make any contract, lease, or other agreement amounting to a permanent charge on the property of the Des Moines Company without the approval of the three proprietary companies or their assignees, and without further approval of the holders of more than three-fourths of the stock of the Des Moines Company.

There was no such limitation upon the power and authority of the stockholders and Board of Directors of the Eastern Company.

(c) Substantially all of the provisions of the tripartite agreement between the Eastern Company and its proprietary companies which are summarized in the extracts from the opinion of this Court quoted above are embodied in the Supplemental Agreement of May 10, 1889, between the Des Moines Company and its proprietors, and there are superadded thereto further and more stringent provisions evidencing the identity of the stock interest and property interest of the proprietary companies, among these being (1) the provision requiring the stock of the Des Moines Company to be issued in quarters represented by single certificates, *all* of which were to be non-transferable, without the unanimous consent of the proprietary companies; (2) the provision admitting a railway company becoming the purchaser of a surplus quarter interest in the stock of the company to the use and occupation of the terminal

properties of the Des Moines Company on a parity with the three original proprietors; and(3) the provision that in case any difference should arise between the parties respecting any matter *not* expressly provided for in the Agreement, the same should be referred to a board of arbitration to be determined not upon the basis of the legal rights of the Des Moines Company, as the holder of the legal title to the terminal properties, but upon principles of justice and equity.

Following the enumeration of the facts which, in its opinion, establish the character of the Eastern Company as the mere corporate agency or representative of the two proprietary companies, facts which manifestly fall far short of the facts disclosed in the case at bar, this Court further says:

"To accomplish this end they resorted to the familiar device of incorporating the Eastern Company, and in order that their purpose might not be defeated in the future, by the design or business necessity of either company, the contract between them which we have discussed, was entered into to prevent the corporate organization of the Eastern Company and the control of its operations from being changed by either owning company without the consent of the other, and the evidence makes it very clear that all through its corporate life the Eastern organization has been consistently used as a mere agency of the two owning companies to accomplish their original purpose.

"Much emphasis is laid upon statements made in various decisions of this Court that ownership, alone, of capital stock in one corporation by another, does not create an identity of corporate interest between the two companies, or render the stockholding company

the owner of the property of the other, or create the relation of principal and agent or representative between the two. *Pullman's Palace Car Co.* v. *Missouri Pacific Ry Co.*, 115 U. S. 587; *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364, 391; *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 413; *Interstate Commerce Commission* v. *Stickney*, 215 U. S. 98, 108; and *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 529, 530, and it is argued that since the order of the Commission requires that the tracks, the title to which is in the Eastern Company, be treated as the property of the stock owning companies, the effect of it, if enforced, will be to deprive the Eastern Company of its property without compensation and to render valuless its capital stock owned by the Milwaukee and Omaha Companies.

"While the statements of the law thus relied upon are satisfactory in the connection in which they were used, they have been plainly and repeatedly held not applicable where stock ownership has been resorted to, not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency of instrumentality of the owning company or companies. *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S., 257, 273, and *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516. In such a case the courts will not permit themselves to be blinded or deceived by mere forms or law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require.

"Satisfied as we are by the evidence that the Eastern Company is a completely controlled agency of the two companies which

> own its capital stock, we agree with the Supreme Court of Minnesota that the fact that the legal title to what are obviously terminal or spur delivery tracks is in the Eastern Company should not be permitted to become the warrant for permitting a charge upon shippers greater than they would be required to pay if that title were in the owning companies" (pp. 500-501).

From the foregoing it is quite clear that this decision must control the case at bar, unless it is distinguishable by reason of the fact that at the time the decision was rendered the whole capital stock of the Eastern Company was held apparently in equal proportions by the proprietary companies, whereas in the case at bar a part of the capital stock of the Des Moines Company is now claimed to be owned by the defendants Hubbell.

To urge such a distinction is to ignore the underlying principle of this Court's decision.

This Court held that the Eastern Company was organized and established by the two proprietary companies as a convenient and customary means of creating a tenancy in common in the railway property held in legal title by the Eastern Company "so that each might have the benefit of it as fully as if it were the sole owner."

The proprietary interest was represented by shares of stock of the Eastern Company issued to the proprietary companies, and at the date of this Court's decision the tripartite agreement between the Eastern Company and the proprietary companies had expired and the sole evidence or indicia of their title to and right to use and enjoy the common property was the certificates of capital stock of the Eastern Company. In other words, this Court disregarded the conventional status of the shares and held that in the

possession of the proprietary companies such shares represented a right to the common use and enjoyment of the properties held by the Eastern Company precisely as if that right had been definitely expressed upon the face of the stock certificates themselves.

The Des Moines Company was organized under substantially the same conditions as the Eastern Company and for the same purpose, and its capital stock was allotted to the proprietary companies for the same purpose as the stock of the Eastern Company was allotted to its proprietary companies, and, curiously enough, in the same identical proportions.

It is true that at a subsequent date certain shares of the Des Moines Company passed from the control of the proprietary companies into the hands of the defendant Hubbell, but this was not intended to destroy, and, in the nature of things, could not destroy the right of user or the equitable estates inhering in and represented by the shares retained by the proprietary companies for the reason—if for no other reason—that the parties themselves expressly so stipulated.

At the time the Purchasing Committee sold three one-eighth interests to the defendant Hubbell, retaining one-eighth in its own treasury, it was expressly agreed, as we have repeatedly pointed out in our original brief, "that a one-eighth interest in the capital stock should be sufficient to represent a proprietorship in the company" (Rec., 1603).

Moreover, even if there had been no express agreement of this character, the Court, in order to sustain the transaction, would be obliged to imply one. It is quite evident that the Milwaukee Company and Omaha Company could not now de-

feat the deliberate judgment of this Court by the simple device of selling to an individual, much less an individual who is an officer and director of the Eastern Company, a portion of their stock of the Eastern Company. If such a transaction were presented surely this Court would hold that the Milwaukee Company and the Omaha Company had no corporate power to alienate their interest in the corporate property of the Eastern Company by a transfer of their shares of stock of the Eastern Company, thereby disabling themselves in the performance of their public duties and in the exercise of their corporate franchises. Such a transaction if not held void would be construed as implying a reservation in the Omaha Company and the Milwaukee Company of every right of user represented by their original allotments of stock.

Certainly there is no substantial reason why an eighth stock interest in the Des Moines Company should not be given the same attributes as a one-quarter or a one-half stock interest in the Eastern Company—especially as the record in this case makes it abundantly clear that all of the parties so intended.

To argue further that the parties always intended that an allotment of stock in the Des Moines Company, originally an allotment of one-quarter and subsequently an allotment of one-eighth, should represent a proprietorship, is surely unnecessary. The evidence on this point is overwhelming.

In this connection, we desire, however, to refer again to the provisions of the Articles of Incorporation of the Des Moines Company attempted to be amended at the illegal stockholder's meeting of April 8, 1890.

Article IV provides that

> "At all future elections of directors it shall require the votes of more than seven-eighths of all the stock theretofore issued to elect any director."

The same Article provides that

> "With respect to the matters above mentioned, and all other matters, except the ordinary operation of the property, the Board of Directors can act only upon the unanimous vote of eight members thereof."

And Article IX provides that the Articles may only be amended by a vote of "more than seven-eighths of all the stock in favor thereof."

These provisions give a veto, amounting to a power of strangulation, to a vote of one-eighth of the stock of the Des Moines Company.

What conceivable reason could there be for giving to an eighth stock interest a veto power of this character in perpetuity, unless it be given as supplementary to or complementary of a proprietorship of which the primary attribute is a right to use and occupy the terminal facilities of the Des Moines Company in common with other proprietary companies as contemplated and provided for by the express provisions of the contract of January 2, 1882.

The theory upon which counsel for the defendants have developed their brief, namely, that there is great significance in the fact that the temporary trustees conveyed to the Des Moines Company titles in fee simple to the properties assembled for the proprietary Companies under the trust instrument of January 2, 1882, with the supposed result that such absolute conveyances were incon-

sistent with the establishment and continuance of a trust in the Des Moines Company, is cast in a series of questions beginning on page 264 of their brief, relating to subject matters upon which it is suggested that counsel for the complainants have been silent.

It is submitted that the queries raised by such questions have been fully disposed of, in our original brief, under Points I, II, V and VI, discussing the plan of the trust created, the reasons for the conveyance of complete legal titles in the trust properties to the Des Moines Company, and the harmonious relationship of the subsequent acts and circumstances to the trust thus created and developed.

Nevertheless, at the risk of repetition, we desire to answer categorically the questions thus submitted:

> Question (1). "If the organization of the defendant company was for the sole purpose of providing the corporate trustee referred to in the contract of 1882, as claimed on pages 99-100 of their argument, why did they organize a corporation having the power and assuming the obligation of a Railway Company and why did they organize a corporation for pecuniary profit?"

Previous to the making of the contract of January 2, 1882, the terminal properties acquired in the common interest of the three proprietary companies were held in the names of two corporations and two individuals. These properties were intended to be used for railroad purposes. It was, therefore, essential that they be concentrated in a railroad corporation having power to exercise all the prerogatives and to perform all of the functions of a common carrier, to the end that the

proprietary companies might effectively enjoy for railroad purposes the properties acquired and held for their common benefit. Furthermore, it was essential that these properties be conveyed to a single railroad corporation, to make practicable the mortgaging of the same and the issuing of bonds, in compliance with the terms of the trust instrument. An identical course was pursued by the organizers of the Eastern Company in the case of *Chicago, Milwaukee and St. Paul Railway Company* v. *Minneapolis Civic and Commercial Association*, above analyzed.

A railway corporation for pecuniary profit was organized because no other corporate form of railway company was possible under the laws of Iowa and, furthermore, because under paragraph Tenth of the trust instrument (Rec., p. 413) it was provided that railroad companies other than the proprietary companies might be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and (their) its proportion of the maintenance account."

> Question (2a). "If it was the purpose to transfer to the defendant Company simply the legal title to the Terminal property then why the following:
>
> Why did the Des Moines Northwestern Railway Company, in whose name the title to no part of the Terminal stood, in January, 1895, (1885) pass a resolution authorizing its officers to transfer to the Terminal Company all of its interests in the Terminal Company of whatever kind and character?"

In vesting the trust properties in a corporate trustee, as provided for by the trust instrument, it was appropriate that the proprietary companies should as they did do on January 1, 1885, take

coincident corporate action with this end in view. In this respect, the resolutions adopted by the stockholders of the Northwestern Company, on January 1, 1885, were identical with the resolutions passed by the St. Louis and Northern Companies on the same date. By these several resolutions, each proprietary company in unequivocal terms accepted the incorporation of the Des Moines Company as the corporate trustee provided for by trust instrument, and it was appropriate that concerted action be taken by the proprietary companies to vest in such corporate trustee the trust properties assembled in the names of the temporary trustees. Thus, in a determination of the character of estate intended to be conveyed by the proprietary companies to the Des Moines Company, it is without significance that the stockholders of the Northwestern Company adopted the above resolution, notwithstanding, that it had taken title to no part of the trust properties. *On the other hand, the fact that the Northwestern Company did not, as both shown and asserted by counsel for the Hubbells on pages 67 and 70 of their brief, make any deed of conveyance of any kind or character to the Des Moines Company is highly significant in demonstrating that the proprietary companies did not intend to convey their equitable estates in common to the Des Moines Company, for as this Court has said in Brown v. Fletcher, 235 U. S. 589, an equitable estate is an estate in property to the same extent as if the legal title thereto were vested in the beneficiary and such an estate passes by deed.* It is beyond question, as counsel for the Hubbells themselves state, that the proprietary companies had equitable estates in common in the terminal properties, while the

temporary trustees held legal title thereto. Therefore, if it had been the intent of the proprietary companies that such equitable estates should pass with the legal estates in the terminal properties to the Des Moines Company, the Northwestern Company could have divested itself of its own interests in this respect only by proper deed of conveyance.

> Question (2b). "Why did the Northwestern Company, the Northern Company and the St. Louis Company, each, in their resolutions of January, 1885, authorizing their officers to convey this property, use this language: 'convey, assign and transfer to said company all its right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract.' (Rec., Vol. II, p. 427.)"

The proprietary companies established their trust by virtue of the contract of January 2, 1882. The Des Moines Company became the corporate trustee provided for in this contract, both by express declaration of the incorporators and by virtue of the recital of the trust instrument in the Articles of Incorporation and the declaration contained in Article 2 that "all the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." The Des Moines Company in its resolution of January 1, 1885, accepted the trust and directed

its officers to procure the necessary conveyances and transfers to fully invest it with *the title* provided for in the trust instrument. For the purpose of carrying out the terms of the trust as expressly provided by the trust instrument, it was essential that the corporate trustee take legal title to the trust properties in fee simple. The trust estates thus being established and reserved by instruments other than the deeds of conveyance made by the temporary trustees, it was both appropriate and essential that the conveyances made by them should be without reservation.

> Question (2c). "Why did Col. Blodgett, whose integrity and ability are unchallenged, who had lived these transactions and who knew the intention better than can counsel or the Court, in preparing the deed of the St. Louis Company in carrying out these resolutions, prepare a warranty deed, and why did he formulate it so as to convey not only the property which stood in the name of that Company but also 'all of the real estate within the City of Des Moines * * * also all its embankments, bridges, sidetracks, * * * all its railroad property acquired or to be acquired and everything appurtenant to said railroad'?" (p. 458)

The answer to this is covered by our answer to Questions (2a) and (2b), and we may also add that Col. Blodgett, precisely because he was a lawyer of unchallenged ability, prepared the deed of the St. Louis Company in the form stated in the question, knowing that the warranty deed was not to be the instrument within which the trust was to be reserved.

Counsel for the Hubbells, failing to appreciate the significance of the principle here involved,

assert that the embodiment of the trust instrument in the Articles of Incorporation was a "mere solecism" and an "incongruity" (Brief, p. 191).

From their standpoint this is indeed true; and their own admission that their whole argument is utterly inconsistent with the existence of these reservations in the organic law of the Des Moines Company is the best possible demonstration of the complete fallacy of their fundamental contention.

> Question (2d). "Why did the Northern Company in its deed after describing the property which stood in his name use the following language:
>
> 'Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the revrsion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, etc.'?" (p. 456).

The answer to this is covered by our answer to Questions (2a) and (2b).

> Question (2e). "Why was it provided in the original articles of incorporation of the defendant Company that its capital stock should be issued in payment for the Terminal property?"

It was for the reason that it was contemplated that the stock would be apportioned among the proprietary companies as evidencing and measuring their respective equitable estates in the com-

mon properties, precisely as was done with the stock of the Eastern Company in the case of *Chicago, Milwaukee and St. Paul Company* v. *Minneapolis Civic and Commercial Association, supra.*

> Question (2f). "Why was it recited in the contract of May 10th, 1889, that the defendant Company owned this property?"

The primary purpose of this agreement was to give assurance to the holders of the bonds issued under the mortgage of the Des Moines Company that the interest on such bonds would be duly and punctually paid by the proprietary companies, and this agreement was formulated and executed primarily as an additional security for the bonds issued under the mortgage, which mortgage also recited that the Des Moines Company was the owner of the terminal properties. Moreover, Judge Hook, in his dissenting opinion calls attention to the fact that such recital of ownership is based upon the provisions of the charter of the corporation and that in such charter is incorporated the trust instrument.

> Question (3). "If the contract of May 10th, 1889, was supplemental to the contract of January 2, 1882, why does it not recite this fact?"

This fact is recited in the resolution authorizing this supplemental agreement and a further recitation of the fact was unnecessary, especially in view of the fact that the agreement is fundamentally a supplemental agreement, in that it only provides for the details of operation of the terminals for the period of thirty years, whereas, the contract of January 2, 1882, is perpetual. In connection with this subject matter, we wish to refer

to the assertion in the brief of counsel that we have misquoted the resolution authorizing the supplemental agreement by stating that it provided for a thirty year agreement, whereas, the record in fact shows that the resolution provided for an agreement not for *thirty years* but for *three years*. (Brief, pp. 266-268.) It is true that the record is as stated by counsel for the Hubbells, but it obviously contains in this respect a typographical error which has been treated as such from the inception of this litigation, and no suggestion was ever made in oral argument or printed argument, of which we are aware, that the fact was otherwise.

In concluding our reply argument we especially direct this Court's attention to that division of the brief of counsel for the Hubbells (pp. 258, 259) where they defend their alleged title to the five-eighths stock interest in the Des Moines Company which they took from the treasury of the consolidated company under the several transactions analyzed in Point VII of our original brief.

Their defense of these transactions is not even a plea in confession and avoidance; it is indeed a plea of guilty.

The statement that the mortgage debt to the Metropolitan Trust Company through whom the St. Paul Company claims title has long since been paid is not true. The record shows that the mortgage to the Metropolitan Trust Company was duly foreclosed, that the bondholders themselves were forced to buy in the property and that there was a substantial deficiency which ought to have been satisfied by application of the unmortgaged assets wrongfully appropriated by the Hubbells (Rec., 651).

The Hubbells are, however, mistaken in assuming that the security holders of the defunct consolidated company are alone entitled to complain of the breach of trust. As we pointed out in our original brief (Points VI and VII), the consolidated company as one of the equitable tenants in common was itself subject to all the disabilities of a fiduciary in dealing with aliquot interests in the trust properties and the defendants Hubbell stand in no better position than their controlled vendor.

The Hubbells do not attempt to controvert this proposition, and we submit that it is incontrovertible.

To emphasize and illustrate the application of this proposition we refer again to the case of *Chicago, Milwaukee and St. Paul Railway Company* v. *Minneapolis Civic and Commercial Association, supra.*

Let it be assumed that an individual who was an officer and director of the Eastern Company and also a director of one or both of the proprietary companies by a series of transactions that were fraudulent *per se* and confessedly in violation of the express provisions of the tripartite agreement had obtained possession of the 145 shares (the two surplus quarters) of the stock of the Eastern Company which under the terms of the tripartite agreement had been issued to "a trustee for the Eastern Company" and let it be further assumed that this individual should assert that his possession and alleged ownership of these shares established the autonomy and independence of the Eastern Company so that it was free to do what this Court held that it could not do in the case in question. Would any lawyer seriously

contend that the two proprietary companies, upon a discovery of the fraudulent character and object of the transaction, would not be entitled to a rescission of the transaction and a restoration of the *status quo ante?*

The fact that such relief in the instant case will deprive the Hubbells of any legitimate profit which they might still realize by transferring the shares to other railway companies is of no consequence. Equity is indifferent to the ill-fortunes of a faithless fiduciary. As the Hubbells, lured by the hope and expectation of inordinate gain, elected to ignore the requirements of conscience and good faith and set about deliberately to destroy property interests of immense value belonging to their *cestuis que trustent*, surely they will not be heard to complain if at the end of a long, tedious and costly litigation a court of equity should give the injured *cestuis* their full and complete measure of equitable relief.

Finally attention should be called to the fact that such complete measure of relief cannot be given the complainants with the continuance in the Hubbells of the five-eighths stockholding interest in the Des Moines Company now claimed to be owned by them, for any decree which protects the right of user belonging to the complainants as equitable tenants in common of the terminal properties and still leaves the Hubbells identified with, or in control of, the corporate activities of the Des Moines Company without responsibility in this respect either to the public or to the complainants, and with power to exploit such control in furtherance of the private real estate operations of F. M. Hubbell and Son in the industrial precincts of the City of Des Moines, would both perpetuate

a situation in principle indefensible and create paralysis in the legitimate development of the trust enterprise and in the performance by the proprietary companies through it of their duties to the public.

The brief and argument of counsel for the Hubbells upon the controversy as to the so-called surplus earnings, is equally as unresponsive as their argument on the main case. We have nothing to add to the argument in our original brief on this controversy, except to reiterate our belief that it involves no public interest and no rule or principle of law which public interest requires this Court to determine, and that the writ of *certiorari* issued on petition of the Hubbells may properly be dismissed.

In the brief of counsel for the Hubbells (p. 269), they question the statement in our original brief that these accumulations now amount to approximately $2,000,000.00, and say:

> "There is nothing in the record to sustain this statement and it is not true as a matter of fact. The record does show that a substantial sum involved in this issue."

As we stated in our original brief, the record does not show the amount of these accumulations at the present time, the testimony having been taken a number of years ago.

It seems proper, however, that this Court should be apprised of the precise condition of the case at the time of the argument, relying in this

respect upon the good faith of counsel. The fact is that on December 31, 1917, these accumulations, as reported by joint accountants employed to audit the books of the Des Moines Company, amounted to $1,730,582.58. The subsequent accretions, including interest on the fund, practically all of which is in cash, should bring the present total to a figure well above $2,000,000.00.

All of which is respectfully submitted.

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Vol. I

TRANSCRIPT OF RECORD

82

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]66

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL.

No. [redacted]67

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITIONS FOR CERTIORARI FILED JANUARY 24, 1921.

CERTIORARI AND RETURNS FILED APRIL 4, 1921.

(26,965)

(26,905)

(26,906)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 278.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL.

No. 279.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

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Original.

TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Eighth Circuit.

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO. et al., Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY, et al., Appellees.

No. 4886.

DES MOINES UNION RAILWAY COMPANY, et al., Appellants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO. et al., Appellees.

Appeals from the District Court of the United States for the Southern District of Iowa.

Filed February 3, 1917.

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1918, of said Court, before the Honorable William C. Hook, the Honorable Walter I. Smith and the Honorable Kimbrough Stone, Circuit Judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

F. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the third day of February, A. D. 1917, a transcript of record, pursuant to an appeal and a cross-appeal allowed by the District Court of the United States for the Southern District of Iowa, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in certain causes wherein the Chicago, Milwaukee & St. Paul Railway Company, et al., were Appellants, and the Des Moines Union Railway Company et al., were Appellees, and the Des Moines Union Railway Company et al., were Appellants, and the Chicago, Milwaukee & St. Paul Railway Company et al., were appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

Pleas and Proceedings in a cause lately pending in the the District Court of the United States for the Southern District of Iowa, Central Division, wherein Chicago, Milwaukee & St. Paul Railway Company and The Wabash Railroad Company are Appellants and Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Appellees and numbered 4001-Eq. (old number 2149-Eq.)

Appearances:

J. C. Cook, Cedar Rapids, Iowa. John N. Hughes, Cedar Rapids, Iowa, Attorneys for C. M. & St. P. Ry. Co.
J. L. Minnis, St. Louis, Mo., Attorney for Wabash Railroad Co.
J. L. Parrish, Des Moines, Iowa. F. W. Lehmann, St. Louis, Mo., Attorneys for Defendants.

WM. C. McARTHUR,
Clerk Des Moines, Iowa.

(Citation on Appeal by Chicago, Milwaukee & St. Paul Ry. Co. et al.)

In the District Court of the United States, Southern District of Iowa, Central Division.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE Wabash Railroad Company, and The Wabash Railway Company, Complainants,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL, and F. M. HUBBELL & SON, Defendants.

UNITED STATES OF AMERICA:

To Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the 8th circuit at the city

of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the District Court of U. S., in and for the southern district of Iowa, wherein Chicago, Milwaukee & St. Paul Railway Company, and The Wabash Railroad Company, and The Wabash Railway Company are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said Chicago, Milwaukee & St. Paul Railway Company, and The Wabash Railroad Company, and The Wabash Railway Company, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin J. Wade, Judge of the United States District Court, for the southern district of Iowa, this 18th day of October, 1916.

MARTIN J. WADE,
Judge of U. S. District Court.

Service of the above and foregoing Citation is hereby acknowledged this 19th day of October, 1916.

F. W. LEHMANN,
PARKER, PARRISH & MILLER,
Attorneys for Des Moines Union Ry. Co., Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son.

Endorsed: Filed in the District Court on October 23, 1916.

(*Citation on Appeal by Des Moines Union Ry. Co. et al.*)

The United States of America to the Chicago, Milwaukee & St. Paul Railway Company, The Wabash Railroad Company, and Wabash Railway Company, Complainants, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the district court of the United States in and for the southern of Iowa, wherein the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F.

M. Hubbell Son, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin J. Wade, Judge of the United States district court for the southern district of Iowa, this 13th day of November, A. D. 1916.

MARTIN J. WADE,
Judge of the District Court, Southern District of Iowa.

We hereby accept due and legal service of the foregoing citation this 18th day of November, A. D. 1916.

J. C. COOK AND
JOHN N. HUGHES,
COOK, HUGHES & SUTHERLAND,
Attorneys for Complainant, Chicago, Milwaukee & St. Paul Railway Company.
JAMES L. MINNIS,
Attorney for Complainant- The Wabash Railroad Company and Wabash Railway Company.

Endorsed: Filed in the District Court on Dec. 20, 1916.

Be It Remembered that on the 5th day of February A. D. 1907, there was filed in the Circuit Court of the United States for the Southern District of Iowa, Central Division, a bill of complaint in cause No. 2449-Eq. wherein Chicago, Milwaukee & St. Paul Railway Company and Wabash Railroad Company were complainants and Des Moines Union Railway Company was defendant which said bill of complaint is in words and figures as follows, to-wit:

Bill of Complaint.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY and THE WABASH RAILROAD COMPANY, Complainants,

vs.

DES MOINES UNION RAILWAY COMPANY, Defendant.

In Equity.

To the Honorable the Judges of the Circuit Court of the United States, for the Southern District of Iowa, Central Division:

The Chicago, Milwaukee & St. Paul Railway Company, a railroad corporation created by and under the laws of the State of Wisconsin.

and a citizen of said State, having its principal office in the City of Chicago, State of Illinois, and the Wabash Railroad Company, a consolidated railroad corporation organized under the laws of the States of Ohio, Indiana, Illinois, Michigan and Missouri, first created by and under the laws of the State of Ohio, and a citizen of said State, having its principal office in the City of St. Louis, State of Missouri, bring this, their bill, against the Des Moines Union Railway Company, a corporation created by and under the laws of the State of Iowa, having its principal office in the City of Des Moines, in said last named State, and a citizen of said State of Iowa:

I.

And thereupon your orators complain and say that on and prior to the second day of January, 1882, the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St Louis, Des Moines and Northern Railway Company, were *respectfully* engaged in the construction and operation of separate and independent lines of railroad within the State of Iowa, the railroad of the first named Company extending from Albia to the City of Des Moines, the railroad of the second named company extending from Spirit Lake to the said City of Des Moines, and the railroad of the last named company extending from Boone to the said City of Des Moines. That said companies, desiring to economize in the cost of construction and operation of terminal facilities in said City of Des Moines, where the said lines of railroad converge and terminated, and to reduce as far as practicable the cost and expense of handling and interchanging traffic between said railroads, and with other railroads entering said city, all of which would result in great advantage to the public as well as to such railroad companies, united in an arrangement for the acquisition, construction and operation of depot, yard and other terminal facilities in said City, to be held and used in common by and for the benefit of said Railroad Companies, their successors and assigns.

II.

Your orators further show that in pursuance of the purpose aforesaid, said companies purchased and acquired certain properties in said City of Des Moines, and in order to more clearly define and carry out the aforesaid purpose of acquiring and establishing terminal facilities to be held and used by and for the common benefit of all said railroads, a written contract was made and executed by the parties above named, on or about the 2nd day of January, A. D. 1882, which contract is in words and figures substantially as follows:

"This Agreement, made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the several individual signers hereto, Witnesseth:

First. The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

Second. In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of Jas. F. How, individually, Jas. F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third. It is mutually agreed by the parties above named, that the expense incurred by the purchase and improvements above mentioned and such other as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchase and improvement.

Fourth. The title to said property shall be and remain in a trustee to be named by agreement by said Companies, but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth. The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustees upon demand and reimbursement.

Sixth. The Des Moines and St. Louis Company, shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two companies, the apportionment to be determined by the use thereof which they shall respectively make as

evidence by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

Seventh. The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

Eighth. It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories and other sources of trade in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge tracks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefor shall be determined by arbitration.

Ninth. Taxes and assessments levied upon said property shall be charged to maintenance account.

Tenth. In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the Companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies, parties hereto.

Eleventh. All differences arising under this agreement shall be referred to arbitration; one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company, and the third by the two thus selected. The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis, and the Des Moines Northwestern, then the second arbitrator shall be chosen by the Des Moines Northwestern, and not by the St. Louis, Des Moines & Northern.

Twelfth. It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street, in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement.

In Witness Whereof, the said Railway Companies parties hereto have caused these presents to be executed by their respective Presidents under their respective corporate seals, attested by the Secretaries of the said Companies, and the several individual signers hereto have executed the same the day, year first above written.

THE DES MOINES AND ST. LOUIS RAILWAY COMPANY,
By J. S. CLARKSON,
President.

Attest:

J. S. POLK, *Secretary.*

THE DES MOINES NORTHWESTERN RAILWAY COMPANY,
By J. S. POLK,
President.

Attest:

J. S. RUNNELLS, *Secretary.*

THE ST. LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY,
By J. S. CLARKSON,
President.

Attest:

J. S. POLK, *Secretary.*

Your orators further show that shortly prior to the execution of the above named contract, by arrangement with the Des Moines and St. Louis Railroad Company, and the Des Moines Northwestern Railway Company, the Wabash, St. Louis and Pacific Railway Company, became lessee of all the rights and properties of said two companies, and furnished the money and paid for said terminal real estate and improvements on behalf of said two last named Companies, and said Wabash, St. Louis and Pacific Railway Company also gave its consent in writing to the execution of said contract of January 2nd, 1882, by said two companies.

III.

Your orators further show that in further execution of said contract, and especially of paragraph Fourth thereof, providing that the terminal properties should be held by a Trustee for the joint use and occupation of all of said railway companies upon the terms in said contract described, a meeting was held at the instance of said contracting parties, by certain individuals in said City of Des Moines, on the 10th day of December, 1884, for the purpose of organizing a corporation to take and hold said terminal properties as such Trustee in accordance with the terms of said contract. That at said meeting the following resolution and Articles of Incorporation of the defendant the Des Moines Union Railway Company, were unanimously adopted, to-wit:

"Resolved, that for the purpose of carrying out the objects and purposes of the agreement heretofore, to-wit, on the 2nd day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company and others (which is set out in full in the following Articles of Incorporation); That the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company, to-wit:

Whereas, The Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Iowa, and have secured certain franchises, purchased certain realty and made certain improvements thereon—which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions, at their joint expense—in accordance with a contract made and entered into by and between said Companies and Grenville M. Dodge, and James F. How, Trustees, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to-wit,

(Here follows agreement of January 2nd, 1882, copies in Paragraph II of this bill, which to avoid repetition, is omitted here.)

Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said Companies; and

Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was the understanding of the parties that such Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto;

Now Therefore, for the purpose aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following,

Articles of Incorporation.

Article I. The name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be Des Moines, Iowa.

Article II. The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, store-houses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed shall possess all the powers conferred upon corporations for pecuniary profit by Chapter 1 of Title IX of the Code and the amendments thereto. All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract, entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, James F. How, Jas. F. How, Trustee, and Grenville M. Dodge. The said Company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company, provided that the assent in writing of the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and The St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

Article 3. The capital stock of this corporation shall be One Million Dollars ($1,000,000.00), which shall be divided into shares of One Hundred Dollars ($100.00) each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Rail-

way Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How, and Grenville M. Dodge.

Article 4. The affairs of the company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of each year. The provisional Board of Directors, who shall hold office until the First Thursday in January, A. D. 1886, shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnels, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company, and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certificates shall be conclusive.

The provisions herein with respect to the nomination for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders duly called, and shall have been approved by more than three-fourths of all the stockholders, and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided.

The Directors shall elect, from their number, a President, Vice President, Secretary and Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

Article 5. The President, Vice President, Secretary and Treasurer, shall possess the powers and discharge the duties of like officers of

similar corporations, subject to the limitations imposed by these Articles. The officers, hereby constituted, who shall hold their places until the first Thursday in January, 1885, or until their successors are duly chosen, shall be as follows:

President ..... G. M. Dodge.
Vice President ..... Jas. F. How.
Secretary & Treasurer ..... F. M. Hubbell.

Article 6. The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article 7. The highest amount of indebtedness to which the corporation may at any time subject itself shall be the amount authorized by law.

Article 8. Meetings of the Board of Directors may be called by the President, or, in case of his absence or disability, by the Vice President, and shall be called upon request preferred in writing by two members of the Board.

Article 9. These articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of the stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation—published in the City of Des Moines, Iowa.

Article 10. This corporation shall commence on the fifth day of December, A. D. 1884, and continue fifty years, with the right of renewal.

In Testimony Whereof, we have hereunto set our names this 10th day of December, A. D. 1884.

J. S. POLK.
F. M. HUBBELL.
J. S. RUNNELLS."

And thereupon the said Articles of Incorporation were on said same day duly signed and acknowledged by said individuals, and recorded as required by law, and the said Des Moines Union Railway Company was accordingly duly incorporated under the laws of Iowa.

IV.

And your orator further show that thereafter, on or about the first day of January, 1885, said Railroad Companies, H. M. Hoxie and James F. Hoa notified said Trustee Company, the Des Moines Union Railway Company, that each had approved its organization, and had directed the surrender and delivery to it of the property and franchises mentioned in and acquired in pursuance of said contract of January 2nd, 1882, and requested it to take possession thereof, and maintain and operate the same for the purposes and on the terms stated in said contract, and that they desired to transfer said property to it in accordance with said contract; whereupon said Des Moines Union Railway Company accepted said proposed transfer management and operation of said terminal properties and franchises, and instructed its President to make such order as might be necessary to render its control and management effective as provided in said contract, and also appointed a Committee consisting of its President, Vice President, Secretary and Treasurer, to arrange with the several parties to said contract for the transfer of said properties and franchises and agree with them in reference to the amounts of its bonds and capital stock to be delivered to each of them in payment for said properties, and to procure such conveyances and transfers as might be necessary to fully invest it with the title, control and management of said properties, as Trustee, in accordance with said contract of January 2nd, 1882; and thereupon authorized the issuance of bonds and stock for the purpose aforesaid.

V.

Your orator further show that thereafter, on or about November 8th, 1887, said companies having the equitable and beneficial ownership of said terminal properties respectively directed and individuals to make conveyance of the portions held by them in Trust, as aforesaid, to said Trustee Company, in accordance with the contract of January 2nd, 1882, and thereupon said James F. Hoa executed and delivered to said Des Moines Union Railway Company, his certain deeds of conveyance, reciting that the property therein described had been purchased and paid for with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company, and the legal title thereto for convenience conveyed to him in trust, and that the same was so acquired and held for the purposes and upon the terms set forth in said contract of January 2nd, 1882, and conveying to said Trustee Company, in pursuance of the above named direction of said

Companies, and for the consideration of One Dollar ($1.00), the real estate so held by him in Trust as aforesaid.

And thereupon said G. M. Dodge did likewise convey and quitclaim to the said Des Moines Union Railway Company, in accordance with the aforesaid direction, and for the expressed consideration of One Dollar ($1.00) the real estate held by him in Trust as aforesaid.

All of which deeds of conveyance respectively appear of record in the office of the Recorder of said County of Polk, State of Iowa, in Book 2[illegible], pages 170, 172, 173, 174.

And thereupon the Des Moines and St. Louis Railroad Company as like grantor assigned and conveyed to said Des Moines Union Railway Company certain real estate, property and franchises acquired in its name, to be held and used in trust for the purposes aforesaid, all of which properties so conveyed to said Trustee Company, are included in the description of the properties embraced in the mortgage or Deed of Trust of November 1st, 1887, as hereinafter set out.

VI.

Your orator further show that in pursuance of the authority, and for the purposes above recited, an issue of eight hundred (800) bonds of the par value of One Thousand Dollars ($1000.00) each, was provided for by said Des Moines Union Railway Company and secured by mortgage or deed of trust bearing date the first day of November, 1887; and executing to the Central Trust Company of New York as Trustee, in trust to secure the aforementioned bonds, the terminal properties acquired and then held as aforesaid by the said Trustee Company, and described therein as follows:

"Commencing at the east end of Market Street, in Brooks & Co.'s addition to Des Moines, Iowa, and running thence west on Market Street, crossing Twenty-fourth Street, Twenty-third Street, Twenty-second Street, Nineteenth Street and Seventeenth Street to the west line of East Eleventh Street in said City; thence westerly along and across Vine Street from East Eleventh Street to East Eighth Street as vacated, over and along the alleys in blocks twenty-one, twenty-two and twenty-three of the town of Demoine, now included in the City of Des Moines, crossing East Twelfth Street, East Eleventh Street, East Tenth Street and East Ninth Street, thence west between Court Avenue and Vine Street, crossing all the streets and alleys of said

City between East Ninth Street and East Fourth Street, thence northerly along the south alley between Court Avenue and Vine Street in said City to West Fifth Street, crossing East Fourth Street, East Third Street, East Second Street and Front Street, Water Street, West Second Street, West Third Street, West Fourth Street and West Fifth Street, and across all north and south alleys between East Fourth Street and West Fifth Street of said City, thence westerly in said City on the alley between Cherry Street and Vine Street from West Fifth Street to the line of Fourteenth Street or Section Street if extended south of Mulberry Street, crossing next Sixth Street, next Seventh Street, West Eighth Street, West Ninth Street, West Tenth Street, West Eleventh Street, West Twelfth Street, West Thirteenth Street and thence westwardly to Fairbank Street and crossing all the north and south alleys of said City between West Fifth Street and West Thirteenth Street, together with all other lines, branches, extensions, switches and side tracks, which are now or may be hereafter constructed, to connect the lines of property of said Company with the lines of other railway companies converging in Des Moines, Iowa, or which are or may be built to any other point within said City.

Also all lots of land upon any part of which the said railroad, its extensions, side tracks or branches, or any of them, or any depots, shops, round houses, water tanks or other structures now are or may be hereafter constructed, and of which the said railway company is or may become the owner or holder by deed, lease or other beneficial interest, to the full extent of said railway company's interest therein, as the same does now or may hereafter exist.

Also the bridge of said railway company over and across the Des Moines River in said City, touching upon and lying immediately north of the south alley between Court Avenue and Vine Street in said City, with all the approaches and appurtenances thereto, owned or used by said company in connection therewith.

Also all the property and realty embraced in the several conveyances made to the said Des Moines Union Railway Company by James F. Hoy, Trustee, James F. Hoy, Cornelia M. Hodge, the Des Moines Northwestern Railway Company, the Des Moines and St. Louis Railway Company, and the St. Louis, Des Moines and St. Louis Railway Company, and the St. Louis, Des Moines and Northern Railway Company, or any other person or corporation not specially named above, and for which conveyance reference is hereby prayed to the records of Polk County, Iowa.

And all other branch or tributary roads which are now owned or that may be hereafter acquired, located or constructed, including the right of way thereof, the road-bed thereof, the superstructure and tracks placed or to be placed thereon and all station, depot and shop grounds, yards and other grounds used and to be used in connection therewith, and all rails, railways, bridges, tracks, sidings, switches, fences, turn tables, water tanks, viaducts, culverts main passenger and other depots, station houses, freight houses, machine shops and all other structures, buildings and fixtures necessary acquired or to be acquired for the use of the parties of the first part or the business thereof.

It being the intention of said Des Moines Union Railway Company to convey to said trustee, not only the property specifically described herein, but also

All and Singular the whole line of railroad of the party of the first part, as the same now is or may be hereafter located, constructed or acquired under its charter, with all its tracks, side tracks and switches; and also all lines of road connecting its tracks with other lines of railroad with which it may join or intersect; and all such spurs, extensions, side tracks, yard tracks, turnouts, switches and appurtenances as it has constructed or may hereafter construct to enable it to connect with warehouses, elevators, stockyards, mills and manufacturing establishments along or near its route, as well as all real estate now owned or hereafter acquired, with all the tracks and improvements thereon which said Des Moines Union Railway Company now has or may hereafter find it necessary or proper to have in order to enable it to transact a general railway transfer business in and about the City of Des Moines, Iowa.

Together with all the rolling stock, machinery, tools, implements, fuel and materials of the party of the first part now owned or that may be hereafter acquired for construction, reconstruction, operation, exploration, improvement, or equipment of said road, and its appurtenances, or any part thereof, or in or for the business of said railroad, and all the real estate of said party of the first part wherever the same may be situated, now held or hereafter to be acquired.

Together with all the corporate rights, privileges and franchises of the said party of the first part, now possessed or that may be hereafter acquired, connected with or relating to the said railroad and the construction, maintenance, use and enjoyment of the same.

Together with all the streets, ways, passages, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of the hereby granted and mentioned premises and estates, appertaining or belonging thereunto, with all the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property claim and demand of every nature and kind whatsoever of the said party of the first part now owned and possessed, or that may be hereafter acquired, as well at law as in equity, of, in and to the same, and every part and parcel thereof."

Your orators further show that the execution of said mortgage and issue of said bonds as aforesaid, was duly authorized and approved by the said proprietary railroad companies, and the same thereupon became and constitutes a first lien upon all the said terminal properties and facilities then held or thereafter acquired as provided in said mortgage. And your orators further show that the aforesaid bonds were issued to the amount of the cost of said terminal properties and improvements, and delivered to said proprietary companies to the amount of their respective portions of such cost, and said bonds have likewise from time to time been issued and delivered to other companies and persons in payment for moneys advanced for additional terminal properties and improvements, or sold, and the proceeds thereof applied in payment or re-imbursement of such advances, all as contemplated and provided for in said contract of January 2nd, 1882, and the Articles of Association of said Trustee Company.

VII.

Your orators further show that it was agreed between the said Trustee Company and the proprietary companies that in accordance with the said Articles of Association and contract of January 2nd 1882, said last named companies should use such terminal properties, paying the operating expenses, taxes and interest on said bonds then or thereafter issued, after deducting all amounts received by said Trustee Company from other sources; and thereafter for the purpose of specifying in detail the conduct and operation of said properties, an agreement in the form of a lease was prepared at the instance of said Trustee Company, and executed by said Trustee Company and the then beneficial owners of said properties (the Des Moines and Northwestern Railway Company having in the meantime succeeded to all the rights, title and interest of the Des

Moines Northwestern Railway Company), which agreement is substantially in the following form:

This agreement, made and entered into this 10th day of May, A. D. 1889, by and between the Des Moines Union Railway Company, of Des Moines, Iowa, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part, Witnesseth That

Whereas, the said party of the first part is the owner of valuable terminal facilities in the City of Des Moines, Iowa, as hereinafter described; and

Whereas, the respective parties of the second part have railroads in the State of Iowa, which terminate at, or run into and through the City of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party; and

Whereas, said party of the first part has become incorporated and organized under the laws of the State of Iowa for the purpose of owning and operating a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said City to Farnham Street, in the western part thereof; and

Whereas, said party of the first part, in pursuance of said charter has acquired and now owns a railway in said City, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round-houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and

Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined.

Now Therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows:

Section One. The party of the first part agrees to proceed with reasonable dispatch, and whenever its board of directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said City of Des Moines, a union passenger depot and such additional switches, sidings, freight depots, round-houses, shops, water tanks, and yard appurtenances, as the board of directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase or otherwise such additional real estate as may be necessary.

Section Two. The amount of such additional grounds and the form, character and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement and repairs thereof, shall in all matters not otherwise specifically provided for herein, be determined by the board of directors of said first party.

Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay to said party of the first part a sum of money, to be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round-houses, engine-houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round-house

transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month; and it is expressly understood and agreed that in computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard gauge cars; and that the term 'wheelage' as used in this contract means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

Section Five. If the amount, or any part of the amount, due from any other railroad company or companies for the use of said property or any part thereof, shall not be paid when due, then the sum so due and unpaid shall also, on demand of said first party, be paid to it by said second parties on a wheelage basis as hereinbefore defined.

Section Six. The party of the first part, in consideration of the payments to be made to it by said parties of the second part, hereby grants to said second parties the use of its terminal properties aforesaid, and said first party agrees to keep and maintain its said terminal properties in good condition and repair, and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such servants and employes as shall be reasonably necessary for the conduct of its business and the moving and handling of the cars, passenger and freight, of said second parties, and the housing and care of their engines. And said first party further agrees to switch all cars, handle all freight, house and care for all engines of said second parties which may be delivered to it or which may come upon its said premises, in so far as either of said second parties may request it so to do.

Section Seven. The party of the first part shall on or before the tenth day of each month, or as soon thereafter as practicable, make

up and present to each of the parties of the second part, an account showing the amount due thereunder for the preceding month, and payment thereof shall be made within five days thereafter.

Section Eight. So far as relates to the rental necessary to raise a fund for the payment of interest upon the mortgage bonds, this contract shall be retrospective and shall govern from and after the first day of May, 1888.

Section Nine. The cost and expense of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping, washing and firing up, shall be borne by each of said companies in such proportion as the number of road engines of each company in and out of said engine house shall bear to the whole number of road engines in and out of said engine house during the period for which said costs and expenses are made up. All repairs to engines shall be charged for and paid by each of said companies for whom the work is done on the basis of actual cost of labor and material, and all services rendered, supplies and labor furnished to any of the railroad companies, parties hereto, for their own benefit, and which are not properly a portion of the joint expenses, shall be charged directly to said company, on such equitable terms as may be agreed upon between the superintendent of the party of the first part and the superintendent of the party to whom the service is rendered.

Section Ten. It is further agreed between the party of the first part and each of the second parties hereto, that if any one of the parties of the second part shall, for any reason fail or refuse for a period of thirty days after the same has become due, and has been demanded, to pay the several sums under this contract as aforesaid, then the party of the first part may take from any moneys in its hands belonging to said defaulting party, or in the hands of its agents, the amount of said sums and apply a sufficient amount thereof to meet said demands. Should the sum in the hands of the party of the first part, or its agents, be insufficient to meet the amount due under this agreement and the same shall still remain unpaid, said first party shall have the right to exclude said delinquent party from said premises, and the party or parties so failing to pay shall forfeit all rights under this agreement, and the first party may thereupon with the consent of the remaining parties of the second part, transfer and assign the rights of the party so failing to any other party or parties, for such sum as the Board of Directors of the first party may determine, and the same may be thereafter held and enjoyed

by such assignee or assignees. But it is understood and agreed that nothing herein shall prevent the party of the first part from enforcing its claims against any delinquent lessee or lessees, parties of the second part, by any proper action either at law or in equity, to recover the amount which may be at any time due and unpaid, in case said party of the first part shall so elect.

Section Eleven. The directors of the party of the first part hereto shall appoint an executive committee, of which each party of the second part shall have one member as its representative.

Section Twelve. The management of the depot grounds and terminal facilities, including station, buildings, tracks, round houses, shops, etc., shall be in charge of a superintendent who shall be appointed by the executive committee, subject to the approval of the board of directors. Said superintendent shall, in the performance of his duties, be governed by such regulations as may from time to time be established by said executive committee, or by the Board of Directors.

Section Thirteen. The salary of said superintendent shall be fixed by the executive committee, subject to the approval of the board, and the compensation of other agents and employes shall not be higher than is paid by railroad companies in the vicinity for similar services.

Section Fourteen. Said terminal properties shall be used by said railroad companies, parties of the second part, for all their passenger trains destined for or departing from said City of Des Moines, Iowa, and said second parties shall run all their trains to and from said depots and terminal properties, unless otherwise expressly permitted by said executive committee.

Section Fifteen. Said executive committee, subject to the board, shall make and publish and enforce such rules and regulations for the use, management and operation of said terminal station, depots, depot grounds, yards and tracks, by all the parties hereto, as it may from time to time consider necessary.

Section Sixteen. The said party of the first part shall at all times protect its depot buildings and improvements and furniture by adequate insurance against loss by fire, and the cost of such insurance shall be paid as herein provided for.

Section Seventeen. The party of the first part shall keep accurate books of accounts showing in detail all the expenditures made by it

on account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance and repairs, and other disbursements upon and about the premises, embraced in this agreement, and said books shall show the amount of work done for, and fuel or other material furnished to each party to this agreement, and the amount of fuel or other material received form each party hereto, and said books shall give such other details as will at all times enable the parties hereto to make accurate settlements of their accounts as provided in this agreement, and said books may at all reasonable and proper hours be examined and inspected by the superintendent, auditor or treasurer of said second parties, or by an authorized accountant.

Section Eighteen. The said party of the first part shall also keep an accurate record of all the engines and cars of each party hereto arriving at and departing from said terminal station, or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched onto or from said terminals for the benefit of the several parties hereto, or others; and of all the engines which have been housed at said engine houses in each month; and as hereinbefore provided, said first party shall furnish to the other parties hereto, a full, true and detailed statement of all the expenditures made, of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section Nineteen. All damages which may be received by any engine or engines, car or cars of any party hereto, while being switched by said first party at or upon any part of the premises embraced in this agreement, shall be repaired by the party to whom such rolling stock belongs, and the cost of such repairs shall be borne and paid by each party hereto on a wheelage basis, as hereinafter provided.

Section Twenty. All damages to property other than as above described, caused by any engine or engines, car or cars, or either party hereto, or by any imperfection in the track or tracks laid on said premises, and all injuries which may at any time be received by any person or persons in, around, about or upon said terminal station, depot grounds, yards, etc., shall (if settled at all,) be adjusted and settled by said first party and the sums thus paid in settlement or settlements shall be borne and paid by each of the parties hereto

upon said wheelage basis, as herein defined: provided, however, that each party hereto shall, at its own sole cost and expense, bear, settle and pay all damages to property belonging to itself or to third parties, and all injuries to persons, when said damages or injuries are done to or by its own trains, while said trains are being moved by its own engines and operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the servants of said first party, or by some imperfection in its track or tracks, and in case such damages or injuries are occasioned by the act, negligence or fault of the servants of said first party, or by an imperfection in its said tracks, then settlements and payments shall be made by said first party as in this section first provided.

Section Twenty-one. All persons employed and paid either permanently or temporarily by said first party in the maintenance and operation of said terminal station, depot grounds and yards, shall be deemed and taken to be the employes and servants of said first party.

Section Twenty-two. It is further agreed that the several covenants, conditions and stipulations herein contained shall be mutually binding upon the respective parties hereto, their successor, successors and assigns for the term of thirty years from May 1st, 1888, unless this contract shall be sooner determined by consent of the parties hereto, or by reason of the provisions hereof.

Section Twenty-three. It is further understood and agreed that all of the aforesaid covenants and agreements on the part of said parties of the second part to be performed are several and not joint.

Section Twenty-four. It is understood and agreed that the Des Moines & St. Louis Railroad Company, as the owner of one-half of the capital stock of the Des Moines Union Railway Company, may sell and transfer one-half of said stock, or one-quarter of the whole to such railway company as may be acceptable to a majority of the parties of the second part; in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of the second part. Only as aforesaid, shall other railroad companies be admitted to the use of the property of said first party, without the consent of all the parties of the second part, and the compensation to be paid by any other railroad company, or person not a party hereto (or provided for as aforesaid), for the use of said depot or ter-

minal facilities, or any part thereof, shall be determined by the Board of Directors of said first party.

Section Twenty five. It is further agreed by and between said first party and the several second parties hereto, that any of said second parties may sell, assign and transfer to any other one railroad company all its rights under this agreement, or said second parties, or any of them, may mortgage to any one party all their respective interests and rights under this contract; but none of said second parties shall subdivide, sublet, mortgage or assign to any other company, or person, a portion of its said rights and privileges herein and any assignment, mortgage or lease made by any one of said second parties, which may be held sufficient to admit its assignee, mortgagee or lessee, or their assigns, to the possession of any of said property, shall be held sufficient to exclude, and shall exclude, the party making such lease, mortgage or assignment from all its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as to prevent any of said second parties from contracting to do the business, or handle with its own engines the traffic or cars of any other railroad company to and from said city on such terms as said first party may approve, provided the line of such other railroad company connects with the line of such second party not less than twenty miles from said City of Des Moines.

Section Twenty-six. Whereas, the several parties hereto of the second part are entitled to the shares of the stock of said first party in the following amounts or proportions, to-wit: The Des Moines & St. Louis Railroad Company to one-half said shares; the Des Moines & Northwestern Railway Company to one-fourth said shares; and the St. Louis, Des Moines & Northern Railway Company to one-fourth said shares; and

Whereas, no certificate for said shares have as yet been issued to said parties;

Now therefore, it is hereby further agreed between the parties hereto, that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of one hundred dollars each, the same shall be issued and held as follows, to-wit: One certificate of ten thousand shares shall be issued and delivered to the Des Moines & St. Louis Railroad Company; one certificate for five thousand shares shall be issued and delivered to the St. Louis, Des Moines

& Northern Railway Company, and one certificate for five thousand shares shall be issued and delivered to the Des Moines & Northwestern Railway Company, and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement, except that any shares of stock issued on request of either of said companies to any person, to qualify him as a member of the Board of Directors shall be so transferable to the company on whose request it shall have been issued without the consent of the other companies; but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued, unless consented to by the other parties of the second part.

Section Twenty-seven. Whereas, the parties of the second part have herein and hereby obligated themselves to pay as a part of the consideration for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used, or to be hereafter issued and used by said first party in purchasing improving and equipping the terminal properties herein described;

Now therefore, in consideration of the premises, the said first party hereby contracts and agrees to and with each of the second parties hereto, that it will not at any time hereafter issue or dispose of any of said bonds, except for the purpose of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in said City of Des Moines.

Section Twenty-eight. In case any difference shall hereafter arise between the first and second parties hereto, concerning the management of said terminal station, depot, grounds, yards and tracks, with respect to any matter not herein provided for, or concerning any other matter or thing, connected therewith, but not herein expressly provided for, such differences shall be referred to three competent men experienced in railroad management, who, shall, as soon as practicable after they are chosen, proceed to examine and determine what would be just and equitable for each of said parties to do in and about the matter in dispute. Each party shall choose one of said arbitrators and the two thus chosen shall select the third arbitrator and the decision in writing of a majority of said arbitrators with respect to the matter submitted, shall be furnished to and be thereafter binding upon each of the said parties; Provided, however, that such differences shall have no effect on the course of the business at said terminal station, depot grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, and such settlements and payments as are herein

provided for shall be made as before, until the matter in dispute shall be adjusted by the said arbitrators, and thereupon such payments or restitutions shall be made as may be required by the decision of said arbitrators.

In witness whereof, the respective parties hereto have caused their corporate seals to be hereunto affixed and these presents to be signed by their respective presidents, and attested by their secretaries respectively, the day and year first above written.

[SEAL.] THE DES MOINES UNION RAILWAY COMPANY.
By G. M. DODGE,
President.

Attest:
F. M. HUBBELL,
Secretary.

[SEAL.] THE DES MOINES & ST. LOUIS RAILROAD COMPANY.
By JAMES F. HOW,
President.

Attest:
F. M. HUBBELL,
Secretary.

[SEAL.] THE ST. LOUIS, DES MOINES & NORTHWESTERN RAILWAY COMPANY.
By G. M. DODGE,
President.

Attest:
J. T. GRANGER,
Secretary.

[SEAL.] THE DES MOINES & NORTHWESTERN RAILWAY COMPANY.
By F. M. HUBBELL,
President.

Attest:
A. N. DENMAN,
Secretary.

VIII.

Your orators further show that all the right, title, and interest of said Des Moines and St. Louis Railroad Company, and the Wabash, St. Louis & Pacific Railway Company, in and to the said terminal properties, and the use thereof, were acquired by and are now vested

to your orator, the Wabash Railroad Company, and all the right, title and interest of said Des Moines and Northwestern Railway Company, and St. Louis, Des Moines and Northern Railway Company in said terminal properties, were acquired by and became vested in the Des Moines, Northern and Western Railroad Company; and that thereafter on the 31st day of July, 1897, for the purpose of removing any doubts as to the rights and obligations of said successor companies with respect to the use and operation of said terminal properties, under the aforesaid operating lease or contract, an agreement was entered into between them and the said Des Moines Union Railway Company, which last named agreement is substantially as follows:

"This Agreement of modification and substitution entered into this 31st day of July, 1897, between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter called the Des Moines Company, the Wabash Railroad Company, a corporation organized and existing under the laws of the State of Missouri, and hereinafter called the Wabash Company, and the Des Moines, Northern & Western Company, Witnesseth, That

Whereas, on the 10th day of May, 1889, the said Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines and Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, entered into a certain contract, a copy of which, for complete identification, is hereto attached, marked Exhibit "A"; and

Whereas, the said Wabash Company is not named in said contract, and now operates the Des Moines & St. Louis Railroad; and

Whereas, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company have ceased to own or operate the respective railroads which were owned and operated by them at the time the said contract was made and the said Des Moines, Northern & Western Company has become the owner of and operates the lines of railroad which were formerly owned and operated by the said Des Moines & Northwestern Railway Company, and the said St. Louis, Des Moines & Northern Railway Company; and

Whereas, for a long time past both the Wabash Company and the Des Moines Northern & Western Company have been using the terminal property described in said contract, and all the parties have recognized the said contract as continuing and binding upon them; and

Whereas, it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines Northern & Western Company;

Now Therefore, in consideration of the premises, and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named that the said contract, a copy of which is attached, shall be and hereby binding and obligatory upon said Wabash Company and the said Des Moines, Northern & Western Company.

And the said Wabash Company for itself agrees to make the payments therein provided for at the times and in the manner prescribed for the said Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the said Des Moines & St. Louis Company, its obligation to so pay, and all the obligations herein assumed by it, shall at once determine and be and become the obligations of whichever company operates the said railroad, it being the intention that the obligations of the said contract, so far as they pertain to the Des Moines & St. Louis Railroad Company, shall attach to and become the obligations of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company, in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property leased in the said contract, to assume all the obligations therein or hereby undertaken to either the said Des Moines & St. Louis Company or the said Wabash Company.

And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein, and as though it had been named in and was a party to the said contract when originally made, and to pay to the said Des Moines Company at the times and in the manner therein provided the sum of money which may become due computed according to the terms and provisions of the said contract with respect to a lessee company, and the said Des Moines, Northern & Western Company further agrees that the obligations therein named and hereby assumed shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee, or successor of the said Des Moines, Northern & Western Company in the ownership or operation of the said Des Moines, Northern & Western Rail-

road, and any company succeeding the Des Moines, Northern & Western Company in such ownership or operation, shall be held by the operation of trains over the said Des Moines, Northern & Western Railroad, and upon the property leased in the said contract, to assume all the obligations therein expressed and herein undertaken by said Des Moines, Northern & Western Company.

But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as related to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:

The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, 5881 shares.

The Des Moines, Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares.

Of the above shares belonging to said Purchasing Committee two shares stand upon the books of the Company as follows:

Joseph Ramsey, Jr., 1 share, and H. L. Mager, 1 share.

Of the shares belonging to the Des Moines, Northern & Western Railroad Company two shares stand upon the books of the Company as follows:

A. B. Cummins, 1 share, and F. M. Hubbell, 1 share.

Of the shares belonging to said F. M. Hubbell & Son, five shares stand upon the books of the company as follows:

F. M. Hubbell, 1 share; F. C. Hubbell, 1 share; C. Hattenbeck, 1 share; H. D. Thompson, 1 share; A. M. Beaman, 1 share.

In Witness Whereof, the respective parties hereto have caused these presents to be signed by their respective presidents, and sealed

with their corporate seals, and attested by their respective secretaries, the day and year first above written.

[SEAL.] THE WABASH RAILROAD COMPANY,
By O. D. ASHLEY,

Attest:

J. C. OTTESON,
Secretary.

[SEAL.]

DES MOINES UNION RAILWAY COMPANY,
By F. C. HUBBELL,
President.

Attest:

By F. M. HUBBELL,
Secretary.

[SEAL.] DES MOINES NORTHERN & WESTERN RAILROAD COMPANY,
By F. M. HUBBELL,
President.

Attest:

A. N. DENMAN,
Secretary."

And your orators further show that shortly after the making of the foregoing agreement, all the right, title and interest of said Des Moines, Northern & Western Railroad Company in said properties and their uses, was acquired by and are now vested in your orator, the Chicago, Milwaukee & St. Paul Railway Company, and it thereupon became a party to the said agreement in accordance with the terms thereof; and your orators are now respectively successors as aforesaid, and are entitled to all the rights, titles and interest, legal and equitable, of the said original proprietary companies, the Des Moines and St. Louis Railroad Company, the Des Moines, Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the Wabash, St. Louis and Pacific Company, in and to the terminal properties now held and controlled by said Trustee Company, the Des Moines Union Railway Company, and the use and operation thereof, together with all rentals and other revenues derived therefrom.

IX.

Your orators further show that it was never intended the said Des Moines Union Railway Company should have any right, title or interest in or to any of such terminal properties, or in the management or operation thereof, except as Trustee for your orators, their predecessor companies, successors and assigns; that nothing was ever paid to or received by it for or on account of the shares of its capital stock, and it was never intended that anything should be paid upon the same, or that such shares of stock should have any value or be issued or held except as a means of keeping up the organization and management of said Trustee Company by the Companies beneficially interested in said properties; that it has no capital or assets, and that it was never intended such Trustee Company should have any capital, or acquire or own any assets or properties in its own right, or conduct any terminal or other business on its own account; but that said Trustee Company was organized and exists for the sole purpose of taking, holding and operating said terminal properties and facilities as Trustee for and at the cost and expense of the railroad companies beneficially interested therein, to the end that the handling and interchanging of traffic between the different railroads in the City of Des Moines might be accomplished at a minimum of cost and expense to shippers and consignees, as well as said companies.

Your orators further show that since the making of the operating lease or contract above set out, said Trustee Company, from time to time, performed certain switching services for other companies in and over said terminal properties, and granted to other companies and persons certain depot and other privileges, and the use of certain portions of its said real estate from which certain rentals and revenues have been received by it; that said Trustee Company, by its Board of Directors, on or about the 11th day of February, 1891, duly ordered that all such rentals and other revenues be credited upon the bills of the proprietary or tenant companies, giving each company its share of the same, ascertained on the basis of the wheelage of such company, which order remains in full force and effect except as modified or suspended by a resolution of said Board of Directors, adopted on or about the 7th day of January, 1892, to the effect that until the further action of said Board, supplies purchased and current bills coming in against said Trustee Company, before it received the monthly revenues from the tenant companies, should be paid from said receipts.

Your orators further show that the sum of $25,000.00 was and is sufficient and ample amount to be reserved and used as a cash capital

for the aforesaid purposes; and that notwithstanding your orators were and are entitled to receive and have paid to them, or credited to them, on the basis of their respective wheelage over said terminal tracks, the said surplus earnings derived from the sources aforesaid, a large portion thereof, to-wit, upwards of the sum of One Hundred Thousand Dollars ($100,000.00) has been expended by said Trustee Company wrongfully, and without authority from your orators, or either of them, in the purchase of additional properties; and in the making of additional improvements; and that notwithstanding such expenditures, there is now on hand and in the possession of said Trustee Company, surplus earnings derived as aforesaid, aggregating upwards of $125,000.00.

And your orators further show that they have always insisted and repeatedly requested said Trustee Company to pay or credit the said surplus earnings to them as aforesaid, in accordance with the above named resolution, and that each of your orators, on the 12th day of March, 1906, made formal written demand upon said Trustee Company that said surplus earnings be credited on the bills against your orators respectively, on said wheelage basis; but that said Trustee Company then and there refused, and still refuses to pay or credit to your orators, or either of them, any part of said surplus earnings; that said Trustee Company has likewise refused to request the Trustee in said mortgage of November 1st, 1887, to certify and issue its remaining unissued bonds secured thereby, in accordance with Section 27 of the said contract of May 10th, 1889, and apply the same to the re-imbursement of your orators for the portions of said surplus earnings, temporarily applied to the purchase of additional terminal properties, and the making of additional improvements, and denies that your orators have any right to have any of said bonds issued or applied to the aforesaid purpose.

X.

Your orators further show that notwithstanding the facts are as above set forth, said Trustee Company now denies that it holds or operates said terminal properties as Trustee or agent, and denies that your orators are entitled to the surplus earnings arising as above described, or to the benefit of the same, and on the contrary, claim through its officers and representatives that it is the owner of all said terminal properties in its own right, and entitled to receive and retain in its own right the surplus earnings aforesaid free from any right or claim upon the part of your orators, or either of them; that said Trustee Company threatens to appropriate said surplus earnings to its own and other unlawful uses, and has actually taken steps toward carrying out such unlawful purposes; that on the 12th day of March, A. D. 1906, at a meeting held by its Board of Directors in the said

City of Des Moines, additional salaries were voted to certain of its officers as follows:

To its President, for the years 1901, 1902, 1903, 1904, and 1905—$37,500.00; and to its Secretary $2,500.00 per annum and that said Trustee Company will, unless restrained by this Court, pay said unlawful appropriations from said surplus earnings, and will also appropriate and apply large amounts of said surplus earnings to the unauthorized purchase of additional properties, and the making of improvements; all of which claims, acts and doings on the part of said Trustee Company are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises.

XI.

Forasmuch as your orators can have no adequate relief in the premises except in this Court, in equity, where such matters are properly cognizable, your orators therefore pray.

First. That said defendant, the Des Moines Union Railway Company be required to render to your orators a full and true account of all moneys earned and received by it for switching services, real estate rentals, and from other sources hereinabove mentioned, giving the dates, sources from which derived, amounts, portions of said receipts expended, the purposes and dates of such expenditures, and the balance now on hand, together with a full and true statement and description of all properties acquired, and improvements made and paid for from such earnings.

Second. That all the said earnings or receipts in the hands of said defendant be paid over to your orators on the basis of their respective wheelage, or credited on said basis upon the monthly bills of said defendant against your orators, for the maintenance, repair and operation and other charges pertaining to the maintenance and operation of said properties.

Third. That all the properties acquired, and improvements made by said defendant company from said earnings or receipts, bonds or other means, be declared to belong to your orators, and to be held in trust for your orators by the defendant, under and in pursuance of said contract of January 2nd, 1882, and the Articles of Incorporation of said defendant company.

Fourth. That the defendant be required to render to the Court a full and detailed statement of all properties, real, personal and mixed, acquired or held by it, with full and accurate descriptions of same, and the cost thereof, and that it be decreed to be the holder of the legal title to all the properties held by it, in trust, for the sole use and benefit of your orators, as successors in interest of the original proprietary companies hereinabove named, as and in accordance with said contract of January 2nd, 1882, and the express purpose of its organization, as set forth in its Articles of Incorporation, and that the sole equitable and beneficial right, title and interest in and to all said properties, are in your orator.

Fifth. That the defendant be required to cause the trustee in said mortgage of November 1st, 1887, to certify and issue its remaining and unissued bonds secured thereby, in accordance with Section 27 of the said contract of May 10th, 1889, to such an amount as may be necessary, and apply the same to the reimbursement of your orators for the portions of said surplus earnings applied as aforesaid, to the purchase of additional terminal properties and the making of additional improvements.

Sixth. And that a provisional or preliminary injunction be issued, restraining the defendant, its officers, directors, agents and attorneys from appropriating to its or their own use, as additional salaries or otherwise, any of the earnings or properties held by it as aforesaid, or from expending any of the aforesaid surplus earnings, pending this case, or until the further order of this Court; and that your orators may have such further and different relief in the premises as justice and equity may require, and to the court shall seem meet.

Seventh. And may it please Your Honor to grant unto your orators not only the writ of injunction conformable to the prayer of this bill, but also a subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the defendant, the Des Moines Union Railway Company, therein and thereby commanding it, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer (but not under oath, answer under oath being hereby expressly waived) all and singular the premises, and to stand to, perform and abide by, any order, direction and decree as may be made against it in the premises.

And your orators, as in duty bound, will ever pray, etc.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
By E. W. McKENNA,
2d Vice-President.
J. C. COOK,
Solicitor for said Company.
WABASH RAILROAD COMPANY,
By E. B. PRYOR,
4th Vice-President.
CARR, HEWITT, PARKER & WRIGHT,
Solicitors for Complainant.

CHAS. E. VROMAN,
C. N. TRAVOUS,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of Iowa.

STATE OF IOWA,
Polk County, ss:

E. W. McKenna, being duly sworn, says that he is the Second Vice-President of the complainant, the Chicago, Milwaukee & St. Paul Railway Company, and familiar with said complainant's business relations with the defendant Des Moines Union Railway Company; that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true, of his own knowledge, so far as the same pertains to or concerns the complainant, the Chicago, Milwaukee & St. Paul Railway Company, except as to matters therein stated on information and belief, and as to those matters, he believes the same to be true.

E. W. McKENNA.

Subscribed and sworn to before me by said E. W. McKenna, this 18th day of January, A. D. 1907.

[NOTARIAL SEAL.] THOS. J. GUTHERIE.
Notary Public in and for the County and State aforesaid.

UNITED STATES OF AMERICA,
Southern District of Iowa.

STATE OF IOWA,
Polk County, ss:

E. B. Pryor, being duly sworn, says that he is the Fourth Vice-President and Assistant Secretary of the complainant, the Wabash

Railroad Company, and familiar with said complainant's business relations with the defendant, the Des Moines Union Railway Company; that he has read the foregoing bill of complaint, and knows the contents thereof and that the same is true, of his own knowledge, so far as pertains to or concerns the complainant, the Wabash Railroad Company, except as to matters therein stated on information and belief, and as to those matters he believes the same to be true.

E. B. PRYOR.

Subscribed and sworn to by said E. B. Pryor, before me this 18th day of January, A. D., 1907.

[NOTARIAL SEAL.] THOS. J. GUTHERIE,
Notary Public in and for the County and State aforesaid.

Endorsed: Filed February 5th, 1907. E. R. Mason, Clerk.

(Subpœna in Chancery to Des Moines Union Ry. Co.)

UNITED STATES OF AMERICA,
Central Division,
Southern District of Iowa:

The President of the United States to Des Moines Union Railway Company:

We command you, and each of you, that you appear before the Judge of the Circuit Court of the United States for the Southern District of Iowa, at Des Moines on the 4th day of March A. D. 1907 to answer to the bill of complaint of Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company this day filed in the office of the clerk of said Court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the said Southern District of Iowa:

Returnable twenty days from the date hereof, to-wit, on the 4th day of March A. D. 1907.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, Southern District of Iowa, at the city of Des Moines Iowa, this the 5th day of February A. D. 1907, and of the Independence of the United States the 131st.

[SEAL.] EDWARD R. MASON,
Clerk U. S. District Court, Southern District of Iowa.
By ROMA WOODS,
Deputy.

Memorandum.—The within named defendant is notified that unless it file an answer or other defense in the Clerk's office of said Court on or before the twentieth day after service hereof, the complaint will be taken against it as confessed, and a decree entered thereon accordingly.

[SEAL.] EDWARD R. MASON,
Clerk U. S. District Court, Southern District of Iowa.
By ROMA WOODS,
Deputy.

This writ came into my hands for service on [*on*] the fifth day of February 1907 and I served the same on the within named persons as follows, to-wit:

On Des Moines Union Ry. Co. on the 6th day of Feby. 1907, by delivering to F. C. Hubbell, President, a true copy of this writ at Des Moines, Ia.

On.....on the.....day of.....191..
by delivering to him a true copy of this writ at.....

On.....on the.....day of.....191..
by delivering to him a true copy of this writ at.....

On.....on the.....day of.....191..
by delivering to.....at the dwelling house or usual place of abode of the said.....in .....the said.....being an adult person, and a member or resident in the family of the said .....

On.....on the.....day of.....191..
by delivering to.....at the dwelling house or usual place of abode of the said.....in .....the said.....being an adult person, and a member or resident in the family of the said .....

Marshal's Fees:

Mileage	1	Miles @	.06	$.06
Service on	1	@	2.00	$2.00
				2.06

GEO. M. CHRISTIAN,
U. S. Marshal.
H. D. HEDRICK,
Deputy.

Endorsed: Filed in the District Court on Feby. 6, 1907.

(*Answer of Defendant, Des Moines Union Ry. Co.*)

Filed May 6, 1907.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of Iowa, Central Division:

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

First. This defendant admits that the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company are railroad [corporation-] as alleged in the said bill, and that the Chicago, Milwaukee & St. Paul Railway Company is a citizen of the state of Wisconsin and that the Wabash Railroad Company is a citizen of the state of Ohio, and that this defendant is a corporation as alleged and is a citizen of the state of Iowa.

This defendant admits that on and prior to the second day of January, 1882, the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company were respectively engaged in the operation of separate and independent lines of railroad within the state of Iowa, and admits that the railroad of the first named company extended from Albia to Des Moines, and that the railroad of the last named company extended from Boone to the city of Des Moines.

Second. This defendant denies each and every allegation in the complainants' bill of complaint contained not elsewhere in this answer admitted or denied.

Third. This defendant admits the execution of the contract dated January 2, 1882, set out in paragraph two of the bill of complaint and admits the adoption of the resolution set out in paragraph three of the bill of complaint, and that under the articles of incorporation which form a part of that resolution the organization of this defendant was duly consummated as a corporation created under the laws of Iowa.

Fourth. This defendant admits that all of the property referred to in said agreement of January 2, 1882, was assigned, transferred and conveyed to it by the various persons who had theretofore held the title to the same under the said agreement of January 2, 1882, but denies that such transfer was made to this defendant as trustee. It on the contrary avers that the said property was so assigned, transferred and conveyed to this defendant, to be held by this defendant in its own right, as the absolute and unqualified owner thereof, and that said property was so transferred, assigned and conveyed to this defendant under and pursuant to agreements made by this defendant for the purchase of the said property, for a valuable consideration which was paid by this defendant.

Fifth. This defendant admits that it executed a trust deed to the Central Trust Company of New York, as trustee, dated November 1, 1887, and that the property covered by the said trust deed is, in said trust deed, described as alleged in paragraph six of the said bill and that the said trust deed was to secure an authorized issue of eight hundred (800) bonds, of the denomination of one thousand dollars ($1,000.00) each, and that the said trust deed became and constituted and is a lien on the terminal properties of this defendant.

This defendant avers that the said trust deed recited, among other things, the organization of this defendant as a corporation; that this defendant had undertaken and partially completed the construction of its terminal railway; that it had purchased and owned certain property, meaning the property described in the said trust deed, and including the property referred to in the said contract of January 2, 1882; and that the issue of the bonds in question was for the purpose of paying for this property, building and extending its railroad, and making necessary and desirable improvements thereto and thereon.

And this defendant avers that a portion of the bonds issued under and secured by the said trust deed were delivered to and accepted as partial payment of the purchase price therefor, by the grantors in the various conveyances referred to in the complainants' bill, and in the preceding paragraph of this answer, by which the property in controversy was conveyed to this defendant; and that the said bonds are still outstanding as the obligations of this defendant, and are held by such grantors or their assigns.

And this defendant admits that from time to time other and additional bonds have been issued and that the proceeds of the said additional bonds have been used, either in payment for property acquired by this defendant, or in additions to and extensions and improvements of the property of this defendant.

This defendant avers that the said trust deed was executed for the purposes recited in it, that the said bonds and the proceeds thereof were devoted to the purposes aforesaid, in accordance with the unanimous vote of all of the stockholders and directors of this defendant and with the knowledge and concurrence of all of the parties to the said original agreement of January 2, 1882.

Sixth. This defendant admits that on or about the 10th day of May, 1889, the lease set out in paragraph seven of complainants' bill was fully entered into by this defendant and the other parties thereto; and avers that at the time of the making of the said lease this defendant was the owner of the property in question and that the fact of this defendant's ownership thereof was recited in and recognized by the said lease; and avers further that the other parties thereto and their successors had not on the 10th day of May, 1889, and have not since that time had any other right, title or interest in or to the property in controversy in this suit than the rights obtained and held by them under the said agreement.

And this defendant further avers that ever since the 10th day of May, 1889, the said agreement of that date, as amended by the supplemental agreement of date July 31, 1897, has been recognized by this defendant and by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and by the successors of the last named companies, including the complainants, as in full force and effect, and that the complainants are now using the property of this defendant in common with its other tenants by virtue of the right so to do claimed by them under the said agreement, and that the complainants are estopped to deny this defendant's title to the property in controversy.

Seventh. Further answering, this defendant respectfully shows to the court that on or about the 8th day of April, 1890, the stockholders of this defendant adopted amended articles of incorporation, a copy of which amended articles of incorporation is hereunto attached and made a part hereof, marked exhibit "A," and that the said articles of incorporation were adopted by the unanimous vote of all of the stockholders of this defendant, including the stockholders to whose rights the complainants claim to have succeeded; and avers further that among the stockholders so voting in favor of the adoption of the said amended articles of incorporation were all of the persons then interested as parties of the second part in the said contract of January 2, 1882, and of May 10, 1889, which is set out in paragraph seven of the complainants' bill.

That among other things, it is provided in the said amended articles of incorporation by article XV thereof, as follows:

The proceedings of a meeting held December 10th, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged.

That the meeting of December 10, 1884, referred to in the said article XV, is the meeting at which the resolution referred to in paragraph three in complainant's bill was adopted, and that the contract of January 2, 1882, referred to in the said article XV is the said contract of January 2, 1882, set out in paragraph two of the complainants' bill.

That by the adoption of the said amended articles of incorporation, and especially by the adoption of article XV thereof, the said contract of January 2, 1882, and the proceedings at the said meeting of January 10, 1884, were formally repealed, stricken out and expunged by the unanimous action of all the parties in interest.

Eighth. This defendant admits that the agreement set out in paragraph eight of the complainants' bill, and dated the 31st day of July, 1897, was entered into by the parties thereto, but avers that the copy of the same set out in the bill contains some manifest inaccuracies, especially in the matter of names.

This defendant avers that the purpose of the said contract was to recognize the complainant, the Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company as the successors to the rights and obligations of the parties of the second part as lessees under the said agreement of May 10th, 1889, and to recognize this defendant as the owner of the property in question, and to make certain modifications of the existing contracts between the parties, especially as to the ownership of the capital stock of the defendant; and that it was the further express purpose of the said contract to confirm in the persons then holding the same and named in the said agreement of July 1st, 1897, their individual ownership of the capital stock of the defendant and to recognize and confirm their right to so own and hold the same.

This defendant further avers that on or about the 15th day of March, 1894, the complainant, the Chicago, Milwaukee & St. Paul Railway Company, became the owner of a portion of the capital stock of the Des Moines Northern & Western Railroad Company and that thereafter and on or about the .... day of ....., 1900, it acquired the property of the said Des Moines, Northern & Western Railroad Company, including the one thousand (1000) shares of stock in this defendant, theretofore owned by that company, and succeeded to the rights of the Des Moines & Western Railroad Company under the lease of date May 10, 1889, and the said agreement supplemental thereto of July 31, 1897; and avers that the only interest of the complainants or either of them in the defendant company is as stockholders therein, and as tenants under the said agreement of lease, and denies that the complainants or either of them have any other right, title or interest in or to the property of this defendant or any part or portion thereof.

Ninth: This defendant denies that it was intended that it should take title to the property in controversy as trustee for the complainants; and avers that it was intended that it should, and that it did in fact, take title to the said property in fee, absolutely, for its own use and benefit; and specifically denies that nothing was ever paid on account of the shares of its capital stock; and denies that it was intended that nothing should be paid for the same; and denies that the intention was that such shares should have no value, or that they should be issued for the purposes alleged in paragraph nine of the bill, or that they were so issued; and denies the averment that it has no capital or assets and the averment that it was never intended that this defendant should have any capital or acquire or own any property or assets in its own right or conduct any terminal or other business on its own account; and denies that this defendant was organized or that it exists for the purpose stated in said paragraph nine.

On the contrary, this defendant avers that as set out by article II of its amended articles of incorporation, the business and purposes for which it was organized are as follows:

The objects of the corporation and the general nature of the business to be transacted shall be, the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock

yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators, or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines; and also to lease terminal facilities to, and furnish and perform terminal service for all railways *those* lines reach or pass through or near the said City of Des Moines; and the corporation shall possess all the powers conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

Defendant further avers that by article III of the said amended articles of incorporation it is expressly provided as to its capital stock as follows:

The capital stock of the corporation shall be two million dollars ($2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, consituted the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions. Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successors in ownership to the Des Moines & St. Louis Railroad Company the present owner of the property known as the Des Moines & St. Louis Railroad, one thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines North Western Railway Company, and one thousand shares to the Des Moines & Northern Railway Company, successors to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, sixteen thousand shares or any part thereof shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered.

The stock shall be transferable only upon the books of the Company, by, and with the consent of three-fourths of all the Directors, except in the case the [transferee] of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

And this defendant further avers that it has at all times been recognized by the complainants as the absolute owner of the property in question, and that it has made large expenditures in connection with said property in reliance upon its ownership thereof; and that its capital stock has at all times been recognized by the complainants, and their assignors, as fully paid stock, issued to evidence the interests of its owners in the management, profits and ultimate assets of this defendant, and has been bought and sold by the complainants and their assignors as property of value.

That by virtue of the premises, the complainants are now estopped from setting up that this defendant does not own the property in question and from setting up that the said property is held in trust for their benefit and from setting up that this defendant's stock is not of value, or does not represent the ownership of the corporation; and that by reason of their laches and long acquiescence and delay the complainants cannot now be heard to assert or set up the said matters or either of them.

Tenth. This defendant admits that since the making of the said lease of date May 10th, 1889, it has derived revenue from switching and other terminal services performed by it, and from depot and other privileges furnished by it, and from rentals of portions of its real estate.

That for a long series of years and until on or about the 12th day of March, A. D. 1906, the surplus earnings of this defendant of the character above indicated were continuously applied by it to the purchase of permanent additions to and improvements of its plant and property, and to the acquisition of additional property and extensions of its tracks, and to like purposes, and that the said application of the said funds so made with the full acknowledge, acquiescence and approval of each and every of the officers, directors and stockholders of this defendant, including complainants, and their [assognors]; and that during the said period this defendant asserted that under the proper construction of the said lease it was entitled to the said earnings and the tenants thereunder acquiesced and concurred in such construction of the said lease of date May 10th, 1889, and the contract supplemental thereto, and such was the practical construction thereof placed upon it and adopted by the parties thereto. That on or about the 12th day of March, 1906, the complainants asserted

that under and by virtue of the terms of the said agreements last above referred to they were entitled to have the said surplus earnings [credited] upon the rentals paid by them under the said lease, which construction of the said contracts this defendant denied; but that since that time and pending the determination of the said question it has held the said surplus earnings in a separate fund and has not expended them.

And this defendant denies that the said complainants have the right to have said earnings credited upon the rentals payable by them under the said contracts; and denies that they have any interest in said earnings.

This defendant admits that it has refused to request the trustee under its said mortgage of November 1, 1887, to certify and issue the additional bonds authorized by the said mortgage, or when issued to use the said bonds to reimburse the complainants for the portions of the said surplus earnings used in the purchase of additional terminal properties and the making of additional improvements; and denies that the complainants are entitled to such reimbursement and denies that the complainants are entitled to have said bonds so certified, issued and delivered to them.

Eleventh. This defendant admits that it now denies, and avers that it has at all times denied, that it holds or operates said properties as trustee or agent; and admits that it now denies, and avers that it at all times has denied, that the complainants are entitled to the said surplus earnings or to the benefit of the same; and admits that it now claims, and asserts that it has at all times claimed, that it is the owner of all of the said terminal properties in its own right, and entitled to receive and retain in its own right the surplus earnings aforesaid free from any claim or right on the part of the complainants or either of them; and admits that it proposes to appropriate the said surplus earnings to its own uses for lawful purposes if it shall be held that it has the right so to do.

Twelfth. This defendant avers that for many years prior to on or about March 10th, 1906, the then president and secretary of this defendant had had general charge of and had conducted and managed the business of this defendant, including not only the operation of the property but also the acquisition of additional property and the building up and development of the property as a terminal railroad. That during said period the said officers had been largely interested in the defendant through its capital stock, and that no formal arrangement had ever been made fixing the amount of compensation to be paid to them for their services.

That shortly prior to March 10th, 1906, the complainants having asserted that they claimed to be the beneficial owners of the property in question, the said officers deemed it proper and expedient that the amount of the compensation to which they were entitled should be fixed and that thereupon and on or about the 12th day of March, 1906, there was presented to a meeting of the board of directors of the defendant a resolution to the effect that for each of the years 1901, 1902, 1903, 1904, and 1905, the salary of the president of the defendant be fixed at seven thousand five hundred dollars ($7,500.00), and a further resolution to the effect that the salary of the secretary be fixed at two thousand five hundred dollars ($2,500.00) per annum. That each of the said motions received five (5) affirmative votes and three (3) negative votes, which negative votes were cast by three of the said directors, who were also at the time officers of the complainants.

That the said officers of this defendant are entitled to compensation for the services so rendered by them, but because of the said opposition thereto this defendant has not up to this time either made, or threatened to make, any payments under the resolutions above referred to, or either of them.

Thirteenth. This defendant further answering, respectfully shows to the court, that it is and for more than ten (10) years last past has been in the open, adverse, notorious and continuous possession of all of the property in controversy in this action, under a claim of right and under the claim that it was the absolute and unqualified owner thereof, and under the claim that neither of the complainants nor the persons to whom they were successors, had any right, title or interest in or to the said property or any part thereof; and that the complainants have been guilty of laches; and that any rights that they might have had in the said property are now barred by the statute of limitations.

Fourteenth. This defendant further respectfully shows to the court that from the time when, as mentioned in paragraph fourth of this answer, it commenced the acquisition of its terminal property in the city of Des Moines, until shortly prior to the beginning of this suit, it was continuously recognized by all of the parties to the said agreement of January 2, 1882, and by all of the parties of the second part to the said agreement of May 10th, 1889, and by all of the parties to the said supplemental agreement of July 31, 1897, and by each and all of the successors of said parties, and by each and all of its stockholders, as the absolute owner of all of the property so acquired by it and of all additions thereto and extensions and improvements thereof, which have from time to time been

acquired or made by this defendant; and that this defendant has with the knowledge and acquiescence of all of the said persons continued throughout a long period of years to make many and valuable additions to, and extensions and improvements of, said property, and has made leases of said property or parts thereof to other persons, all with the knowledge and acquiescence of the persons above mentioned and each of them, and in reliance upon this defendant's ownership of said property; and that during said entire term, the said persons, including the complainants, until shortly before the bringing of this suit, acquiesced in and recognized this defendant's ownership of the said property.

That by reason thereof the complainants cannot, at this time, be heard to assert the claims set up by them in their bill, and are barred by their laches and are estopped from so doing.

And this defendant having fully answered prays to be dismissed with its costs in this behalf most wrongfully sustained.

DES MOINES UNION RAILWAY COMPANY,
By F. C. HUBBELL,
President.

N. T. GUERNSEY,
Solicitor for Defendant.

EXHIBIT "A."

Articles of Incorporation of the Des Moines Union Railway Co. as Amended.

Article I.

The name of the corporation shall be the "Des Moines Union Railway Company" and its principal place of transacting business shall be at Des Moines, in the County of Polk and State of Iowa.

Article II.

The objects of the corporation and the general nature of the business to be transacted shall be, the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators, or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines; and also to lease terminal facilities to, and furnish and perform terminal service for all railways whose lines reach or pass through or near the said City of Des Moines; and the corporation shall possess all the powers conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

Article III.

The capital stock of the corporation shall be two million dollars ($2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the

corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, constituted the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions: Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company and the present owner of the property known as the Des Moines & St. Louis Railroad, one thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines North Western Railway Company, and one thousand shares to the Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, [sicteen] thousand shares or any part thereof shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered.

The stock shall be transferable only upon the books of the Company by, and with the consent of three-fourths of all the Directors, except in the case the transferee of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

Article IV.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons who shall be elected by the stockholders at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday in January of each year, and they shall hold their offices for one year and until their successors are elected and qualified; but at all future elections of Directors, it shall require the votes of more than seven-eighths of all the stock theretofore issued, to elect any Director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase prperty, to construct buildings, to make leases to authorize the institution of condemnation proceedings, and to do all such

other things as may be proper or necessary for the corporation to do; but with respect to the matters above mentioned and all other matters except the ordinary operations of the property, the Board of Directors can act only upon the unanimous vote of the eight members thereof and in order to facilitate the transaction of business, power is expressly conferred upon each of the Directors to delegate by written authority, some other person to act or vote for him and in his stead: Provided that such authority shall be filed with the Secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an executive committee, but such selection must be made by the vote of at least seven members.

The duties and powers of such committee shall be defined in the by-laws.

The Board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must be elected and such by-laws enacted by the [unanimous] vote of the eight members of the Board. All vacancies occurring in the Board shall be filed by the stockholders at a special meeting in the manner heretofore provided for the election of Directors.

Article V.

The officers of the corporation shall be a President, Vice-President, Secretary and Treasurer (the offices of Secretary and Treasurer may be filled by one person) to be annually elected from the persons composing the Board of Directors as hereinbefore provided, and for that purpose, among others, the newly elected Board shall convene immediately after the adjournment of the annual meeting of the stockholders. Said officers shall hold their offices for one year and until their successors are elected and qualified; and they shall exercise such power and be charged with such duties as usually pertain to their respective offices, subject, however, to the limitations herein contained.

Article VI.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article VII.

The highest amount of indebtedness to which the corporation may at any time subject itself, shall be the amount authorized by law.

Article VIII.

Meetings of the Board of Directors may be called by the President, or in case of his absence or disability, by the Vice-President and shall be called upon request preferred in writing, by two members of the Board.

Article IX.

These Articles may be amended by a vote of more than seven-eighths of all the stock in favor thereof, at a meeting of the stockholders thereof, of which a notice containing the proposed amendment shall be mailed to each stockholder at his address as disclosed by the transfer books of the Company.

Article X.

This Corporation shall commence on the fifth day of December, A. D. 1884, and continue fifty years, with the right of renewal.

Article XI.

Special meetings of the stockholders may be called by the President or by four Directors; but at least ten days' notice of such meeting shall be given to each stockholder by mailing to its or his address as shown by the books of the Company a notice stating the time and place of such meeting.

— XII.

At all meetings of stockholders, each stockholder shall be entitled to [*case*] one vote for each share of stock owned by him or it, as may appear from the books of the Company, such vote may be cast either in person or by proxy, but if by proxy, written authority therefor must be filed with the Secretary at or before the time the meeting convenes.

Article XIII.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized, that all its authorized capital stock be subscribed or taken.

Article XIV.

The purchase of the property heretofore conveyed to the corporation, the conveyances made in pursuance thereof, the execution of Trust Mortgage to the Central Trust Company of New York, dated February 28th, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 196, at page 525, and the issuance of bonds secured by the same are hereby approved, ratified and confirmed.

Article XV.

The proceedings of a meeting held December 10th, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged.

Endorsed: Filed May 6th 1907 E. R. Mason, Clerk.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

No. 2449. In Equity.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE WABASH RAILROAD COMPANY, Complainants,

vs.

THE DES MOINES UNION RAILWAY COMPANY, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Defendants.

Amended Bill of Complaint as Amended.

J. C. Cook, Wells H. Blodgett, J. L. Minnis, Hewitt and Wright, Solicitors for Complainants.

In the Circuit Court of the United States, in and for the Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company, and The Wabash Railroad Company, Complainants.
No. 2449. vs. In Equity.
The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Defendants.

Amended Bill of Complaint
As Amended.

The Chicago, Milwaukee & St. Paul Railway Company, a railroad corporation created by and under the laws of the State of Wisconsin, a citizen of said State, having its principal offices in the City of Milwaukee, State of Wisconsin, and in the City of Chicago, State of Illinois, and the Wabash Railroad Company, a consolidated railroad corporation organized under the laws of the States of Ohio, Indiana, Illinois, Michigan and Missouri, first created under the laws of the State of Ohio, and a citizen of said State, having its principal office in the City of St. Louis, State of Missouri, bring this, their Amended Bill of Complaint against the Des Moines Union Railway Company, a corporation created by and under the laws of the State of Iowa, having its principal office in the City of Des Moines, in said last named State, and a citizen of said State of Iowa, and Frederick M. Hubbell, a citizen of the State of Iowa, and a resident of the City of Des Moines, in Polk County, in said District and Division, and Frederick C. Hubbell, also a citizen of the State of Iowa and a resident of said City of Des Moines, in Polk County, Iowa, which is in said District and Division, and the firm of F. M. Hubbell & Son, which is composed of the said Frederick M. Hubbell and Frederick C. Hubbell, defendants.

I.

And thereupon your orators complain and say that on or about December 15th, A. D. 1880, the said defendant Frederick M. Hubbell, and three other residents of the City of Des Moines, Polk County, Iowa, to-wit: J. S. Polk, John S. Runnells, and J. S. Clarkson, all of whom were largely interested as property owners in said City, entered into an agreement in writing with the Wabash, St. Louis & Pacific Railway Company (hereinafter called Original Wabash Company), which latter Company was then engaged in operating a large sys-

tem of railroads in Iowa and other States, and under which agreement the said defendant Frederick M. Hubbell and his associates were to organize a corporation for the building of a railroad from the City of Des Moines to a connection with the said system of railroads at Albia in the interest of the said Original Wabash Company, and it was further agreed in said contract that the said Frederick M. Hubbell and his associates were personaly to receive a large sum of money from the said Original Wabash Company for procuring the right of way, and for otherwise promoting the building of said railroad, and the funds for such building, including the compensation to the said Hubbell and his associates were all to be furnished by said Original Wabash Company.

That pursuant to said contract, the said Hubbell and his associates organized a corporation under the laws of the State of Iowa, to be known as the "Des Moines & St. Louis Railroad Company," which corporation will be hereafter called the "St. Louis Company," for the purpose of building the said connecting link or line of railroad from the Town of Albia in Monroe County, Iowa, to the City of Des Moines in Polk County, Iowa; and thereupon the work of procuring right of way, and constructing the said railroad was actively begun and carried on, in the name of said St. Louis Company; the said Hubbell and his three associates being the directors, executive officers and managers thereof, but the Original Wabash Company furnishing all the money for the same, and for which money it received all the capital stock of the said St. Louis Company, in the name of James F. How, Trustee, he being also vice-president of said Original Wabash Company.

2.

That about the same time the defendant Frederick M. Hubbell and one J. S. Polk, his partner in business also under and through an Iowa corporation known as the Des Moines Northwestern Railway Company (hereinafter called the Northwestern Company), promoted the building of a line of railroad from a connection with the Des Moines & Ft. Dodge Railroad to the Town of Waukee about fifteen miles west of the City of Des Moines, and extending thence in a northwesterly direction toward Spirit Lake in Northwestern Iowa.

That on or about the first of the year 1881, said Northwestern Company leased its line of railroad, then being built, to the Original Wabash Company, and the said last named Company at a large expense financed said project and extended said line from Panora to Lohrville, a distance of forty-three and one-half miles. And said Original Wabash Company also leased the line of the St. Louis Company and com-

pleted that line from Albia into the City of Des Moines and thereafter for some time said original Wabash Company operated both said lines through Des Moines.

3.

And your orators further represent and show to the Court that on or about April 4th, A. D. 1881, the said Hubbell, Clarkson, Runnells, and Polk, organized a corporation to be known as the "St. Louis, Des Moines & Northern Railway Company" (hereinafter called the Northern Company), for the purpose of building a line of railroad from a connection with the line of the St. Louis Company in the City of Des Moines, northerly to the City of Boone, Iowa. That one Grenville M. Dodge, became connected with said last named corporation and to a large extent financed the same and furnished the larger share of the cost of constructing said line of railroad.

That about the month of December, A. D. 1881, the last mentioned road was completed from a connection with the line of the St. Louis Company in the City of Des Moines, westward through Clive, a station about seven and four-tenths miles west of Des Moines Station, and to a connection with said line of the Northwestern Company at Waukee, and soon thereafter sold and granted the undivided one-half interest in its said road between Des Moines and Clive and its entire interest in the line between Clive and Waukee to said Northwestern Company, so that from then on both said roads had an entrance into Des Moines by reason of their connection with the tracks and terminal yard of the St. Louis Company. In the meantime said Northern Company also completed its line from Clive to Boone.

4.

Your orators further aver and show that the said three corporations, to-wit, the St. Louis Company, the Northern Company, and the Northwestern Company, on or about the date last aforesaid, determined that it would be to their mutual advantage, as well as beneficial to the public, for them to acquire, construct and operate, terminal facilities in the City of Des Moines, for their common use and benefit; and for that purpose the St. Louis Company had, with funds provided by said Original Wabash Company, purchased, in said City, real estate at a cost of about $380,000, and had the same conveyed to one James F. How, its Vice-President, to be held by him for the time being, in trust for said terminal purposes and uses. That the Northern Company had also purchased in said City real estate at a cost of about $74,000, and had the same conveyed to said Grenville M. Dodge, to be held by him, for the time being, in trust for said terminal purposes and uses. That

the Northwestern Company had also acquired real estate and right of way in said City, and constructed tracks and improvements thereon, at a cost of about $3,000, all of which said real estate said Company had already appropriated to the joint and common use of all of said railroad companies, and as a part of said joint terminal facilities. And your orators further state, that thereupon, said three railroad companies, in pursuance of their said plan, entered upon the common use of the terminal properties so acquired and held for them as aforesaid, in said City, and began the improving thereof by the construction of tracks and suitable buildings thereon at their joint expense.

That thereafter, on the second day of January, A. D. 1882, in the City of New York, the said St. Louis Company, the Northwestern Company, the Northern Company, and said James F. How and Grenville M. Dodge, (the persons then holding in trust said real estate so conveyed to them in execution of said purpose), in order to secure to said railroad companies, their successors and assigns, in perpetuity, the right to use in common said terminal facilities at the least possible expense to themselves, to shippers and the general public, made and entered into a contract in writing, reciting that said companies were then engaged in constructing the railroads above mentioned; that they had theretofore agreed upon the purchase, construction, maintenance and operation, at their joint expense, of terminal facilities in the said City of Des Moines, to be held and used by said companies, their successors and assigns, in common and in perpetuity, and for those purposes had purchased said real estate so conveyed to and held by said James F. How and Grenville M. Dodge in trust, as aforesaid; that additional property in said City of Des Moines had been appropriated by the Des Moines & St. Louis Company, for said terminal purposes, and that buildings and other terminal improvements were then being constructed on said real estate. That in said contract said individual parties, How and Dodge, declared that they held the real estate conveyed to them, as aforesaid, in trust, and agreed to convey, upon demand, said property to a trustee to be thereafter named by said railroad companies. That the expense incurred by the purchase and improvements theretofore made, and such other as might thereafter be made, should and would be borne in the proportion of one-half by the St. Louis Company, one-quarter by the Northern Company, and one-quarter by the Northwestern Company; and that a Depot Company might be organized to take permanent charge of the property upon the terms set forth in the aforesaid contract, and that such Depot Company, if organized, should deliver to the companies, parties to said contract, its mortgage bonds to the amount of their respective portions of

the cost of the said purchase and improvements. It was also agreed in and by said contract that the title to such property should be and remain in a Trustee to be named by agreement of said three companies, but that such title in said trustee should be granted to and held by such new trustee subject to the joint use and occupation of said three railroad companies upon the terms in said contract described; and it was also provided in said contract that said three railroad companies should have the right to so use said terminal facilities at a maximum cost to them of the expense of maintaining and operating the same, to be shared by them in accordance with their respective use thereof, as evidenced by the wheelage; that is to say, each was to pay the proportion of the total cost of maintaining and operating said terminal facilities that its wheelage over said facilities should bear to the total wheelage of said three companies; and said Original Wabash Company, the lessee of said St. Louis Railroad, and of said Northwestern Railroad, and the holder of their capital stock, assented to the execution of said contract, and as an evidence of said assent, its approval was indorsed thereon by its president. That a true copy of said contract is hereto attached, and made a part hereof, marked Exhibit "A".

And your orators represent and show to the Court that the legal effect, or the effect in law, of the said written contract and its execution, as aforesaid, was and is an express declaration in writing by the then holders of the legal title to the ground and property, How and Dodge, that they held the said ground and property, and the title to the same, in trust and was also an express agreement between the said How and Dodge, and the said Railroad Companies, that the trust should be executed and carried out in conformity with, and as provided in said written contract; and the execution of said contract by the said three railroad companies, was, in legal effect, and in law, the declaring and creating of a beneficial interest in the several lots or parcels of land then held in the name of How and Dodge, or in the names of either railroad company, or that might be thereafter acquired, to the extent of a right in common of said three railroad companies and their successors in interest, or in title to their respective railroads, to construct upon the said lots, lands or grounds so held, or thereafter to be acquired, railroad tracks, depots, station houses, ware-houses, and all other structures that might be useful to them in the way of railroad terminal facilities, and also the right to maintain, operate, and use the same for railroad purposes, in perpetuity, at a maximum expense of the cost of maintaining and operating said terminal facilities to be borne by each in proportion to its use thereof as aforesaid; and was also the creat-

ing of and granting to each of said three railroad companies, a perpetual easement in and upon said lots or parcels of land, such easement consisting of a grant to each of said three railroad companies and their assigns or successors in interest, or in title to their respective railroad lines, of the right in perpetuity to construct and maintain, upon or over said lots and parcels of land, for use by them in common, railroad tracks and railroad buildings, suitable for terminal railroad purposes, to the extent reasonably necessary in the business then existing or that might in the future arise upon the said three lines of railroad, or on either of said lines of railroad; and gave to each of said three railroad companies the right to a use of said tracks, structures and facilities, jointly, or in common with the other two railroad companies and in connection with their several lines of railroad for such purposes, perpetually, at a maximum expense of the cost of maintaining and operating said terminal facilities to be borne by each in proportion to its use thereof as aforesaid.

That from and after the making of said contract (Exhibit "A"), the said yards, freight and passenger depots, and all the property referred to and embraced in said contract, and the privileges, franchises and easements acquired or held by either of said Companies between Farnham Street and the eastern boundary of the City of Des Moines, was, and were, maintained, operated and used in common by said three companies as their only railroad yards and passenger and freight depots, as well as for all switching, making up of trains and all station work at Des Moines, in strict and full accord with said written contract (Exhibit "A"), and the cost and expense thereof, including improvements and extensions, was apportioned among the three companies, as provided in said written contract; and this continued until the time hereinafter named.

5.

Your orators further represent and show to the Court that thereafter, in the way of carrying out said contract of January 2nd, A. D. 1882, and for the purpose of providing for the joint management and control of said terminal facilities and to carry out said contract, the Board of Directors of the Northwestern Company adopted the following resolution, to-wit:

"Whereas, heretofore, to-wit, on the 2nd day of January, 1882, the Des Moines & St. Louis Railroad Company, the Des Moines & North Western Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, Jas. F. How, and Jas. F. How, Trustee, entered into a contract whereby it was agreed to purchase and use certain Real Estate

and Franchises theretofore acquired by certain of said parties for terminal facilities in Des Moines, and

"Whereas, it is desirable that a corporation be organized for the purpose of taking and holding such property,

"Now Therefore, be it resolved, That J. S. Polk and F. M. Hubbell be and they are appointed to act for this Company in the organization of such corporation and they are selected to act as two of the directors of said proposed corporation so to be organized for the purpose of carrying out the objects of said contract of January 2nd, 1882."

That each of the other two railway companies took similar action, the result of which was, that on December 10th, 1884, certain individuals, as representatives of the said three railway companies (the defendant Frederick M. Hubbell, and J. S. Polk appearing for the said Northwestern Company, G. M. Dodge for the Northern Company, John S. Runnells and C. F. Meek for the St. Louis Company) assembled in organized meeting at the City of Des Moines, and after appointing a Chairman and Secretary, collectively declared their purpose, and the purposes of said meeting to be the organization of a corporation to "carry out the purposes of the agreement heretofore, to-wit, on the 2nd day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company, and others",

(meaning and referring to the contract set out in Exhibit "A" hereof), and adopted Articles of Incorporation as set out in full in Exhibit "B" hereto attached, and which exhibit is also made a part of this Bill.

That not only was the aforesaid resolution adopted at the outset by said meeting by said incorporators and promoters of the Des Moines Union Railway Company, but the said contract of January 2nd, 1882, was bodily and fully recited and set out in said Articles of Incorporation as a part of the charter of the said Des Moines Union Railway Company (hereinafter called the Terminal Company), and it was also declared in said Articles of Incorporation that the said Terminal Company was being organized by reason of and pursuant to said contract, and with intent and for the purpose of having it acquire title to said property and then to operate and maintain it "in such manner as best to serve the interests of the parties thereto," meaning the said three railroad companies parties to said contract of January 2, A. D. 1882.

And by way of still further making plain and to show the intent and purpose of the said Terminal Company to be as aforesaid, all the proceedings aforesaid had at the meeting of

said promoters and incorporators of the Terminal Company were spread upon and recorded in the records and minutes of the meetings and proceedings of stockholders and directors of the Terminal Company.

That Article I of said Articles provided, that the name of said corporation should be "The Des Moines Union Railway Company."

That Article II thereof provided that its business should be to construct, own, maintain and operate a railroad in and around and about the City of Des Moines, and depots and other terminal facilities in said City; that all the powers exercised by said Company should be limited to and exercised in accordance with the terms and spirit of said contract of January 2nd, 1882; that said Company should have the right to lease or otherwise dispose of the use of any part of its franchise to any other Railway Company, provided that the consent in writing of the St. Louis Company, the Northwestern Company and the Northern Company should be necessary before any such lease or disposition could be made to any other than the Companies last named.

That Article III thereof provided that the capital stock should be One Million Dollars ($1,000,000), divided into shares of One Hundred Dollars ($100.00) each, and should be paid in at such time and in such manner as the Board of Directors might determine, and that the Board of Directors might receive in payment therefor the property and franchises in the City of Des Moines then held by the three companies last named, and said James F. How, James F. How, Trustee, and Grenville M. Dodge.

That Article IV thereof provided that the affairs of the Company should be managed by a Board of Directors who should be elected annually by the stockholders on the first Thursday in January of each year, and the provisional board to hold office until the first Thursday in January, 1886, should consist of James F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, and C. F. Meek; that four members of the Board should be nominated by the Original Wabash Company, two members by the Northern Company, and two members by the Northwestern Company, and that no stockholder should be eligible for membership in the Board, unless so nominated, and that such nominations should be evidenced by a certificate to the Stockholders' meeting, signed by the respective Secretaries of the last named companies, and that the provision with respect to nominations for the Board of Directors, should be enjoyed by a grantee or assignee of either of the last named companies; that no contract, lease or other agreement amounting to a permanent

charge upon the property of the corporation should be entered into by the Board unless the same had been first approved by the three companies last named or their assigns, and had also been approved by more than three-fourths of all the stockholders voting therefor at a stockholders' meeting.

That Article V thereof provided that the officers of the Company should possess the powers and discharge the duties of like officers of similar corporations subject to the limitations imposed by said Articles and decreed that the following persons should hold the following offices until the first Thursday in January, 1886, to-wit:

President ..... G. M. Dodge
Vice President ..... Jas. F. How
Secretary and Treasurer ..... F. M. Hubbell.

That Articles VI, VII, VIII related to the liability of stockholders, the amount of indebtedness the Company might incur, and meetings of the Board of Directors.

Article IX thereof provided that by a vote of more than three-fourths of all the stock in favor thereof at a meeting of stockholders therefor, the Articles of Incorporation of the Terminal Company might be amended.

6.

Your orators further show that in the year 1884, the Original Wabash Railway Company became insolvent and made default in the payment of interest due on all its mortgage bonds theretofore issued, whereupon the Central Trust Company of New York, trustee in what was known as the general mortgage covering all the property of said Original Wabash Company, and covering the payment of bonds that had been previously issued, to an amount exceeding eighteen million dollars, filed in the Circuit Court of the United States for the Eastern District of Missouri, its Bill of Complaint, wherein it prayed for the foreclosure of said mortgage and thereupon said Court appointed Receivers to take charge of and manage all said mortgaged railroad and property pending such foreclosure proceedings. That to protect the interests of the holders of said bonds, what was known as a Purchasing Committee was formed, consisting of Ossian D. Ashley, James F. Joy, Thomas H. Hubbard and Edgar T. Welles, with which committee all said bonds were deposited under an aggreement entered into between the members of said Committee and the holders of said bonds, to the effect that said Committee should purchase and hold all said mortgaged property for the use and benefit of the holders of said bonds according to their respective interests, it being provided in said agreement that said Purchasing Committee might after the foreclosure of said mortgaged properties dispose of

the same in such manner as they might deem to be for the best interests of the holders and owners of said bonds, or organize, or cause to be organized, new corporations to take title to and operate said railroad properties for the use and benefit of said bondholders.

7.

That after the defendant corporation, the Terminal Company, was thus organized as aforesaid, and on January 1st, 1885, the acting Board of Directors of the Terminal Company, by formal resolution declared, that, whereas, the St. Louis Company, the Northern Company, and the Northwestern Company, and the Trustees, Dodge and How, had personally notified the said Terminal Company that its organization was approved as being in compliance with the contract of January 2nd, 1882, and, whereas, said corporations had directed their officers, agents and trustees to surrender and deliver to the Terminal Company the railroad property and franchises mentioned in said contract, and had requested said corporation "to take possession of and maintain and operate the same for the purposes and on the terms mentioned in said contract," and had indicated their desire to transfer to the Terminal Company the said property "in accordance with the terms of said contract," that therefore the Terminal Company accepted the transfer, management and operation, and assumed control of the said property from that time, so far as practicable, and instructed its President to make such order as might be necessary to render said control and management effective, "as provided in said contract," meaning the contract of January 2nd, A. D. 1882.

That on January 1st, 1885, at a meeting of the Acting Board of Directors of the defendant, the Terminal Company, the defendant Frederick M. Hubbell being present as a director and as Acting Secretary of the corporation, and taking an active part in the deliberations and doings of said meeting, a resolution was unanimously adopted as is set out in Exhibit "4" attached hereto, and made a part of this Bill.

That in said resolution it was recited and declared that the St. Louis Company, the Northern Company, the Northwestern Company, G. M. Dodge, and James F. How, under the contract of January 2nd, A. D. 1882 (referred to and set out in Exhibit "A" hereof) had approved of the organizing of the Des Moines Union Railway Company and directed their officers, agents and trustees to surrender and deliver to the said Company the railroad property and franchises mentioned in said contract, and had requested it to take possession of and maintain and operate the same "for the purposes and on the terms mentioned in said contract." It was also expressly

stated that the said three railway companies, signers of said contract, had indicated their desire and purpose to transfer said property to the Terminal Company "in accordance with the terms of said contract;" and it was explicitly stated and declared in said resolution that the Terminal Company did accept the transfer, management and operation of said property east of Farnham Street, and expressly directed its officers to assume control and management "as provided in said contract" (to-wit, as provided in the contract of January 2nd, 1882, set out as Exhibit "A" hereof.) And the said Terminal Company in said resolution expressly directed its officers to procure from the three railroad companies and the parties to said contract of January 2nd, 1882,

"Such conveyance and transfer as might (would) be necessary to fully invest this (the Terminal) Company with the title, control and management of said properties as provided for in said contract of January 2nd, 1882."

That on January 1, 1885, at a stockholders' meeting of the Northern Company, the defendant Frederick M. Hubbell, who was present as a stockholder, offered the resolution which is hereto attached marked Exhibit "D" and made a part of this Bill. That in said resolution it was explicitly declared that the Terminal Company was organized pursuant to and as "contemplated and provided in the written contract of January 2nd, 1882, (hereinbefore referred to and set out in Exhibit "A"), for the purpose of acquiring and holding the property, rights and franchises in the City of Des Moines east of Farnham Street * * * and to carry out the puposes of said contract of January 2nd, 1882." And it was declared that the Articles of Incorporation of the Terminal Company, being "in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882" the Northern Company undertook to discharge the obligations of said contract toward the said Terminal Company, and the proper officers were directed to transfer to the Terminal Company all the property purchased, acquired or held by said Northern Company in pursuance of said contract. And at a meeting of the Board of Directors of said Northern Company held on November 5, 1887, the defendant Frederick M. Hubbell, being present as one of the said directors, and participating in the deliberations, a resolution was presented and adopted, which resolution explicitly declared that Jas. F. How had purchased certain property and made expenditures on the same as trustee for that Company, and that the money therefor had been furnished by the Original Wabash Company, and that under an agreement between the said Northern Company and the said Original Wabash Company, the said Trustee was to trans-

fer said property to the Terminal Company "under certain conditions," and therefore the said How was, by said resolution, requested to transfer said property to the Terminal Company; and said resolution also declared that the property held by Grenville M. Dodge was by him held as Trustee for the said Northern Company, and that under an agreement between that corporation and the Original Wabash Company, and others, it was intended that he should transfer the same to the Terminal Company, "under certain conditions," meaning the conditions and terms set forth and contained in said contract of January 2, 1882, hereto attached as Exhibit "A"), therefore the said Dodge was requested to transfer said property to the Terminal Company. A copy of which said last named resolution of said Directors is attached to this Bill as Exhibit "E" and made a part hereof.

That at a meeting of the stockholders of the Northwestern Company, held on January 1, 1885, the defendant Frederick M. Hubbell, as a stockholder, submitted to the said meeting a preamble and resolution wherein it was recited that, whereas, the St. Louis Company, the Northwestern Company, the Northern Company, G. M. Dodge, James F. How, and James F. How, Trustee, had, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines, which had theretofore been held and used by certain of the individual parties to said contract upon conditions set out in said contract (being the written contract of January 2, 1882, hereinbefore referred to and set out in Exhibit "A"), and reciting that, whereas, the Terminal Company had been organized as contemplated and provided for in said contract, and declaring that for the purpose of carrying out the said contract, the Northwestern Company accepted and ratified the Articles of Incorporation of the Terminal Company as being "in substantial accord and compliance with the terms and conditions of said contract of January 2nd, 1882," and that it would undertake to discharge the obligations imposed upon it by said contract of January 2nd, 1882) to the end that the purposes for which the said Terminal Company was organized might be made effective; and the proper officers were directed to transfer to the Terminal Company all the property held by the Northwestern Company, or any trustee, "purchased, acquired, or held in pursuance of said contract," and the officers were directed to turn over the management and operation of its property in Des Moines to the Terminal Company. A copy of which resolution is fully set out and attached to this Bill as Exhibit "F", and made a part and parcel of this Bill.

That at a meeting of the stockholders of the St. Louis Company, held on January 1, 1885, the defendant Frederick M. Hubbell being present and actively taking part in the deliberations, and acting as Secretary of said meeting, a resolution was unanimously adopted reciting the making of the written contract of January 2nd, 1882 (set out in Exhibit "A" hereof), and that the property and franchises therein referred to in Des Moines was purchased, held, controlled and used upon the conditions set out in said contract, and that the defendant corporation had been organized as contemplated and provided in said contract of January 2nd, 1882 (meaning the contract set out in Exhibit "A" hereof), and therefore the St. Louis Company accepted and ratified the Articles of Incorporation of the Terminal Company "as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882," and the St. Louis Company by said resolutions undertook to discharge the obligations imposed upon it by said contract of January 2nd, 1882, "in order to make effective the purposes of said" Terminal Company. And the proper officers of the said St. Louis Company were instructed to transfer to the Terminal Company all said property, a copy of which said resolution is hereto attached, marked Exhibit "G", and made a part and parcel of this Bill.

That on November 8th, 1887, the directors of the said St. Louis Company adopted a resolution declaring that the money for the purchasing of the property in Des Moines held by Jas. F. How had been and was furnished by the Original Wabash Company, and that under an agreement with that Company, and others, it was intended that the property should be transferred to the Terminal Company "under certain conditions," (meaning the terms and conditions stated and set forth in said contract of January 2nd, 1882), and declaring that the property held by Grenville M. Dodge was also held as Trustee for the said St. Louis Company, and that under an agreement between the St. Louis Company and the Original Wabash Company, and others, it was intended that said property held by Dodge should be transferred to the Terminal Company "under certain conditions," (meaning the conditions contained in said contract of January 2nd, 1882, hereto attached as Exhibit "A"), therefore said Dodge and said How were, by said resolution, requested to transfer the said property to the Terminal Company; and the officers of the said St. Louis Company were directed by said resolution to convey said property to the Terminal Company; and it was explicitly declared in said resolution that it was being offered for the purpose of carrying out the contract of January 2nd, 1882, entered into by and between this (St. Louis) Company, the Northwestern Company, the Northern Company, and others. Said resolution so offered

was unanimously adopted at said Directors' Meeting, the defendant Frederick M. Hubbell being present as one of the directors, and as Secretary, and actively participating in the deliberations and acts of the said meeting. A copy of said resolution is attached to this Bill, marked Exhibit "H" and made a part hereof.

That notice in writing and copies of the said resolutions by the said three railroad companies were furnished and delivered to the defendant corporation, the Terminal Company, and on the 8th day of November, 1887, its directors at a regular meeting considered the same and caused them to be entered in full upon the records of the said Terminal Company, to-wit, the records of the said Board of that date, the said resolutions being fully copied into and spread upon the said record. And thereupon, at the same meeting, the Board of Directors of the defendant corporation, the Terminal Company, authorized its officers to deliver to the said three railroad companies, or the parties then holding the title of the property as trustees (Hew and Dodge) "bonds for the amount of money, with interest and taxes added" which had been "expended by or through them for or on the property referred to."

Your orators attached hereto as Exhibit "I", a copy of the notice in writing so given by the St. Louis Company; as Exhibit "J", a copy of the notice given by the Northern Company, and as Exhibit "K", a copy of the notice given by the said Northwestern Company, each of said three exhibits being made a part of this Bill.

That it was explicitly stated and set forth in each of said notices that the said Hew and Dodge held the said property as trustee only, and that the money for the purchasing of said property had been furnished to Hew by the Original Wabash Company; and it was also explicitly stated and set forth in each of said notices to the Terminal Company, the defendant herein, that the transferring of said property by these trustees to said Des Moines Union Railway Company was pursuant to the agreement of January 2nd, 1882, hereinbefore set out as Exhibit "A".

That said Hew and Dodge, pursuant to the foregoing resolutions, executed quit claim deeds to the Des Moines Union Railway Company, copies of which are hereto attached as Exhibits "L", "M", "N", and "O", and made a part of this Bill, said deeds being delivered to the Terminal Company on or about April 26th, 1888, April 27, 1888, and May 1st, 1888.

8.

And your orators further show that in the month of January, 1887, a decree of foreclosure and sale was entered in the

foreclosure suit of the Central Trust Company of New York against the Original Wabash Company in the Circuit Court of the United States for the Eastern District of Missouri, in pursuance of which decree all the property of said Original Wabash Company was, on or about the....day of April, 1887, offered for sale at public auction and sold to the Purchasing Committee. That said sale was duly confirmed and approved by said Court, and in pursuance thereof deeds were executed and delivered to said Purchasing Committee, conveying to said Committee all said mortgaged railroad and property. That thereupon said Committee caused to be organized under the laws of Missouri, a corporation to be known as the Wabash Western Railroad Company, to which Company said Purchasing Committee conveyed all the mortgaged railroad and property formerly belonging to said Original Wabash Company lying west of the Mississippi River, which included all the railroad of said Company in the State of Iowa.

9.

And your orators further represent and show to the Court that in each of the three deeds made by the said How it was explicitly recited, stated and declared, that the Original Wabash Company had furnished the money and funds for the purchasing and acquiring of the property therein described and conveyed; that the said How held the said property and the title thereto only in trust for the said Original Wabash Company; that said property was acquired and held for the purposes and upon the terms set forth in the written contract of January 2nd, 1882, (Exhibit "A" hereto attached), and that said Original Wabash Company had consented to the said contract; that at the request of the said Original Wabash Company the said How had theretofore declared and stated in writing that he, the said How, held the legal title to the property in trust for the St. Louis Company and the Northwestern Company; and each of said deeds recited the resolutions of the Board of Directors of the St. Louis and Northwestern Companies hereinbefore referred to and set out in Exhibit "F", "G" and "H" hereto attached and made a part of this Bill. That said deeds each declared that the conveyance by the said How to the Terminal Company was made by reason of the said resolutions and in consideration of the matters hereinbefore set out in this Bill, and for the consideration of one dollar, and were mere quit-claim deeds.

That the said three deeds from the said How covered the following property, to-wit:

"Official Plat Lot three (3) in the Northwest quarter of Section (29), Township seventy-eight (78) Range twenty-four

(24) West of the 5th P. M. Iowa; Lot six, and the south half of Lot five in Block twenty-two (22) Lots five (5) and seven (7) and the south sixty-six (66) feet of Lots one (1) and two (2) and the south half of Lot three (3) all in Block thirty-one (31); Lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) in Block thirty-two (32) all in Keene & Poindexters Addition to Fort Des Moines; Lot three, Block fourteen and Lots five and six in Block fourteen; Lots five and six and the north two-thirds of Lot seven in Block 18, Lot three in Block twenty-two, Lot three and the west half of Lot five (5) and six (6) in Block nine, all in Hoxies Addition to the town of Fort Des Moines; Lot nine and the north two-thirds of Lot four in Block thirty-five (35); Lot four (4) and the north two-thirds of Lot nine (9) in Block Thirty (30), Lot Four (4) and the south two-thirds of Lot Nine (9) in Block twenty-five (25); Lot nine and the south one-third of Lot ten (10) less a strip four feet in width from the north side of said one-third and the south one-third of Lot three (3) in Block twenty (20); Lots one (1) two (2) seven (7) and eight (8) in Block fifteen (15); Lots one (1) two (2) and leasehold interest seven (7) and eight (8) in Block nine (9); Lot two (2) in Block four (4), all in the original town of Fort Des Moines; Lots five (5) and six (6) in Block D, Lot Twelve (12) in Block 1, Lots three (3) and twelve (12) in Block Three (3), all in Scott & Dean's Addition to Fort Des Moines. The right of way in the rear of Lot Seven (7) in Block Fourteen (14) beginning at the west line of Seventh Street and extending westward ninety-nine feet; Lots Seven (7) and Fifteen (15) in Block Sixteen (16); Lots twelve (12) and thirteen (13) in Block eleven (11); Lots ten (10) and eleven (11) in Block twelve (12); Lots one (1) and nine (9) and official plat Lot Eleven (11) in Block twenty-one (21); all interest in alley adjoining lots one (1) and two (2) in Block thirteen (13); Lots eight (8), Nine (9), Fifteen (15) and sixteen (16) in Block thirteen (13); Lot fifteen (15) in Block fifteen (15); the undivided one-fourth of Lot two (2) and official plat lot thirteen (13) in Block twenty-two (22); Lots three (3), four (4), five (5), six (6), seven (7) and eight (8) in Block twenty-three (23), all in the Town of Demoine; Lot twenty-three (23) north two and seventy-five one-hundredths acres of Block Forty (40); west one-third (now official plat Lot One (1) of Block forty-five (45), all of Lot thirty-six (36), all in Brooks and Company's Addition to the City of Des Moines.

The several Lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows: Lot One (1) of the Official Plat of Lot twenty-four (24) and Lot Two (2) of the Official Plat of Lot twenty-five (25) and Lot One of

the Official Plat of Lot twenty-six (26), all in Brooks and Company's Addition to the City of Des Moines; and the east one-half (½) of Lot Two (2) in Block Fifteen (15) in the Original Town of Fort Des Moines. Also the right of way in Alley adjoining Lots One (1) and Two (2) in Block thirteen (13) in the Town of Demoine, and Lot Nine (9) in Block Twelve (12) in the Town of Demoine, now a part of the City of Des Moines.

A strip of land fifty (50) feet in width, lying north of and adjoining the north line of the right of way of the Chicago, Rock Island and Pacific Railway, and being part of Lot two (2) of the official plat of the north-west quarter of the north-east quarter of Section eight (8), Township Seventy-eight (78) North Range Twenty-four (24), west of the Fifth P. M., lying and being in the City of Des Moines, County of Polk, State of Iowa."

That the deed from G. M. Dodge (Grenville M. Dodge) was a mere quit-claim deed, the consideration expressed being "One Dollar and other valuable considerations" and covered the following described property:

"Lots number One (1) and two (2), in Block number twenty-two (22), in H. M. Hoxie's Addition to the Town of Fort Des Moines, now (then) included in the corporate limits of the City of Des Moines."

That about the same time the Northwestern Company also conveyed to the Terminal Company, by quit-claim deed, all the property then held by it, and being its property referred to in the contract of January 2nd, 1882 (Exhibit "A" hereto attached), in the City of Des Moines, and which was covered by and embraced in the terms of said written contract; and the St. Louis Company and the Northern Company soon thereafter also executed quit-claim deeds to the Terminal Company covering the property held by them and such rights in the streets and alleys as they acquired from the City of Des Moines, or acquired by condemnation of property, and which was covered by and embraced within the terms of said contract of January 2nd, 1882; and the deeds or conveyances made as aforesaid constitute the only evidence of title, and create the only right that the Terminal Company has or ever had in the property therein described.

10.

And your Orators further represent and show to the Court that by virtue of the deeds made as and under the circum-

stances aforesaid, said Terminal Company took the property charged with the duty of holding, managing and administering the same, and whatever additions might be made thereto, subject to the joint and common use in perpetuity of and by the said St. Louis Company, the Northern Company, and the Northwestern Company, and their successors in title to their said respective railroads, and subject to the right of said three railroad companies and their successors in title to their respective railroads perpetually to have the use of said property as terminal facilities in Des Moines under and according to the terms of said contract of January 2nd, 1882 (Exhibit "A" hereof).

11.

And your orators further represent and show to the Court that thereafter the companies then owning said three railroads purchased more property adjacent to that theretofore acquired and turned over to the Terminal Company, and built a Union Passenger Depot, and additional side-tracks, or spur tracks, to industries as contemplated by and to be held on the terms of the contract of January 2nd, 1882 (herein referred to as Exhibit "A"), and the Terminal Company issued its negotiable mortgage bonds for the cost thereof, to reimburse said companies.

12.

That all of the bonds issued by the Terminal Company, as hereinbefore stated, and all bonds subsequently issued by it, as hereinafter stated, provide for and draw interest at five per cent per annum, and were and are secured by a mortgage or deed of trust bearing date November 1st, 1887, which the companies then owning said three railroads caused the Terminal Company to execute pursuant to the contract of January 2nd, 1882, conveying to the Central Trust Company of New York, as Trustee, in trust, all the terminal properties acquired and then held as aforesaid by the said Terminal Company, and described in said mortgage as follows, to-wit:

"Commencing at the east end of Market Street, in Brooks & Co's Addition to Des Moines, Iowa, and running thence west on Market Street, crossing Twenty-fourth Street, Twenty-third Street, Twenty-second Street, Nineteenth Street and Seventeenth Street to the west line of East Eleventh Street in said City; thence westerly along and across Vine Street from East Eleventh Street to East Eighth Street and on, over and along the alleys in Blocks Twenty-one, twenty-two and twenty-three of the Town of Demoine, now included in the City of Des Moines, crossing East Twelfth Street, East Eleventh Street, East Tenth Street and East Ninth Street, thence west between Court Avenue and Vine Street, crossing all the streets and

alleys of said City between East Ninth Street and East Fourth Street, thence westerly along the south alley between Court Avenue and Vine Street in said City to West Fifth Street, crossing East Fourth Street, East Third Street, East Second Street, and Front Street, Water Street, West Second Street, West Third Street, West Fourth Street and West Fifth Street, and across all north and south alleys between East Fourth Street and West Fifth Street of said City, thence westerly in said City on the alley between Cherry Street and Vine Street from West Fifth Street to the line of Fourteenth Street or Section Street if extended south of Mulberry Street, crossing West Sixth Street, West Seventh Street, West Eighth Street, West Ninth Street, West Tenth Street, West Eleventh Street, West Twelfth Street, West Thirteenth Street, and thence westerly to Farnham Street and crossing all the north and south alleys of said City between West Fifth Street and West Thirteenth Street, together with all other lines, branches, extensions, switches and side tracks, which are now or may be hereafter constructed, to connect the lines of property of said Company with the lines of other railway companies converging in Des Moines, Iowa, or which are or may be built to any other point within said City.

Also all lots of land upon any part of which said railway, its extensions, side tracks, or branches, or any of them, or any depots, shops, round houses, water tanks or other structures, now are or may be hereafter constructed, and of which the said railway company is or may become the owner or holder by deed, lease, or other beneficial interest, to the full extent of said railway company's interest therein, as the same does now or may hereafter exist.

Also the bridge of said railway company over and across the Des Moines River in said City, touching upon and lying immediately north of the south alley between Court Avenue and Vine Street in said City, with all the approaches and appurtenances thereto owned or used by said Company in connection therewith.

Also the property and realty embraced in the several conveyances made to the said Des Moines Union Railway Company by James F. How, Trustee, James F. How, Grenville M. Dodge, the Des Moines Northwestern Railway Company, the Des Moines & St. Louis Railway Company, and the St. Louis, Des Moines & Northern Railway Company, or any other person or corporation not specially named above, and for which conveyance reference is hereby prayed to the records of said Polk County, Iowa.

And all other branch or tributary roads which are now owned or that may be hereafter acquired, located or constructed,

including the right of way therefor, the roadbed thereof, the superstructures and tracks placed or to be placed thereon, and all station, depot and shop grounds, yards and other grounds, used and to be used in connection therewith, and all rails, railways, bridges, tracks, sidings, switches, fences, turn-tables, water-tanks, viaducts, culverts, main passenger and other depots, station-houses, freight-houses, machine-shops, and all other structures, buildings, and fixtures, howsoever acquired or to be acquired, for the use of the parties of the first part, or the business thereof.

It being the intention of said Des Moines Union Railway Company to convey to said Trustee, not only the property specifically described herein, but also, All and Singular the whole line of railroad of the party of the first part, as the same now is, or may be hereafter located, constructed or acquired, under its charter, with all lines of road connecting its tracks with other lines of railroad, with which it may join or intersect; and all such spurs, extensions, side-tracks, yard-tracks, turnouts, switches and appurtenances as it has constructed or may hereafter construct to enable it to connect with warehouses, elevators, stockyards, mills and manufacturing establishments along or near its routes, as well as all real estate now owned or hereafter acquired, with all the tracks and improvements thereon, which said Des Moines Union Railway Company now has or may hereafter find it necessary or proper to have in order to enable it to transact a general railway transfer business in and about the City of Des Moines, Iowa.

Together with all the rolling stock, machinery, tools, implements, fuel and materials of the party of the first part now owned or that may be hereafter acquired for constructing, maintaining, operating, replacing, improving, or repairing the said road, and its appurtenances, or any part thereof, or in or for the business of said railroad, and all the real estate of said party of the first part wherever the same may be situated, now held, or hereafter to be acquired.

Together with all the corporate rights, privileges and franchises of the said party of the first part, now possessed or that may be hereafter acquired, connected with or relating to the said railroad and the construction, maintenance, use and enjoyment of the same.

Together with all the streets, ways, passages, water-courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of the hereby granted, and mentioned premises and states, appertaining or belonging thereunto, with all the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim and demands of every nature and kind whatsoever

of the said party of the first part now owned and possessed, or that may be hereafter acquired, as well at law as in equity, of, in and to the same, and every part and parcel thereof."

And your orators further show to the Court that the execution of the said mortgage bonds, as aforesaid, was, in all respects in accordance with and as provided in said contract of January 2nd, 1882 (Exhibit "A" attached to this bill,) and was duly authorized and approved by the said Companies then owning said three railroads. And thereafter said mortgage or trust deed constituted, and now constitutes, a first lien, upon all of the said property, and that none of the said negotiable bonds as issued by the defendant corporation have been paid.

And your Orators further represent and show that of the aforesaid bonds sufficient were issued and delivered to each of the three railway companies at par to reimburse it for the amount of money paid by it for the original property which it had contributed as aforesaid to the joint property, and interest thereon at six per cent per annum, and thereafter additional bonds were likewise issued and delivered to each of the said railway companies from time to time for money by it expended or advanced for property that was added to the said original property, and that all such added grounds or property which now stands in the name of the defendant corporation, (the Terminal Company) was paid for by bonds issued under the mortgage aforesaid, except such as were paid for out of the fund which arose from rents received for property or privileges and for switching charges received from other railroad companies or persons, as will be hereinafter stated and more fully set out.

13.

And your orators further represent and show to the Court that up to the first day of May, 1888, the said terminal property had been managed by the St. Louis Company under and pursuant to the terms of the written contract of January 2nd, 1882 (Exhibit "A" hereof); and on said May 1st, 1888, the property was all turned over to the Terminal Company (the Des Moines Union Railway Company), and was thereafter managed and conducted by it under and pursuant to the terms of said contract of January 2nd, 1882, and in strict compliance with its terms.

That about the same time certain parties, including the defendant, F. M. Hubbell, who were then promoting and managing the affairs of the Terminal Company, and who claimed to each be the holder of one share of stock in said Terminal Company, at a meeting at the Company's office in Des Moines, un-

animously resolved that the operating expenses, taxes, and interest on bonds that were then or thereafter to be issued by the Terminal Company, after deducting any amount received from other sources for rental, be paid, pro-rata, on a "wheelage basis" by the three railway companies, and that such payments, including interest charges, be made monthly; and that a contract so providing and also "covering in detail the conduct and operation of the Des Moines Union Railway Company" for thirty years from May 1st, 1888, be approved and executed by all the lines then "holding an interest in the property."

Your orators further state that while the right to use said terminal facilities was secured to said three railroad companies by said contract of January 2nd, 1882, (Exhibit "A" hereto attached), on the terms hereinbefore stated, yet neither of said railroad companies had obligated itself to use said terminals, and each was therefore at liberty to cease to use the same at any time and was at liberty to withdraw its wheelage therefrom, and thereby burden the company or companies continuing to use the said terminal facilities with the entire cost of maintaining and operating said terminals, including the taxes, insurance, and the interest on said bonds; that the time or dates on which said three railroad companies should make the payments to the Terminal Company provided for in said contract of January 2nd, 1882 (Exhibit "A" hereto attached), had not been fixed; and for the purpose of obligating each of the said proprietary railroad companies with respect to said matters, as well as to render said bonds marketable or saleable, by making certain the payment of interest thereon until their maturity, the said proprietary companies on May 10th, 1889, entered into a supplemental terminal contract with each other, with the Terminal Company, by the terms of which terminal contract each of the three railroad companies obligated itself to use said terminal facilities until the maturity of said bonds, and the dates on which payments of interest, taxes, and expense of operating and maintaining the terminals should be paid by each of said railroad companies into the Treasury of the said Terminal Company were fixed; and said last named contract also fixed in greater detail the manner in which said Terminal property should be managed and conducted, a copy of which said contract is hereto attached, marked Exhibit "P" and made a part of this bill. But your orators aver that under the terms of said contract, more particularly under Section Twenty-two thereof, the management and control of the property, and the conduct of the parties, and their successors in interest, were and are fixed and prescribed only until May 1st, A. D. 1918, and does not change or affect the rights, obligations or duties of the parties under the agree-

ment of January 2nd, 1882, (Exhibit "A" hereto attached), after said May 1st, A. D. 1918, being the date of maturity of said bonds.

And it was also agreed in said last named contract, that the said Companies owning the said three Railroads should be entitled to the capital stock of the Terminal Company in the same proportions that it was agreed in the contract of January 2nd, 1882, the cost of said terminal property should be borne by said Companies, that is to say, the St. Louis Company should be entitled to 10,000 shares and the Northwestern and the Northern Companies each to 5,000 shares thereof, said shares being for $100.00 each, and the total capital stock of the Terminal Company being Two Million Dollars.

14.

Your orators further state that on account of the nature of said Terminal Company, arising from its limited powers, its capital stock, as well as the shares thereof, were merely nominal and of nominal value. All of which was then well known to defendant Frederick M. Hubbell. And he also then well knew that said three Railroad Companies that had entered into said contract of May 10, 1889, with each other with said Terminal Company (Exhibit "P"), had organized said Terminal Company as a mere agency, and for their own convenience in the matter of keeping the books and accounts incident to the construction, maintenance and operation of said terminals for their joint and common use, and that all said railroad companies, and their officials, regarded the stock thereof as merely nominal, and of nominal value, and that none of said railroad companies intended to sell or dispose of said stock, or issue the same, to others than the railroad companies who were or might thereafter become entitled to use said terminal facilities, and your orators state that by said contract of May 10, 1889, (Exhibit "P"), it was, among other things, agreed that said three Railroad Companies then having the right to use said terminals, should be entitled to the capital stock of the Terminal Company in the following proportions, to-wit; the St. Louis Company to 10,000 shares thereof, of the par value of One Hundred Dollars ($100.00) each, nominally amounting in the aggregate to one million dollars; the Northern Company to 5,000 shares thereof of the par value of One Hundred Dollars ($100.00) each, nominally amounting in the aggregate to Five Hundred Thousand Dollars; and the Northwestern Company to 5,000 shares thereof, of the par value of One Hundred Dollars ($100.00) each, nominally amounting to $500,000; and that all the certificates of said stock should, when issued, express upon their face that they were not transferrable in whole or in part, without the consent in writing, of all the Railroad

Companies parties to said agreement, excepting, however, that any shares of the said stock issued on request of either of said Companies, to any person to qualify him as a member of the Board of Directors, might be retransferred to the Company on whose request they had been issued, without the consent of the other Companies.

Your orators further state that at and before the date of the execution of said contract of May 10, 1889, (Exhibit "P"), the defendant Frederick M. Hubbell was, and continued to be throughout all the transactions, on all the dates hereinafter mentioned, a director as well as the secretary of the St. Louis, Company; that throughout all said transactions, and all said dates, he was also a member of the Board of Directors, and President of said Northwestern Company, and that throughout all said transactions, and on all said dates, he was also acting as a Director of said Terminal Company, and as the Secretary and Treasurer thereof.

And your orators further state that on or about the date, or soon after the date, of the execution of said contract of May 10th, 1889 (Exhibit P), the defendant Frederick M. Hubbell, while being and acting as a Director and Secretary of the St. Louis Company, and while being and acting as a Director and President of the Northwestern Company, and while also acting as a nominal Director, as well as the nominal Secretary and Treasurer of said Terminal Company, conceived of a plan whereby he hoped to enrich himself in the manner hereinafter stated, at the expense of the aforesaid corporations, of which he was at the time a trusted officer.

That having determined upon said plan, the first step in execution thereof was to acquire for himself from said Railroad Companies, of which he was at the time an officer, a majority of the nominal capital stock of said Terminal Company, at nominal prices. And although as Secretary of said St. Louis Company, he, the said Frederick M. Hubbell, at the time well knew that said St. Louis Company was under said contract of May 10th, 1889 Exhibit P), entitled to receive one-half the nominal capital stock of said Terminal Company, of the par value of $1,000,000., and although he then well knew that said St. Louis Company had not sold, or in any manner disposed of the same, or any part thereof, or of its rights in said stock, and although he then well knew as Secretary of said Terminal Company, that none of the nominal capital stock of said Terminal Company had then been issued, and although he then well knew, as Treasurer of said Terminal Company, that nothing of value had been paid to, or received by said Terminal Company on account of said nominal capital stock, yet notwithstanding his knowledge of all the matters and things aforesaid,

he did, on or about the first day of February, 1890, purchase from one O. D. Ashley, as a member of said Wabash Purchasing Committee, One Hundred and Thirty-five (135) First Mortgage Bonds of said Terminal Company of the par value—and also of the then market value—of $1,000.00 each, and as a part of said transaction, said Ashley agreed on behalf of said Committee that said Hubbell should be entitled to whatever title and interest said Committee then had, to one-half of the shares of said nominal capital stock of said Terminal Company (of the [part] value of $500,000.00) which by said contract of May 10th, 1889 (Exhibit P), it was agreed that the St. Louis Company was entitled to receive.

And your orators further state that again, on or about the 12th day of February, 1890, the said Frederick M. Hubbell purchased from said Ossian D. Ashley, as a member of said Wabash Purchasing Committee, Fifty (50) First Mortgage Bonds of said Terminal Company, of the [part] value—and of the then market value—of One Thousand Dollars ($1,000) each, and as a part of the same transaction, in consideration of the sum of $7,500.00 said Ashley agreed on behalf of said Purchasing Committee, that said Frederick M. Hubbell should be entitled to receive all the title and interest of said Committee in an additional one-fourth of the shares of said nominal capital stock of said Terminal Company (of the par value of $250,000.00) which by said contract of May 10th, 1889 (Exhibit P), it was agreed the St. Louis Company was entitled to receive.

But your orators state that neither said Ashley, nor said Wabash Purchasing Committee, either at the date of the transactions last aforesaid, or at any other time, owned or were authorized to sell or dispose of said nominal capital stock, or any part thereof, and said Frederick M. Hubbell, as a Director and Secretary of said St. Louis Company, then well knew that neither said Ashley, nor said Wabash Purchasing Committee, at the date of said transactions, or at any other time, owned or had authority to sell to him, the said Hubbell, the nominal capital stock of said Terminal Company above mentioned, or any part thereof.

And your orators state that said Frederick M. Hubbell had made his pretended purchase of said stock from said Wabash Purchasing Committee, for the sole purpose of concealing the fact that he was acquiring, or trying to acquire, in a secret way for himself, for the nominal consideration of $7,500.00, said capital stock of the par value of $750,000.00, which he then knew, in fact and of right, belonged to the St. Louis Company, of which he was at the time a Director. And being at the time Secretary of said Terminal Company, his plan and intention then was to so formulate the proceedings and records of said

Company, as to have the certificates for said stock, when the same should afterwards be issued by himself, as Secretary, show on their face that said nominal capital stock of said Terminal Company of the par value of $750,000.00 had been first issued to said Purchasing Committee, and afterwards transferred by said Committee to himself, or to the firm of F. M. Hubbell & Son, of which firm he was, at the time, the senior and controlling member.

And your orators further state that on or about the date of said contract of May 10th, 1889 (Exhibit P), the said defendant Frederick M. Hubbell had acquired control of the Des Moines & Northwestern Railway Company, in such manner as would and did afterwards enable him to have transferred to himself, for a nominal consideration, the 5,000 shares of the nominal capital stock of said Terminal Company (of the par value of $500,000.00) which by the terms of said contract of May 10th, 1889 (Exhibit P), the said Des Moines & Northwestern Railway Company was entitled to receive.

And your orators further state that having by his contracts and arrangements made as aforesaid, succeeded in establishing such relations between himself and said Wabash Purchasing Committee, and between himself and the said Des Moines & Northwestern Railway Company, as would, as he then believed, enable him to procure the transfer of five-eighths of the nominal capital stock of said Terminal Company (of the par value of $1,250,000.00) to himself, as soon as, and whenever the same should be issued, he, the said Frederick M. Hubbell, then entered upon the execution of the second step in his said plan, which was to make it appear upon the face of the records and books of said Terminal Company as follows:

1st. That said nominal capital stock, the possession and control of which (when the same should be issued) he had then secured to himself, as hereinbefore stated, was fully paid and non-assessable, and that too without the payment by himself, or anyone else, of any money whatever into the Treasury of said Terminal Company, or the delivery to said Company of any property or thing of value, on account thereof, when he, the said Hubbell, then well knew that no money or property, or thing of value, had been previously paid into the Treasury of said Terminal Company, or delivered to it on account of said stock.

2nd. To make it appear upon the face of the records and proceedings of said Terminal Company, that said Company was a corporation for pecuniary profit, when he, the said Frederick M. Hubbell, then well knew that it was a corporation created as a mere agency, and only for the convenience of said

Railroad Companies in the matter of keeping the books and accounts of said Railroad Companies, in the business of constructing, improving and operating said terminal properties.

3rd. To make it appear upon the records and proceedings of said Terminal Company, that the 7,500 shares of said nominal capital stock of said Terminal Company (for the acquisition of which he had bargained with said Purchasing Committee) then belonged to said Committee, and not to said St. Louis Company, of which he was then a Director, when he at the time well knew the title to said 7,500 shares of said nominal capital stock was, by said contract of May 10th, 1889 (Exhibit P), vested in said St. Louis Company, and also well knew that said St. Louis Company had not parted with its ownership thereof.

And your orators further state that defendant Frederick C. Hubbell is a son and business partner of defendant Frederick M. Hubbell, and that said defendants have at all times herein mentioned, resided at the City of Des Moines, and have been for many years, and now are, large owners of real estate, insurance companies and other business enterprises in said City; and as stockholders of corporations located and doing business in said City, that in all the transactions hereinbefore and hereinafter mentioned, they have at all times pretended to be interested in promoting the public welfare of said City, as well as the private interests of all said Railroad Companies of which said Frederick M. Hubbell is and has been a Director and officer, to-wit, the St. Louis Company, the Northern Company, and the Northwestern Company, all of which are common carriers of freight and passengers, and the operation of their said lines of railroad into said City, and over said terminal tracks and properties at the least possible expense to consignees and shippers, has been and will at all times continue to be, a matter of public interest, and necessary to the growth of said City, the prosperity of its inhabitants, and the development of manufacturing and other business interests.

And your orators state that both said defendants Frederick M. Hubbell, and Frederick C. Hubbell, now are, and have been for many years, well known throughout the country, and especially throughout the State of Iowa, for their business sagacity and foresight, and that until the occurrences hereinafter mentioned, their advice and recommendations respecting the management of all said railroads and terminal properties, in and about the said City of Des Moines, were at all times accepted and acted upon by all their associate directors, and other officers and managers of said corporations, without hesitation, and without suspicion, respecting their good faith,

in all matters affecting the interests of said Railroad Companies, of which they were at the time directors and officers.

But your orators state that notwithstanding the truth of the several matters and things last aforesaid, the said Frederick M. Hubbell in furtherance of his said plan to enrich himself at the expense of said corporations, of which he was at the time an officer, combined and confederated with defendant Frederick C. Hubbell, and with divers other parties to your orators at present unknown but whose names when discovered your orators pray that they may be at liberty to insert in this bill with apt words to charge them as parties defendants, and contriving how they might so manipulate the proceedings and records of said corporations as would accomplish their designs and purposes, and at the same time give said records and proceedings the appearance, on their face, of representing the free and voluntary acts of their associate officers, without any suggestions from them, or either of them, in the premises, caused a statement to be written into a book, purporting to be a record of the corporate proceedings of said Terminal Company, to the effect that said Frederick M. Hubbell had been elected Secretary of said Terminal Company, and thereupon, on or about the 1st day of February, 1890, said defendants, Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, in further execution of their said plan and purpose to deprive said three Railroad Companies and their successors of their said rights to use said terminal properties in common and in perpetuity, as provided in said contract of January 2nd, 1882, by transfering the aforesaid rights of said Railroad Companies in said terminals under said contract, without consideration to said Terminal Company, thereby hoping to make the nominal capital stock of said Terminal Company, of which they now claim a majority, of great value to themselves, without the expenditure of any money on their part, caused to be issued to certain persons whom they designated and addressed as stockholders of said Terminal Company, pretended notices stating to, and notifying said parties, that on a certain day there would be a meeting of said persons as stockholders of said Terminal Company, for the purpose of amending Articles of Incorporation of said Terminal Company.

And your Orators further show that afterwards they, the said defendants Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, caused an untrue statement to be written into what purports to be the record book of said Terminal Company, to the effect that a meeting of the stockholders of said Company had been held on or about the 8th day of April, 1890, in pursuance of said pretended notices, at

which the following named persons were present as stockholders, or as representatives or proxies for persons who were owners of shares of the capital stock of said Terminal Company, to-wit:

J. F. Hew ..... representing one (1) share
C. M. Hays ..... representing one (1) share
F. M. Hubbell ..... representing one (1) share
L. M. Martin ..... representing one (1) share
F. C. Hubbell ..... representing one (1) share
A. B. Cummins ..... representing one (1) share

And that C. M. Dodge was present at said meeting as the owner of one share by L. M. Martin, and that W. H. Hodgett was present at said meeting as the owner of one share by J. F. Hew.

Your orators further show that at the time said defendants, Frederick M. Hubbell and Frederick C. Hubbell issued said pretended notices to the persons aforesaid, informing them that on a day stated there would be a meeting of the stockholders of said Terminal Company, for the purpose of amending the Articles of Incorporation of said Company, and also at the time of the alleged meeting of the stockholders of said Company, to-wit, on or about the 8th day of April, 1880, none of the persons to whom said alleged notices were addressed, or who are named in said alleged record as being present as stockholders at said meeting, in person or by proxy, had either subscribed for any share or shares of the stock of said Terminal Company, or paid or delivered to said Terminal Company or into its Treasury, any money, or other thing of value, on account of any stock therein, nor had said persons, or any one of them, in any wise obligated themselves to subscribe for, or become in any manner a stockholder in said Terminal Company, nor had they, or either of them, by purchase or otherwise, become the owner or holder of any share or shares of the stock of said Terminal Company, or the agent or proxy of any such owner or holder.

And your orators further show that in furtherance of their said unlawful design to injure your orators as aforesaid, they the said defendants, Frederick M. Hubbell and Frederick C. Hubbell, caused it to be stated in writing in what purports to be the record book of said Terminal Company, that the Des Moines & St. Louis Railroad Company was present at said meeting by J. F. Hew, President; that the Des Moines & Northwestern Railroad Company, successor to the Des Moines Northwestern Railway Company, was present at said meeting by Frederick M. Hubbell, President, and that the Des Moines and Northern Railroad Company, successor to the St. Louis, Des

Moines & Northern Railway Company, was present at said meeting by A. B. Cummins, Vice President, thereby intending to imply and have it appear by said writing in said record book, that said Companies were each of them present as stockholders, at a meeting of the stockholders of said Terminal Company, held on said date, when in fact and in truth neither of said Railroad Companies were present at said meeting as a stockholder, or otherwise, as made to appear in and by said sham or pretended record. But your orators state the truth to be that at the date of said pretended meeting of the stockholders of said Terminal Company, for the alleged purpose of amending the Articles of Incorporation of said Terminal Company, as stated in said pretended record book, no stock of said Terminal Company had been subscribed for by, or issued to anyone.

And your orators further state that by the Articles of Incorporation of said Terminal Company, as adopted on or about December 10th, 1884, it was therein provided that said Articles could only be amended by a vote of more than three-fourths of all said stock in favor thereof, at a meeting of stockholders called for that purpose, of which a notice containing the proposed amendment should be mailed to each stockholder at his address, as disclosed by the transfer books of the Company, and that notice of such proposed meeting should also be given by publication for three successive weeks in some newspaper published in said City of Des Moines, Iowa.

And your orators state the fact to be that no notice of any proposed meeting of stockholders, containing any proposed amendment of said Articles of Incorporation, was ever mailed, or otherwise delivered to any stockholder of said Company at any time before said alleged meeting, nor has there been a vote of more than three-fourths of all the stock or a vote of any of the holders of the stock of said Terminal Company, at any time at any meeting, in favor of any amendment of said Articles of Incorporation.

Wherefore, your orators state that by reason of the several matters and things hereinbefore stated, there has been in fact no amendment of the Articles of Incorporation of said Terminal Company, and that the same are now, in all respects the same as they were adopted and filed in the office of the Recorder of Deeds, within and for said County of Polk, on or about December 10th, 1884, and in the office of the Secretary of State for said State of Iowa, on or about the 11th day of February, 1885.

And your orators further state, that by the Articles of Incorporation of said Terminal Company, the holders of the shares of its stock were not authorized to so amend said Articles as to affect in any manner whatever, the rights reserved by and

secured to your orators by said contract dated January 2nd, 1882, to use said terminal facilities and property, as and on the terms therein stated, but on the contrary, said Articles of Incorporation provided that neither the directors nor the stockholders of the Terminal Company, should have authority or power to affect in any manner the rights of your orators, or their predecessors, to use said terminal facilities and property, as reserved by and secured to them by said contract of January 2nd, 1882, and to so use the same as and on the terms stated in said contract. Your orators further represent and show that neither your orators nor their predecessors have at any time consented to the adoption of said alleged amended Articles of Incorporation, or ratified them, and that neither of them had any information or knowledge of or with respect to said alleged amended Articles of Incorporation, until the time said defendants Frederick M. Hubbell and Frederick C. Hubbell set up their claims as hereinafter stated.

Your orators further show that in said pretended record it is made to appear that by the unanimous vote of the stockholders of said Terminal Company, the Articles of Incorporation of said Terminal Company had been amended in the following particulars, to-wit:

1st. That Article I of said Articles of Incorporation was stricken out and a new article of the same number adopted and substituted therefor, which provided that the name of the corporation should be the "Des Moines Union Railway Company" and that its principal place of transacting business shall be at said City of Des Moines.

2nd. That Article II of the Articles of Incorporation was repealed and stricken out and a new Article of the same number adopted and substituted therefor, which provided that the objects of the corporation and the general nature of its business should be the purchase, lease, construction, ownership, maintenance and operation of a system of railways in and around and about the City of Des Moines including the construction, purchase, ownership, maintenance and use of union depots, depots, freight houses, railway shops, repair shops, stock yards, and whatever other things may be useful and convenient for the operation of railways at terminal station, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufacturies, warehouses, elevators or other sources of traffic to each other or any of the railways or depots thereof now constructed or hereafter to be constructed in and around said City of Des Moines, and also to lease terminal facilities to and furnish and perform terminal service for all railways whose lines reach or pass through or near the City of Des Moines and should pos-

sess all the powers conferred upon railway companies by the laws of Iowa, including the power to condemn private property for its use.

3rd. That Article III of the Articles of Incorporation was repealed and stricken out and a new article of the same number adopted and substituted therefor, which provided that the capital stock of the corporation should be Two Million Dollars ($2,000,000) divided into Twenty-Thousand (20,000) shares of the par value of One Hundred Dollars ($100.00) each, four thousand (4,000) of which should be issued in payment in part of the purchase price of the terminal property originally acquired by the corporation, it being agreed by the stockholders that the sum of Four Hundred Thousand Dollars ($400,000) together with the first mortgage bonds theretofore issued for that purpose constituted the fair value of said property when so acquired; that of said Four Thousand (4,000) shares two thousand (2,000) shares should be issued to the Purchasing Committee of the Original Wabash Company, successor in ownership to the Des Moines & St. Louis Company and the present owner of the property known as the Des Moines & St. Louis Railroad; that one thousand (1,000) shares thereof should be issued to the Northwestern Company, successor to the Des Moines Northwestern Railway Company, and that one thousand (1,000) shares thereof should be issued to the Northern Company, successor to the St. Louis, Des Moines & Northern Railway Company, and said shares were declared to be fully paid by the transfer of the aforesaid property, that the remaining capital stock should only be issued pursuant to a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and should be fully paid either in money or property at its fair market value.

4th. That Article IV of the Articles of Incorporation was repealed and stricken out and a new article of the same number adopted and substituted therefor, which provided that the affairs of the corporation should be managed and its business conducted by a Board of Directors composed of eight persons, who should be elected by the stockholders at their regular annual meeting to be held at the offices of the Company in Des Moines, Iowa, on the first Thursday of January of each year; that it should require the votes of more than seven-eighths of all the stock issued to elect a director; that the Board of Directors should have power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings and to do all such other things as might be proper or necessary for a

corporation to do, but with respect to the matters above mentioned, and all other matters, except the ordinary operation of the property, the Board of Directors could only act upon the unanimous vote of the eight members thereof; that the Board of Directors should annually select an Executive Committee, but that such selection could only be made by the vote of at least seven members and that the duties and powers of such Committees should be defined by by-laws. That the Board of Directors should elect the officers of the corporation and should have the power to enact and publish by-laws, but required that such officers should be elected and such by-laws enacted only by the unanimous vote of the eight members of the Board, and that vacancies occurring in the Board should be filled by the stockholders at a special meeting.

5th. That Article V of the Articles of Incorporation was repealed and stricken out and a new article of the same number adopted and substituted therefor, which provided that the officers of the corporation should be a President, Secretary and Treasurer, to be annually elected from the persons comprising the Board of Directors; that said officers should hold their respective offices for one year and until their successors should be elected and qualified.

6th. That Article IX of the Articles of Incorporation was repealed and stricken out and a new article of the same number adopted and substituted therefor, which provided that the Articles of Incorporation might be amended by the vote of more than seven-eighths of all the stock voting in favor thereof at a meeting of the stockholders of which a notice containing proposed amendment should be mailed to each stockholder at his address as disclosed by the transfer books of the Company.

7th. That five new articles were adopted and added to the Articles of Incorporation, designated as Nos. XI, XII, XIII, XIV, XV. That such new articles, however, only related to special meetings of the stockholders, the conduct of the business and the ratification of the mortgage executed by the Company, dated February 28th, 1887, and that by said Article XV, it was provided that the proceedings of a meeting held December 10th, 1884, with certain preambles including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Company, the Northwestern Company and the Northern Company, consented to by the Original Wabash Company, which appears as a part of the Articles of Incorporation, should be and were thereby repealed, stricken out and expunged from said Articles.

15.

And your orators further state that said Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, having made it appear in Article III of said pretended amendments, that 4,000 shares of the capital stock of said Terminal Company were to be immediately issued; that 2,000 of said shares were to be issued to the Wabash Purchasing Committee; 1,000 shares to said Des Moines & Northwestern Railway Company, and 1,000 shares to said St. Louis, Des Moines & Northern Railroad Company, and having also made it appear by said Article III of said pretended amendments that without the payment of any money to said Terminal Company, or the delivery to it of any property, said 4,000 shares should, nevertheless, be issued as fully paid, the defendant Frederick M. Hubbell thereupon, as Secretary of said Terminal Company, proceeded at once to issue said shares accordingly. And your orators state, that having issued 2,000 of said shares as fully paid to said Wabash Purchasing Committee, the said Committee, on his request, immediately transferred 1,500 of said shares to said Frederick M. Hubbell, or to said firm of F. M. Hubbell & Son, said transfer being made in accordance with the contracts and arrangements he, the said Frederick M. Hubbell, had previously made with said Wabash Purchasing Committee; and the said Frederick M. Hubbell, as such Secretary, having issued 1,000 of said shares as fully paid, to said Des Moines & Northwestern Railway Company, the said Des Moines & Northwestern Railway Company on his request, immediately transferred said 1,000 shares to him, the said Frederick M. Hubbell, or to his said firm, said transfer being in accordance with the contract and arrangements he, the said Frederick M. Hubbell, had previously made with said Des Moines & Northwestern Railway Company, of which he was at the time a Director.

And your orators further state, that since the date last aforesaid there has been no change in the relations sustained by defendants, Frederick M. Hubbell or Frederick C. Hubbell, or of the firm of F. M. Hubbell & Son to said terminal properties, or in the stock certificates of said Terminal Company, nor have they, or either of them, since said date, or at any other time, advanced or contributed any money or thing of value to said Terminal Company, or contributed to the expense of acquiring, maintaining, operating or improving said terminals; nor have they, or either of them, at any time since the 8th day of April, 1890, made any investments of money on account of anything contained in said pretended amendments of said Articles of Incorporation, or on account of anything stated in any of the resolutions or contracts hereinbefore referred to as having been adopted or executed on or since said last mentioned date.

And your orators further show, on information and belief, that the statement made in what purports to be Article III of said pretended amendments, to the effect that 2,000 shares of the nominal capital stock of said Terminal Company was then owned by, and should be issued to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company (successors in ownership of the Des Moines & St. Louis Railroad Company, and the then present owner of the property known as the Des Moines & St. Louis Railroad) was inserted, or caused to be inserted, in said pretended amendments by said Frederick M. Hubbell and Frederick C. Hubbell and their confederates knowing said statement was not, and could not, at the time be true.

And your orators state, on like information and belief, that the purpose of said Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, in causing said statement concerning the right of said Purchasing Committee to have 2,000 shares of said nominal capital stock of said Terminal Company issued to it, was to conceal from their co-directors and officers in said Terminal Company, and from their co-directors and officers in said Railroad Companies, the fact that said Frederick M. Hubbell had, prior to said date, secretly bought from said Committee whatever interest said Committee then had, or claimed to have, in 1,500 of said shares (which under said contract of May 10th, 1889, Exhibit P., the St. Louis Company was entitled to receive) and had secretly arranged to have the same transferred by said Committee to himself, as soon as he, the said Frederick M. Hubbell, should, as Secretary of said Terminal Company, issue said stock to said Committee.

And your orators further state, that said Frederick M. Hubbell and Frederick C. Hubbell, having, by their said maneuverings, succeeded in getting fully paid stock certificates for five-eighths of all the issued stock of said Terminal Company issued to themselves without the payment of any money whatsoever on account thereof, and all of which shares they then well knew belonged of right to the Railroad Companies of which they were at the time officers, they now falsely assert and claim, to the injury of your orators, that said pretended amendments of said Articles, as written by them in said record book, were actually made and approved by a vote of more than three-fourths of all the stock of said Terminal Company, and that said pretended amendments are now binding on your orators, when they, the said Frederick M. Hubbell, and Frederick C. Hubbell, both well know that at the date when they caused said pretended amendments to be written in said record book, no stock of said Terminal Company had been issued to any one; and they also now falsely assert and claim that said Wabash Purchasing Committee was entitled to receive said 2,000 shares of

said stock of said Terminal Company issued to said Committee as aforesaid, when they, the said Frederick M. Hubbell and Frederick C. Hubbell both well knew that said Purchasing Committee neither owned said stock, nor had authority to dispose of the same; they also now falsely assert and claim that the shares of the nominal capital stock of said Terminal Company that had been issued to said Frederick M. Hubbell or to their said firm, as Assignees of said Purchasing Committee, and as Assignees of said Des Moines & Northwestern Railway Company, being five-eighths of all the issued stock of said Terminal Company, was and is fully paid, when they, the said Frederick M. Hubbell and Frederick C. Hubbell, both well know that nothing of value was ever paid or delivered to said Terminal Company on account of said stock.

And your orators further state that by said pretended amendments of said Articles of Incorporation, it was also made to appear that so much of Article II of the Articles of Incorporation of said Terminal Company, as the same were executed and filed on or about December 10th, 1884, as provided that the powers to be exercised by said Company should be in accordance with the terms and spirit of the aforesaid contract entered into on or about the 2nd day of January, A. D. 1882 (Exhibit A), had been cancelled, and was no longer in force.

And your orators further state that said Frederick M. Hubbell and Frederick C. Hubbell now falsely assert and claim, to the irreparable damage and injury of your orators, that by reason of said pretended amendments, the provision in Article II of the Articles of Incorporation of said Terminal Company, that were adopted and filed on or about the 10th day of December, 1884, to the effect that the powers to be exercised by said Terminal Company should be in accordance with the terms and spirit of the aforesaid contract of January 2nd, 1882, has been cancelled, and is no longer in force, and your orators further state that said Frederick M. Hubbell and Frederick C. Hubbell now falsely assert and claim, to the irreparable damage and injury of your orators, that by reason of said pretended amendments, so much of said contract of January 2nd, 1882 (Exhibit A) as provided that your orators were entitled to the use of said terminals in common and in perpetuity, was cancelled, and that the same is no longer binding on said Terminal Company.

16.

And your orators further state that defendants Frederick M. Hubbell and Frederick C. Hubbell caused a preamble and resolutions to be adopted by the Board of Directors of the Des

Moines & St. Louis Railroad Company and written into its record book under date of April 8th, 1890 (being the same date that the record book of the Terminal Company states that said pretended amendments were made to the Articles of Incorporation of the Terminal Company), erroneously reciting that $400,000.00 of the capital stock of said Terminal Company had been issued, as a part of the purchase price of said Terminal properties; that the Wabash Purchasing Committee had sold said Frederick M. Hubbell one-eighth of the issued capital stock of said Terminal Company and to said G. M. Dodge one-eighth of the issued capital stock of said Terminal Company, and that said sales had been, and were thereby, ratified, confirmed and approved by said Des Moines & St. Louis Railroad Company.

And your orators state that said defendants afterwards caused another preamble and resolution to be adopted by the Board of Directors of the Des Moines & St. Louis Railroad Company, and written into its record book, under date of February 11th, 1891, erroneously reciting that said Wabash Purchasing Committee had sold to Frederick M. Hubbell another one-eighth of the stock of said Terminal Company, of the par value of $50,000.00, and that said sale by said Committee to said Frederick M. Hubbell was thereby ratified, confirmed and approved by said Des Moines & St. Louis Railroad Company.

And your orators further state on information and belief that said Frederick M. Hubbell and Frederick C. Hubbell, being at the time members of the Boards of Directors of said Des Moines & Northwestern Railway Company, and of said St. Louis, Des Moines & Northern Railway Company, caused like resolutions to be adopted and entered in the record book of both said Companies.

And your orators state, on information and belief, that the chief and real purpose of said Frederick M. Hubbell and Frederick C. Hubbell in causing said preamble and resolutions to be entered in the record book of said Des Moines & St. Louis Railroad Company, was to make it appear on the face of the records of said Company, that defendant Frederick M. Hubbell had acquired, or was acquiring, said stock from said Committee, instead of from said Des Moines & St. Louis Railroad Company, of which he was at the time a Director, when they, the said defendants, at the time well knew that said stock did not belong to said Committee, but would in fact and of right, when issued, belong to said Des Moines & St. Louis Railroad Company, of which he, the said Frederick M. Hubbell, was at the time a Director.

And your orators state, on information and belief, that the chief purpose of said Frederick M. Hubbell and Frederick C.

Hubbell in causing it to be stated in said preamble and resolutions first aforesaid, that one-eighth of the stock of said Terminal Company had been sold by said Purchasing Committee to said Dodge, was to conceal the fact that said Frederick M. Hubbell was getting for himself stock that he, at the time, well knew belonged to said Des Moines & St. Louis Railroad Company, of which he was a Director, by having the same first issued to said Dodge, and afterwards immediately transferred, without consideration, to himself, or to his said firm of F. M. Hubbell & Son.

And your orators further state that your orator the Wabash Railroad Company, and the Des Moines, Northern and Western Railroad Company, which latter Company was then the successor in interest of the Northern Company (the St. Louis, Des Moines & Northern Railway Company) and also of the Northwestern Company (the Des Moines & Northwestern Railway Company), and had become the owner of said Northern and Northwestern lines of railroad and was then operating the same, not having executed said contract of May 10th, 1889, Exhibit "P" hereto attached, O. D. Ashley, as president of said Wabash Railroad Company, and F. M. Hubbell, as president of said Des Moines, Northern & Western Railroad Company, on or about July 31st, 1897, executed a written contract (a copy of which is hereto attached as Exhibit "R") in reality between themselves, but ostensibly with the Terminal Company, for the purpose of showing their succession in interest and title, and to show that they each assumed all the obligations of the original railroad companies (the St. Louis Company, the Northern Company and the Northwestern Company) in and under the contract, made May 10th, 1889, as aforesaid, and set out in Exhibit "P" hereto attached, including the payment of interest on the mortgage bonds that said railroad companies had theretofore caused to be issued in the name of the Terminal Company; the cost of operating and maintaining said terminal properties, and all other charges in connection therewith, all as provided in, and for the full term stated in, said contract of May 10th, 1889.

And your orators further state that defendants Frederick M. Hubbell and Frederick C. Hubbell caused to be inserted in said contract of July 31st, 1897 (Exhibit "R"), a statement to the effect that so much of the contract of May 10th, 1899, (Exhibit "P"), as related to the distribution of the capital stock of said Terminal Company, was no longer binding, and that the capital stock of said Terminal Company, was in fact held as follows, to-wit: By the Purchasing Committee of the Wabash Company, representing the St. Louis Company, 500 shares; by the Des Moines, Northern & Western Railway Com-

pany, 1,000 shares, and by F. M. Hubbell & Son, 2,500 shares.

And your orators further state that the chief purpose of said Frederick M. Hubbell and Frederick C. Hubbell in inserting, or causing to be inserted, in said contract, said statements respecting the ownership of the capital stock of said Terminal Company, and that so much of said contract of May 10th, 1889, as related to the ownership of the capital stock of the Terminal Company was no longer binding, was to give color and support to the claim now set up by defendants to the injury of your orators, to the effect that your orator the Wabash Railroad Company and said Des Moines, Northern & Western Railroad Company thereby intended to and did confirm the issuance of a majority of the stock of the Terminal Company, to-wit, 2,500 shares out of a total of 4,000 shares, to the Hubbells in the name of F. M. Hubbell & Son, as fully paid up stock; and that the railroad companies which then owned, controlled and operated the three lines of railroad as the successors of the three original railroad companies, parties to the contract of January 2nd, 1882, Exhibit "A", and also your orators, through said contract and by reason of the pretended amendments to said Articles of Incorporation of the Terminal Company, and the several resolutions, recitals and statements aforesaid, had in some manner forfeited or relinquished their several rights to use said terminals in common and in perpetuity on the terms provided in said contract of January 2nd, 1882.

And your orators further state that the aforesaid purposes of defendants Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, in inserting said statements, or causing them to be inserted in said contract of July 31st, 1897 (Exhibit "R"), as well as their intention to set up the claims now made by them, were all carefully concealed by said Frederick M. Hubbell and Frederick C. Hubbell from your orators, and also from their co-directors and associate officers of said railroad companies, who had no knowledge thereof.

And your orators further state that defendants Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, having progressed with their said plan to acquire, without payment of any money, valuable properties and property rights from the corporations, of which they were at the time Directors and officers, so far as to make it appear on the face of the record and stock books of said Terminal Company that they had become the owners of five-eighths of all the issued stock of said Terminal Company; and having also so far succeeded in their said plan as to make it appear on the face of the record and stock books of said Terminal Company, that the stock of said Terminal Company, of which they appear to be the owners,

had, without the expenditure of any money by them or anyone else, been issued to them as fully paid; and having also so far succeeded in their said plan as to make it appear on the face of the records of said Terminal Company that its Articles of Incorporation had been so amended by the unanimous vote of all of its stockholders as to repeal and strike out of said Articles the provisions therein requiring all the corporate powers of said Terminal Company to be exercised in accordance with the terms and spirit of said contract of January 2nd, 1882 (Exhibit A); and also in such manner as to make it appear that the contract last aforesaid had been stricken entirely out of the Articles of Incorporation of said Terminal Company, they, the said Frederick M. Hubbell and Frederick C. Hubbell now boldly claim and assert, to the irreparable injury of your orators, that the effect of said pretended amendments of said Articles, and of various resolutions of the Boards of Directors of said Railroad Companies hereinbefore recited, had been to make said Terminal Company not only the apparent, but the real and substantial owner of said terminal properties in such way as will entitle said Terminal Company to deprive your orators, their successors and assigns, of the rights secured to them, and each of them, to use said terminal properties in common and in perpetuity, on the terms stated and reserved to them in said contract of January 2nd, 1882; and also in such way as to make said Terminal Company a corporation for pecuniary profit, and entitle it to exact a rental from your orators, and their assigns, for the use of said terminals, sufficient to pay dividends on said nominal capital stock, the Certificates for which they, the said Frederick M. Hubbell and Frederick C. Hubbell have heretofore acquired in the manner hereinbefore stated. And they also now assert, to the injury of your orators, that from and after the expiration of said contract of May 10th, 1889, (Exhibit P), to-wit, from and after May 1st, 1918, your orators will have no right to use said terminal properties excepting on such terms, for such compensation and under such regulations as may be consented to by said Terminal Company, and they also now claim and assert to the injury of your orators, that by reason of the statement made in Article III of said pretended amendments to the Articles of Incorporation of said Terminal Company, to the effect that the sum of $400,000.00, together with the first mortgage bonds theretofore issued constituted the fair value of said Terminal properties when the same were acquired, as hereinbefore stated, was to make the said stock now held by them, fully paid and non-assessable.

18.

Your orators further state that the lease, hereinbefore referred to as having been executed by the Des Moines & St.

Louis Railroad Company, to the Wabash, St. Louis and Pacific Railway Company, was executed and delivered on or about the first day of March, 1882, and thereby said Des Moines & St. Louis Railroad Company, leased and demised to said Wabash, St. Louis and Pacific Railway Company, in perpetuity its right of way and railroad extending from the City of Des Moines in the State of Iowa, to Albia, in said State, together with all its real estate, embankments, bridges, buildings, tools and all its railroad property, acquired, or to be acquired, and everything appurtenant to said railroad or used in connection therewith, which demise included the right of said Des Moines & St. Louis Railroad Company to use the aforesaid terminal properties in said City of Des Moines, in perpetuity and in common with said other railroad companies, as provided in said contract of January 2nd, 1882, hereto attached as Exhibit A.

Your orators further state that by its deed, duly executed and delivered on or about the 25th day of April, 1888, said Wabash, St. Louis and Pacific Railway Company sold, assigned, transferred and conveyed to said Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, all its property, rights, interest and choses in action, acquired by it, the said Wabash, St. Louis & Pacific Railway Company, after the first day of June, 1880, which conveyance included all the rights and interest of said Wabash, St. Louis & Pacific Railway Company in and to said Des Moines & St. Louis Railroad, and its appurtenances.

And your orators further state, that on or about the 15th day of April, 18.., said Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, as Trustee, acquired by assignment from said Wabash, St. Louis & Pacific Railway Company all the capital stock of said Des Moines & St. Louis Railroad Company.

And your orators further state that said Purchasing Committee had, during or prior to the year 1889, by purchase at foreclosure sale or otherwise, as herein stated, acquired, as Trustees for the holders of certain bonds of the Wabash, St. Louis & Pacific Railway Company (secured by mortgage of [dated] June 1st, 1880) all the railroads and properties of said Wabash, St. Louis & Pacific Railway Company, in all the states first herein mentioned; and thereupon, in the year 1889, said Purchasing Committee organized, or caused to be organized, separate railroad companies in each of said states, and immediately afterwards said Committee as such Trustees conveyed to said companies all the railroads and properties situated in the several States in which said Companies were respectively organized.

And your orators further state, that immediately afterwards, to wit in said year 1889, said Purchasing Committee caused all said Railroad Companies to be consolidated as and under the name of your orator, the Wabash Railroad Company; and immediately afterwards, in the year last aforesaid, said Purchasing Committee as such trustees conveyed to your orator, the Wabash Railroad Company, all the rights and interests of said Purchasing Committee in all said properties, rights and franchises not theretofore conveyed to said separate companies, including all the rights and interests of said Purchasing Committee in said Des Moines & St. Louis Railroad and also its rights in the capital stock of said Des Moines & St. Louis Railroad Company.

"And your orators further state that afterwards, in the year 1899, said Des Moines & St. Louis Railroad Company, for a good and valuable consideration, executed and delivered unto you orator the Wabash Railroad Company, its deed of conveyance whereby said Des Moines & St. Louis Railroad Company granted and assigned unto your orator, the Wabash Railroad Company and its successors and assigns for ever, all the line of railroad and right of way of said Des Moines & St. Louis Railroad Company in the State of Iowa, commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the counties of Polk, Marion & Monroe, to the Town or City of Albia, in Monroe County in said State, together with all its right of way, real estate, side tracks, yards, depots, turn-tables, lands, buildings and furniture, and also all its rights, privileges and franchises, and all other things, real and personal, owned or used by said Des Moines and St. Louis Railroad Company, in connection with the line of railroad above described, and especially including all the rights and leasehold and other interest of the Des Moines and St. Louis Railroad Company, under a contract dated May 10, 1889, between the Des Moines Union Railway Company, of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company of the second part."

19.

Your orators further represent and state that during the month of December, 1891 the Des Moines & Northern Railway Company had by purchase and sale become the owner of the Northern line of railroad running from Des Moines to Boone, and was in possession of and operating the same as the successor in interest and title to all the property, rights, and franchises of the Northern Company; and the Des Moines & North-

western Railway Company had, by purchase, sale and transfer, become the owner and was in possession of and operating the Northwestern line of railroad running from Des Moines northwesterly and then completed to the town of Fonda, in Pocahontas County, Iowa, and had succeeded to and acquired all the rights, franchises and privileges of the Northwestern Company; and thereupon, by consolidation agreement under the laws of Iowa, the said two corporations then owning and operating said two lines of railroad as aforesaid, were consolidated under the name of the Des Moines Northern & Western Railway Company, which new corporation will be hereinafter called the Northern & Western Railway Company.

That afterwards, to-wit, during the year ....., your orator the Chicago, Milwaukee & St. Paul Railway Company became the owner and took possession of both said Northern and said Northwestern lines, having become the successor in interest and title of said Northern & Western Railway Company, and of its property, rights, and franchises, as is hereinafter more fully and in detail stated, to-wit: On the 15th day of March, A. D. 1894, Frederick M. Hubbell, individually, and the said firm of the defendants, F. M. Hubbell & Son, owned and held 32,000 shares out of a total issue of 42,000 shares of $100.00 each, of the capital stock of the said Des Moines Northern & Western Railway Company, and also owned and held $2,805,000 out of a total issue of $2,770,000 of the first mortgage bonds of said Des Moines Northern & Western Railway Company, which said company then owned and operated the line to Boone, Iowa (the Northern line), and the line to Fonda, Iowa (the Northwestern line), and was the successor in interest and title of the original Northern Company and the original Northwestern Company.

That on said date the Hubbells entered into a written contract with your orator the Chicago, Milwaukee & St. Paul Railway Company (hereinafter called the Milwaukee Company), a copy of which contract is hereto attached, marked Exhibit "Q", and made a part hereof. That in said contract the said Hubbells sold and obligated themselves to transfer and deliver to the Milwaukee Company 16,800 shares of the capital stock of the Des Moines Northern & Western Railway Company, and gave to said Milwaukee Company an option on, and the right and privilege of purchasing from said Hubbells a further block of 6,468 shares of the stock of the Des Moines Northern & Western Railway Company, provided the Milwaukee Company would exercise such right and privilege of purchasing on any day after the first day of January 1897, and before twelve o'clock noon of the first Monday in April in the year 1899; that the said 16,800 shares above mentioned were sold and agreed to be delivered for a valuable and valid consideration moving at the date of said contract, and the addi-

tional 6,468 shares were for a consideration of $46,200, to be paid in money by the Milwaukee Company to the defendants Frederick M. Hubbell and F. M. Hubbell & Son, as co-partners, at the time of exercising said option; that in said contract Frederick M. Hubbell and F. M. Hubbell & Son also agreed, among other things, to bring about a reduction of the interest on the outstanding bonds from five per cent. to a rate not higher than four per cent. per annum from and after April 1st, 1897, and it was agreed that in case said Hubbells could not secure such reduction of interest rate, they would cause proceedings to be instituted to foreclose the mortgage securing said bonds and would organize a new company to take over the property covered by the mortgage, and all property, rights, privileges and franchises of every name and description then belonging to or enjoyed by said Des Moines Northern & Western Railway Company; that said new company should have a capital stock not exceeding in par value the mortgage indebtedness of said Company more than fifty per cent. and that its mortgage debt should carry interest at not more than four per cent per annum, the principal not to exceed in amount the then outstanding bonds of said Des Moines Northern & Western Railway Company, with interest to the date of the organization of the new company, and the costs and expense of foreclosure and that fifty-five and four-tenths (55.4) per cent. of all the stock in said new company should be issued to the Milwaukee Company or to the trustee named in said contract, to be held by him for it as it might become entitled to receive the same under said contract.

That thereafter the Hubbells professing themselves to be unable to secure the consent of all the bondholders to accept a reduction of the interest on the bonds from five to four per cent., as required of them in said contract, they, with the consent of your orator the Milwaukee Company, caused suit to be instituted by the trustee in said mortgage to foreclose the same; and thereafter, to-wit, on or about the fifth day of March A. D. 1895, under such foreclosure proceedings, the Des Moines Northern & Western Railroad Company, a new corporation, was organized by said Hubbells, and under and through said foreclosure proceedings said new corporation took over all the property, rights and franchises of said Northern & Western Railway Company (said new company being hereinafter called the Northern & Western Railroad Company).

That a part of the scheme and plan of such transfer was that stock should be issued in the new company to the parties who held or were entitled to the stock of the old company in the same proportion; and said Milwaukee Company surrendered

its stock in the old company for stock in the same proportion in the new company, and the Hubbells from time to time, as required in their said contract, delivered and assigned stock in the new company, amounting to fifty-five and four-tenths per cent. of all the stock issued or outstanding, to the Milwaukee Company, and subsequently the Hubbells also transferred the remainder of their stock in the new company to said Milwaukee Company.

That the said Hubbells also sold and transferred to the Milwaukee Company all the bonds of the new company held by them, or either of them amounting in all to about $2,500,000 par value, and subsequently, to-wit, about February, 1899, the Northern & Western Railroad Company assigned, transferred and conveyed to your orator the Milwaukee Company all its right, title and interest in and to the two lines of railroad, and the property, rights and franchises which it had acquired from said Northern & Western Railway Company; and your said orator soon thereafter took possession of the said two lines of railroad, to-wit, the Northern and Northwestern, and has since then held and operated the same.

And your orators further show, that ever since the transfers of possession, conveyances and considerations hereinbefore and hereinafter stated, your orators have always been and are now recognized by the defendants as having succeeded fully to all the property, rights, interest and privileges of the parties to the original contract of January 2nd, 1882 (Exhibit A), and as having succeeded to the property, rights and privileges of the corporations designated as parties of the second part in said contract of May 10, 1889 (Exhibit P), and are now using the terminal properties under said last named contract, except as hereinafter stated.

Your orators further show, that by the terms of said contracts of January 2, 1882, (Exhibit A), and May 10, 1889, (Exhibit P), the railroad companies named therein, and their assigns were required to pay and have paid the entire purchase price of said terminal properties all taxes that have been levied on said terminals; the cost of all insurance thereon; all interest on the mortgage bonds issued by said Terminal Company; all sums of money that have been expended improving, maintaining, repairing and operating said terminal property; the entire cost of all labor, material and equipment used or employed in swtiching and handling the traffic and cars of other persons and corporations over said terminals for hire; all sums that have been expended on account of injuries to persons or property in the operation and use of said terminals, and that neither said Terminal Company, nor any stock-

holder thereof has ever at any time paid or in any way contributed any money, or thing of value, on account of the purchase, improvement, maintenance, operation or repair of said terminal properties, or any part thereof, or on account of taxes, insurance or interest on the mortgage bonds of said Terminal Company. Nor has any stockholder of said Terminal Company paid to said corporation, or into its treasury any money, or delivered to said Terminal Coapany any property or thing of value, on account of any shares of stock heretofore issued to, or now held by him, or them, in said corporation, or on any other account—and that no part of said capital stock was ever subscribed for by any person whomsoever.

20.

And your orators represent and show to the court that after the making of the said contract with your orator the Milwaukee Company on March 15th, A. D. 1894 (Exhibit "Q" attached to this Bill) said Frederick M. Hubbell was the president and executive and managing officer of the Des Moines Northern & Western Railway Company, continuously until now; and that upon the organization of the new company, the Des Moines Northern & Western Railroad Company, he was the acting president and executive officer and in full control and management of all the affairs of said last named Company; and during all the time that your orator the Milwaukee Company was interested in the property and stock of the said two railroad companies or either of them, he was entrusted by it in the management of the railroad property and in the conservation of the interests of the Companies of which he was president, as aforesaid; that your orator the Milwaukee Company trusted him fully in connection with his son and co-defendant, Frederick C. Hubbell, in the conservation of the property interests of said two corporations, and relied upon their good faith toward your orator in caring for and conserving the property and corporation interests which they were then transferring and selling to your orator the Milwaukee Company.

And your orator, the Milwaukee Company, avers and shows to the court, that the signing of the contract or agreement of July 31st, 1897 (Exhibit "R") by the defendant Frederick M. Hubbell as president, and A. N. Denman as secretary of the Des Moines Northern & Western Railroad Company was in fraud of the rights of your orator the Milwaukee Company, in so far as it attempted to give the consent of the Northern & Western Railroad Company to the transfer of said block of 2,500 shares of stock in the Terminal Company from the Railroad Company to F. M. Hubbell & Son or to the Hubbells, and

that the signing and executing of said contract by Frederick M. Hubbell as president of said Northern & Western Railroad Company, and by A. N. Denman, as secretary of said company, the said Denman being then a confidential clerk and employe generally of said Frederick M. Hubbell, and controlled by him, was a fraud upon the rights of the Milwaukee Company, and in equity and good conscience said contract should be set aside and held for naught as between the Hubbells and the Milwaukee Company, so far as it relates to said stock and the right of said Hubbells to hold and control the same.

And your orator the Milwaukee Company further avers, and shows to the court, that said 2,500 shares of stock now claimed by the Hubbells to belong to them was taken out of the treasury of the Northern & Western Railway Company and transferred to themselves for a mere nominal sum, the exact amount of which is to your orator unknown. And your orator the Milwaukee Company hereby offers to return to the Hubbells, or either of them, or to F. M. Hubbell & Son, any and all amounts that may have been paid by them or either of them, or that may have been by them or either of them turned into the treasury of said Northern & Western Railway Company, at any time, for or in consideration of said transfer of said stock to themselves, together with annual interest thereon; and your orator, the Milwaukee Company, now offers to do and perform any and everything in the premises which the court may deem equitable and just in that regard, or in the premises or as the court may require.

21.

Your orators further represent and show that the Terminal Company had now issued and outstanding of its nominal capital stock four thousand (4,000) shares issued as aforesaid; that of said shares the defendants Frederick M. Hubbell and Frederick C. Hubbell, in the firm name of F. M. Hubbell & Son, hold certificates for two thousand five hundred (2,500) of such shares, acquired as aforesaid, your orator the Wabash Railroad Company holds certificates for five hundred (500) of such shares, and your orator the Chicago, Milkauwee & St. Paul Railway Company, holds certificates for one thousand (1,000) of such shares, that the defendants the Hubbells, by means of their said shares, which constitute a majority, have pretended to elect themselves and H. D. Thompson, a son-in-law, and Grover C. Hubbell, a son of said Frederick M. Hubbell, and N. T. Guernsey, their private and general attorney, their nominees and subordinates, as directors of the Terminal Company, and now constitute a majority of the acting Board of Directors of said Terminal Company.

22.

Your orators further represent and show that defendants Hubbells early in the year 1906 set up a claim, and together with their associate directors who were and are controlled by them, caused the Terminal Company to set up a claim, and they and said company now make the claim, that your orators and each of them have been deprived of the right reserved by and secured to them under said contract of January 2, 1882, to use in perpetuity the said terminal facilities and property as and on the terms stated in said contract, and that the Terminal Company now owns and holds said terminal facilities and property free from the right of your orators to use said terminal facilities and property as and on the terms provided in said contract of January 2, 1882; that the Terminal Company now has the right to sell, mortgage, and lease said property to any corporation whatsoever, subject only to said contract dated May 10, 1889, and that at the expiration of said contract it will have the right to wholly exclude your orators from said terminal facilities and property, and that if your orators are permitted by it to use said terminal facilities and property, they must do so in the manner, on the terms and for such period of time as the Terminal Company may prescribe.

Your orators further state and show to the Court that the defendants the Hubbells, and associate directors, now dominating and controlling the Terminal Company, have themselves threatened, and are now threatening and have caused the Terminal Company to threaten to mortgage said terminal facilities and property and to lease the same for a long term of years to railroad companies other than your orators, and unless restrained by this Honorable Court, will carry out such threats and thereby cast a cloud on the title of your orators to the use of said terminal facilities and property and the right to use the same in perpetuity as provided in said contract, dated January 2, 1882, and said original Articles of Incorporation as and on the terms therein stated.

23.

Your orators further represent and show to the Court that they have heretofore at great expense, to-wit, the expenditure of millions of dollars, constructed or acquired and now own in the States of Iowa, Illinois and Missouri, long lines of railroad which were constructed for the sole purpose of reaching to and into the City of Des Moines and there receiving and delivering traffic as common carriers for the benefit and advantage of said City and all the inhabitants thereof; and the public generally; that unless the defendants be enjoined and restrained by this Honorable Court from executing such

threats and from their unlawful purpose to cast a cloud on your orator's said right and title to use in perpetuity said terminal facilities and property as aforesaid, the credit of your orators will be injured and the value of your orator's lines of railway aforesaid, extending from various points in the States of Illinois, Missouri and other states to the said City of Des Moines, will be greatly depreciated to the irreparable damage of your orators and each of them. Your orators further show to the Court that the defendants the Hubbells, and their said associate directors, who dominate the Terminal Company as aforesaid, have caused the Terminal Company to divert and invest the money of your orators derived from rentals and services rendered other companies and persons, at the cost of your orators, in switching and handling their cars and traffic, and in the use and operation of said terminal facilities and property, and to invest such money in real estate and other property which it causes to be conveyed to itself in fee simple and in such manner as to indicate that it is the absolute owner thereof; and defendant Hubbells and their said associate directors are threatening and have caused the Terminal Company to threaten to continue to so divert and invest such earnings and to claim and appropriate the earnings on said property so acquired; and to sell, mortgage or lease such property so acquired, and that unless restrained by this Honorable Court, the Terminal Company, will execute such threat, and sell, mortgage or lease such property, which in equity and good conscience belongs to your orators, to their irreparable damage.

24.

And your orators further show that the Terminal Company and its said Directors controlling it now claim to have the right in their discretion to select without the consent of your orators an Executive Committee contrary to the provisions of said contract, dated May 10, 1889, wherein it is provided that the Directors of the Des Moines Union Railway Company shall appoint an executive committee as hereinbefore stated. That by the contract of May 10th, 1889, the companies owning the three railroads obligated themselves to use the terminal properties for a period of thirty years and to pay every debt and obligation contracted in the operation and maintenance of said terminals; and said contract of May 10th, 1889, provided that the directors of the Terminal Company should appoint an executive of three, composed of one representative of each railroad, but that the directors of the Terminal Company refused to appoint such committee although frequently requested by your orators so to do, and unless the defendants

be directed and required by appropriate orders of this Court to specifically perform said provision of said contract, dated May 10, 1889, and appoint an executive committee composed of three members to be designated by your orator, your orators will be prevented, to their irreparable damage, from supervising the operation and maintenance of said terminal facilities and property in an economical manner and so as to afford the greatest efficiency in the use and operation of said property.

That although the Union Depot building was to be erected for the sole use and benefit of the proprietary railroad companies, the defendant, Frederick C. Hubbell, has taken possession of a large part of said building, and has usurped the entire control of the superintendent and his assistants and of the auditor and clerks, as completely as though he were the private owner of the said building and property; that he has rented, leased or let the major part of the said building for the private benefit of the defendant corporation, the Terminal Company, and has excluded your orators from said entire building, except the waiting room and toilet rooms or water closets, except as hereinafter stated in the second division of this Bill, as to rooms for which one of your orators is charged rent.

25.

And your orators further represent and show to the Court that after the St. Louis Company had been organized as a corporation, and after it had announced its purpose of constructing a railroad from Albia to Des Moines, and while it was engaged in the preparatory or preliminary work of construction, much property in the way of right of way was donated and given or conveyed to it in the construction of said lines; and that franchises or licenses to occupy streets and alleys in the City of Des Moines and other cities and towns along the line were given to it, and land was condemned for right of way purposes all along the line, including that within the City of Des Moines. That the same was and is true of the line of the Northwestern Company to Fonda, and of the line of the Northern Company to Boone, along each of which lines a large amount of taxes were also voted in the various townships and municipalities, such taxes being voted on condition of the building of each of said lines into the City of Des Moines, and such building was an inducement to the public to thus aid in the construction of the said three lines of railroad so that said lines of railroad would be constructed and operated to and from a suitable place in the City of Des Moines.

That about the time of the making of the written contract of January 2nd, 1882, set out in Exhibit "A" hereof, the railroad

companies, parties thereto, permanently located and established, for their common use, a passenger station between Fifth and Sixth Streets in the City of Des Moines, and located and established their freight stations and depots immediately to the west of Sixth Street, and said location was then, and has ever since then continued to be the most suitable and proper place for the same, it being in the center of the city, near the business portion thereof, and in the immediate vicinity of the passenger and freight depots of all the railroads in Des Moines, except one, and such place is remarkably well calculated to serve the public interests at Des Moines. That at the time of the building of the said lines of railroad the City of Des Moines was the capital of the State of Iowa, with a population of more than 50,000, and was the most important and promising city in Iowa; that it now has a population of about 100,000, and is a very important commercial center; that from the said passenger and freight depots to the eastern limits of the City of Des Moines is about ..... miles, and to Farnham street in West Des Moines is about ..... miles. That to deprive the railroad corporations that originally located, established and built the said passenger and freight depots and lines of railway to them, as well as their successors in interest, or to deprive your orators of the free and unrestricted use of said lines of railroad within the City of Des Moines as secured to them and each of them in perpetuity in and by said contract of January 2nd, 1882 (Exhibit "A"), and of the said passenger and freight stations, would be to dismember the said lines of railroad, and to practically exclude the party, or parties, operating them, from the City of Des Moines; and would be a dismembering of the several lines of railroad as originally located and built, and would hinder and prevent the several corporations from discharging their duties to the public as common carriers, and as required by the charters under which said lines were located and built. And to so dismember said lines of railroad and to exclude your orators from said city, or to deny to them, or either of them, the use of the tracks, depot and freight buildings, or stations, as secured to them in and by said contract of January 2nd, 1882, would be contrary to public policy.

26.

And your orators further represent and show to the Court that the defendants Frederick M. Hubbell, Frederick C. Hubbell and the firm of F. M. Hubbell & Son, had at all times full and complete knowledge of each and every one of the facts and transactions hereinbefore recited or set out; and that the said Frederick M. Hubbell was one of the promoters of the entire enterprise from its inception, and continued to be such through all the foregoing transactions. That he was one of

the officers of the St. Louis Company, and of the Northwestern Company, and of the Northern Company and took part in each and all of the aforesaid transactions so far as relates to the doings of the St. Louis Company, the Northwestern Company, the Northern Company, and the Terminal Company; and that Frederick C. Hubbell, being the son of the said Frederick M. Hubbell, and the other member of the firm of F. M. Hubbell & Son, also had at all times such notice and knowledge, although not connected with either of the corporations in an official way until in ....., when he was elected president of the Terminal Company, and on the .... day of ..... when he was elected director of the Northwestern Company.

27.

And your orators further represent and show that the Terminal Company accepted a conveyance of said terminal property subject to the joint use of said three railroad companies in common, upon the terms stated in said contract of January 2nd, 1882 (Exhibit "A" hereof), and with the apparent and avowed purpose on its part to hold and manage the same under and according to the terms of said contract, and to carry out the same; wherefore, in equity and good conscience said Terminal Company, defendant corporation, should be held to a full performance of said contract of January 2nd, 1882, after May 1st, 1918, after the contract of May 10th, 1889, will be no longer effective.

Division Two.

28.

And your orators further complain of the defendants, and as a ground for further and additional relief, represent and show to the court;

That in the said supplemental terminal contract of May 10th, 1889, a copy of which is set out in Exhibit "B" attached to this Bill and made a part hereof, it was agreed and provided that the defendant corporation should erect and furnish for the use of the three railroad companies, a Union Passenger Depot, and additional switches, sidings, freight depots, round houses, shops, water tanks, and yard appurtenances and that it should acquire the necessary additional grounds therefor. And it was also explicitly agreed and provided in said contract, more particularly in section six thereof, that the defendant corporation should switch all cars and handle all freight which might be delivered to it, or which might come upon its said premises insofar as either of said three railroad companies might request it so to do; that the entire property or terminal facilities, including buildings, should be in charge of a superintendent, who was to be appointed by the executive committee, being one from

each of the three railroad companies as hereinbefore stated, subject to the approval of the directors of the defendant corporation, and that each of the three railroad companies should use the said terminal property for all its passenger trains destined to or departing from said City of Des Moines, and should use said terminal properties for all its trains, unless otherwise expressly permitted by the said executive committee; and it was also stipulated and provided that the covenants, conditions and stipulations in the said contract should govern and be mutually binding upon all parties thereto, their successor, successors and assigns, severally, for the term of thirty years from May 1st, 1888. That among other things, it was also agreed therein that the three railroad companies should pay, and they have at all times heretofore paid, as hereinbefore stated, interest on the mortgage bonds of the defendant corporation, and the expense of maintaining and repairing the property, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., and the taxes, general or special, and all costs and expenses of every nature connected with the operation of the said terminal property, less any sum or sums received from other railroad companies in the way of rent for the use of said property, or parts thereof, and that such expenses or costs to the said three railroad companies should be apportioned among them according to the wheelage of each.

29.

And your orators further show to the Court that soon after the terminal contract of May 10th, 1889, set out in Exhibit "F" hereto, was made, the defendant corporation began to lease and let to third or outside parties some of the buildings or parts of buildings that were upon the terminal property, and let or granted certain privileges to certain third or outside parties in the Depot building, and in other parts of the terminal property, from which there was realized from time to time a considerable revenue as rental and license fees; and as industries sprang up along the railroad lines or tracks of said terminal property, and said lines were extended to other industries, cars belonging to other railroad companies were switched over the said tracks, for which switching charge was made, exacted and collected by the defendant corporation. That the parties to said terminal contract, in form of lease Exhibit "F", hereinbefore last referred to, all understood and construed the same to mean that such earnings from rents and privileges, and from switching charges, should enter into the account for operating expenses of the Terminal Company, and should be credited upon the cost of such operating for the benefit of the three constituent railroad companies, parties of the second part to said last named supplemental contract. That pursuant to

said understanding and construction of said supplemental contract, the revenue or income derived from said sources, to wit, from rents for property and for privileges or license fees, and for switching charges, were each month credited upon the monthly accounts of the said railroad companies, and such income or revenue was used to reduce the monthly account of the Terminal Company for expense of operating and maintaining the said terminal property; and that for the purpose of carrying out the spirit and intent of the said contract of May 10th, 1889, and to set at rest any doubt in regard to its construction for the future, the board of directors of the defendant corporation, at a meeting on February 11, 1891, by resolution made the following order, to-wit:

"It is ordered that the rents collected for the use of the Company's real estate, and the switching charges paid in, be credited on the bills of the different tenant companies occupying this Company's terminals, giving to each company its share ascertained by wheelage."

And the practice which had theretofore obtained as hereinbefore stated in reference to such earnings for the use of ground or buildings, or for switching cars of other railroads over the said terminal property was continued to be credited to operating expenses for the benefit of the parties of the second part to said contract of May 10th, 1889, or their successors in interest.

That afterwards, to-wit, on January 7th, 1892, at a meeting of the said Board of Directors of the defendant corporation (the defendants F. M. Hubbell and F. C. Hubbell, again being present as directors), the following resolution was adopted by the unanimous vote of all the members of the said board, to-wit:

"Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenues from the tenant companies;

Therefore, Be It Resolved: That until the further action of the Board, the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purposes."

30.

That at the time of this last action of the Board of Directors of the Terminal Company, to-wit, on January 7th, 1892, the need of a working fund or cash capital with which to purchase supplies, as stated in the said resolution, was apparent and pressing, and the proprietary railway companies, having up to

that time been obliged to advance or furnish supplies to the defendant corporation, from time to time, to enable it to maintain and operate said terminal property pending settlement at the end of each month, were willing to allow such rents and switching charges, or the proceeds thereof, to accumulate in the hands of the Terminal Company to an amount sufficient for such working fund, and therefore acquiesced in this action of the directors of the defendant corporation. But your orators further represent and show to the Court that the sum of twenty-five thousand dollars ($25,000.00) would be and is an ample fund, and will meet all the needs of the Terminal Company, as a cash capital for the purposes expressed in the said resolution last set out herein. But your orators charge and show to the Court that the fund arising from such rents and privileges or license fees, and from such switching charges, now amount to a sum very largely in excess of twenty-five thousand dollars ($25,000.00), and as your orators believe, and charge the fact to be, that on June 30, 1898, the fund so withheld from your orators amounted to $157,680.89.

31.

And your orators further state and show to the Court that when making the supplemental terminal contract of May 10, 1889 set out as Exhibit "F" in this bill, the parties thereto recognized and contemplated that circumstances and conditions would arise in the operating and management of the terminal property that were not then foreseen or anticipated in the contract as written, and therefore they explicitly provided in said contract, to-wit, in section twenty-eight thereof, that such matters should be dealt with and disposed of upon the principles of justice and equity from the standpoint of railroad operating and management; and it was in said contract, to-wit, in section twenty-eight thereof, agreed and provided that any differences that might arise between the parties over such matters might be referred to arbitration by men experienced in railroad management who should "determine what would be just and equitable for each of said parties to do in and about the matter in dispute."

That your orator, the Wabash Railroad Company, accepted the aforesaid resolutions of the Board of Directors of the Terminal Company hereinbefore set out, to-wit, that adopted on February 11, 1891, and that adopted January 7th, 1892, as an amicable adjustment of the matter of earnings from rents and privileges and switching, and acquiesced in the disposition apparently made of the matter, by said two resolutions. And that your orator, the Chicago, Milwaukee & St. Paul Railway Company, in purchasing an interest in the Des Moines, Northern & Western Railway Company, during the year 1894, and

afterwards in purchasing and taking over the entire property from its successor, the Des Moines, Northern & Western Railroad Company, as hereinbefore set out, also relied upon the said two resolutions as having disposed of the matter and relied upon their being carried out in good faith, and it acquired the property in the belief that the said earnings or fund, after a sufficient sum had been accumulated to meet the wants and needs of the Terminal Company for a working fund as expressed in said last resolution, would then be applied to the reducing of the expense for operating and maintaining the property under the said supplemental terminal contract (Exhibit "F"), and would go to the credit of your orators each month in due proportion.

32.

And your orators further represent and show to the Court that the defendants Frederick M. Hubbell and Frederick C. Hubbell, being in possession of, and being the apparent holders of a majority of the stock of the Terminal Company, have annually, and for the last five years, insisted upon a majority of the board of directors of the defendant corporation being elected in their interest, and when they parted with all interest in the proprietary companies more than five years ago they had on said board five out of eight members in their personal interest, to-wit, themselves, and three others who were either the attorney, or near relatives or employes of the defendants, Frederick M. Hubbell and Frederick C. Hubbell. That through the said 2,500 shares of stock they have ever since then retained themselves and their said allies on said board, each and all of whom have always been, and now are, absolutely and completely under the control of the said Hubbells, as hereinbefore stated, and are entirely subservient to the interests of the said Hubbells; and, notwithstanding your orators have repeatedly, orally and in writing, made demand on said Hubbells and the Board of Directors and officers of the defendant, the Terminal Company, to pay or credit the said money or fund now in their hands arising from such switching charges, rents and privileges or license fees, exceeding $25,000.00, in their monthly accounts to your orators in accordance with the foregoing resolutions of February 11th, 1891, and January 7th, 1892, and that each of your orators on the 12th day of March, 1906, made formal written demand upon the defendants that said income and earnings in excess of $25,000.00 be credited upon the bills against your orators, respectively, on said wheelage basis, but that said defendant company, and the defendants, the Hubbells, then and there refused, and still refuse to pay or credit to your orators, or either of them, any part of said earnings, income or receipts, and the defendants further likewise refused, and continue to refuse, to request the Trustee in said mortgage of

November 1st, 1887, to certify and issue the remaining unissued bonds secured by said mortgage, in accordance with Section 27 of said contract of May 10th, 1889, and apply the same to the reimbursement of your orators for the portions of said surplus earnings (being the proceeds of switching charges, rents, and license fees for privileges hereinbefore referred to), temporarily applied to the purchase of additional terminal properties and the making of additional improvements. But the defendants refused to do so, and deny that your orators have any right to have any of said bonds issued or applied to the aforesaid purposes.

33.

And your orators further show that notwithstanding the facts are as hereinbefore set forth, said defendant company and the defendants, Frederick M. Hubbell and Frederick C. Hubbell, now deny that the said Terminal Company holds and operates said terminal properties as agent for your orators, and deny that your orators are entitled to the surplus earnings arising as above described, or to the benefits of the same; but on the contrary claim that the Terminal Company defendant is the owner of all said terminal properties in its own right, and entitled to receive and retain in its own right the said surplus earnings aforesaid, free from any right or claim upon the part of your orators or either of them; that said defendants threaten to appropriate said surplus earnings to their own use, and to other unlawful uses, and have actually taken steps toward carrying out such unlawful purposes; that on the 12th day of March 1906, at a meeting held by the Board of Directors of the Terminal Company in said City of Des Moines, the said Hubbells and their three other associates upon the Board of Directors, voted to allow additional salaries as follows, namely: To the defendant Frederick C. Hubbell as president of the company for the years 1901, 1902, 1903, 1904, and 1905, $37,500; and to the defendant Frederick M. Hubbell, as secretary of the company, for the same years, the sum of $12,500.00, notwithstanding that no services would be required of the president if the defendants appointed the executive committee as your orators desire, and as hereinbefore claimed should be done, and if the defendants allowed such executive committee to superintend and direct the management of the property according to the terms of said supplemental contract of May 10th, 1889, set out in Exhibit "F"; and the work of the defendant Frederick M. Hubbell, as secretary, amounts to but a few hours each year. And your orators say that said defendants, unless restrained by this Court, will not only appropriate the said sums of money to themselves out of the aforesaid earnings and rents belonging to your orators, but will apply the remainder to the unauthorized pur-

chase of additional properties, and the making of improvements, for the purpose of giving value to the stock of the Terminal Company, and thereby furthering the unlawful schemes of defendants, Frederick M. Hubbell, and Frederick C. Hubbell, at the cost and expense of your orators, all of which claims, acts and doings on the part of the defendants are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises.

34.

And your orators further represent and show to the Court that the entire cost of producing such earnings falls upon your orators in that all switching of cars over the terminal property for other railroad companies, has always been, and is now being done by engines, appliances and equipment, the original cost of which was borne by your orators, and the work is being done by employes whose wages are paid by your orators, and under superintendence and management, the entire expense of which is charged to and paid by your orators; every item of expense for equipment, fuel, oil, supplies of any kind, repairs, labor management, and all expenses made by or growing out of the doing of said work of switching or handling cars, or for repairs on and care for buildings, including insurance, from which a revenue is derived by the defendant corporation, or being charged to your orators by the said defendants in the making up of the monthly accounts under the terminal contract, and, further, your orators are charged in said monthly accounts with the interest on the bonds of the corporation defendant, which bonds cover the entire cost of the entire terminal property, including extensions, additions and betterments, except insofar as such costs have been paid out of the earnings from switching services and rents as aforesaid, the exact amount of which your orators are unable to give. The monthly charges against your orators also include the entire cost of maintaining, repairing, operating, superintending and managing the entire property of the Terminal Company.

35.

That heretofore from time to time the defendants, the Hubbells, by reason of their usurpation of all the powers of the executive committee and controlling the auditing officers and the treasurer of the Terminal Company, the last being a near relative and an employe of the said Hubbells, large sums have been taken from the said earnings for switching charges, rents, and license fees, and paid out for improvements, extensions and additional equipment, which said extensions additional improvements and equipment should properly have been charged to capital account, the precise amounts of which your

orators are unable now to give, but are informed and believe that the amount so diverted up to June 30, 1908, was $242,744.18.

36.

And your orators further represent and show to the Court that all the receipts arising from the sale of tickets sold at Des Moines over the lines of your orators, or either of them, and all collections for freight or property hauled or carried by either of your orators to or from Des Moines, are collected by the defendant corporation and its employes, and said receipts pass into the possession and control of the defendants and the employes of the defendant, the terminal corporation who are controlled by the defendants, the Hubbells; and each month an amount sufficient to cover the amount which the defendants, the Hubbells, as controlling officers of the defendant, the terminal corporation, see fit to charge to either of your orators is retained; and the defendants have repeatedly threatened to declare the rights of your orators, or either of them, to use the said terminal property under the supplemental terminal contract of May 10th, 1889, to be forfeited if your orators, or either of them, should at any time refuse to fully pay the amount charged to it as its proportion to be paid under said last named contract. And the defendants have repeatedly threatened to deny to your orators any service by the defendant terminal corporation and to deny to your orators the right to use the said terminal property, or any part thereof, in case of the refusal by your orators, or either of them, to submit to the exaction being made, as aforesaid, each month from your orators.

Division Three.

37.

And your orators further complain of the defendants Frederick M. Hubbell and Frederick C. Hubbell, and as a ground for still further and other relief represent and show to the court:

That the defendants, Frederick C. Hubbell and Frederick M. Hubbell, while being respectively the president and secretary of the Terminal Company, and after your orators became the successors in interest of the original proprietary railroad companies without authority from the board of Directors of the Terminal Company, or from your orators, built spur tracks from a connection with the tracks of the Terminal Company to industries located adjacent to said tracks, and now claim such spur tracks belong to themselves or some corporation organized and controlled by them; that since the building of such spur tracks, continuously and now, the said defend-

ants the Hubbells, switch and haul cars from the tracks of the Terminal Company over said spur tracks, using the switch engines and motive power and the employes of the defendant corporation to do such switching (at the cost and expense of your orators). And the said Hubbells, themselves, or in the name of their said corporation, collect from all railroad companies, including your orators, an extra charge of $..... per car, and appropriate such collections or switching charges to their individual use and benefit, or to the use and benefit of their said corporation.

That such spur tracks at their initial point are each and all laid for some distance upon the ground which was acquired and is held by the Terminal Company, as is hereinbefore charged, and such spur tracks in some instances are laid in the streets or alleys of the City of Des Moines where permission was granted to the Terminal Company, defendant, by the City Council of said city. That your orators are not advised and cannot state the cost or value of the ground occupied outside of said streets and outside of the ground held by the defendant corporation as trustee for your orators as hereinbefore charged.

And your orators represent and show to the court that in good faith and in equity said spur tracks should either be conveyed to the defendant corporation for the reasonable cost of constructing the same, including right of way, or that the part of the same that has been laid upon the ground of the Terminal Company should be taken up and removed. And your orators state that they are willing that said tracks and connection may remain, provided such spur tracks and the right of way upon which they are laid be conveyed to the Terminal Company, and they are willing that the said Terminal Company reimburse the defendants Frederick M. Hubbell and Frederick C. Hubbell, or their said corporation, for the reasonable cost and expense of constructing said spur tracks, including right of way and legal interest therein, after an accounting for the amounts received for switching over the same as hereinbefore stated. And your orators here and now offer to do and perform whatever this court determines is equitable and just as a condition precedent to the conveying of said spur tracks and right of way and turning over of the same to the Terminal Company.

38.

And your orators further represent and show to the court that it would be useless and vain for them to apply to the officers or board of directors of the defendant the Terminal Company to take any action looking toward the claiming of said spur tracks for the defendant corporation, or requesting

the bringing of a suit either to destroy the connection of said spur tracks with those of the Terminal Company or to recover such spur tracks for the Terminal Company, or to require the said Hubbells or their said corporation to convey or turn over the same to the defendant corporation, because the defendants Frederick C. Hubbell and Frederick M. Hubbell, and their associates and subordinates, whom they control, fill the executive offices and constitute a majority of the Board of Directors of the defendant corporation (the Terminal Company), and aid and abet the perpetrators of the wrong for which your orators seek redress. All of which actions, statements, claims and doings by the defendants are contrary to equity and good conscience and tend to the manifest injury of your orators in the premises.

Your orators state to the court that wherever the names occur in this Bill, F. M. Hubbell means the same person as Frederick M. Hubbell; F. C. Hubbell means the same person as Frederick C. Hubbell, and F. M. Hubbell & Son means the same firm and persons as the name Frederick M. Hubbell & Son.

In consideration whereof, and forasmuch as your orators are without remedy in the premises, under the strict rules of the common law and cannot have adequate relief except in a court of equity where matters of this sort are properly cognizable and relievable; to the end, therefore, that the said Des Moines Union Railway Company, the said Frederick M. Hubbell and Frederick C. Hubbell, and their said confederates, when discovered, may be required respectively to make answer according to the best of their knowledge, information and belief, to all and singular the matters hereinbefore stated and charged, as fully and completely as if the same were here repeated, and they were thereunto particularly interrogated (but not under oath, answers under oath being hereby expressly waived) your orators pray:

1st. That it be declared that, on the terms stated in said contract of January 2nd, 1882, the complainants, their successors and assigns, are entitled, for railroad purposes, to the joint and exclusive use, in common and in perpetuity, of all the pieces and parcels of real estate, together with all buildings, tracks and improvements thereon, or appurtenant thereto, in said City of Des Moines, heretofore conveyed to the Des Moines Union Railway Company by James F. How, James F. How, Trustee, Grenville M. Dodge, the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Frederick M. Hubbell and J. S. Polk, and each of them, and all additions thereunto made by exchange or by purchase

for extensions of tracks or building grounds, where such purchases were made either by rents of the original property or by the proceeds of mortgage bonds issued as aforesaid; and that the said Frederick M. Hubbell and Frederick C. Hubbell, and each of them, their counsel, solicitors, officers, agents and attorneys be perpetually restrained by the order and injunction of this Honorable Court, from in any wise interfering with, or obstructing your orators, their officers, agents or servants, in the aforesaid use of said properties and appurtenances.

2nd. That said Des Moines Union Railway (The Terminal) Company, its officers and agents, be required to render unto your orators a full and true account of all moneys heretofore received by it or them, on account of the switching or handling of cars, or traffic, on or over said terminal properties or any part thereof, for all persons or corporations whomsoever, other than complainants; of all sums of money received from or on account of rentals of real estate, buildings and improvements, as well as the income derived from all other sources connected with the use or operation of said terminal properties, giving the dates and sources from which the same were derived; the amounts expended and the purposes and dates of all expenditures; the balance now on hand, and a full and true statement and description of all properties acquired and improvements made and paid for with or from moneys received by it or them, on account of the aforesaid operation and use of said real estate, buildings, tracks and terminals.

3rd. That it be declared that complainants, their successors and assigns, are entitled to have and enjoy the exclusive use, in common and in perpetuity, of all the real estate, tracks, buildings, improvements and terminal facilities in said City of Des Moines that have been, or may be hereafter acquired, erected or made, either in the name of the Terminal Company, or in the name of any other corporation or person, with the income or earnings derived from the rental, operation or use of said terminal properties, or any part thereof, or from sale of mortgage bonds heretofore issued or hereafter issued in the name of said Terminal Company.

4th. That the Terminal Company be required to pay over to complainants all sums of money now in its possession or under its control (in excess of the sum of $25,000.00, to be retained as a working fund), received by it on account of the switching or hauling of cars, or traffic, on or over said terminal properties, or any part thereof, for all persons or corporations, other than complainants; and all sums of money received from, or on account of rentals of real estate, or buildings, as well as income derived from all other sources con-

nected with the use or operation of said terminal properties, or any part thereof, in the proportion that the wheelage of each complainant has borne to the total wheelage over said terminals during the months such moneys were earned or accrued.

5th. That it be adjudged and decreed that the Articles of Incorporation of said Terminal Company, as the same were adopted, signed and filed, on or about the 10th day of December, 1884, are now in full force and effect; that the same have never been amended, and that all alleged and pretended amendments thereof are void and of no effect.

6th. That all extensions of tracks that have been constructed by said Frederick M. Hubbell or Frederick C. Hubbell, or by any person or persons for them, or by any corporation organized and controlled by them, or either of them, partly on said terminal properties and partly on real estate or right of way acquired by them, or either of them, be decreed to be a part and parcel of said terminal properties, and that complainants be permitted to have the use thereof, in common and in perpetuity on such terms and under such regulations as to the Court shall seem equitable.

7th. That said defendants, Frederick M. Hubbell and Frederick C. Hubbell, and each of them, be, by the order and decree of the Court, enjoined and prohibited from hereafter asserting, claiming or publishing that said Terminal Company, is the owner in fee simple of all or any of said terminal properties, or that the only rights complainants now have therein were acquired under the said contract dated May 1st, 1889, or that after the expiration of said contracts, to-wit, after the 1st day of May, 1918, complainants will have no right to further use said terminals, excepting on such terms and for such compensation as may be agreed upon between them and said Terminal Company.

8th. That the Terminal Company be required to appoint from time to time, an Executive Committee, who shall be the nominees and representatives respectively of your Orators, their successors and assigns, which Committee shall have power to appoint a Superintendent who shall have charge of the operation, repair and management of said depot grounds and terminal facilities, including station buildings, tracks, round houses and shops, and that in default of such appointment by the Board of Directors of the Terminal Company, such Committee be, from time to time appointed by the Court.

9th. That said Frederick M. Hubbell and Frederick C. Hubbell and said firm of F. M. Hubbell & Son be perpetually restrained by the order and injunction of this Court from sell-

ing, pledging or otherwise disposing of the shares of the nominal Capital Stock of said Terminal Company that have been issued in their names, and that as holders of said stock certificates they be restrained by the order and injunction of this Court from exercising any control or management of said terminals and terminal properties excepting such as shall be in accordance with the terms and spirit of the aforesaid contract dated January 2nd, 1882, and herein referred to as Exhibit "A".

10th. That defendants Frederick M. Hubbell and Frederick C. Hubbell and said Terminal Company, and each of them, be perpetually restrained by the order and injunction of this Court from executing any lease, or entering into any contract for the use of said terminal properties by any person or corporation, after the expiration of said contract of May 10, 1889 (herein referred to as Exhibit "P"), that will in any manner interfere with or impair the rights of your orators to use said terminals in common and in perpetuity as provided in said contract of January 2nd, 1882, herein referred to as Exhibit "A".

"11th. That it be adjudged and decreed that the Des Moines Union Railway Company took and now holds the title to all the real estate that has been heretofore, or may be hereafter, acquired by or conveyed to it, for terminal purposes in the City of Des Moines, together with all the buildings, tracks and other improvements thereon, as Trustee, for the Des Moines & St. Louis Ry. Co., the Des Moines Northwestern Ry. Co., the St. Louis, Des Moines & Northern Ry. Co. and the complainants herein, as their successors and assigns, and that the complainants herein, and their assigns, now are and shall be hereafter entitled to the permanent use of the same as and for terminals for their said railroads in the City of Des Moines, on the terms and conditions stated in said contract of January 2nd, 1882, to-wit: On condition that they pay the cost of supervising, maintaining and operating said terminals and the cost of all insurance, taxes and assessments thereon according to their proportionate use thereof as evidenced by their wheelage upon and over said terminals."

12th. And that your orators may have such other and further relief in the premises as the nature of the case shall require and as to the Court shall seem meet.

May it please your Honors to grant unto your Orators, writs of subpoena, to be directed to the said defendants, the Des Moines Union Railway Company, Frederick M. Hubbell and Frederick C. Hubbell, and F. M. Hubbell & Son, commanding them, and each of them, at a certain time, and under

a certain penalty therein to be named, to appear before your Honors in this Honorable Court, and then and there severally to answer all and singular the matters aforesaid (but not under oath), and to stand to, abide, and perform such other and further orders and decrees herein as to your Honors shall seem meet.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.
By J. C. Cook, Its Solicitor.

THE WABASH RAILROAD COMPANY.
By J. L. Minnis, and Hewitt & Wright, Its Solicitors.

(Signed)
J. L. Minnis,
J. C. Cook,
Of Counsel.

Exhibit "A."

Being the contract of January 2nd, 1882, referred to in the foregoing Bill.

"This Agreement made at the City of New York, the second day of January 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the several individual signers thereto,

Witnesseth:

First.

The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

Second.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of Jas. F. How, individually, Jas. F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third.

It is mutually agreed by the parties above named, that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

Fourth.

The title to said property shall be and remain in a trustee to be named by agreement of said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth.

The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement.

Sixth.

The Des Moines and St. Louis Company shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two Companies, the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company within ten days after rendition of an account stated.

Seventh.

The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

Eighth.

It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories and other sources of trade in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge trucks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefore shall be determined by arbitration.

Ninth.

Taxes and assessments levied upon said property shall be charged to maintenance account.

Tenth.

In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the companies hereto in the same proportion

as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies parties hereto.

Eleventh.

All differences arising under this agreement shall be referred to arbitration, one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company, and the third by the two thus selected. The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis and the Des Moines Northwestern, then the second arbitrator shall be chosen by the Des Moines Northwestern and not by the St. Louis, Des Moines & Northern.

Twelfth.

It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement.

In Witness Whereof the said Railway Company, parties hereto, have caused these presents to be executed by their respective Presidents under their respective corporate seals, attested by the Secretaries of the said Companies and the several individual signers hereto have executed the same the day and year first above written.

(Corporate Seal) THE DES MOINES AND ST. LOUIS RAILWAY COMPANY.
By J. S. Clarkson, President.

Attest:
J. S. Polk, Secretary.

(Corporate Seal) THE DES MOINES NORTHWESTERN RAILWAY COMPANY.
By J. S. Polk, President.

Attest:
J. S. Runnells, Secretary.

(Corporate Seal) THE ST. LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY.
By J. S. Clarkson, President.

Attest:
J. S. Polk, Secretary.

(Seal) G. M. DODGE.
(Seal) JAMES F. HOW.
(Seal) JAMES F. HOW, Trustee.

The Wabash, St. Louis and Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines and St. Louis, and the Des Moines Northwestern Companies.

(Corporate Seal) THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.
By Solon Humphreys, President.

Attest:
James F. How, Secretary.

Exhibit "B."

Being the Articles of Incorporation of the Des Moines Union Railway Company, referred to in the foregoing Bill.

Articles of Incorporation of the Des Moines Union Railway Co.

Whereas, The Des Moines & St. Louis, The Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Iowa, and have secured certain franchises, purchased certain realty and made certain improvements thereon, which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions at their joint expense in accordance with a contract made and entered into by and between said Companies and Grenville M. Dodge and James F. Howe, Trustee, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to-wit:

This Agreement, made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the several individual signers hereto,

Witnesseth:

First.

The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

Second.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of Jas. F. How, individually, Jas. F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appro-

priated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third.

It is mutually agreed by the parties above named that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

Fourth.

The title to said property shall be and remain in a trustee to be named by agreement of said Companies, but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth.

The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement.

Sixth.

The Des Moines and St. Louis Company, shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two Companies, the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

Seventh.

The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

Eighth.

It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories

and other sources of trade in and about the City of Des Moines as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge trucks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefor shall be determined by arbitration.

Ninth.

Taxes and assessments levied upon said property shall be charged to maintenance account.

Tenth.

In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the Companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies parties hereto.

Eleventh.

All differences arising under this agreement shall be referred to arbitration; one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company, and the third by the two thus selected. The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis and the Des Moines Northwestern, then the second arbitrator shall be chosen by the Des Moines Northwestern and not by the St. Louis, Des Moines & Northern.

Twelfth.

It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement.

In Witness Whereof the said Railway Companies, parties hereto, have caused these presents to be executed by their

respective Presidents under their respective corporate seals, attested by the Secretaries of the said Companies and the several individual signers hereto have executed the same the day and year first above written.

(Corporate Seal) THE DES MOINES AND ST. LOUIS RAILWAY COMPANY.
By J. S. Clarkson, President.

Attest:
J. S. Polk, Secretary.

(Corporate Seal) THE DES MOINES NORTHWESTERN RAILWAY COMPANY.
By J. S. Polk, President.

Attest:
J. S. Runnels, Secretary.

(Corporate Seal) THE ST. LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY.
By J. S. Clarkson, President.

Attest:
J. S. Polk, Secretary.

(Seal) G. M. DODGE.
(Seal) JAMES F. HOW.
(Seal) JAMES F. HOW, Trustee.

The Wabash, St. Louis and Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines and St. Louis and the Des Moines Northwestern Companies.

(Corporate Seal) THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.
By Solon Humphreys, President.

Attest:
James F. How, Secretary.

Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said Companies, and,

Whereas, it was provided in the contract aforesaid, that a depot company might be organized to take permanent charge of the property, and it was the understanding of the parties that such Company might acquire, operate, and maintain said property in such manner as best to serve the interests of the parties thereto.

Now Therefore, for the purposes aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following Articles of Incorporation, to-wit:

Article I.

The name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be Des Moines, Iowa.

Article II.

The general nature of the business to be transacted shall be the construction, ownership, and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock yards, and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars from the line or depot of one railway to another or from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots thereof now constructed or to be hereafter constructed in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter 1 of Title IX of the Code and the amendments thereto.

All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, Jas. F. How, Jas. F. How, Trustee, and Grenville M. Dodge.

The said Company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company. Provided that the assent in writing of the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

Article III.

The capital stock of this corporation shall be one million ($1,000,000) dollars, which shall be divided into shares of one hundred ($100) dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor, the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, James F. How, Trustee, James F. How, and Grenville M. Dodge.

Article IV.

The affairs of the Company shall be managed by a Board of eight Directors, who shall be elected annually by the stockholders on the first Thursday in January of each year. The provisional Board of Directors who shall hold office until the first Thursday in January, A. D. 1886, shall consist of James F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis and Pacific Railway Company, two members by the Des Moines Northwestern Railway Company, and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholder shall be eligible for membership of the Board unless so nominated. The fact that a candidate has been duly nominated shall be certified to the stockholders meeting of this Company by the Secretary of one of the respective Companies aforesaid, and such certification shall be conclusive.

The provision herein with respect to nominations for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid.

No contract, lease or other agreement amounting to a permanent charge upon the property of the corporation shall be entered into by the Board unless the same shall have been first approved by the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders duly called, and shall have been approved by more than three-fourths of all the stockholders, and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided.

The Directors shall elect from their number a President, Vice-President, Secretary and Treasurer.

All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

Article V.

The President, Vice-President, Secretary and Treasurer shall possess the powers and discharge the duties of like officers of similar corporations, subject to the limitations imposed by these Articles.

The officers hereby constituted who shall hold their respective places until the first Thursday in January, 1886, or until their successors are duly chosen, shall be as follows:

President, G. M. Dodge;
Vice-president, James F. How;
Secretary and Treasurer, F. M. Hubbell.

Article VI.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article VII.

The highest amount of indebtedness to which the corporation may at any time subject itself, shall be the amount authorized by law.

Article VIII.

Meetings of the Board of Directors may be called by the President, or in case of his absence or disability, by the Vice-President, and shall be called upon request, preferred in writing, by two members of the Board.

Article IX.

These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof at a meeting of stockholders therefor, of which a notice containing the proposed amendment shall be mailed to each stockholder at his address as disclosed by the transfer books of the Company. Notice of such proposed meetings shall also be given by publication for three successive weeks in some newspaper of general circulation published in the City of Des Moines, Iowa.

Article X.

This corporation shall commence on the fifth day of December, A. D. 1884, and continue fifty years with the right of renewal.

In Testimony Whereof, we have hereunto set our names this 10th day of December, A. D. 1884.

J. S. POLK.
F. M. HUBBELL.
J. S. RUNNELLS.

State of Iowa,
Polk County—ss.

In this 10th day of December, 1884, personally appeared before me, C. Huttenlocher, a Notary Public in and for the County of Polk, J. S. Polk, F. M. Hubbell and J. S. Runnells,

to me personally known to be the identical persons whose names are affixed to the foregoing instrument as incorporators, and acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

(Seal) C. HUTTENLOCHER,
Notary Public, Polk County.

Exhibit "C."

January 1st, 1885.

The Board met this day pursuant to the call of the President, due notice thereof having been given to each member of the Board.

The members of said Board having each qualified by subscribing for one share of the capital stock of this Company.

There were present G. M. Dodge, F. M. Hubbell, J. S. Runnells, J. S. Polk and C. F. Meek.

The meeting was called to order by the President. On motion of John S. Runnells it was unanimously Resolved, that the Secretary be instructed to procure a seal for said Company, which shall consist of a circular disc, having engraved around the outer edge thereof the words, "Des Moines Union Railway Company," and in the center the word "Seal," and that such device is hereby adopted as the seal of this Company, and until the same is procured, a scroll with the word, "Seal," written in the center thereof shall be regarded and treated as the seal of this Company.

On motion of J. S. Polk, the following preamble and resolutions were submitted for the action of the Board, to-wit:

Whereas, the Des Moines and St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, the Des Moines Northwestern Railway Company, G. M. Dodge and James F. How, both in his individual right and as Trustee under the contract mentioned and set out in the Articles of Incorporation of this Company, have by their officers and by themselves, personally notified this Company that they have each for themselves approved of the organization of this Company, and have directed their officers, agents and trustees to surrender and deliver to this Company the railroad property and franchises mentioned in said contract, and requested it to take possession of and maintain and operate the same for the purposes and on the terms mentioned in said contract, and that said railway companies and individual signatories have indicated their desire and purpose to transfer

said property to this company in accordance with the terms of said contract.

Whereas, it is desirable that this Company should at once take possession of said property and maintain control and operate the same, and that it should procure all necessary conveyances and transfers of the same as soon as practicable, and make provisions for and pay for said property so proposed to be conveyed to it. Now therefore, be it

Resolved,

First.

That this Company accepts the transfer and management and operation of said property in the City of Des Moines east of Farnham Street in said City, heretofore owned and controlled by the Des Moines & St. Louis Railroad Company, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as practicable, and it hereby instructs its president to make such order as may be necessary to render such control and management effective, as provided in said contract.

Second.

That the President, Vice-President, Secretary and Treasurer of this Company be, and they are hereby appointed a committee to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said properties as provided for in said contract of January 2nd, 1882.

Exhibit "D."

Hereinbefore referred to in this Bill and adopted at a stockholders' meeting of the St. Louis, Des Moines & Northern Railway Company on January 1st, 1885.

On motion of F. M. Hubbell the following preamble and resolutions were submitted to the meeting for its consideration, to-wit, and were unanimously adopted:

Whereas, the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge and James F. How, and James F. How, Trustee, on the 2nd

day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate, and franchises, in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract, and,

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate, property, rights and franchises in the City of Des Moines east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

Now Therefore,

I. Resolved, That this Company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company;

II. Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, chosen in action and rights in possession of contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract.

Exhibit "E."

Board of Directors' Meeting, November 5th, 1887.

The Board met this day pursuant to the call of the President.

The following directors were present: C. F. Meek, J. S. Polk, F. M. Hubbell.

The meeting being called to order by F. M. Hubbell, Vice-president, the minutes of the last meeting were read and approved.

J. S. Polk offered the following preamble and resolution, to-wit:

Whereas, James F. How has prior to 1881, and since then, purchased certain property and made expenditures on same as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and,

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions, it is hereby

Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable after the transfer said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements with interest on same and taxes paid thereon and also three-fourths of the stock of the Des Moines Union Railway Company, said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns in lieu for the money advanced by said Company to make the purchase of the above property and improvements and the payment of taxes for this Company.

Which resolution, after being duly considered, was unanimously adopted.

C. F. Meek offered the following resolution, to-wit:

Whereas, Grenville M. Dodge has prior to 1881, and since then, purchased certain property and made expenditures on the same as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individu-

ally, should be transferred to the Des Moines Union Railway Company under certain conditions.

It Is Hereby

Resolved, That Grenville M. Dodge is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above so purchased on receiving from said Company a stipulation that as soon as practicable said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced by him for the payment of said property and improvements with interest and taxes on the same, and also one-fourth of the capital stock of the Des Moines Union Railway Company.

Which resolution, after being duly considered, was unanimously adopted.

Exhibit "F."

Hereinbefore referred to in this Bill and adopted at a stockholders' meeting of the Des Moines Northwestern Railway Company on January 1st, 1885.

On motion of F. M. Hubbell the following preamble and resolution were submitted to the meeting for its consideration, to-wit:

Whereas, The Des Moines, St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, on the 2nd day of January, 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines which had theretofore been held and used by certain of the individual parties thereto for certain purposes and upon certain conditions set out in said contract, and,

Whereas, On the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate, property, rights and franchises in the City of Des Moines east of Farnham Street in said City of the aforesaid railway company and signatories of said contract, acquired or held thereunder and to carry out the purposes of the said contract of January 2, 1882.

Now Therefore,

Resolved, That this Company accepts and ratifies so far as its interests are affected thereby the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord, and compliance with the terms and conditions of the said contract of January 2, 1882. And undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign and transfer any interest of whatever name and character in and to the real estate, franchises, chosen in action and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract.

The same having been duly considered was on motion adopted, all the stockholders present and represented voting therefor.

On motion of Mr. Runnells, the following resolution was submitted to the meeting, to-wit:

Resolved, That the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines so far as the same may now be vested in the Company to the Des Moines Union Railway Company on the 1st day of January, 1885, or as soon thereafter as practicable, leaving the question of settlement between this Company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein. And the same being duly considered, was adopted by the meeting, all the stock present and represented voting therefor.

Exhibit "G."

Hereinbefore referred to in this Bill, being proceedings at a stockholders' meeting of January 1, 1885, of the Des Moines & St. Louis Railroad Company.

Stockholders' Meeting, Jan'y 1, 1885.

On motion of J. Polk, the following preamble and resolution were submitted to the meeting for its consideration, to wit:

Whereas, The Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. Hew, and James F. Hew, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control, and use certain real estate and franchises, in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto for certain purposes and upon certain conditions set out in said contract, and,

Whereas, On the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company, was organized as contemplated and provided in the aforesaid contract, to acquire, hold, use and enjoy the real estate, property rights and franchises in the City of Des Moines, east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract acquired or held thereunder, and to carry out the purposes of said contract of January 2nd, 1882.

Now, Therefore,

I. Resolved, That this Company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882, and undertakes to discharge all the obligations imposed upon it by said contract, in order to make effective the purposes of said Des Moines Union Railway Co.

II. Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign, and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof, purchased, acquired or held in pursuance of said contact.

The same, having been duly considered, was on motion adopted, all the stockholders present and represented voting therefor.

On motion of J. S. Runnells, the following resolution was submitted, to-wit:

Resolved, That the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the Company, on the first day of January, or as soon thereafter as practicable, leaving the question of settlement between this Company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore adopted to be arranged as directed therein.

And the same, being duly considered, was adopted by the meeting, all the stockholders present and represented voting therefor.

F. M. Hubbell,
Secretary.

J. S. CLARKSON,
President.

Exhibit "H."

Being resolutions of Board of Directors of Des Moines & St. Louis Company offered at meeting of November 8th, 1887.

Charles M. Hays offered the following resolutions and moved its adoption, to-wit:

Whereas, James F. How, has, prior to 1881 and since purchased certain property and made expenditures on same as Trustee for the company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes paid

thereon and also three-fourths of the stock of the Des Moines Union Railway Company; said Bonds and Stock to be transferred by said How, to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

Said motion having been duly considered, was unanimously adopted.

On motion of John S. Runnells, the following resolution was unanimously adopted, to-wit:

Whereas, Grenville M. Dodge, has prior to 1881, and since then, purchased certain property, and made expenditures on the same as trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company, and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above on receiving from said Company a stipulation that as soon as practicable, said Union Railway Company is to deliver to him first mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on same and taxes, and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

James F. How, offered the following resolution, to-wit:

Resolved, That the President and Secretary of this Company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said Company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from city of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second (2), 1882, entered into by and between this Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and others.

Said motion having been duly considered was unanimously adopted.

There being no other business before the meeting it adjourned.

F. M. HUBBELL, Secretary.

Exhibit "I."

Hereinbefore referred to in this Bill, being notice in writing to the Des Moines Union Railway Company given by the Des Moines & St. Louis Railroad Company:

To The Des Moines Union Railway Company:

This is to notify you that the Board of Directors of the Des Moines & St. Louis Railroad Company, at its meeting, November 8th, 1887, did pass the following resolutions, to-wit:

Whereas, James F. How, has, prior to 1881 and since purchased certain property and made expenditures on same as Trustee for this company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes thereon and also three-fourths of the stock of the Des Moines Union Railway Company; said Bonds and Stock to be transferred by said How, to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

Whereas, Grenville M. Dodge, has prior to 1881, and since then, purchased certain property, and made expenditures on the same as trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company, and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above on receiving from said Company a stipulation that as soon as practicable, said Union Railway Company is to deliver to him first mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on same and taxes, and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

Resolved, That the President and Secretary of this Company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said Company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from city of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second (2), 1882, entered into by and between this Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and others.

Exhibit "J."

Hereinbefore referred to in this Bill, being notice by St. Louis, Des Moines & Northern Railway Company to the Des Moines Union Railway Company.

To The Des Moines Union Railway Company.

You are hereby notified that the Board of Directors of the St. Louis, Des Moines & Northern Railway Company did, at its meeting, held in Des Moines, Iowa, on the 5th day of November, 1887, pass the two following resolutions, to-wit:

Whereas, James F. How, has, prior to 1881 and since then purchased certain property and made expenditures on same as Trustee for this company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others

it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes paid thereon and also three-fourths of the stock of the Des Moines Union Railway Company, said Bonds and Stock to be transferred by said How, to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

2. Whereas, Grenville M. Dodge, has prior to 1881, and since then, purchased certain property, and made expenditures on the same as trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company, and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above so purchased on receiving from said Company a stipulation that as soon as practicable, said Union Railway Company is to deliver to him first mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on same and taxes, and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

Exhibit "K."

Hereinbefore referred to in this Bill, being notice by the Des Moines Northwestern Railway Company to the Des Moines Union Railway Company:

To The Des Moines Union Railway Company.

This is to notify you that the Board of Directors of the Des Moines Northwestern Railway Company, at its meeting held in Des Moines, Iowa, November 8th, 1887, did pass the following two resolutions, to-wit:

1. Whereas, James F. How, has, prior to 1881 and since purchased certain property and made expenditures on same as Trustee for this company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes paid thereon and also three-fourths of the stock of the Des Moines Union Railway Company; said Bonds and Stock to be transferred by said How, to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

2. Whereas, Grenville M. Dodge, has prior to 1881, and since then, purchased certain property, and made expenditures on the same as trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company, and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transfered to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, said Union Railway Company is to deliver to him first

mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on same and taxes, and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

Exhibit "L."

Being deed from James F. How, Trustee, to Des Moines Union Railway Co.

James F. How, Trustee,
to
Des Moines Union Ry. Co.—88.

Deed.

Whereas, The property hereinafter described was from time to time purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company; and Whereas for its convenience the legal title to said property was conveyed to me in trust; and Whereas said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee; and which contract was consented to by the Wabash, St. Louis and Pacific Railway Company; and Whereas I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust, for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas the Board of Directors of said Des Moines & St. Louis Railway Company and the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas, James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement with this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How

is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now, Therefore, Know all Men by These Presents:

That I, James F. Dow, Trustee, as aforesaid, of the City of St. Louis, State of Missouri, in consideration of the premises, and of the sum of one dollar, to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, the several lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows:

Official Plat Lot three (3) in the northwest quarter of Section (9) Township seventy-eight (78) Range twenty-four (24) West of the 5th P. M. Iowa; Lot six, and the south half of Lot five in Block twenty-two (22) Lots five (5) and seven (7) and the South sixty-six feet (66) of Lots one (1) and two (2) and the south half of Lot three (3) all in Block thirty-one (31); Lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) in Block thirty-two (32) all in Keene & Poindexters Addition to Fort Des Moines; Lot three, Block fourteen, and Lot five and six in Block fourteen Lots five and six and the north two-thirds of Lots seven, in Block 18, Lot Three in Block twenty-two, Lot three and the west half of Lot five (5) and six (6) in Block nine, all in Hoxies Addition to the Town of Fort Des Moines; Lot nine and the north two-thirds of Lot four in Block thirty-five (35); Lot four (4) and the north two-thirds of Lot nine (9) in Block thirty (30); Lots four (4) and the south two-thirds of Lot nine (9) in Block twenty five (25); Lot nine and the south one-third of Lot ten (10) less a strip four feet in width from the north side of said one-third and the south one-third of Lot three (3) in Block twenty (20); Lots one (1) two (2) seven (7) and eight (8) in Block fifteen (15); Lots one (1) two (2) and leasehold interest seven (7) and eight (8) in Block nine (9); Lot two (2) in Block four (4) all in the original town of Fort Des Moines; Lots five (5) and six (6) in Block D, Lot twelve (12) in Block I, Lots three (3) and twelve (12) in Block three (3) all in Scott & Dean's Addition to Fort Des Moines. The right of way in the rear of Lot seven (7) in Block fourteen (14) beginning at the west line of Seventh Street and extending westward ninety-nine feet; Lots seven (7) and fifteen (15) in Block sixteen (16); Lots twelve (12) and thirteen (13) in Block eleven (11); Lots ten (10) and eleven (11) in Block twelve (12); Lots one (1) and nine (9) and official Plat Lot eleven (11) in Block twenty-one (21); all interest in alley adjoining Lots one (1) and two (2) in

Block thirteen (13); Lots eight (8) nine (9) fifteen (15) and sixteen (16) in Block thirteen (13); Lot fifteen (15) in Block fifteen (15); the undivided one-fourth of Lot two (2) and official plat Lot thirteen (13) in Block twenty-two (22); Lots three (3) four (4) five (5) six (6) seven (7) and eight (8) in Block twenty-three (23) all in the Town of Demoine; Lot twenty-three (23) north two and seventy-five one hundredths acres of Block forty (40) west one-third (now official plat Lot one) of Block forty-five (45), all of Lot thirty-six (36) all in Brooks and Company's Addition to the City of Des Moines.

To have and to hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me.

In testimony whereof, I have hereunto set my hand and seal this 19th day of November, A. D. one thousand eight hundred and eighty-seven.

JAMES F. HOW.

City of St. Louis,
State of Missouri—ss:

On this sixteenth day of April, A. D. 1888, before me, a notary public within and for the City of St. Louis and State of Missouri, personally appeared James F. How, to me personally known to be the identical person whose name is affixed to the within and foregoing instrument of writing as grantor therein, and who acknowledged that he executed the same as his voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said City of St. Louis the day and year first above written.

My term expires June 29th, 1889.

(Notarial Seal) MILLARD F. WATT.
Notary Public, City of St. Louis, State of Missouri.

Exhibit "M."

Being deed of James F. How and wife to Des Moines Union Railway Company.

James F. How and Wife
to
Des Moines Union Ry. Co.

Deed.

Whereas, The property hereinafter described was from time to time purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company, a corporation; and Whereas, for its convenience the legal title to said property was conveyed to me in trust; and Whereas, said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company; the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, and which said contract was consented to by said Wabash St. Louis & Pacific Railway Company; and Whereas, I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust, for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas, the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas, James F. How has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement between this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now, Therefore, Know all Men by These Presents:

That I, James F. How, of the City of St. Louis, State of Missouri, in consideration of the premises, and of the sum of one dollar, to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, the several lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows:

Lot one (1) of the Official Plat of Lot twenty-four (24) and Lot two (2) of the Official Plat of Lot twenty-five (25), and Lot one (1) of the Official Plat of Lot twenty-six (26), all in Brook and Company's Addition to the City of Des Moines; and the East one-half (½) of Lot two (2) in Block fifteen (15) in the original town of Fort Des Moines. Also the right of way in alley adjoining Lots one (1) and two (2) in Block thirteen (13) in the Town of Demoine, and Lot nine (9) in Block twelve (12) in the Town of Demoine, now a part of the City of Des Moines. And Eliza A. How, wife of the said James F. How, hereby relinquishes her right of dower in and to the above described premises. To have and to hold all and singular the several pieces and parcels of real estate aforesaid with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises and that I only undertake to warrant and defend against those claiming through and under me.

In testimony whereof I have hereunto set my hand and seal this tenth day of December, A. D. one thousand eight hundred and eighty-seven.

(Seal) JAMES F. HOW.
(Seal) ELIZA A. HOW.

(The above deed was duly verified on the 17th day of April, 1888.

Exhibit "X."

Being deed from James F. How, Trustee, to Des Moines Union Railway Company.

James F. How, Trustee
to
Des Moines Union Ry. Co.—ss.

Warranty Deed.

Whereas, The property hereinafter described was purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company, a corporation; and Whereas, for its convenience the legal title to said property was conveyed to me in trust; and Whereas, said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company; the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, and

which said contract was consented to by said Wabash, St. Louis & Pacific Railway Company; and Whereas, I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust, for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas, the Board of Directors of said Des Moines & St. Louis Railway Company and the Board of Directors of the said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas, James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement with this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now, Therefore, Know all Men by These Presents:

That I, James F. How, Trustee, as aforesaid, of the City of St. Louis, State of Missouri, in consideration of the premises, and of the sum of one dollar to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, a strip of land fifty (50) feet in width lying north of and adjoining the north line of the right of way of the Chicago, Rock Island & Pacific Railway and being part of Lot two (2) of the Official Plat of the northwest quarter of the northeast quarter of Section eight (8) Township seventy-eight (78) north Range twenty-four (24) west of the 5th P. M. lying and being in the City of Des Moines, County of Polk, State of Iowa. To have and to hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only

undertake to warrant and defend against those claiming through and under me.

In testimony whereof I have hereunto set my hand and seal this 28th day of April, A. D. one thousand eight hundred and eighty-eight.

JAMES F. HOW.

The above deed was duly acknowledged on the 28th day of April, A. D. 1888.

Exhibit "O."

Being Quit Claim Deed from G. M. Dodge and wife of Des Moines Union Railway Company.

G. M. Dodge & Wife,
to
Des Moines Union Ry. Co.

Quit Claim Deed.

This Indenture made the seventh day of November in the year one thousand eight hundred and eighty seven, between G. M. Dodge and Annie Dodge, his wife, of Pottawattamie County, State of Iowa, parties of the first part, and the Des Moines Union Railway Company, parties of the second part, Witnesseth: That the said Party of the first part for and in consideration of the sum of One Dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid by the said parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and Quit claimed, and by these presents doth remise, release and Quit claim unto the said parties of the second part and to their heirs and assigns forever. All of the following described premises situated in the county of Polk and State of Iowa, to-wit:

Lots numbered one and two in Block numbered twenty-two in H. M. Hoxies Addition to the Town of Fort Des Moines now included in the corporate limits of the City of Des Moines.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents and issues and profits thereof; And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in or to the above described premises; and every part and parcel thereof, with the appurtenances. To have and to hold all and

singular the above mentioned and described premises, together with the appurtenances unto the said parties of the second part and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

G. M. DODGE.
ANNIE DODGE.

Sealed and Delivered
in the presence of
A. T. Granger.
L. F. Bartels.

The above deed was duly acknowledged by G. M. Dodge on the 9th day of Nov., 1887, and by Annie Dodge on the 15th day of Nov., 1887.

Exhibit "P."

This Agreement, made and entered into this 10th day of May, A. D. 1888, by and between the Des Moines Union Railway Company of Des Moines, Iowa, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part.

Witnesseth that:

Whereas, the said party of the first part is the owner of valuable terminal facilities in the city of Des Moines, Iowa, as hereinafter described, and:

Whereas, the respective parties of the second part have railroads in the state of Iowa which terminate at, or run into and through said city of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party, and,

Whereas, said party of the first part has become incorporated and organized under the laws of the state of Iowa for the purpose of owning and operating a line of railway in the said city of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham street, in the western part thereof; and

Whereas, said party of the first part in pursuance of said charter has acquired and now owns a railway in said city, as

above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and

Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance and repairs, shall be stated and defined.

Now Therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself) as follows:

Section One. The party of the first part agrees to proceed with reasonable dispatch and whenever its board of directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said city of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots, round houses, shops, water tanks, and yard appurtenances, as the board of directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase or otherwise such additional real estate as may be necessary.

Section Two. The amount of such additional grounds and the form, character, and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement, and repairs thereof, shall in all matters not otherwise specifically provided for herein be determined by the board of directors of said first party.

Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay to said party of the first part a sum of money to be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round houses, transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligations to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month; and it is expressly understood and agreed that in computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard gauge cars; and that the term "wheelage," as used in this contract, means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

Section Five. If the amount, or any part of the amount, due from any other railroad company or companies for the use of said property, or any part thereof, shall not be paid when due, then the sum so due and unpaid shall also, on demand of said first party, be paid to it by said second parties on a wheelage basis as hereinbefore defined.

Section Six. The party of the first part, in consideration of the payments to be made to it by said parties of the second part, hereby grants to said second parties the use of its terminal properties aforesaid, and said first party agrees to keep and maintain its said terminal properties in good condition and repair, and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such

servants and employes as shall be reasonably necessary for the conduct of its business and the moving and handling of the cars, passenger and freight, of said second parties, and the housing and care of their engines. And said first party further agrees to switch all cars, handle all freight, house and care for all engines of said second parties which may be delivered to it or which may come upon its said premises, in so far as either of said second parties may request it so to do.

Section Seven. The party of the first part shall on or before the tenth day of each month, or as soon thereafter as practicable, make up and present to each of the parties of the second part, an account showing the amount due thereunder for the preceding month, and payment thereof shall be made within five days thereafter.

Section Eight. So far as relates to the rental necessary to raise a fund for the payment of interest upon the mortgage bonds, this contract shall be retrospective and shall govern from and after the first day of May, 1888.

Section Nine. The costs and expenses of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping, washing and firing up, shall be borne by each of said companies in such proportion as the number of road engines of each company in and out of said engine house shall bear to the whole number of road engines in and out of said engine house during the period for which said costs and expenses are made up. All repairs to engines shall be charged for and paid by each of said companies for whom the work is done on the basis of actual cost of labor and material, and all services rendered supplies and labor furnished to any of the railroad companies parties hereto for their own benefit, and which are not properly a portion of the joint expenses, shall be charged directly to said company, on such equitable terms as may be agreed upon between the superintendent of the party of the first part and the superintendent of the party to whom the service is rendered.

Section Ten. It is further agreed between the party of the first part and each of the second parties hereto, that if any one of the parties of the second part shall, for any reason, fail or refuse for a period of thirty days after the same has become due, and has been demanded, to pay the several sums under this contract as aforesaid, then the party of the first part may take from any moneys in its hands belonging to the said defaulting party, or in the hands of its agents, the amount of said sums and apply a sufficient amount thereof to meet said demands. Should the sum in the hands of the party

of the first part, or its agents, be insufficient to meet the amount due under this agreement and the same shall still remain unpaid, said first party shall have the right to exclude said delinquent party from said premises, and the party or parties so failing to pay shall forfeit all rights under this agreement, and the first party may thereupon, with the consent of the remaining parties of the second part, transfer and assign the rights of the party so failing to any other party or parties, for such sum as the board of directors of the first party may determine, and the same may be thereafter held and enjoyed by such assignee or assignees. But it is understood and agreed that nothing herein shall prevent the party of the first part from enforcing its claims against any delinquent lessee or lessees, parties of the second part, by any proper action either at law or in equity, to recover the amount which may at any time due and unpaid, in case said party of the first part shall so elect.

Section Eleven. The directors of the party of the first part hereto shall appoint an executive committee, of which each party of the second part shall have one member as its representative.

Section Twelve. The management of the depot grounds and terminal facilities, including station buildings, tracks, round houses, shops, etc., shall be in charge of a superintendent who shall be appointed by the executive committee, subject to the approval of the board of directors. Said superintendent shall, in the performance of his duties, be governed by such regulations as may from time to time be established by said executive committee, or by the board of directors.

Section Thirteen. The salary of said superintendent shall be fixed by the executive committee, subject to the approval of the board, and the compensation of other agents and employes shall not be higher than is paid by railroad companies in the vicinity for similar services.

Section Fourteen. Said terminal properties shall be used by said railroad companies, parties of the second part, for all their passenger trains destined for or departing from said city of Des Moines, Iowa, and said second parties shall run all their trains to and from said depots and terminal properties, unless otherwise expressly permitted by said executive committee.

Section Fifteen. Said executive committee, subject to the board, shall make, and publish and enforce such rules and regulations for the use, management and operation of said terminal stations, depots, depot grounds, yards and tracks, by

all the parties hereto, as it may from time to time consider necessary.

Section Sixteen. The said party of the first part shall at all times protect its depot buildings and improvements and furniture by adequate insurance against loss by fire, and the cost of such insurance shall be paid as herein provided for.

Section Seventeen. The party of the first part shall keep accurate books of account showing in detail all the expenditures made by it on account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance, and repairs, and other disbursements upon and about the premises, embraced in this agreement, and said books shall show the amount of work done for, and fuel or other material furnished to each party to this agreement, and the amount of fuel or other material received from each party hereto; and said books shall give such other details as will at all times enable the parties hereto to make accurate settlements of their accounts as provided in this agreement, and said books may at all reasonable and proper hours be examined and inspected by the superintendent, auditor or treasurer of said second parties, or by an authorized accountant.

Section Eighteen. The said party of the first part shall also keep an accurate record of all the engines and cars of each party hereto arriving at and departing from said terminal station, or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched on to or from said terminals for the benefit of the several parties hereto, or others; and of all the engines which have been housed at said engine houses in each month; and as hereinbefore provided, said first party shall furnish to the other parties hereto, a full, true and detailed statement of all the expenditures made, of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section Nineteen. All damages which may be received by any engine or engines, car or cars of any party hereto, while being switched by said first party at or upon any part of the premises embraced in this agreement, shall be repaired by the party to whom such rolling stock belongs, and the cost of such repairs shall be borne and paid by each party hereto on a wheelage basis, as herein defined.

Section Twenty. All damages to property other than as above described, caused by any engine or engines, car or cars, of either party hereto, or by any imperfection in the track or

tracks laid on said premises, and all injuries which may at any time be received by any person or persons in, around about or upon said terminal station, depot grounds, yards, etc., shall (if settled at all) be adjusted and settled by said first party, and the sums thus paid in settlement or settlements shall be borne and paid by each of the parties hereto upon said wheelage basis, as herein defined: Provided, however, that each party hereto shall, at its own sole cost and expense, bear, settle and pay all damages to property belonging to itself or to third parties, and all injuries to persons, when said damages or injuries are done to or by its own trains, while said trains are being moved by its own engines and operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the servants of said first party, or by some imperfection in its track or tracks, and in case such damages or injuries are occasioned by the act, negligence or fault of the servants of said first party, or by an imperfection in its said tracks, then settlements and payments shall be made by said first party as in this section first provided.

Section Twenty-one. All persons employed and paid either permanently or temporarily by said first party in the maintenance and operation of said terminal station, depot grounds and yards, shall be deemed and taken to be the employes and servants of said first party.

Section Twenty-two. It is further agreed that the several covenants, conditions and stipulations herein contained shall be mutually binding upon the respective parties hereto, their successor, successors and assigns for the term of thirty years from May 1, 1888, unless this contract shall be sooner determined by consent of the parties hereto, or by reason of the provisions hereof.

Section Twenty-three. It is further understood and agreed that all of the aforesaid covenants and agreements on the part of said parties of the second part to be performed, are several and not joint.

Section Twenty-four. It is understood and agreed that the Des Moines & St. Louis Railroad Company, as the owner of one-half of the capital stock of the Des Moines Union Railway Company, may sell and transfer one-half of said stock, or one-quarter of the whole to such railway company as may be acceptable to a majority of the parties of the second part; in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of

the second part. Only as aforesaid, shall other railroad companies be admitted to the use of the property of said first party, without the consent of all the parties of the second part, and the compensation to be paid by any other railroad company, or person not a party hereto (or provided for as aforesaid) for the use of said depot or terminal facilities, or any part thereof, shall be determined by the board of directors of said first party.

Section Twenty-five. It is further agreed by and between said first party and the several second parties hereto, that any of said second parties may sell, assign and transfer to any other one railroad company all its rights under this agreement, or said second parties, or any of them, may mortgage to any one party all their respective interests and rights under this contract; but none of said second parties shall sub-divided, sublet, mortgage or assign to any other company or person a portion of its said right and privileges herein, and any assignment, mortgage or lease made by any one of said second parties, which may be held sufficient to admit its assignee, mortgagee or lessee, or their assigns, to the possession of any of said property, shall be held sufficient to exclude, and shall exclude, the party making such lease, mortgage or assignment from all its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as to prevent any of said second parties from contracting to do the business, or handle with its own engines the traffic or cars of any other railroad company to and from said city on such terms as said first party may approve, provided the line of such other railroad company connects with the line of such second party not less than twenty miles from said city of Des Moines.

Section Twenty-six. Whereas, the several parties hereto of the second part are entitled to the shares of the stock of said first party in the following amounts or proportions, to-wit: The Des Moines & St. Louis Railroad Company to one-half said shares; the Des Moines & Northwestern Railway Company to one-fourth said shares; and the St. Louis, Des Moines & Northern Railway Company to one-fourth said shares, and,

Whereas, no certificates for said shares have as yet been issued to said parties;

Now, therefore, it is hereby further agreed between the parties hereto, that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of one hundred dollars each, the same shall be issued and held as follows, to-wit: One certificate of ten thousand shares shall

be issued and delivered to the Des Moines & St. Louis Railroad Company, one certificate for five thousand shares shall be issued and delivered to the St. Louis, Des Moines & Northern Railway Company, and one certificate for five thousand shall be issued and delivered to the Des Moines & Northwestern Railway Company, and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement, except that any shares of stock issued on request of either of said companies to any person, to qualify him as a member of the board of directors shall be re-transferable to the company on whose request it shall have been issued without the consent of the other companies; but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued, unless consented to by the other parties of the second part.

Section Twenty-seven. Whereas, the parties of the second part have herein and hereby obligated themselves to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used, or to be hereafter issued and used by said first party in purchasing, improving and equipping the terminal properties herein described;

Now therefore, in consideration of the premises, the said first party hereby contracts and agrees to and with each of the second parties hereto, that it will not at any time hereafter issue or dispose of any of said bonds except for the purposes of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in said city of Des Moines.

Section Twenty-eight. In case any difference shall hereafter arise between the first and second parties hereto, concerning the management of said terminal station, depot, grounds, yards, and tracks, with respect to any matter not herein provided for, or concerning any other matter or thing connected therewith, but not herein expressly provided for, such differences shall be referred to three competent men experienced in railroad management, who shall, as soon as practicable after they are chosen, proceed to examine and determine what would be just and equitable for each of said parties to do in and about the matter in dispute. Each party shall choose one of said arbitrators and the two thus chosen shall select the third arbitrator and the decision in writing of a majority of said arbitrators with respect to the matter submitted, shall be furnished to and be thereafter binding upon

each of the said parties; Provided, however, that such differences shall have no effect on the course of business at said terminal station, depot, grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, and such settlements and payments as are herein provided for shall be made as before, until the matter in dispute shall be adjusted by the said arbitrators, and thereupon such payments or restitutions shall be made as may be required by the decision of said arbitrators.

In Witness Whereof, the respective parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their respective presidents, and attested by their secretaries respectively, the day and year first above written.

(Seal) THE DES MOINES UNION RAILWAY COMPANY,
By G. M. Dodge, President.
Attest: F. M. Hubbell, Secretary.

(Seal) THE DES MOINES & ST. LOUIS RAILROAD COMPANY,
By James F. How, President.
Attest: F. M. Hubbell, Secretary.

(Seal) THE ST. LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,
By G. M. Dodge, President.
Attest: J. T. Granger, Secretary.

(Seal) THE DES MOINES & NORTHWESTERN RAILWAY COMPANY,
By F. M. Hubbell, President.
Attest: A. N. Denman, Secretary.

Exhibit "Q."

This Indenture, made this Fifteenth day of March, A. D. 1894, by and between Frederick M. Hubbell, individually, and Frederick M. Hubbell & Son, co-partners, all of Des Moines, Iowa, parties of the first part, hereinafter called "The Associates;" the Chicago, Milwaukee & St. Paul Railway Company, a corporation of the State of Wisconsin, authorized to own and operate Railroads in the State of Iowa, party of the second part, hereinafter called "The St. Paul Company," and Roswell Miller, of the City of Chicago, County of Cook and State of Illinois party of the third part, hereinafter called "The Trustee,"—Witnesseth:

1. That the Des Moines, Northern & Western Railway Company, hereinafter called "the Des Moines Company," owns and operates certain lines of Railroad, aggregating about 150 miles in length, extending, respectively, from Des Moines to Boone, and from Clive to Fonda, all in the State of Iowa; and the St. Paul Company owns and operates an extensive system of Railroads, aggregating about 6,150 miles in length, in Illinois, Iowa and other States, and its Line from Chicago to Council Bluffs intersects and connects with the Lines of the Des Moines Company at Madrid and at Herndon, respectively, and by means of such connections it is able to give to the Des Moines Company a large amount of traffic not otherwise obtainable, and thereby greatly increases the prosperity of said Company.

2. That the Associates own Thirty Thousand Shares, out of a total issue of Forty-two Thousand Shares of One Hundred Dollars each, of the Capital Stock of the Des Moines Company, and Two Million and Five Thousand Dollars out of a total issue of Two Million, Seven Hundred and Seventy Thousand Dollars of its First Mortgage Bonds which Bonds bear interest at the rate of Four per cent per annum up to January 1st, 1897 and thereafter at the rate of Five per cent per annum—and desire that the St. Paul Company shall acquire an interest in said Capital Stock, and enter into close traffic relations with said Des Moines Company, and that the St. Paul Company is willing to acquire such interest and to enter into such traffic relations, on the terms hereinafter set forth; and

3. That in consideration of the premises, and of their mutual and dependent covenants hereinafter contained, the parties hereto have agreed and do hereby agree each with the other, and each with all the others, as follows, to-wit:

First. In consideration of the execution by the St. Paul Company of a certain Traffic Agreement with the Des Moines Company (a copy of which agreement is hereto attached and hereby referred to), the Associates hereby jointly and severally agree that until any termination of the Traffic Agreement aforesaid, or until the expiration of the option given in Section Three hereof, the Capital Stock of the Des Moines Company shall not, without the written consent of the St. Paul Company, be increased beyond Forty-two Thousand Shares of One Hundred Dollars each, except by the issue of Stock at par in payment for the actual cost of property hereafter to be acquired, and that all said Shares, issued or to be issued, shall have equal rights and preferences.

Second. As a further and additional consideration for the execution by the St. Paul Company of the Traffic Agreement aforesaid, and in consideration of the sum of One Dollar to

them in hand paid by said Company, the receipt whereof is hereby acknowledged, the Associates do hereby sell, assign, transfer and set over to the St. Paul Company Sixteen Thousand, Eighth Hundred Shares of the Capital Stock of the Des Moines Company, and agree to deposit said Shares at the time, in the manner and for the purposes set forth in Section 7 hereof.

Third. As a further and additional consideration for the execution by the St. Paul Company of the aforesaid Traffic Agreement, and in consideration of the sum of One Dollar to them in hand paid by said Company, the receipt whereof is hereby acknowledged, the said Associates do hereby give and grant unto the St. Paul Company the right and privilege of purchasing from them—and they hereby agree to sell to it, if it elects so to purchase—Six Thousand Four Hundred and Sixty-eight Shares, additional to the Sixteen Thousand, Eight Hundred Shares above mentioned, of the Capital Stock of the Des Moines Company at and for the sum of Forty-six Thousand, Two Hundred Dollars; provided that such right and privilege be exercised by the St. Paul Company on any day after the 1st day of January, 1897, and not later than 12 o'clock noon of the 1st Monday in April in the year 1899, and in the manner hereinafter set forth.

Fourth. And for the consideration first aforesaid, the Associates further agree that the principal of the present Mortgage indebtedness of the Des Moines Company shall not, without the written consent of the St. Paul Company first obtained, be increased, by the issue of additional Bonds, beyond the said Two Million, Seven Hundred and Seventy Thousand Dollars in Bonds now outstanding, except by the issue of bonds at par in payment for the actual cost of property hereafter acquired, and that none of the bonds so to be issued shall bear interest at a higher rate than four per cent per annum; and that no other or further Mortgage shall, without like consent as aforesaid, be placed on the railway or property of the Des Moines Company. And the Associates also agree to use all lawful and proper means to procure a reduction in the rate of interest on said outstanding bonds, so that said bonds shall, from and after the first day of April, 1897, bear interest at not exceeding four per cent per annum. Provided however, that this Section shall not be construed so as to prevent the Des Moines Company from making a new Mortgage and issuing new bonds thereunder for the purpose of renewing or extending its present Mortgage indebtedness; but provided also, that the new bonds so to be issued shall bear interest at not exceeding Four per cent per annum, and shall not exceed in amount the aggregate of the principal sum of the present outstanding bonds of said Company and the interest thereon

which shall have accrued and be unpaid at the time of the issuing of new bonds therefor; and provided further, that said new bonds, or their proceeds, shall be used only for the purposes aforesaid, and that the present outstanding bonds and coupons, exchanged therefor or redeemed thereby, shall be cancelled when and as so exchanged or redeemed.

Fifth. The Associates further agree that if they shall be unable to procure the reduction in interest on said Bonds, as provided in the next preceding Section, then and in such case they will cause proceedings to be instituted to foreclose the Mortgage securing said Bonds, and will use all lawful and proper means to accomplish such foreclosure and sale of the property covered by said Mortgage, and a new Company shall be organized to take over said property, which new Company shall possess and own all the property, rights, privileges and franchises, of every name and description, now belonging to or enjoyed by the Des Moines Company, and shall have a Capital Stock which shall not exceed the Mortgage indebtedness of said Company more than fifty per cent, divided into shares of One Hundred Dollars each, and a Mortgage debt, bearing not more than Four per cent interest per annum, and not exceeding in amount the principal sum of the present outstanding Bonds of the Des Moines Company, with all just and lawful interest thereon to the date of the organization of said new Company, and all costs and expenses of foreclosure, including costs and expenses incurred by a Receiver or Receivers, if such shall be appointed; and that Fifty-five and Four-tenths (55.4) per cent of said new Stock shall be deposited with the Trustee, as hereinafter provided.

Sixth. And for the consideration first aforesaid, the Associates further agree that the Board of Directors of the Des Moines Company shall consist of not more than seven members, and at the next Annual meeting of the Stockholders for the election of Directors the St. Paul Company shall be represented in said Board by three persons nominated by it; and in case a new Company is organized to take the place of the Des Moines Company, as contemplated in the next preceding Section hereof, then its Board of Directors shall consist of seven members, and the St. Paul Company shall have the right to nominate three of said members.

Seventh. The Associates further agree that, simultaneously with the execution hereof, they will deposit with the Trustee Twenty-three Thousand, Two Hundred and Sixty-eight Shares of the present outstanding Capital Stock of the Des Moines Company; and if a new Company shall be formed to take the place of said Des Moines Company, then and in such case they will deposit with the said Trustee Fifty-five

and Four-tenths per cent of the Shares of the Capital Stock of such new Company, in exchange and substitution for the 23,268 Shares first mentioned; and all of said shares, whether of the Des Moines Company or of the new Company, shall be held by the said Trustee for the following purposes and on the following conditions and trusts, to-wit:

1. That the said Trustee may and shall, at each Annual or other meeting of the Stockholders of the Des Moines Company (or of such new Company, if one be formed) held for the election of Directors, vote for the four persons by the said Associates nominated to him in writing as Directors, and for the three persons who may be by the St. Paul Company nominated to him in like manner and for the like purpose. But in case the Associates shall at any time fail to nominate, then the Trustee may and shall, for and on their behalf, choose as such Directors four suitable persons, not Officers of or connected with the St. Paul Company; and in case the St. Paul Company shall fail so to nominate, then the Trustee shall, for and on its behalf, choose as such Directors the persons who may at that time be the President, Third Vice President and General Manager, respectively, of the St. Paul Company.

2. That said Trustee may and shall, at any Annual or Special meeting of the Stockholders of the Des Moines Company (or of such new Company, if one be formed) vote for such measures as may lawfully be required to be adopted thereat, in order to carry out the provisions of this agreement and of the Traffic Agreement hereto attached; and for such other purposes, not inconsistent with the terms of said agreements, or either of them, as said Associates may from time to time request.

3. That the said Trustee may and shall, on the 15th day of March, 1895, and thereafter on the like day of each year during the continuance of the Traffic Agreement aforesaid (but not exceeding in all five years) transfer and deliver to the St. Paul Company Three Thousand, Three Hundred and Sixty Shares of the Capital Stock of the Des Moines Company; or in lieu thereof, eight per cent of the Shares of the Capital Stock of such new Company, if one be formed—being one-fifth part for each year of the 16,800 Shares of the Stock of the Des Moines Company (or their equivalent in the Stock of the new Company) which the Associates have in and by the Second Section hereof agreed to convey to the St. Paul Company.

4. That the said Trustee may and shall, at any time after the 1st day of January, 1897, and prior to 12 o'clock noon of the first Monday of April, in the year 1899, on the payment to or deposit with him by the St. Paul Company of the sum of

Forty-six Thousand, Two Hundred Dollars, for the use and benefit of the Associates, assign, transfer and deliver to said Company all the Shares of the Capital Stock of the Des Moines Company (or of the new Company, if one be formed) then remaining in his hands, anything in the next preceding paragraph hereof to the contrary notwithstanding.

5. That the said Trustee may and shall, at any determination of this agreement, and upon notice thereof signed by the parties hereto, deliver up or pay over any shares of Stock or any money, as the case may be, then in its hands, to the owners thereof, upon receiving proper receipts for the same; and thereupon this Trust shall be discharged.

Eighth. The Associates further agree that they will pay to the Trustee such just and proper compensation for his services, in any matter growing out of this undertaking, as may be agreed upon between themselves and the said Trustee, and that they will hold and save the St. Paul Company free and clear from all claims of the said Trustee for such compensation; and they also agree that if and whenever the said sum of $46,200 shall be paid to or deposited with the said Trustee by the St. Paul Company, and written notice thereof shall have been served upon Frederick M. Hubbell—one of the said Associates—by depositing the same in the United States Postoffice, addressed to him at Des Moines, Iowa, then and thereafter the said Company shall be in nowise liable for the misapplication or non-application of the money so by it paid or deposited, and that all the rights and interests of said Associates, to and in any and all of the Capital Stock deposited with the Trustee as aforesaid, shall wholly cease and determine when such payment or deposit is made; and thereupon they will, when thereto requested by the St. Paul Company, cause a meeting of the Board of Directors of the Des Moines Company, or of the new Company, as the case may be, to convene, and their representatives in said Board to resign, one by one, and to elect in their places such persons as may be thereto nominated by the St. Paul Company.

Ninth. In consideration of the agreement of the Associates, to pay him a just and proper compensation for his services therein, the Trustee hereby accepts the trust aforesaid, and agrees to faithfully perform all the acts and discharge all the duties mentioned and set out in the Seventh Section of this Indenture, when and as the same may be required of it.

Tenth. In consideration of the performance by the parties thereto of their respective covenants hereinabove set forth, faithfully and within the time and times limited therefor,

the St. Paul Company hereby agrees that it will enter into and execute the aforesaid Traffic Agreement with the Des Moines Company, and that in case a new Company is formed to take the place of the Des Moines Company, within the time and upon the terms for that purpose hereinabove mentioned and set forth, it will make a Traffic Agreement with said new Company for the then unexpired term of the Traffic Contract aforesaid, and upon the terms and conditions therein contained; but the St. Paul Company expressly reserves to itself the right to terminate this Indenture and the aforesaid Traffic Agreement with the Des Moines Company, without notice, on the second day of April, 1897, if at that time the Associates have failed to perform their covenants hereinbefore contained, or if the Mortgage Bonds of the Des Moines Company then bear interest at a higher rate than Four per cent per annum, or if the property of said Company has not then been acquired by a new Company formed as hereinabove contemplated.

Eleventh. The St. Paul Company further agrees that if and whenever it shall in any manner acquire the absolute ownership of Fifty-one per cent in amount of the Capital Stock of the Des Moines Company, or of the new Company, if one be formed as aforesaid, then the Traffic Contract hereinabove mentioned and referred to shall remain in full force until the 15th day of March, A. D. 1904, anything herein contained to the contrary notwithstanding.

Twelfth. It is mutually understood and agreed by and between the Associates and the St. Paul Company, that if the Associates shall faithfully endeavor to perform the obligations by them assumed, in the Fifth Article hereof, but nevertheless fail to perform the same, they shall not be liable in damages to the St. Paul Company by reason of such failure; Provided however, that nothing in this 12th Section contained shall be construed so as to limit or abridge in any manner the rights and privileges reserved to itself by the St. Paul Company in the 10th Section hereof.

Thirteenth. It is further mutually understood and agreed by and between the Associates and the St. Paul Company that if at any time a difference of opinion shall arise between them in respect to the rights and duties of either of them under this Indenture, the question in dispute shall be referred to a Board of Arbitrators, consisting of three competent, disinterested persons, one to be chosen by the Associates, one by the St. Paul Company, and the two so chosen to choose a third. The party desiring such arbitration shall give written notice of the same to the other party, setting forth therein definitely the points in dispute, and naming the per-

son selected by such party to act as arbitrator. If the party on whom such notice is served shall for fifteen days thereafter neglect to name a person to act as arbitrator, then the party giving such notice shall name a second arbitrator, and the two so chosen shall choose a third. The Board of Arbitrators so chosen shall immediately proceed to hear and determine all matters submitted to them, after giving to each party not less than five days notice of the time and place of meeting, and at the time and place appointed shall proceed summarily to hear and dispose of the matter in dispute, unless, in their judgment, the hearing should be postponed to a later day or days, of which adjourned meeting like notice shall be given, unless such notice shall be waived by both parties, in which case the hearing may proceed at an earlier date. The determination of such Board of Arbitrators, or of a majority of them, as to any matter so submitted to them shall be absolute, final and conclusive upon the parties hereto, and such parties shall abide by such decision and perform the conditions thereof as if the same were made a part of this Indenture.

Lastly. It is mutually understood and agreed by and between all the parties hereto that at any termination of this agreement each party shall be released from all obligation or liability to the others, except for the payment or delivery of any balances of money or shares of stock then due under the terms of this agreement.

In Witness Whereof, the Associates and the Trustee have hereunto set their hands and seals, and the St. Paul Company has caused these presents to be executed by its President, thereto duly authorized, and its corporate seal to be hereto affixed and properly attested, the day and year first above written.

FREDERICK M. HUBBELL. (Seal)
FREDERICK M. HUBBELL & SON. (Seal)

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

(Seal) By Roswell Miller, President.

Attest: F. M. Myers, Secretary.

Roswell Miller, Trustee. (Seal)

Exhibit "R."

This Agreement of ratification and confirmation, entered into this 31st day of July, 1897, between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter called the

Des Moines Company, the Wabash Railroad Company, a corporation organized and existing under the laws of the state of Missouri, and hereinafter called the Wabash Company, and the Des Moines Northern & Western Railroad Company, a corporation organized and existing under the laws of the state of Iowa, and hereinafter called the Des Moines, Northern & Western Company, Witnesseth that:

Whereas, on the 10th day of May, 1889, the said Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, entered into a certain contract, a copy of which, for complete identification, is hereto attached, marked Exhibit "A"; and,

Whereas, the said Wabash Company is not named in said contract, and now operates the Des Moines & St. Louis Railroad; and

Whereas, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company have ceased to own or operate the respective railroads which were owned and operated by them at the time the said contract was made, and the said Des Moines, Northern & Western Company has become the owner of and operates the lines of railroad which were formerly owned and operated by the said Des Moines & Northwestern Railway Company and the said St. Louis, Des Moines & Northern Railway Company; and

Whereas, for a long time past both the Wabash Company and the Des Moines, Northern & Western Company have been using the terminal property described in said contract, and all the parties have recognized the said contract as continuing and binding upon them; and

Whereas, it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines, Northern & Western Company;

Now Therefore, in consideration of the premises, and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Wabash Company and the Des Moines, Northern & Western Company.

And the said Wabash Company for itself agrees to make the payments therein provided for at the times and in the manner prescribed for the said Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the said Des Moines & St. Louis Company its obligation to so pay, and all the obligations herein assumed by it, shall at once determine and be and become the obligations of whatever company operates the said railroad, it being the intention that the obligations of the said contract, so far as they pertain to the Des Moines & St. Louis Railroad Company, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property leased in the said contract, to assume all the obligations therein or hereby undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein and as though it had been named in and was a party to the said contract when originally made, and to pay to the said Des Moines Company at the times and in the manner therein prescribed the sums of money which may become due, computed according to the terms and provisions of the said contract with respect to a tenant company; and the said Des Moines, Northern & Western Company further agrees that the obligations therein named and hereby assumed shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee, or successor of the said Des Moines, Northern & Western Company in the ownership or operation of the said Des Moines, Northern & Western Railroad, and any company succeeding the Des Moines & Western Company in such ownership or operation shall be held by the operation of trains over the said Des Moines Northern & Western Railroad, and upon the property leased in the said contract, to assume all the obligations therein expressed and herein undertaken by said Des Moines, Northwestern & Western Company.

But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:

The purchasing committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.

The Des Moines Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares.

Of the above shares belonging to said purchasing committee two shares stand upon the books of the company as follows: Joseph Ramsey, Jr., 1 share; and H. L. Magee, 1 share.

Of the shares belonging to the Des Moines Northern & Western Railroad Company two shares stand upon the books of the company as follows: A. B. Cummins, 1 share; and F. M. Hubbell, 1 share.

Of the shares belonging to said F. M. Hubbell & Son, five shares stand upon the books of the company as follows: F. M. Hubbell, 1 share; F. C. Hubbell, 1 share; C. Huttenlocher, 1 share; H. D. Thompson, 1 share; A. N. Denman, 1 share.

In Witness Whereof, The respective parties hereto have caused these presents to be signed by their respective presidents and sealed with their corporate seals, and attested by their respective secretaries, the day and year first above written.

THE WABASH RAILROAD COMPANY,
(Seal) By O. D. Ashley, President.

Attest: J. C. Otteson, Secretary.

DES MOINES UNION RAILWAY COMPANY,
(Seal) By F. C. Hubbell, President.

Attest: F. M. Hubbell, Secretary.

DES MOINES NORTHERN & WESTERN RAILROAD COMPANY,
(Seal) By F. M. Hubbell, President.

Attest: A. N. Denman, Secretary.

(Here follows Exhibit "A" of the above Terminal Contract, which is a copy of the Terminal Contract of May 10, 1889, heretofore attached by copy to this Bill as Exhibit "P").

J. C. COOK,
J. P. HEWITT,
Solicitors for Complainants.

J. C. Cook, of Counsel.

United States of America,
Southern District of Iowa—ss.

I, Wm. C. McArthur, Clerk of the District Court of the United States, for the Southern District of Iowa, as the successor of the Clerk of the Circuit Court of the United States for the Southern District of Iowa, hereby certify the above and foregoing to be a full, true and complete copy of the Amended Bill of Complaint filed May 12th, 1909, in cause No. 16-M. Eq. (C. C.) old number 2449 Eq., wherein the Chicago, Milwaukee & St. Paul Ry. Co., et al., are complainants, and the Des Moines Union Railway Co., et al., are defendants, as amended by an order of Court entered in said cause on May 25, 1910, as full, true and complete as the original thereof now on file in my office in the City of Des Moines, in said District.

In Witness Whereof, I hereunto set my hand and affix the seal of said Court at my office in the City of Des Moines, in said District, this 20th day of November, A. D. 1912.

(Seal)

WM. C. McARTHUR,
Clerk as aforesaid.

(Subpoena in Chancery to Des Moines Union Ry. Co. et. al.)

UNITED STATES OF AMERICA,
Central Division
Southern District of Iowa:

The President of the United States to The Des Moines Union Railway Company, Frederick H. Hubbell and Frederick C. Hubbell and F. M. Hubbell & Son:

We command you, and each of you, that you appear before the Judge of the Circuit Court of the United States for the Southern District of Iowa, at Des Moines on the 7th day of June A. D. 1969 to answer to the bill of complaint of The Chicago, Milwaukee & St. Paul Railway Company and The Wabash Railroad Company this day filed in the office of the clerk of said Court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To The Marshal of the Said Southern District of Iowa: Returnable twenty days from the date hereof, to-wit, on the 7th day of June A. D. 1969.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, Southern District of Iowa, at the city of Des Moines, Iowa, this the 12th day of May A. D. 1969, and of the Independence of the United States the 134th.

[SEAL.] EDWARD R. MASON,
Clerk U. S. District Court, Southern District of Iowa.
By ——— ———, *Deputy.*

Memorandum.—The within named defendants are notified that unless they file an answer or other defense in the Clerk's office of said Court on or before the twentieth day after service hereof, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

[SEAL.] EDWARD R. MASON,
Clerk U. S. District Court, Southern District of Iowa.
By ——— ———, *Deputy.*

This writ came into my hands for service on [our] the 15th day of May 1909 and I served the same on the within named persons as follows, to-wit:

On Frederick M. Huddell on the 15th day of May 1909 by delivering to.....a true copy of this writ at.....

On Frederick C. Huddell on the 15th day of May 1909 by delivering to him a true copy of this writ at.....

On F. M. Huddell & Son on the 15th day of May 1909 by delivering to him a true copy of this writ at.....

On.....on the.....day of.....
.....by delivering to F. M. Huddell Des Moines, Iowa, in.....
.....the said F. M. Huddell being a member of the said firm.

On.....on the.....day of.....
191.....by delivering to.....at the dwelling house or usual place of abode of the said.....being in.....the said.....
Adult person, and a member or resident in the family of the said
.....

Marshal's Fees:

Mileage	Miles @	.08	$ .08
Service on	@	2.00	8.00
			8.08

FRANK B. CLARK,
U. S. Marshal.
FRANK A. NICHOL,
Deputy.

Endorsed: Filed in the District Court on May 19, 1909.

(Answer to Amended Bill of Complaint.)

To the Honorable Judges of the Said Circuit Court:

The respondents, for their answer to the amended bill of complaint in the above entitled cause, respectfully show to the court as follows, to-wit:

Paragraph 1. They admit that the complainant, the Chicago, Milwaukee & St. Paul Railway Company, is a citizen of the state of Wisconsin, and that the complainant, the Wabash Railroad Company, is a citizen of the state of Ohio, and that each of the respondents, the Des Moines Union Railway Company, Frederick M. Hubbell and Frederick C. Hubbell, is a citizen of the central division of the southern district of Iowa.

Paragraph 2. These respondents admit that on or about the 15th day of December, 1880, the respondent, Frederick M. Hubbell, with Jefferson S. Polk, James S. Clarkson and John S. Runnells, organized the Des Moines & St. Louis Railroad Company (hereinafter for convenience designated as the St. Louis Company) as a corporation under the laws of the state of Iowa, to construct a railroad from a connection with the railroad of the Wabash, St. Louis & Pacific Railway Company (hereinafter for convenience designated as the original Wabash Company) at Albia, in the state of Iowa, to the city of Des Moines, in the said state, and that said railroad was so constructed.

These respondents aver that the St. Louis Company was so organized pursuant to a contract between the parties above named and the Original Wabash Company, and that the St. Louis Company was at all time controlled by the Original Wabash Company and managed in its interest and pursuant to instructions received from its officers.

Paragraph 3. These respondents further aver that prior to June, 1887, a corporation had been organized under the laws of Iowa known as the Des Moines, Adel & Western Railroad Company, and aver that on or about the 27th day of September, 1880, the name of the said company was changed, by an amendment to its articles of incorporation, to Des Moines Northwestern Railway Company (hereinafter for convenience designated as the Northwestern Company), and admit that at that time the respondent, Frederick M. Hubbell, was interested in the said company.

These respondents aver that the said Northwestern Company was organized for the purpose of building a railroad from the town of Wanker, in Iowa, northwesterly, and that it built such a railroad and acquired from the St. Louis, Des Moines & Northern Railway Company, hereinafter referred to, a line of railroad from Wanker to Clive and a one-half interest in a line of railroad from Clive to the city of Des Moines.

These respondents further admit that the Original Wabash Company leased and operated the lines of the St. Louis Company and the Northwestern Company.

Paragraph 4. These respondents admit that on or about the 4th day of April, 1881, the respondent, Frederick M. Hubbell, and others,

organized a corporation under the laws of the state of Iowa, known as the St. Louis, Des Moines & Northern Railway Company (hereinafter for convenience designated as the Northern Company), for the purpose of constructing a line of railroad from Des Moines through Clive to Boone and from Clive a connection with the Northwestern Company at Waukee, and that said railroad was constructed by the said company.

That from and after the organization of the said Northern Company, one Grenville M. Dodge became and was the controlling factor in the said company, and that the interest of the respondent, Frederick M. Hubbell, therein was insignificant, and that in the construction of the railroad of the said Northern Company the Original Wabash Company cooperated with the said Dodge.

Paragraph 5. These respondents further aver that the St. Louis Company, the Northwestern Company and the Northern Company were, in the first instance, all organized in the interest of the Original Wabash Company and were, in effect, corporations subsidiary to it, and continued so to be until after the insolvency of the Original Wabash Company in 1884.

Paragraph 6. That the property of the Northern Company was about the year 1889, acquired by the Des Moines & Northern Railway Company, and thereafter, on or about the 11th day of December, 1891, the railroads of the Northwestern and Northern companies were consolidated and were acquired by a corporation organized under the laws of the state of Iowa and known as the Des Moines, Northern & Western Railway Company. That Exhibit number 1, hereunto attached and made a part hereof, shows the railroad of the Original Wabash Company from St. Louis to Afton, the railroad of the St. Louis Company, and the railroads of the Northern and Northwestern companies as they existed at the date of said consolidation.

Paragraph 7. These respondents admit that the contract, of which Exhibit "A" to the said amended bill is a copy, was duly executed and delivered by the parties hereto; they admit that Exhibit "B" to the said amended bill is a correct copy of the original articles of incorporation of the Des Moines Union Railway Company, one of the respondents; they admit that Exhibit "C" to the said amended bill is a correct copy of certain preambles and a portion of certain resolutions adopted by the board of directors of the Des Moines Union Railway Company at its first meeting; they admit that Exhibit "D" to said bill is a portion of a record of a meeting of the stockholders of the Northern Company held on January 1, 1885; they have not knowledge or information sufficient to form a belief as to the transactions which Exhibit "E" to said bill purports to record; they admit

that Exhibit "F" is a correct copy of certain preambles and resolutions adopted at a meeting of the stockholders of the Northwestern Company on January 1, 1885, except that in the fifth line from the bottom of page 18 as said exhibit appears in said amended bill, after the word "any" after "transfer" should be omitted and in lieu thereof there should be inserted the words "to said company all its right and title," and except further that the said exhibit does not contain a complete record of the proceedings of the said meeting; these respondents have not knowledge or information sufficient to form a belief as to whether or not Exhibits "G" and "H" are correct copies of the records of which they purport to be copies; these respondents admit that notices were served on the Des Moines Union Railway Company, of which Exhibits "I," "J" and "K" to the bill are substantial copies, except that the words "three-fourths" in Exhibit "K" in the third line from the bottom of page 26 in the printed bill should be "one-half;" they admit that each of the exhibits "L," "M," "N," "O," "P," "Q," and "R" was duly executed and delivered on or about its date, and that said exhibits are correct copies, except that in Exhibit "R" in the second line from the top of page 56 in the exhibits to said amended bill as printed the word "Northern" should be inserted.

Paragraph 8. These respondents further admit that in the year 1881 the Original Wabash Company became insolvent and that foreclosure proceedings were instituted against it by the Central Trust Company of New York, but as to the details of the said foreclosure proceedings these respondents have not knowledge or information sufficient to form a belief.

These respondents admit that to protect the interests of certain bondholders, a purchasing committee was constituted, consisting of Susan P. Ashley, James F. Joy, Thomas H. Hubbard and Edgar T. Welles, and admit that with the said committee a large majority of the outstanding general mortgage bonds were deposited, under an agreement between the said committee and the holders of the said bonds, but deny that the terms of the said agreement are correctly set forth in the bill.

These respondents further admit that the complainants are the owners of large railway systems and that it is of importance to them, in connection with the operation of the portions of those systems which reach the city of Des Moines, that they should have adequate terminal facilities in the said city.

Paragraph 9. These respondents deny that the agreement, Exhibit "A" was made for the purposes alleged in the amended bill, and

aver that the said agreement was tentative only and that at the time the said contract was signed, the parties thereto had not completed any definite or certain plan as to the terminal property in Des Moines or its ownership, and aver further that it was not either the purpose or the effect of the said contract, Exhibit "A," to evidence any such definite or completed plan.

Paragraph 10. That at the time of the execution of the said agreement, Exhibit "A," the Original Wabash Company was operating the railroads of the St. Louis Company and the Northwestern Company and was also operating the terminal property in the city of Des Moines, and that it continued to operate the said terminal property until about the 1st day of May, 1888, as hereinafter set out.

Paragraph 11. That upon the insolvency of the Original Wabash Company, in the year 1884, it appeared to all of the parties interested in the property embraced in the said agreement, Exhibit "A," that it was for their interest to have the said property owned, controlled and operated by a separate and independent corporation, and to that end the respondent, the Des Moines Union Railway Company, was organized by the parties interested in the said agreement, Exhibit "A," for the purpose of acquiring, owning and operating the terminal property referred to in the said contract, Exhibit "A," so that said company might be able to have terminal facilities in the city of Des Moines to the St. Louis Company, the Northern Company and the Northwestern Company, and to such other railroads as might desire to acquire the right to use its terminal property.

That in furtherance of this purpose, the board of directors of the Des Moines Union Railway Company, at its first meeting, adopted certain preambles and resolutions, copies of which are as follows:

Whereas, The Des Moines and St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, the Des Moines Northwestern Railway Company, G. M. Dodge and Jas. F. Rowley both in his individual right and as trustee under this contract mentioned and set out in the Articles of Incorporation of this Company have by their officers and by themselves, personally notified this Company that they have each for themselves approved of the organization of this Company, and have directed their officers, agents and trustees to surrender and deliver to this Company the railroad property and franchises mentioned in said contract, and requested it to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in said contract, and the said railway companies and individual signatories have indica-

their desire and purpose to transfer said property to this company in accordance with the terms of said contract:

Whereas, It is desirable that this Company should at once take possession of said property and maintain, control and operate the same, and that it should procure all necessary conveyances and transfers of the same as soon as practicable, and make provision for and pay for said property so proposed to be conveyed to it:

Now, therefore, be it,

Resolved, First, That this Company accepts the transfer and management and operation of said property in the City of Des Moines, East of Farnham street in said City, heretofore owned and controlled by the Des Moines & St. Louis Railroad, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as practicable, and it hereby instructs the President to make such order as may be necessary to render such control and management effective, as provided in said contract.

Second. That the President, Vice-President, Secretary and Treasurer of this Company be and they are hereby appointed a committee to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said property provided for in said contract of January 2, 1882.

Third. That to enable this Company to pay for the property and to maintain, operate and improve the same, and purchase other property necessary to carry out its objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same, the President and Secretary of this Company are hereby authorized and directed to issue full-paid capital stock of this Company, not to exceed One Million Dollars ($1,000,000.00) and not to exceed five hundred (500) bonds of this Company, of the denomination of One Thousand Dollars ($1,000.00); the form to be agreed upon hereafter by this Board.

And to secure said bonds, the President and Secretary are authorized and directed to execute, in the name of this Company, a first

mortgage or deed of trust, conveying all of said property so to be conveyed to this Company or thereafter to be acquired to a trustee therein named, the form of which deed of trust shall be hereafter determined by this Board.

And when the said committee shall have agreed with the said several parties to said contract as to the amount of bonds and stocks of this Company necessary to be delivered to them, and each of them, in payment for said railroad property and franchises, the President and Secretary of this Company shall deliver the same to said several parties as each shall appear to be entitled, on receipt of the conveyances and assignments of said property so to be made to this Company.

The remainder of said bonds and stocks so authorized to be issued shall be, by order of this Board, signed and issued from time to time as they may be needed for the purposes of the resolutions above set out authorizing their issuance, and for no other purpose.

Fourth. That said committee shall from time to time report to this Board their acts and doings under the foregoing resolution.

Resolved, That G. M. Dodge, the President of this Company, or such officer or director as he may designate, be authorized to negotiate with any railway company whose lines extend into Des Moines, or which may wish to acquire the right to use any part of the property of the Company with authority to make and fix any terms upon which such right may be acquired or enjoyed, subject to the approval of the Board of Directors of this Company and to the limitations imposed by its Articles of Incorporation.

That the said preambles and resolutions were adopted by the unanimous vote of all persons interested in any way in the said contract, Exhibit "A," or in the property described therein.

That in furtherance of the purposes aforesaid, the resolutions, Exhibits "D," "F" and "G," were passed by the stockholders of the Northern, Northwestern and St. Louis companies respectively on the 1st of January, 1885, accepting the organization of the Des Moines Union Railway Company and directing the conveyance of the terminal property in question to it.

Paragraph 12. That the Original Wabash Company, through its receiver and purchasing committee, continued to control and operate both the St. Louis and Northwestern companies until the year 1887, and no steps were taken to consummate the sale of the terminal property to the Des Moines Union Railway Company until about the year

1887, when the purchasing committee sold the property of the Northwestern Company.

That after such sale had been made, and on or about the 8th of November, 1887, James F. How, one of the parties to the agreement, Exhibit "A," a vice-president of the Original Wabash Company and its chief executive officer in the west and also the general agent of the receivers of the said company, caused certain preambles and resolutions to be unanimously adopted at a meeting of the board of directors of the Des Moines Union Railway Company. The said Preambles recited action upon the part of the Northern Company, the Northwestern Company and the St. Louis Company, authorizing the adoption of the resolutions, which resolutions were as follows:

Therefore It Is Resolved, That on receipt from the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railway Company and from James F. How, Trustee, and G. M. Dodge, of deeds to this Company of the property standing in their name in the city of Des Moines, that the officers of this Company be authorized to issue to said James F. How and G. M. Dodge, respectively, an agreement to deliver to them, as soon as prepared, bonds for the amount of money, with interest and taxes added, which will be shown by them, at that time, to have been expended by or through them for or on the property referred to.

The agreement for the delivery of bonds to be turned over to James F. How, Trustee, to state that the same are for the benefit of the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company; also that the agreement issued by the officers of this Company shall state that certificates can be prepared, and the officers of the Company will issue to the St. Louis, Des Moines & Northern Railway Company certificates for one-fourth of the stock of the Company, and to James F. How, Trustee, to be delivered to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, certificates for three fourths of the stock of the Company.

Resolved, That the officers of the Company, on receipt of deeds referred to in the foregoing resolution, shall place the same on record, and prepare mortgages upon all the property of this Company, then owned or to be hereafter acquired, to secure not to exceed eight hundred thousand dollars of bonds, principal and interest payable in gold, to be issued by this Company. Said bonds to be for one thousand dollars each, dated November 1, 1887, and falling due fifty years from date, and bearing interest at the rate of five per cent per annum, payable semi-annually.

Resolved, That the officers of this Company be authorized, on the execution of said mortgage, to cause to be prepared and executed, bonds in conformity with the same, the amount required to be used in payment for the property, as provided in the foregoing resolution.

That the resolutions, Exhibits "E" and "H," adopted by the directors of the Northern Company and the St. Louis Company respectively, directing the transfer of the terminal property to the Des Moines Union Railway Company, were adopted as a part of this same transaction, and in the same connection the notices, Exhibits "I," "J" and "K," were given by the St. Louis Company, the Northern Company and the Northwestern Company respectively to the Des Moines Union Railway Company, advising the last named company that the holders of the property in question had been authorized and directed to convey it to the Des Moines Union Railway Company under the terms stated in the said resolution adopted November 8, 1887, and hereinbefore set out.

That thereafter and pursuant to said resolution, the said property was conveyed to the Des Moines Union Railway Company by the deeds, Exhibits "L," "M," "N" and "O," and by deeds duly executed and delivered to the Des Moines Union Railway Company by the Northern Company, the St. Louis Company and the Northwestern Company.

That further pursuant to said resolutions, the Des Moines Union Railway Company executed and delivered its trust deed referred to in paragraph twelve of the amended bill, and executed and delivered its bonds in part payment for the property so acquired by it, and later issued and delivered its capital stock in completion of the payment for said property.

Paragraph 13. These respondents admit that the description of the property conveyed by the said trust deed is, with the exception of a few minor errors, correctly set out in paragraph twelve of the said bill, and admit that the said trust deed was duly authorized and approved by the St. Louis Company, the Northern Company and the Northwestern Company and by the receivers and purchasing committee of the Original Wabash Company, and admit that the said trust deed was and is a first lien upon the property described therein and that none of the bonds secured thereby have been paid.

These respondents aver further; that the said bonds have been sold generally upon the market and are held by numerous investors, to these respondents unknown, and that among other things the said bonds have been issued and negotiated upon the faith of the said trust deed which contains among others the following recitals:

Whereas, the Des Moines Union Railway Company has undertaken and partially completed the construction of a railroad in the City of Des Moines, Polk County, Iowa, extending from the main lines of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company to a connection with and across the lines of various other railroads which center or terminate in the said City of Des Moines, and to various manufactories and industries in said city, and has purchased and owns various structures and buildings used for depots, railway shops, round houses and other structures suitable and useful for railway purposes, and has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said city, and valuable franchises from the City Council of said city; and,

Whereas, for the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds to the amount of eight hundred thousand ($800,000) dollars, etc.

Paragraph 14. That shortly after the execution of the said trust deed, and on or about the 1st day of May, 1888, the possession of the said terminal property was turned over to the Des Moines Union Railway Company, and ever since that time the Des Moines Union Railway Company has exercised undisputed possession, control and dominion over the said property and has maintained and operated the same.

These respondents deny that it was intended that the respondents, the Des Moines Union Railway Company, should take title to the said property as trustee for the complainants; and aver that it was intended that it should, and that it did, in fact, take title to the said property in fee absolutely for its own sole use and benefit; they specifically deny that nothing was ever paid on account of the shares of the capital stock of the Des Moines Union Railway Company;

and deny that it was intended that nothing should be paid for the same; and deny that the intention was that such shares should have no value; and deny the averment that the said Des Moines Union Railway Company has no capital or assets; and deny the averment that it was never intended that it should have any capital or acquire or own any property or assets in its own right; and deny that the Des Moines Union Railway Company was organized or that it exists for the purposes stated in the bill as amended; but, on the contrary, aver that it was organized and exists for the purposes stated in its original and amended articles of incorporation. These respondents further aver that the Des Moines Union Railway Company has at all times been recognized by the complainants as the absolute owner of the property in question, and that it has made large expenditures in connection with the said property in reliance upon its ownership thereof, and that the capital stock of the said company has at all times been recognized by the complainants and their assignors as fully paid stock, issued as evidence of the interests of its owners in the management, profits and ultimate assets of said Des Moines Union Railway Company, and that it has been at all times bought and sold and treated by the complainants and their assignors as property of value.

That by virtue of the premises, the complainants are now estopped from setting up that the Des Moines Union Railway Company does not own the property in question, and from setting up that the said property is held in trust for their benefit, and from setting up that its stock is not of value or that said stock does not represent any interest in the property of the said corporation; and that by reason of their laches and long acquiescence and delay, the complainants cannot now be heard to assert or set up the said matters or either of them.

Paragraph 15. These respondent further respectfully show to the court that on or about the 10th day of May, 1889, the St. Louis Company, the Northern Company and the Northwestern Company entered into a formal written agreement of lease with the Des Moines Union Railway Company, of which Exhibit "P," to the amended bill is a copy, and that the said agreement was confirmed and ratified by the successors to the original parties thereto as binding upon such successors by the agreement of which Exhibit "R," attached to said bill is a copy, in which last mentioned agreement the ownership of the five-eighths of the capital stock of the Des Moines Union Railway Company owned by F. M. Hubbell & Son was expressly recognized and confirmed in them.

That by the said agreement the complainants expressly and affirmatively recognized the Des Moines Union Railway Company as the owner of the terminal property now in controversy and recognized and attorned to said company as their landlord, and assumed the position of tenants under the said contracts, and leases for the said property, and that ever since the making of the said contract of May 10, 1889, Exhibit "P" to the amended bill, the occupation of the terminal property by the complainants and their predecessors in interest has been under and by virtue of the said contracts; that said contracts have been accepted by all parties in interest as defining and fixing such rights as the complainants had with reference to the use and occupation of the said property, and that the complainants are estopped from denying the title of the Des Moines Union Railway Company to the said property, and are estopped from asserting that the rights of the parties in and to the said property are not fixed by the said contracts.

Paragraph 16. These respondents aver that the firm of F. M. Hubbell & Son never acquired a majority of the capital stock of the Des Moines Union Railway Company until about the 29th day of January, 1894, and that the said stock was acquired at that time by them for a valuable consideration from the Des Moines, Northern & Western Railway Company, with the knowledge and approval of all of the stockholders of the said company, and that the transfer of the said stock to the said F. M. Hubbel & Son was approved by all parties in interest by a contract of which Exhibit "R" to the amended bill is a copy, and that said stock was transferred to F. M. Hubbel & Son by the Des Moines Union Railway on or about the 4th day of October, 1893, and from and after the said transfer was held and voted by the said F. W. Hubbel & Son at all meetings of the Des Moines Union Railway Company, down to the commencement of this suit, with the knowledge and approval of each and every stockholder in the Des Moines Union Railway Company. These respondents aver that the said stock was acquired long after the amendments to the articles of incorporation of the Des Moines Union Railway Company referred to in the amended bill had been adopted, and that the two transactions were wholly and entirely independent of each other.

Paragraph 17. Answering the allegations of the amended bill with reference to the amendments to the articles of incorporation of the Des Moines Union Railway Company, and the acquisition of certain stock therein by the respondent, Frederick M. Hubbell, these respondents respectfully show to the court that prior to the acquisition of any of said stock by the said respondent, and on the 3d of January, 1890, the said James F. How caused a resolution to be adopted by the board of directors of the Des Moines Union Railway Company, referring to the general solicitor and local attorney of The Wabash Railroad Company, who were both then directors of the Des Moines Union Railway Company, the question of amending its articles of incorporation.

That thereafter, and on or about the 5th of February, 1890 the respondent, Frederick M. Hubbell, acting in behalf of himself and Grenville M. Dodge agreed to purchase from the said purchasing committee one hundred and thirty-five bonds of the Des Moines Union Railway Company and one-fourth of its capital stock, and that pursuant to the said agreement separate contracts were made by the said purchasing committee with the said Hubbell and the said Dodge, under which said purchasing committee agreed to sell to the said Hubbell sixty-seven of said bonds and one-eighth of said stock, and to the said Dodge sixty-eight of said bonds and one-eighth of said stock, the said purchasing committee agreeing to consent to an amendment to the articles of incorporation of the Des Moines Union Railway Company which should permit the owner of one-eighth of its stock to nominate one director.

That thereafter, and on the 8th day of April, 1890, the stockholders of the Des Moines Union Railway Company, at a meeting at which the holders of all of its stock were present, including the respondents, the respondents being at that time minority stockholders, unanimously adopted substitutes for articles 1, 2, 3, 4, 5 and 9 of the articles of incorporation of the said company, and additional articles 11, 12, 13, 14 and 15. That article 15 of the additional articles so adopted was as follows.

Article 15. The proceedings of a meeting held December 10th, 1884, with certain preambles including a contract executed on the 2d day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines, Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the articles of incorporation of the company, are hereby repealed, stricken out and expunged.

That the said article 15 was adopted upon the motion of the then general manager of The Wabash Railroad Company by the unanimouse vote of all of the stockholders of the Des Moines Union Railway Company, including all persons in any way interested, directly or indirectly, in the property described in the contract of January 2, 1882. That a copy of the said articles of incorporation as so amended is hereunto attached and made a part hereof, marked Exhibit 2.

That the purchase so made by the said Frederick M. Hubbell from the purchasing committee was approved by the Des Moines Union Railway Company and by the St. Louis Company, such approval in each instance being evidenced by a vote of the board of directors of the company in question, and being had pursuant to the original agreement with the said purchasing committee for the sale of the said stock, with the knowledge, acquiescence and consent of all parties interested and upon the motion of the representatives of the said purchasing committee.

That thereafter, and on or about the 5th day of June, 1890, the respondent, Frederick M. Hubbell, purchased additional bonds and an additional one-eighth of the capital stock of the Des Moines Union Railway Company from the said purchasing committee, which purchase was likewise ratified and confirmed by both the St. Louis Company and the Des Moines Union Railway Company, such ratification and confirmation being pursuant to the contract for the purchase of the said stock and with the knowledge and acquiescence of all parties interested in the property now in controversy.

These respondents further respectfully show to the court that on or about the 1st day of January, 1892, the respondent, Frederick M. Hubbell, sold the two-eighths of the stock of the Des Moines Union Railway Company so purchased by him to the Des Moines, Northern & Western Railway Company.

Paragraph 18. These respondents further respectfully show to the court that at the time of the transactions in question the Des Moines & St. Louis Railroad Company was dominated and controlled by the original Wabash Company and its receivers, and the purchasing committee, and not by the respondent, Frederick M. Hubbell, or by either of all of the respondents in this case, and further deny that the election of the respondent Frederick M. Hubbell, as secretary of the Des Moines Union Railway Company had any connection whatever with the transactions alleged in the complainants' bill, but aver that the said Hubbell was named as secretary of the said company in its original articles of incorporation, and ever since its organization has been elected and re-elected as its secretary by the unanimous vote of all of its directors at the annual meetings as they have been held.

These respondents further respectfully show to the court that the said amendments to the articles of incorporation of the Des Moines Union Railway Company were not the result of any conspiracy or confederation or fraudulent design or scheme of any kind or character whatsoever, and aver that the said amendments were made with the knowledge of all persons either directly or indirectly interested in the said Des Moines Union Railway Company, and with the knowledge of all persons either directly or indirectly interested in the said contract, Exhibit "A." of date January 2, 1882, and that all of said persons concurred in and voted for each and every of the said amendments with full knowledge of all the facts and circumstances.

Paragraph 19. That the sale made by the Des Moines, Northern & Western Railway Company to F. M. Hubbell & Son of five-eighths of the capital stock of the Des Moines Union Railway Company, which has been hereinbefore referred to, occurred prior to the making of the contract Exhibit "Q" to the amended bill of complaint, and prior to the acquisition by the complainant, the Chicago, Milwaukee & St. Paul Railway Company, of any right, title or interest in or to either the property or the stock of the Des Moines, Northern & Western Railway Company, and that at the time that the Chicago, Milwaukee & St. Paul Railway Company purchased from F. M. Hubbell & Son and Frederick M. Hubbell the stock and bonds of the Des Moines, Northern & Western Railroad Company, hereinafter referred to, the said Chicago, Milwaukee & St. Paul Railway Company knew that the said F. M. Hubbell & Son owned five-eighths of the capital stock of the Des Moines Union Railway Company and that the Des Moines, Northern & Western Railroad Company was the owner of only one-fourth of the said capital stock.

Paragraph 20. These respondents admit that on or about the 15th day of March, 1894, the Des Moines, Northern & Western Railway Company entered into the agreement with the Chicago, Milwaukee & St. Paul Railway Company, of which Exhibit "Q" to the amended bill is a copy, and aver that the said Frederick M. Hubbell and F. M. Hubbell & Son became parties to said contract in order to induce the complainant to make the traffic agreement which is referred to in said Exhibit "Q".

These respondents admit that after the making of the said agreement, Exhibit "Q," the trust deed given by the Des Moines, Northern & Western Railway Company and referred to in the said contract was foreclosed, and the property embraced in the said foreclosure was acquired by the Des Moines, Northern & Western Railway Company, a corporation organized under the laws of the state of Iowa. These respondents deny that by virtue of the said foreclosure and the proceedings subsequent thereto the Des Moines, Northern & Western Railroad Company acquired any interest in the five-eighths of the capital stock of the Des Moines Union Railway Company which had been sold to F. M. Hubbell & Son by the Des Moines, Northern & Western Railway Company.

These respondents admit that upon the organization of the Des Moines, Northern & Western Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company surrendered the stock of the Des Moines, Northern & Western Railway Company which it had held under the contract, Exhibit "Q," and received in lieu thereof a like proportion of the stock of the Des Moines, Northern & Western Railroad Company, and that stock of the said Des Moines, Northern & Western Railroad Company continued to be delivered to the Chicago, Milwaukee & St. Paul Railway Company pursuant to the terms of the said contract, Exhibit "Q," until about December, 1918.

Paragraph 21. That on or about the 29th day of December, 1898, and prior to the expiration of the term of the contract, Exhibit "Q," the complainant, the Chicago, Milwaukee & St. Paul Railway Company, purchased from F. M. Hubbell & Son and from Frederick M. Hubbell two thousand one hundred and fifty (2,150) bonds of the Des Moines, Northern & Western Railroad Company and thirteen thousand nine hundred and twenty-nine (13,929) shares of the capital stock of the said company, constituting all of the bonds and stock of said company owned by the said F. M. Hubbell & Son and Frederick M. Hubbell, for the sum of one million eight hundred and twenty-seven thousand five hundred dollars ($1,827,500.00) and accepted said purchase as a full and complete performance of the contract, Exhibit "Q," and endorsed upon the said contract, Exhibit "Q," a memorandum to the effect that it had been fully performed.

Paragraph 22. That at the time the Chicago, Milwaukee & St. Paul Railway Company so purchased the said stock and bonds from the said F. M. Hubbell & Son and Frederick M. Hubbell, it was fully advised as to the articles of incorporation of the Des Moines Union Railway Company and the amendments made thereto from time to time, and as to the contract of May 10, 1899, Exhibit "F"

to the amended bill, and as to the contract of date July 1, 1887 Exhibit "K" to the amended bill, and, as hereinbefore set out, that the Des Moines, Northern & Western Railroad Company owned only one-fourth of the capital stock of the Des Moines Union Railway Company and that F. M. Hubbell & Son were the owners of the rights of its capital stock, and that the only rights of the Des Moines, Northern & Western Railroad Company in or to the terminal property in question were those arising out of the said contracts, Exhibits "I" and "K".

Paragraph 23. These respondents further respectfully show to the court that ever since the execution of said Exhibits "I" and "K" the complainants and their predecessors in interest have accepted the said contracts as binding and in full force and effect in all respects and have made payments for the use of the terminal facilities furnished to them pursuant to said contracts.

That the complainants and their predecessors have, ever since the organization of the Des Moines Union Railway Company, participated in its management and control of the property in question, as its stockholders and through their representatives elected as members of the board of directors of the Des Moines Union Railway Company, and have in all respects recognized the Des Moines Union Railway Company as a corporation owning and operating the terminal property that is in controversy in this case.

Paragraph 24. These respondents admit that the Des Moines Union Railway Company has now issued and outstanding four thousand shares of its capital stock, and that F. M. Hubbell & Son hold certificates for twenty-five hundred of said shares and that the Chicago, Milwaukee & St. Paul Railway Company holds certificate for one thousand of said shares. They admit further that H. D. Thompson, a brother-in-law, Grover C. Hubbell, a son, and N. T. Guernsey an attorney for Frederick M. Hubbell are members of the board of directors of the Des Moines Union Railway Company. They aver that in each instance where the parties named have been elected members of the said board, they have been elected by the unanimous vote of all of the stock, including that held by the complainants and their predecessors.

Paragraph 25. These respondents admit that the Des Moines Union Railway Company and these respondents as stockholders in the said company have claimed and asserted, ever since the Des Moines Union Railway Company acquired the said terminal property as hereinbefore set out, that it was the owner of the same and had all of the rights in the said property which were incident to or arose out of such ownership, and aver that prior to the commencement of this suit its said claims of ownership were acquiesced in by

the complainants and their predecessors, and that prior to the commencement of this suit no claims had ever been made by anyone under the said contract of 1882, after the terminal property in question was conveyed to the Des Moines Union Railway Company, as hereinbefore set out.

These respondents further admit that they claim and assert that the only rights of the complainants in the said terminal property are their rights under the contracts, Exhibits "F" and "K", and that upon the expiration of the said contracts the complainants will not have the right to use the said terminal property except upon reasonable terms and conditions and upon payments by them of a reasonable compensation for the rights which may be granted to them under contracts which may then be made with the Des Moines Union Railway Company.

Paragraph 26. These respondents further respectfully show to the court that shortly after its organization the Des Moines Union Railway Company commenced to furnish terminal facilities to railroads other than the complainants; and that under leases made by the Des Moines Union Railway Company, with the acquiescence of the complainants and their predecessors, the Chicago, Burlington & Quincy Railroad Company, the receivers of the Chicago, Great Western Railway Company, the Des Moines & Fort Dodge Railroad Company and the St. Paul & Des Moines Railroad Company are all, as tenants, occupying portions of the said terminal property and are dependent upon it, to a greater or less extent, for their terminal facilities in the city of Des Moines.

Paragraph 27. These respondents deny each and every allegation in paragraphs one to twenty-seven inclusive in the said amended bill contained, not hereinbefore admitted or denied.

Paragraph 28. These respondents further respectfully show to the court that for many years the respondents, Frederick M. Hubbell and Frederick C. Hubbell have been charged with the management and operation of the property of the Des Moines Union Railway Company, and for many years have devoted a large amount of time and energy to the management and operation of the said property and to its development and to the acquisition of new and additional property, all of which has been done on account of their interest in the said property through the stock held by the firm of F. M. Hubbell &

Son, with the full knowledge and acquiescence of the complainants and their predecessors without the payment of any consideration whatever.

That the said F. M. Hubbell & Son purchased the stock of the Des Moines Union Railway Company now owned by them and the said Frederick M. Hubbell purchased stock of said company from said purchasing committee, in reliance upon the fact that the Des Moines Union Railway Company was the owner of the terminal property in controversy, and in reliance upon the provisions of the articles of incorporation of the said company as amended, and in reliance upon the fact that the said contract, Exhibit "A", was rescinded and annulled, as aforesaid, and in reliance upon the fact that the complainants and their predecessors had recognized and treated the Des Moines Union Railway Company as the owner of the said terminal property.

That by reason thereof and by reason of the fact that the predecessors of the Wabash Railroad Company sold a portion of the stock in question to the respondents as property of value and received a valuable consideration therefor, and by reason of the fact that the Chicago, Milwaukee & St. Paul Railway Company, when it purchased the stock and bonds aforesaid from the respondents, purchased with the express understanding that the Des Moines, Northern & Western Railroad Company was the owner of only one-fourth of the capital stock of the Des Moines Union Railway Company and that F. M. Hubbell & Son were the owners of two-eighths thereof, and acquired such interests as it may have acquired from the Des Moines, Northern & Western Railroad Company with the same express understanding, and by reason of the fact that the predecessors of the complainants, under whom they now claim, for a valuable consideration sold and transferred the property in question to the Des Moines Union Railway Company, and that the complainants acquiesced for many years in that company's claim of ownership of the said property and acquiesced and aided in its mortgaging the said property and by reason of the proceedings in connection with the amendments of the articles of incorporation of the Des Moines Union Railway Company and of such amendments and by reason of the fact that the complainants stated in the relation of tenants to the Des Moines Union Railway Company under leases recognizing its ownership of the property in question, and by reason of all of the other facts herein before in this answer set out, the complainants are both of them estopped from now or hereafter setting up or claiming that the Des Moines Union Railway Company is not the owner of the terminal property which is in controversy in this case.

Paragraph 29. That the facts with reference to the ownership of the terminal property and stock in controversy have been known to the complainants and to their predecessors in interest ever since the date of the transactions complained of, and were so known to the complainants and their predecessors in interest for many years prior to the commencement of this suit, and that the complainants have been guilty of laches and their claims are stale and are barred and are not recognizable in a court of equity.

Paragraph 30. That on or about the 1st day of October, 1895, there was filed in the district court of the state of Iowa, in and for Polk county, which court was a court of general jurisdiction, the petition of the Des Moines, Northern & Western Railroad Company, the predecessor in interest of the complainants, the Chicago, Milwaukee & St. Paul Railway Company, against J. F. Joy, O. D. Ashley, Thomas F. Hubbard and Edgar T. Welles, who were the purchasing committee of the Original Wabash Company, and the predecessors in the interest claimed by The Wabash Railroad Company, and that in defence of the said suit was undertaken, managed and carried on for the defendants, by The Wabash Railroad Company. That a copy of the said petition is hereunto attached and made a part hereof, marked Exhibit 3.

That thereafter the defendant, The Wabash Railroad Company, filed for the defendants in the said suit an answer, a copy of which is hereunto attached and made a part hereof, marked Exhibit 4. That thereafter the said cause came on to be heard by the court without the intervention of a jury, and upon full and final hearing the court entered its judgment therein in favor of the defendants, a copy of the said judgment entry being hereunto attached and made part hereof, marked Exhibit 5. That in the said suit the defendants among other things set up and maintained that the Des Moines Union Railway Company was the owner of the terminal property in question and that the only interests of the Northwestern Company and of the Des Moines, Northern & and Western Railroad Company were those of stockholders in the Des Moines Union Railway Company. That in that case the court sustained said contention and adjudged its judgment in favor of the defendants upon said finding and conclusion.

That the said judgment operated as and was an adjudication and termination, as between the parties hereto, that the Des Moines Union Railway Company is the owner of the property in controversy in this case, and by the proceedings in said action the parties are estopped from now asserting otherwise.

Division II.

Paragraph 31. These respondents admit that since the making of the lease of date May 10, 1889, of which a copy is attached to the Amended bill as Exhibit "P," the Des Moines Union Railway Company has derived a revenue from switching and other terminal services performed by it, and from depot and other privileges furnished by it, and from rentals of portions of its real estate.

The respondents aver that for a long series of years and until on or about the 12th of March, 1906, the surplus earning of the Des Moines Union Railway Company of the character above indicated were continuously applied by it to the purchase of permanent additions to, and to improvements of its plant and property and to the acquisition of additional property and extensions of its tracks, and to like purposes, and that the said application of the said funds was so made with the full knowledge, acquiescence and approval of each and every of its directors, officers and stockholders, including the complainants and their predecessors in interest.

That these respondents have at all times maintained that under the proper construction of the said lease, Exhibit "P," the Des Moines Union Railway Company was entitled to said surplus earnings and that it received and appropriated the same to its own use with the knowledge and acquiescence of complainants and without objection on their part prior to the 12th day of March, 1906. That since the said date, and upon the contention of the complainants that the Des Moines Union Railway Company was not entitled to the said earnings, they have been kept in a separate fund and have been permitted to accumulate.

These respondents deny that the complainants have any rights to the said earnings and deny that the said complainants are entitled to have them credited upon rentals payable by them as tenants of the Des Moines Union Railway Company; and admit that the Des Moines Union Railway Company has refused to request the trustee under the trust deed of November 1, 1887, to certify and issue additional bonds, and has refused to use the proceeds of such bonds to pay the claims of the complainants on account of surplus earnings used in the purchase of additional property and in making additional improvements. And these respondents deny that the complainants are entitled to any payments, and deny that they are entitled to any payments, and deny that they are entitled to have said bonds so certified or used.

These respondents admit the passage of the resolutions set up in paragraph twenty-nine of the amended bill, but deny that the said resolutions were passed for the purposes or with the understanding or intention which is alleged by the complainants.

These respondents further respectfully show to the court that prior to the making of the contract, Exhibit "R," the negotiations between the complainant, The Wabash Railroad Company, and the Des Moines Union Railway Company, The Wabash Railroad Company requested a modification of the said agreement, Exhibit "P," so as to permit the application of the said surplus earnings to the reduction of the rentals paid by the tenant companies, which request the Des Moines Union Railway Company refused, and that thereupon, and after such refusal, the said The Wabash Railroad Company executed and delivered the contract, Exhibit "R," confirming said agreement, Exhibit "P."

And these respondents aver that the said original agreement, Exhibit "P," has never been modified or changed with respect to the matter of said surplus earnings, but that it has been expressly ratified and confirmed, and aver that the said earnings belong to and are the property of the said Des Moines Union Railway Company. These respondents deny that any sums have been taken from the said surplus earnings for use in payment for equipment, improvements, extensions or property without the knowledge and acquiescence of the complainants and each of them.

Paragraph 32. These respondents deny each and every allegation in paragraphs twenty-eight to thirty-eight of the said amended bill contained, not hereinbefore admitted or denied.

Paragraph 33. These respondents further respectfully show to the court that from and after May 10, 1889, until the present time monthly accounts have been rendered by the Des Moines Union Railway Company to the tenant companies, the complainants and their predecessors in interest, under the contract, Exhibit "P," to the amended bill, and that during said entire period (except only from February 11, 1891, to January 7, 1892) said accounts uniformly did not credit the tenant companies with such surplus earnings, and during said period said accounts were continuously audited and paid by the tenant companies without any claim that they were entitled to any credit on account of said surplus earnings until about March 12, 1906.

That the complainants cannot now be heard to assert that the construction of the said contract so adopted and confirmed by the parties thereto is not the correct construction thereof, and all claims of the complainants on account of said earnings are stale, and are barred by the laches and delay of the complainants and are not cognizable in a court of equity.

Wherefore these respondents pray to be dismissed with their costs in this behalf most wrongfully sustained.

——— ———,

——— ———,

Solicitors for Respondents.

——— ———,

Of Counsel.

Exhibit No 1

EXHIBIT No. 1.

(Here follows blue print marked page 197.)

Exhibit No. 2.

Articles of Incorporation of The Des Moines Union Railway Co. As Amended.

Article I.

The name of the corporation shall be the "Des Moines Union Railway Company" and its principal place of transacting business shall be at Des Moines, in the County of Polk and State of Iowa.

Article II.

The objects of the corporation and the general nature of the business to be transacted shall be, the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators, or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines; and also to lease terminal facilities to, and furnish and perform terminal service for all railways whose lines reach or pass through or near the said City of Des Moines; and the corporation shall possess all the powers conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

Article III.

The capital stock of the corporation shall be two million dollars ($2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, constituted the fair value of said property when so acquired; and all resolutions and proceedings

of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions: Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company and the present owner of the property known as the Des Moines & St. Louis Railroad; one thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and one thousand shares to the Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, sixteen thousand shares or any part thereof shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully paid either in money or property at its fair market value before certificates therefor shall be executed and delivered.

The stock shall be transferable only upon the books of the Company by, and with the consent of three-fourths of all the Directors, except in the case the transferee of the stocks is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

Article IV.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons who shall be elected by the stockholders at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday in January of each year, and they shall hold their offices for one year and until their successors are elected and qualified, but at all future elections of directors, it shall require the votes of more than seven-eighths of all the stock theretofore issued, to elect any director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other things as may be proper or necessary for the corporation to do; but with respect to the matters above mentioned and all other matters except the ordinary operation of the property, the Board of Directors can act only upon the unanimous vote of the eight members thereof and in order to facilitate the transaction of business, power is expressly con-

ferred upon each of the Directors to delegate by written authority some other person to act or vote for him and in his stead; provided that such authority shall be filed with the secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an executive committee, but such selection must be made by the vote of at least seven members.

The duties and powers of such committee shall be defined in the by-laws.

The board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must be elected and such by-laws enacted by the unanimous vote of the eight members of the board. All vacancies occurring in the board shall be filled by the stockholders at a special meeting in the manner heretofore provided for the election of directors.

Article V.

The officers of the corporation shall be a President, Vice-President, Secretary and Treasurer (the offices of Secretary and Treasurer may be filled by one person) to be annually elected from the persons composing the Board of Directors, as hereinbefore provided; and for that purpose, among others, the newly elected board shall convene immediately after the adjournment of the annual meeting of the stockholders. Said officers shall hold their offices for one year until their successors are elected and qualified; and they shall exercise such power and be charged with such duties as usually pertain to their respective offices, subject, however, to the limitations herein contained.

Article VI.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article VII.

The highest amount of indebtedness to which the corporation may at any time subject itself, shall be the amount authorized by law.

Article VIII.

Meetings of the Board of Directors may be called by the President, or in case of his absence or disability, by the Vice-President

nd shall be called upon request preferred in writing, by two mem-
rs of the board.

Article IX.

These Articles may be amended by a vote of more than seven-
ighths of all the stock in favor thereof, at a meeting of stockholders
hereof, of which a notice containing the proposed amendment shall
e mailed to each stockholder at his address as disclosed by the
ansfer books of the Company.

Article X.

This corporation shall commence on the fifth day of December,
. D. 1884, and continue fifty years, with the right of renewal.

Article XI.

Special meetings of the stockholders may be called by the Presi-
ent or by four directors; but at least ten days' notice of such
eeting shall be given to each stockholder by mailing to its or his
ddress as shown by the books of the Company a notice stating the
me and place of such meeting.

Article XII.

At all meetings of stockholders, each stockholder shall be entitled
cast one vote for each share of stock owned by him or it, as may
ppear from the books of the Company, such vote may be cast
ther in person or by proxy, but if by proxy, written authority
erefor must be filed with the Secretary at or before the time the
eeting convenes.

Article XIII.

It shall not be necessary in order to enable the corporation to carry
t the business for which it is organized, that all its authorized
apital stock be subscribed or taken.

Article XIV.

The purchase of the property heretofore conveyed to the cor-
oration, the conveyances made in pursuance thereof, the execution
f Trust Mortgage to the Central Trust Company of New York, dated

February 28, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 186, at page 525, and the issuance of bonds secured by the same are hereby approved, ratified and confirmed.

Article XV.

The proceedings of a meeting held December 10th, 1884, at certain preambles, including a contract executed on the 24 day of January, 1882, between the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of the Company, are hereby repealed, stricken out and expunged.

The said amendments to the articles of incorporation of the Des Moines Union Railway Company were signed by F. M. Hubbell, F. C. Hubbell, A. B. Cummins, Horace Seely, L. M. Morris, Charles M. Hays, James F. Joy, Wells H. Blodgett, G. M. Dodge and H. D. Thompson.

Exhibit No. 3.

In the District Court of Iowa in and for Polk County.

No. 7611. Law.

Des Moines, Northern & Western Railroad Company and Des Moines Union Railway Company

vs.

James F. Joy, O. D. Ashley, Thos. F. Hedges and Edgar T. Wallis.

Petition.

The plaintiffs for cause of action state:

That they are corporations existing under the laws of the State of Iowa, having their principal places of business at Des Moines in the county of Polk in said state. That the defendants are a Purchasing Committee associated together prior to the year 1886 for the purpose of purchasing various railroad properties to be sold under foreclosure of certain mortgages executed by the Wabash, St. Louis & Pacific Railway Company.

That prior to the year 1885 the Des Moines Northwestern Railway Company had executed a mortgage upon its property, which consisted of a line of railway extending from Fairbank street in the city of Des Moines, Iowa, to Fonda, in the county of Pocahontas in said state, to secure the payment of certain railway bonds owned by the said Wabash, St. Louis & Pacific Railway Company, and had also executed a lease of its said property for a long term of years to the said Wabash, St. Louis & Pacific Railway Company. That at the same time what is known as the "terminals" at Des Moines, consisting of the property of the Des Moines Union Railway Company, as it now is known, which had been constructed, and which was a part of a railway known as the Des Moines & St. Louis Railway, extending from Fairbank street in the said city of Des Moines to Alden in the county of Hardin and state of Iowa, had been mortgaged by the said Des Moines & St. Louis Railway Company to secure railway bonds issued by the said Wabash, St. Louis & Pacific Railway Company.

The plaintiffs further state that prior to the 9th day of October, 1885, suits to foreclose the mortgages which had so been executed upon the property of the Des Moines Northwestern Railway Company and upon the terminal property, being a part of the property of the Des Moines & St. Louis Railway Company, and the said properties were about to be sold at said foreclosure sale, the proceedings therefor being then pending in the Circuit Court of the United States in and for the Southern District of Iowa, Central Division. That thereupon the said defendants, acting under the name and style of the "Purchasing Committee" of the Wabash, St. Louis & Pacific Railway Company, entered into negotiations with a certain copartnership then doing business in the City of Des Moines, Polk County, Iowa, known as Polk & Huidekoper, and composed of C. M. Huidekoper and J. S. Polk, looking to the sale by the said defendants to the said Polk & Huidekoper of a one-fourth interest in said terminal property and the entire property of the Des Moines Northwestern Railway Company. As a conclusion to said negotiations the said Polk & Huidekoper on the 9th day of October, 1885, made to the defendants a written proposition, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof; and thereafter, on the 9th day of October, 1885, three of said defendants, to-wit: O. D. Ashley, Thos. H. Hubbard and Edgar T. Welles, accepted the said proposition in and by a written communication, a copy of which is hereto attached, marked Exhibit "B" and made a part hereof. That thereafter, and on the 10th day of September, 1887, the said Polk & Huidekoper and all of the defendants entered into a certain supplementary written agreement touching the same subject matter, a copy of which is hereto attached, marked Exhibit "C" and made a part hereof.

The plaintiffs further state, that pursuant to said written agreement so entered into the said Polk & Hubbell purchased and entered into possession of the said property formerly belonging to the Des Moines Northwestern Railway Company, and, as agreed upon between the trustee and the said defendants, a railway corporation known as the Des Moines & Northwestern Railway Company was organized, to which corporation all the rights and interests acquired by the said Polk & Hubbell in and by their said contract with the defendants were transferred and set over and the said company being so organized, took possession of the said property lying between Farnham street and Fonda, issued its bonds as provided in said agreement, and for a long time operated said property. That after the said purchase was completed as aforesaid, it was mutually agreed between the said Polk & Hubbell, the Des Moines & Northwestern Railway Company and the defendants that what was known as the "terminal" property, that is to say, so much of the property formerly belonging to the Des Moines & St. Louis Railway Company as lay between Farnham street in the city of Des Moines upon the west and Twenty-second street in the city of Des Moines upon the east, should be held and owned by a separate corporation, and thereupon, and during the year 1887, the whole of said property was conveyed to the Des Moines Union Railway Company, a corporation which had theretofore been organized, and the said Des Moines & Northwestern Railway Company received the one-fourth interest in the said terminal property mentioned in the said contract by the delivery to it of one-fourth of the mortgage bonds issued by the said Des Moines Union Railway Company and one-fourth of its capital stock.

The plaintiffs further state, that among other properties that were conveyed and transferred to the said Des Moines Union Railway Company under the said agreement lot seven (7), block fifteen (15), in the original town of Fort Des Moines. That at the time the said conveyance and transfer was so made there was a mortgage upon said property, which mortgage had been a lien thereon prior to the time of the acquisition of the lot for railway purposes, in the sum of Four Thousand Dollars ($4,000); which mortgage the Des Moines Union Railway Company on or about the first day of January, 1891, was compelled to pay. That the total amount paid by the said Des Moines Union Railway Company in payment and satisfaction of the said mortgage which was at the time of the said agreement a lien upon the said property, was Eleven Thousand Nine Hundred Seventy-four and 84-100 Dollars ($11,974.84).

The plaintiffs further show that a certain right of way, being a part of said terminal property upon which the railway was then operated through lots fifty-three (53) and fifty-four (54), Brooks'

Co.'s Addition to the City of Des Moines, was found not to have been acquired, and the said Des Moines Union Railway Company was compelled to acquire the same at a cost to it of Seven Hundred and Sixty-six Dollars ($766.00), that being the lowest sum for which the same could be obtained.

The plaintiffs further state, that the said Des Moines Union Railway Company has been compelled to pay rent for a certain switch known as the distillery switch, with interest, amounting to Fourteen Hundred Eighty-five and 88-100 Dollars ($1485.88). That said switch was a part of the property operated by the terminal company, and should have been free of any lien or incumbrance.

The plaintiffs further state, that of the above named payments the Des Moines & Northwestern Railway Company or its assigns has been compelled to pay the sum of Twenty-seven Hundred Eighty-one and 68-100 Dollars ($2781.68) which, if the said terminal property had been free and clear of incumbrance, would not have been required to be paid.

The plaintiffs further state, that the Des Moines, Northern & Western Railroad Company, one of the plaintiffs herein, is now the owner of all the rights, interests, claims and demands hereinbefore set forth arising in favor of the said Des Moines & Northwestern Railway Company.

Plaintiffs further state, that the defendants are non-residents and each of them is a non-resident of the state of Iowa.

Wherefore plaintiffs demand judgment against the defendants in the sum of Twenty-seven Hundred Eighty-one and 68-100 Dollars ($2781.68), with interest from ——— , ——, and costs of suit.

They further pray that a writ of attachment may issue against the lands and tenements, goods and chattels, rights and credits of the defendants.

CUMMINS & WRIGHT,
Attorneys for Plaintiff.

STATE OF IOWA,
Polk County, ss:

F. M. Hubbell being first duly sworn, upon his oath says, that he is the President of the Des Moines, Northern & Western Railroad Company; that he has read the foregoing petition and verily believes the statements therein contained are true.

F. M. HUBBELL.

Subscribed and sworn to before me this 30th day of September, 1895.

[SEAL.]

J. P. HEWITT,
Notary Public, Polk County, Iowa.

EXHIBIT "A"

New York, October 9, 1886.

To the Purchasing Committee of the Wabash, St. Louis & Pacific Ry. Co.

GENTLEMEN:—

We make the following proposition in regard to the Des Moines Northwestern Railway: The mortgage to be foreclosed to cover all advances made by the Wabash Company to the D. M. N. W. Ry. Co. A good and perfect title free from all liens and incumbrances (including all claims the Receivers may have against it) to be made to Polk & Hubbell for said railway (and all its property, rights, franchises, all its interest in the equipment), and a one-fourth interest in the terminal property at Des Moines and 5037 shares of stock in the D. M. N. W. Ry. Co.

Upon the delivery of the property above named in the condition as to title as above specified, Polk & Hubbell are to pay the Committee a $450,000 first mortgage 5% bond. The issue to be only $450,000, and to be secured by a first mortgage on the property conveyed, to-wit, on that part of said railway lying between Farnham street in Des Moines and the town of Fonda and equipment. To run two years from the time the title is delivered to Polk and Hubbell, and to be redeemable at their option at any time before maturity upon payment of principal and accrued interest, and if paid within one year from the time the title is delivered to Polk & Hubbell, then $450,000 cash shall discharge said mortgage and debt. Polk & Hubbell to have all the stock of the new company. As soon as the contract is completed Polk & Hubbell are to make arrangements to standard guage the road. If accepted, the details and plans of carrying out the above is to be agreed upon and embodied in a contract to be signed by the necessary parties.

POLK & HUBBELL.

EXHIBIT "B."

New York, October 9, 1886.

The foregoing proposition is satisfactory to us, and we agree as a Committee acting under the contract of July 15th, 1885, between ourselves and certain bondholders, to take all measures in our power to have the same fully performed.

(Signed) O. D. ASHLEY.
THOS. H. HUBBARD.
EDGAR T. WELLES.

This Memorandum of Agreement made and entered into this 10th day of September, A. D. 1887, by and between Messrs. Polk & Hubbell, parties of the first part, and James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, as a Purchasing Committee under contract of July 15th, 1885, parties of the second part, Witnesseth:

That Whereas, under date of October 9th, 1886, the parties to this agreement entered into a certain conditional contract for the foreclosure and sale of the Des Moines Northwestern Railway, as shown by copy of proposition of the first party hereto and acceptance of the second party hereto, attached to this agreement and made part hereof;

And Whereas, in pursuance of said contract said foreclosure and sale is to take place as provided in said agreement, and said parties of the first part expect and intend to become purchasers at said sale;

Now Therefore, it is further agreed between the parties above named, as follows:

1st. For the purpose of enabling Messrs. Polk & Hubbell to bid in the Des Moines Northwestern Railway at the foreclosure sale above referred to, the Committee will furnish to said Polk & Hubbell the general mortgage bonds required to make payment of said bid, so far as the same may be required and can be used in that way; the cash payment required by the decree shall be advanced by Messrs. Polk & Hubbell and credited upon the purchase price of the property above mentioned.

2d. A decree of foreclosure and sale shall be entered as soon as possible after the first day of the next term of the Circuit Court of the United States for the Southern District, Central Division of Iowa. Messrs. Polk & Hubbell will see that the amount of the cash payment is made as small as possible, and to that end will negotiate for a reduction of the Master's fees and other costs, so far as the same can be obtained. The day of sale shall, moreover, be made as soon as possible.

3d. The requirement of the agreement hereto annexed, for the delivery to the Committee by Messrs. Polk & Hubbell of a bond for $450,000, shall be satisfied by the delivery of such bond secured by first mortgage as provided in proposition of October 9th, 1886, executed by a new corporation organized for that purpose, and holding the property disposed of at such sale.

4th. As soon as practicable after the signing of this stipulation the Des Moines Northwestern Railway shall be turned over to Messrs. Polk & Hubbell, and thenceforth regarded as having been transferred under the contract hereto annexed.

5th. Simultaneously with the execution and delivery of said bond the Committee will convey to Messrs. Polk & Hubbell, or their assigns, the one-fourth interest in the terminal property at Des Moines, and will transfer also 5,037 shares of stock of the Des Moines Northwestern Railway Company, and also the interest of the parties of the second part in the equipment of said Des Moines Northwestern Railway. It is hereby understood that the rolling stock of the New York & Pacific Car Trust Association is not included in this agreement.

Simultaneously with the conveyance above mentioned of one-fourth interest in the terminal property at Des Moines, the same shall be mortgaged back to the Purchasing Committee for the further security of the said $450,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, the bonds and stock received from the Terminal Company in exchange for said one-fourth interest shall be transferred in lieu of the property to Messrs. Polk & Hubbell or their assigns, or transferred by them to the Committee to be held by the Committee as a further security for the payment of the $450,000 above mentioned.

6th. The transfer of the bonds mentioned in paragraph one of this agreement, to Messrs. Polk & Hubbell, and the execution and delivery of the bond and mortgage mentioned in paragraph three, shall be consummated, if possible, on the same date as the delivery of the

Master's deed to Messrs. Polk & Hubbell, or their assignees; said mortgage being recognized as a purchase money mortgage.

POLK & HUBBELL.

Purchasing Committee: JAMES F. JOY,
O. D. ASHLEY,
THOS. H. HUBBARD,
EDGAR T. WELLES.

STATE OF IOWA,
Polk County, ss:

F. M. Hubbell being first duly sworn, upon his oath says, that he is the President of the Des Moines, Northern & Western Railway Company, one of the defendants in the above suit. That the defendants are non-residents of the State of Iowa, and that each of them is a non-resident of said State, and that personal service of the original notice herein cannot be made upon the said defendants, or either of them within this State.

F. M. HUBBELL.

Subscribed and sworn to by the said F. M. Hubbell this — day of September.

[SEAL.] J. P. HEWITT.
Notary Public, Polk County, Iowa.

The plaintiffs elect to have the original notice herein published in the Des Moines Leader, a newspaper published in the City of Des Moines, Polk County, Iowa.

CUMMINS & WRIGHT.
Attorneys for Plaintiff.

Let the publication be made as requested.

J. G. JORDAN,
Clerk.

By EDWIN HULT,
Deputy.

In the District Court of Iowa in and for Polk County.

DES MOINES, NORTHERN & WESTERN R. R. Co. et al., Plaintiffs,

vs.

JAMES F. JOY et al., Defendants.

Amendment to Petition.

Comes now the plaintiff, the Des Moines Northern & Western Railroad Company, and in response to the motion to make its petition more specific filed herein January 26th, 1896, avers that the Des Moines & Northwestern Railway Company acquired the interest of the said Polk & Hubbell in the said contract with the defendants in the following manner: At the time the said contract was made with the said defendants it was agreed by and between the members of the firm of Polk & Hubbell that all the rights and property acquired by them under and by virtue of the said contract with the Purchasing Committee should be assigned and conveyed to a corporation to be organized known as the Des Moines & Northwestern Railway Company, and if said agreement had been carried out the one-fourth interest in the said terminal property set forth in the original petition would have been so conveyed and transferred to the Des Moines & Northwestern Railway Company. That before the said agreement was executed it was modified as follows, to-wit: That an independent corporation known as the Des Moines Union Railway Company should be organized, which should become the owner of the said terminal property, and that in lieu of the undivided interest in the said terminal property which was to be so conveyed by the said Polk & Hubbell to the said Des Moines & Northwestern Railway Company the said Des Moines & Northwestern Railway Company should have and receive one-fourth of the capital stock of the said Des Moines Union Railway Company. That in pursuance of such modified agreement the Des Moines & Northwestern Railway Company was organized, and received a conveyance of all said property except the terminal property, and the Des Moines Union Railway Company was organized, and issued to the Des Moines & Northwestern Railway Company upon the verbal order of the said Polk & Hubbell one-fourth of its capital stock; and thereupon the said Polk & Hubbell verbally assigned and transferred, in addition to the said one-fourth of the capital stock of the Des Moines Union Railway Company, all the rights and interests which they had acquired in or pertaining to the said terminal property from the defendants and under the contract set forth in the original petition; and in this manner the said Des Moines & Northwestern Railway Company became the owner of the cause of action which is herein set out.

Answering the second requirement of the said motion, the said plaintiff says that in December, 1891, the Des Moines & Northwestern Railway Company, pursuant to the statutes of Iowa, consolidated all its rights, properties, privileges, franchises, cause of action and stock with a corporation known as the Des Moines & Northern Railway Company, and the said consolidated company issued its bonds in an amount not necessary to herein state, and secured the same by a mortgage upon all its property, including the one-fourth of the capital stock of the Des Moines Union Railway Company, and including the said cause of action against the defendants. That thereafter the said mortgage was foreclosed in the Circuit Court of the United States for the Southern District of Iowa, Central Division, and all the property embraced in the said mortgage, including the cause of action herein was sold at public sale under an execution in the said foreclosure proceedings. That at such sale the said property, including the said cause of action, was purchased by a purchasing committee composed of G. M. Dodge, F. M. Hubbell and F. C. Hubbell. That thereafter the present plaintiff, being a corporation known as the Des Moines Northern & Western Railroad Company, was organized in accordance with the laws of the State of Iowa, and the said Purchasing Committee sold, assigned and transferred to the plaintiff by a written instrument all the property that it had acquired at the said foreclosure sale; and thus this plaintiff became the owner of the cause of action set forth in the petition arising out of the contract with the defendants.

Answering the third of the requirements of said motion, the said plaintiff respectfully shows that it is fully answered in the foregoing answers to the first and second requirements.

(Signed) CUMMINS, HEWITT & WRIGHT,
Attorneys for Plaintiff.

STATE OF IOWA,
Polk County, ss:

F. C. Hubbell being first duly sworn, upon his oath says that he is the Superintendent of the Des Moines, Northern & Western Railroad Company; that he has read the foregoing amendment to the petition and verily believes the statements therein contained are true.

(Signed) F. C. HUBBELL.

Subscribed and sworn to before me this 21st day of December, 1896.

(Signed) CRAIG T. WRIGHT,
[SEAL.] *Notary Public, Polk County, Iowa.*

EXHIBIT No. 4.

In the District Court of Iowa in and for Polk County.

No. 7614. Law.

DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY et al., Plaintiffs.

vs.

JAMES F. JOY et al., Defendants.

Answer.

Come now defendants, O. D. Ashley, Thomas F. Hubbard and Edgar T. Welles, and for answer to the plaintiff's petition as amended, say:

That said defendant, James F. Joy, died prior to January, 1897.

That they admit that the plaintiffs are corporations organized under the laws of Iowa, and having their principal place of business at Des Moines, Iowa.

That they admit that defendants are non-residents of the State of Iowa.

That they admit that these defendants with said James F. Joy were constituted a "Purchasing Committee" under a contract dated July 15, 1885, between themselves and certain bondholders of Wabash, St. Louis & Pacific Railway Company, but deny that their powers and duties are correctly or fully set forth in the petition.

That they admit that these defendants with said James F. Joy, in their capacity as a "Purchasing Committee," as defined in said contract appointing them, and not otherwise, did, on or about the 10th day of September, 1887, enter into certain written agreements with Polk & Hubbell for the sale of certain stock and bonds of the Des Moines Northwestern Railway Company, and certain stock and bonds of Des Moines Union Railway Company. That whether the copies, Exhibits "A," "B," and "C," are true copies of said written agreements, or any part of them, these defendants have neither knowledge or information sufficient to form a belief.

That they deny that they intended to, or did, or were, by said Polk and Hubbell, understood to agree to warrant the title of said terminal property, or to incur either personally, or as a "Purchasing Committee," or on behalf of their principals, liability whatever in respect to defects in title or incumbrances upon said terminal property.

That they deny that they are either personally or as a "Purchasing Committee," or on behalf of their principals, liable or indebted to plaintiff in the sum of $2,781.68, or in any other sum or amount, whatever.

That they deny that plaintiffs are, or ever were the owners of the claims sued on.

That they deny each and every allegation in the petition not herein admitted.

Wherefore, defendants demand judgment for costs.

BAILY & BALLREICH,
Attorneys for Defendants.

EXHIBIT No. 5.

In the District Court of Iowa in and for Polk County.

No. 7614. Law.

DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY, Plaintiff,

vs.

JAMES F. JOY et al., Defendants.

Judgment.

This cause was heretofore tried in the court without a jury, the plaintiff appearing by Cummins, Hewitt & Wright, its attorneys, and the defendants appearing by Baily, Ballreich & Preston, their attorneys. The court having heard the evidence and arguments of counsel took the case under advisement.

And now, to-wit, on this 5th day of August, 1899, this cause came on for decision and judgment. The court being fully advised in the premises finds for the defendants and against the plaintiff.

It is therefore ordered and adjudged that plaintiff's cause of action be and it is denied and this action dismissed on the merits; that the attachment be discharged and the attached property released therefrom, and that defendants have and recover from plaintiff, Des

Moines Northern & Western Railroad Company, the costs of this action as taxed by the clerk, and that execution issue therefor.

Endorsed: Filed July 29, 1909 E. R. Mason, Clerk.

(Stipulation for the Withdrawal from Files of Amendment to Bill of Complaint and Answer Thereto, and for Amendment of Amended Bill of Complaint.)

It is hereby stipulated and agreed in the above cause that the Amendment to the Bill of Complaint filed by Complainants November 9, 1912, in relation to the railroad and property between Fairham street and Twenty-eighth street may be and is withdrawn from the files and every allegation therein contained. And the Answer thereto, or Amendment to the Answer of Respondents filed on or about December 2nd, 1912, is also withdrawn from the files and every allegation therein contained is withdrawn by the Respondents and it is agreed that the cause shall proceed to trial as if neither of the aforesaid pleadings had been filed, but Respondents may file an Amendment to their Answer as they may be advised.

It is also agreed that Complainants may and do amend their Amended Bill of Complaint as now on file and printed, by striking out of the first line of the last paragraph of division 9 of the Amended Bill as last printed, the word "Northwestern", and substituting therefor the [word] "Northern", and striking out the word "Northern" in the 7th line of said paragraph on page 17 of the Amended Bill as last printed. The intent hereof being to change the allegation in the Amended Bill in reference to conveyance made by either of the railroad companies to the Des Moines Union Railway Company on page 17 of the printed Amended Bill of Complaint, as Amended so as to show merely such conveyances as having been made by the Des Moines & St. Louis Railroad Company and the St. Louis, Des Moines & Northern Railway Company and not any conveyance by the Des Moines, Northwestern Railway Company.

J. C. COOK,
W. H. BLODGETT,
ROBERT RYAN,
J. L. MINNIS,
Solicitors for Complainants.
N. T. GUERNSEY AND
PARKER, PARRISH & MILLER,
Solicitors for Respondents.

Endorsed: Filed Feb. 6, 1913. Wm. C. McArthur, Clerk. By Louis J. Adelman, Deputy.

Amendment to Bill of Complaint.

Now come the complainants in the above cause, and upon leave of the court first had, amend their Bill of [Company] in the following two particulars:

1. In the closing paragraph of Division Nine of the bill as printed being on page 19 of said printed bill, strike out the following words: "the Northwestern Company also conveyed to the Terminal Company, by quit claim deed, all the property then held by it, and being the property referred to in the contract of January 2nd, 1882 (Exhibit "A" hereto attached), in the City of Des Moines, and which was covered by and embraced in the terms of said written contract; and", so that it will appear that only the St. Louis Company and the Northern Company made deeds to the Des Moines Union Railway Company.

2. In the first line of the second paragraph of Division Thirty-one of the printed bill, being on page 55 of the bill as printed, after the words, "That your orator, the Wabash Railroad Company", insert the following words: "and also the predecessors of your orator the Chicago, Milwaukee & St. Paul Railway Company," so that by the amendment it will show that not only the Wabash Railroad Company, but also the corporation which then owned or operated the Boone and the Fonda lines accepted the resolutions of the Terminal Company adopted February 11, 1891, and January 7, 1892, as an amicable adjustment, etc.

J. C. COOK,
W. H. BLODGETT,
J. L. MINNIS AND
ROBERT RYAN.
Attorneys and Solicitors for Complainants.

Endorsed: Filed Dec. 26, 1913. Wm. C. McArthur, Clerk.

Amendment to Amended Bill of Complaint.

Now come the plaintiffs or complainants in the above cause, and by leave of the court first had, amend the Bill of Complaint by striking out the last section of Paragraph Nine of the "Amended Bill of Complaint as Amended" and heretofore printed and on file, and substitute therefor the following, to-wit:

At about the same time, to-wit, in November, 1887, the St. Louis, Des Moines & Northern Railway Company conveyed by quit claim deed the following lots and parcels of land in the city of Des Moines, Iowa, to-wit: Lots Seven (7) and eight (8) in Block Twenty-two (22) of Keene and Poindexter's Addition and fractional lot eight (8) in Block Twenty-two (22) of Hoxie's Addition, all subject to the right of way of the Chicago, Rock Island and Pacific Railway Company over the same; also Lot six (6) in Block thirty-one (31) and Lots five (5) six (6) and seven (7) eight (8) and nine (9) in Block thirty-three, all in Keene and Poindexter's Addition to Fort Des Moines; also Official Plat Lot Five (5) in the northeast quarter of Section eight (8) and Official Plat Lots two (2) and thirteen (13) in northeast quarter of Section Nine (9), all in Township seventy-eight (78) Range Twenty-four (24) West 5th P. M. Iowa, all included in the corporate limits of the City of Des Moines. Which said lots and parcels of land were covered by and embraced in the terms of said written contract of January 2, 1882. But the said St. Louis, Des Moines & Northern Railway Company never made any deed or conveyance or transfer to the Des Moines Union Railway Company of any interest which said St. Louis, Des Moines & Northern Railway Company had acquired or held or was holding in the terminal property under or by virtue of the said written contract of January 2, 1882, nor did it or any of its successors in title or in interest make any other conveyance or transfer than said quit claim deed to said lots. And that the Des Moines Northwestern Railway Company never made any deed or conveyance of any kind to the Des Moines Union Railway Company, nor did any of its successors in interest or in title or right ever make any transfer or conveyance in any form to the Des Moines Union Railway Company; and the deeds or conveyance made as aforesaid constitute the only evidence of title, and create the only right that the Terminal Company has or ever had in the property therein described.

J. C. COOK.
J. L. MINNIS.
WILLIS H. BLODGETT.
Solicitors for Plaintiffs and Complainants.

Endorsed: Filed May 13, 1915. Wm. C. McArthur, Clerk.

Vol. II

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]66

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL.

No. [redacted]67

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITIONS FOR CERTIORARI FILED JANUARY 24, 1919.

CERTIORARI AND RETURNS FILED APRIL 4, 1919.

(26,905)

(26,906)

(26,905)

(26,906)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 278.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL.

No. 279.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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217-228

IN THE

Circuit Court of the United States

SOUTHERN DISTRICT, IOWA,

CENTRAL DIVISION.

2449.—In Equity.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND THE WABASH RAILROAD COMPANY, PLAINTIFFS,

VS.

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL AND F. M. HUBBELL & SON, DEFENDANTS.

TESTIMONY FOR COMPLAINANTS, WITH AN INDEX.

BUNTON & BRINKER PRINTING CO., ST. LOUIS

TESTIMONY FOR COMPLAINANTS.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company, Complainants,
No. 2449. vs. In Equity.
The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Defendants.

Pursuant to the annexed stipulation in the above entitled cause, providing for taking testimony on behalf of complainants, and the further agreement between counsel for complainants and defendants that I begin the taking of testimony on this day, November 30th, 1909, in Room 53 in the Western Union Building, at 195 Broadway, New York City, in the State of New York, I appeared at the same time and place to take testimony, and thereupon complainants appeared by their counsel, J. L. Minnis, Esq., and defendants appeared by their counsel, Messrs. Guernsey, Parker & Miller, and answered ready to proceed with the taking of the evidence. Thereupon the complainants introduced as a witness

CHARLES M. HAYS, who, after being duly sworn by H. L. Utter, a Notary Public duly commissioned and qualified under the laws of New York to administer oaths at the time and place aforesaid, testified as follows:

Direct-examination

By Mr. Minnis:

Q. State your name, occupation, and place of residence?

A. Charles Melville Hays, Second Vice-President and General Manager of the Grand Trunk Railway of Canada, the Montreal & Quebec, President of the Grand Trunk & Pacific, and a whole lot of other companies.

Q. If you were connected with the Wabash, St. Louis & Pacific Railway Company, the Wabash Western Railroad Company, or the Wabash Railroad Company, please state when you first became connected with either of those companies and in what capacity, and what official position you held in those companies, or either of them?

A. I first went with the Wabash, St. Louis & Pacific at the time it was leased by the Missouri Pacific in the fall of 1883, and remained in the employ of that company until the time of the appointment of the receiver, May 29th, 1884, of the

Wabash, St. Louis & Pacific, at which time A. A. Talmage was appointed general manager and I was appointed his assisstant; then I staid with them under the receivership until the time of the foreclosure and the reorganization of the Wabash Western Railway operating the lines remaining controlled by the Wabash, St. Louis & Pacific west of the Mississippi River, and operating, also, at the same time, the line between Chicago and Detroit. I remained with Mr. Talmage in that capacity as his assistant, or secretary, more properly speaking, until 1885 or 1886, I am not positive which, when I was made Assistant General Manager of the Wabash Western Railway, and then remained in that capacity until July, 1887, when, upon Mr. Talmage's death, I was made General Manager of the Wabash Western Railway and of the line between Detroit and Chicago, being operated on behalf of the Purchasing Committee. I remained in that capacity until the consolidation of the Wabash Western with the lines east in 1889, when I was made general manager of the consolidated company. I remained in that position until the spring of 1894, when I was also made vice-president in addition to the position of general manager of the consolidated property. I remained in that position until January 1st, 1896, when I left the Wabash to go to the Grand Trunk Railway, and I have been with the Grand Trunk Railway ever since, with the exception of a year, when I served as president of the Southern Pacific, the year 1901.

Q. I will ask you to state whether or not you were assistant to the General Manager of the Wabash properties during the receivership of those properties?

A. Yes, up to the time of the separation of the two portions of the system, the eastern and western lines.

Q. When you first became general manager of the properties of the company, either for the receivers or the company, what properties did you have charge of?

A. Well, the receivers, of course, had been discharged so far as the lines west of the Mississippi River were concerned, and they had been reorganized under the title of the Wabash Western Railway Company, and I was appointed first assistant general manager first, and later on, on the death of A. A. Talmage, was appointed general manager of the Wabash Western Railway.

Q. What lines did that company operate?

A. That company at that time operated the line between St. Louis and Kansas City, St. Louis and Des Moines, St. Louis and Columbia, two or three branches in the State of Missouri.

Q. When you became general manager who represented the Wabash interest at Des Moines, Iowa?

Defendants' counsel objects to the question as calling for a conclusion and as incompetent.

A. Mr. F. M. Hubbell.

Q. In what way did F. M. Hubbell at that time represent the Wabash interests and property?

Defendants' counsel makes the same objection.

A. Mr. Hubbell had general charge of all matters in connection with the Wabash interests at Des Moines.

Q. If you recall the purchase of property for terminals at Des Moines, and the development of terminals at that point for the Des Moines & St. Louis Railway Company, the Wabash, and other companies, state who had active charge of that matter for the Des Moines & St. Louis, and the Wabash?

Defendants' counsel objects to the question for the same reasons.

A. Mr. F. M. Hubbell.

Q. You have stated that at the time you became general manager the company had a line extending to Des Moines, Iowa, what was the name of the company that owned that line?

A. The line from Albia to Des Moines was owned by the Des Moines & St. Louis Railway.

Q. Was that line owned by the Des Moines & St. Louis Railway operated as a Wabash property during the time you were vice-president and general manager? A. Yes sir.

Q. Do you recall the formation of the Des Moines Union Railway Company? A. Yes sir.

Q. Who represented the Wabash interests in the development of the terminals at Des Moines, and the getting up of the corporation?

Defendants' counsel objects to the question as incompetent because it calls for an opinion of the witness and not a statement of any facts.

A. Mr. Hubbell.

Q. Were you, during the time you were connected with the Wabash properties, and in speaking of the Wabash properties I include the Des Moines & St. Louis Railroad, or the railroad owned by that company, familiar with the contract of date January 2d, 1882, entered into between the Des Moines & St. Louis Railway Company, the Des Moines & Northwestern Railroad Company, the St. Louis, Des Moines & Northern Railway Company, James F. How, and Grenville M. Dodge, which contract was also approved by the Wabash, St. Louis & Pacific Railway Company, and a copy of which is set out in com-

plainants' bill in this case as Exhibit A, which I show you now (handing paper to witness)?

A. Yes sir, I am familiar with it.

Q. Were you at any time, while you were connected with the Wabash properties as general manager, or otherwise, authorized by the companies, or any of them, owning the Wabash property, including the Des Moines & St. Louis Railway Company, to perform any act that would affect or alter or change the property interests or rights of the Des Moines & St. Louis Railway Company, or any of the other companies above mentioned, in the terminal properties at Des Moines, Iowa?

Defendants' counsel objects to the question for the same reason, because it does not call for any fact, but simply calls for the conclusion of the witness as to the matter about which the inquiry is made.

A. No sir.

Q. Did you at any time, while you were connected with the Wabash properties, hear, at any meeting of the boards of directors of any of the companies owning or operating the Wabash properties, or at a meeting of the board of directors of the Des Moines & St. Louis Railroad Company, or in any conference or talk you may have had at any time with any of the officers of either of those companies, any suggestion, statement or discussion with respect to either of those companies changing or affecting in any way their property rights and interests in the Des Moines terminal property, as set forth in the contract of January 2d, 1882?

Defendants' counsel objects to the question as incompetent because it calls for a conclusion of the witness and does not call for any specific facts with reference to matters as to which inquiry is made.

A. Not to my recollection.

Q. In saying in your answers that Mr. Hubbell represented the Wabash interests at Des Moines, you mean the defendant, F. M. Hubbell? A. Mr. F. M. Hubbell, yes sir.

Q. Did the defendant F. M. Hubbell, or the defendant F. C. Hubbell, or anyone representing them, or either of them, or the firm of Hubbell & Son, during the time you were connected with the Wabash properties say anything to you with respect to the advisability of the companies owning the Wabash properties, or any of them, changing their relationship and their rights to the terminal property at Des Moines as set forth in the contract of January 22nd, 1882, or their relations to the Des Moines Union Railway Company?

Defendants' counsel makes the same objection to the question, and objects further because it does not call for any specific conversation with any person, that it simply calls for the conclusion of the witness as to the substance of conversations which he may have had.

A. Not to my recollection.

Q. Did you have any conversation with them on that subject at all?

Defendants' counsel makes the same objection.

A. No sir.

Q. The minute books or record books of the Des Moines Union Railway Company recite that you attended a meeting of the stockholders of that company at Des Moines, Iowa, on the 8th day of April, 1890; do you recall attending such meeting? A. No sir.

Q. Did you subscribe for, or purchase any stock of the Des Moines Union Railway Co.? A. No sir.

Q. What purport to be the minutes of a meeting of the stockholders of the Des Moines Union Railway Co. held on the 8th day of April, 1890, recite that certain amendments were adopted to the articles of incorporation or association of the Des Moines Union Railway Co., and that you proposed some of those amendments; please state what, if anything, you did in connection with that matter?

A. I have now no recollection of doing anything. I recollect in a general way of attending meetings of the directors of the Des Moines Union and taking such action as was laid before us that was necessary to be taken, but this action was generally in pursuance of what I supposed to be a plan carried out under which I was only there to vote upon and consummate, and if I voted it was in accordance with that plan submitted to me as being supposed to be the thing to do.

Q. Who submitted those plans, and on whom, if anybody, did you rely with respect to the matters that were passed upon by the board of the Des Moines Union Railway Co.?

Defendants' counsel objects to the question as irrelevant, immaterial and incompetent.

A. Well, we regarded Mr. Hubbell as running the whole thing up there, and always considered it a Hubbell concern all the way through.

Q. It appears on the face of what is alleged to be an amended article of association or incorporation of the Des Moines Union Railway Co. that you signed and acknowledged such amended articles; please state your knowledge or recollection with respect to that matter?

A. I have now no definite recollection in regard to the matter.

Q. You have stated that Mr. F. M. Hubbell was in charge of Wabash matters at Des Moines; I will ask you to state whether in your transactions in connection with the Des Moines terminals and the Des Moines Union Railway Co., Mr. Hubbell purported to act for and on behalf of the Wabash properties and other railroads interested in the terminal property, or for and on behalf of himself as an individual?

Defendants' counsel objects to the question because it calls for a conclusion of the witness of the actions of Mr. Hubbell and does not call for what Mr. Hubbell did or said.

A. I presumed that he was acting for the railways as a whole, the Des Moines & St. Louis and other interests involved.

Defendants' counsel moves to strike out the answer of the witness for the reasons urged in the objection to the question, and for the further reason that it states the presumption of the witness.

Q. What was your understanding with respect to whether he was acting in his own behalf or as a representative of the railway companies interested in the terminal?

Defendants' counsel objects to the question for the reasons urged in the objection to the previous question, and in the motion to strike out.

A. I knew Mr. Hubbell had charge of the whole affair from its inception and in connection with the construction of the Des Moines & St. Louis, and the getting together of the companies in a terminal arrangement, and considered him as knowing more about it than anybody else.

Q. Whom did he do these things for?

Defendants' counsel makes the same objection.

A. For the companies interested in the terminal property, the Des Moines & St. Louis, the Des Moines & Northwestern and the St. Louis, Des Moines & Northern.

Q. Did he at any time claim to be acting for himself as an individual in those matters?

Defendants' counsel makes the same objection.

A. No sir.

Q. If you signed the alleged amended articles or incorporation or association of the Des Moines Union Railway Co., please state whether you understood that by so doing you were in any wise affecting or changing the rights of the railroad

companies you represented in the terminal property at Des Moines, Iowa, as secured to them by the contract of January 2nd, 1882?

Defendants' counsel objects to the question as calling for a conclusion and as incompetent for any purpose.

A. I assumed that I was acting in the capacity of a director to carry out a plan agreed upon by the property and that my action was merely formal.

Q. Did you understand that by any act you performed, whether in signing the amended articles or otherwise, that you were affecting the rights secured to the Wabash properties, which you represented by the contract of January 2nd, 1882?

Defendants' counsel makes the same objection.

A. I certainly never thought I was parting with any of the rights of the Wabash Company in any action taken.

Q. It is stated by the defendants in this case in paragraph 25 of their answer, as follows: "These respondents admit that the Des Moines Union Railway Co. and these respondents as stockholders in the said company have claimed and asserted ever since the Des Moines Union Railway Co. acquired the said terminal property as hereinbefore set out, that it was the owner of the same and had all of the rights in that property which are incident to or arose out of such ownership and aver that prior to the commencement of this suit, its said claims of ownership were acquiesced in by the complainants and their predecessors, and that prior to the commencement of this suit no claim had ever been made by any one under the said contract of 1882 after the terminal property in question was conveyed to the Des Moines Union Railway Co. as hereinbefore set out. These respondents further admit that they claim and assert that the only rights of complainants in this said terminal property are their rights under the contracts, Exhibits P and R, and on the expiration of the said contracts, the complainants will not have the right to use the said terminal property except upon reasonable terms and conditions and upon payment by them of a reasonable compensation for the rights which may be granted to them under contracts which may then be made with the Des Moines Union Railway Co.;" the contracts referred to as Exhibits P and R, are the contracts of date May 10th, 1889, and July 31st, 1897, being contracts with respect to the operation of the terminal property; now, I will ask you whether you ever heard the Hubbells or anyone else make such claim of ownership as stated in that part of the answer just read to you while you were connected with the Wabash properties?

A. Not to my recollection.

Q. Was there at any time any discussion between you or in your presence, or any conversation, wherein either of the defendants Hubbeds set up any claim adverse to the interests of the Wabash Companies and other railroad companies that were using the Des Moines terminals?

Defendants' counsel states that he makes the same objection to the question and also objects because it calls for a conclusion of the witness, and not for a specific statement of facts, that it is incompetent.

A. I don't recall any.

Q. Do you think it likely that if they had set up such a claim, that they did not represent the Wabash interests, but that they were acting for themselves, that you would have known of it?

Defendants' counsel objects to the question as clearly incompetent, as asking for a conclusion of the witness, and asking for a pure matter of speculation.

A. I think it would have impressed itself upon me.

Q. The record book or the minutes of the Des Moines Union Railway show, in or about the month of May, 1888, being about the time you began the operation of the Des Moines terminals in the name of the Des Moines Union Railway Company, that a resolution was adopted by the board of directors of the Des Moines Union Railway Co. declaring that the operating expenses, taxes, and interests on bonds, then or thereafter issued, after deducting amounts received from other sources for rentals, be paid pro rata on a wheelage basis by the three railroad companies then using such terminals, and that such payments, including interest, shall be made monthly; now, do you know how the funds derived from rentals of property and handling and switching cars for others were distributed by the Des Moines Union Railway Co. after the passage of that resolution?

A. Up to the time of my leaving the property, my recollection is, they were credited on the expenses, the operation and maintenance of the property.

Q. On the bills rendered against the companies?

A. The bills against the respective proprietary lines.

Q. The minute books or records of the Des Moines Union Railway Co. show that a resolution was passed on or about the 11th day of February, 1891, as follows: "It is ordered that the rents collected for the use of the Company's real estate and the switching charges paid in be credited upon the bills of the different tenant companies occupying this company's

terminals, giving to each company its share ascertained by wheelage;" please state what was done with the revenue arising from switching done for other roads and from rentals received from other roads and for property, pursuant to that resolution, if you recollect?

A. I understand it was credited in the bills against the proprietary lines for their proportion of expense and maintenance, and operation of the property.

Q. Do you remember the passage of that resolution?

A. In a general way, yes sir.

Q. Could you state the circumstances or reasons for passing it?

Defendants' counsel objects to the question as irrelevant and immaterial.

A. My recollection is it was done as the usual method of disposing of earnings of properties in which the roads had a common interest.

Q. It appears from the record books or minutes of the Des Moines Union Railway Company that another resolution was passed on or about the 7th day of January, 1892, which I will now read to you: "Whereas, this company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies, therefore, be it resolved, that until the further action of the board the sums received as rent of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purpose"; if you recall, please state the reasons for and the circumstances surrounding the adoption of that resolution?

Defendants' counsel makes the same objection.

A. My recollection is our superintendent, Mr. Wagner, or Mr. Seeley, I forget which one was superintendent at that time, complained of having no funds with which to carry on the current expenses, and we agreed that was as simple a way of putting him in funds as any we could adopt, as we did frequently in terminal companies, allowed them to accumulate funds to get working capital, and we followed that in this case.

Q. That is, the working capital was to meet the current expenses?

A. Yes sir, it was the equivalent of a contribution from each of the roads to the same extent, the terminal retaining it and utilizing it as a fund for these current expenses.

Cross-Examination

By Mr. Guernsey:

Q. I want to get these dates clearly in my mind before I begin. Now, when were you first connected with the Des Moines Union? A. As a director of the Des Moines Union?

Q. In such a way that you were familiar with the transaction of its affairs?

A. My first familiarity with the Des Moines Union by direct connection was in 1887.

Q. Now, when did you say you first became connected with one of the Wabash companies?

A. I went with the old Wabash, St. Louis & Pacific before the receivership in 1883.

Q. How long before 1883?

A. I think it was—well, the Wabash, St. Louis & Pacific was being operated by the Missouri Pacific, I have forgotten what time they took it over, I was with the Missouri Pacific when they took over the operation of the Wabash, St. Louis & Pacific, and I staid with them in that capacity until the Wabash, St. Louis & Pacific was put in the hands of a receiver, which was May 29th, 1884, and then the Missouri Pacific and Wabash were separated.

Q. I want to get, if I can, clearly, the date of your first connection with the Wabash, that is, in such a way that you were brought into touch with these matters?

A. I think I may very truthfully say from the date of my connection, because as secretary and assistant to the general manager, Mr. Talmage, the bills and matters pertaining to the operation of all parts of the Wabash, St. Louis & Pacific came to me.

Q. Your first connection with the Wabash, as near as you can state it now, was in May, 1883? A. Yes, sir.

Q. And you were then the secretary to the general manager? A. A. A. Talmage, yes sir.

Q. And you continued to occupy that position until you became assistant general manager, and on Mr. Talmage's death you succeeded him as general manager? A. Yes sir.

Q. And when was that? A. That was in July, 1887.

Q. Now, in the mean time the lines west of the Mississippi River had been sold under foreclosure proceedings?

A. Yes sir.

Q. And the Wabash Western Railway was organized to take over that property? A. Yes, sir.

Q. And the Wabash Western took over the property sometime in 1886? A. I have forgotten just the date.

Q. April 1st, 1887, Mr. Pryor says?

A. He has probably got it right.

Q. Then you spoke about the consolidated property, do you mean the Wabash Railroad Company?

A. Yes sir, that was consolidated in 1889.

Q. Now, when was this terminal property in Des Moines acquired?

A. Previous to my connection with the road I think it had been acquired.

Q. So that you have no personal knowledge as to what took place in connection with the acquisition of this property?

A. No sir.

Q. And you don't know what, if anything, Mr. F. M. Hubbell had to do with it? A. No.

Q. Of your personal knowledge? A. No.

Q. Now, this contract of January 2nd, 1882, was made prior to your connection with the Wabash Company?

A. Yes sir.

Q. So that you have no personal knowledge with reference to the matters that led up to that? A. No sir.

Q. Your personal knowledge could not begin earlier than May, 1883? A. No sir.

Q. And you began to assume the responsibility in July, 1887, probably? A. Yes sir.

Q. Mr. Minnis asked you, I think, if I got it correctly, "Who did he do these things for", referring to Mr. Hubbell; now, what things did you have in mind when you answered that question?

A. I had in mind the organization and conduct of the whole affair, we regarded Mr. Hubbell as the whole thing up there.

Q. I want something concrete, tell us some one thing that Mr. Hubbell did that you had in mind in answering that question? A. The preparation of the agreements—

Q. Pardon me for interrupting you, what agreement?

A. Covering the Des Moines Union.

Q. What agreement did Mr. Hubbell prepare?

A. The agreement of 1882.

Q. That was before your day? A. Yes.

Q. So you don't know anything about that personally, and that, as a matter of fact, was prepared here in New York, wasn't it? A. I don't know.

Q. Now, tell me one agreement that you do know of that Mr. Hubbell made?

A. The form in which these matters generally came before us was this—

Q. I beg your pardon, Mr. Hays, but please confine yourself to a direct answer to my question, I do not want to get in any controversy with you, but I do want to hold you down to my questions; now, tell us, if you can, one specific agreement that Mr. Hubbell prepared?

A. When, you say "prepared", do you mean wrote himself?

Q. I mean in the sense in which you use the word, drawing it?

A. What I meant was he oversaw the preparation of it like I do in such matters, of course I don't write agreements myself but I direct the preparation of them.

Q. You couldn't testify that he prepared agreements without having some agreement in your mind; now, tell us one?

A. Well, the agreement of 1882.

Q. But you have not any personal knowledge of that?

A. No.

Q. So that you could not have based your testimony on that; now, then, tell us some that you have some knowledge of yourself, some agreement that Mr. Hubbell prepared?

A. I assumed he was the father of all the agreements.

Q. I don't want your assumptions, I want what you know, tell us some one that he prepared, if you can?

A. I cannot vouch for his having prepared in the way you mean, if you mean the drawing of them, any of them.

Q. Well, that is what I thought; going back a little, when was the Des Moines Union Railway Company organized?

A. 1887, wasn't it? Somewhere along there.

Q. I don't want to mislead you on a date, the articles were adopted in December, 1884, I think; at the time of the organization of the Des Moines Union Railway you were not charged with responsibility as to any of these matters?

A. No.

Q. What, if anything, did you have to do with the organization of the Des Moines Union Railway, you personally?

A. Nothing.

Q. And there was some one who represented the Wabash Company, or the Purchasing Committee, or whoever it was in the series of people there, to whom this property passed, that did represent the Wabash at that time, there was somebody? A. I assume so.

Q. You take that for granted? A. Yes sir.

Q. And that man would probably, if he could remember distinctly what occurred twenty-five years ago, know what his purpose was at that time, you don't know what the man's purpose was, do you? A. No sir.

Q. This receivership lasted from the time you became connected with the Wabash until, as to this property west of the river, the 1st of April, 1887?

A. Yes sir.

Q. How long did the receivership east of the river last?

A. Until August 1st, 1889, I think.

Q. Were you connected with the properties east of the river prior to the termination of that receivership?

A. No sir, not with what were known as the properties, we were operating the Chicago and Detroit line, but that was operated for the Purchasing Committee.

Q. During this receivership there was a vast amount of complication and complicated litigation that took your attention in addition to the ordinary business of operating the railroad?

A. Not so far as the eastern lines were concerned, because I had nothing to do with them.

Q. But the western lines? A. Yes sir.

Q. Everything was mixed up there? A. Yes sir.

Q. And didn't the lawyers require first consideration and claim the right of way until that was wound up?

A. Yes sir.

Q. And they required a great deal of time, of course?

A. Yes sir.

Q. When you became connected with the Des Moines Union Railway Company who were the directors of that company?

A. My recollection is that Mr. F. M. Hubbell, I think Gen. Dodge, Mr. How, I am not sure whether Mr. F. C. was another one or not, I don't think he was, and there was another, Mr. Thompson, I think he was there, that is all I recall now.

Q. I will go back to that later. Now, you stated on your direct-examination that the purchase of terminals there was in charge of Mr. F. M. Hubbell; you mean, I suppose, after you became connected with this property, you didn't mean to testify as to what transpired before you had any personal knowledge of the matter, did you?

A. Well, that was my understanding that he had when I say prior, prior to that time it was my understanding he was.

Q. Aside from what you had been told by somebody, or your understanding, after you came to have some personal knowledge of this matter, what, if anything, did Mr. Hubbell have to do with purchasing these terminals?

A. I think he had everything to do with them.

Q. The purchase after you went in there?

A. Yes sir.

Q. Can you tell us any purchase that was made after you went in there by Mr. Hubbell or by anybody else while you were there without conference with you and without your acquiescence?

A. I cannot describe properties that were bought but I recall conversations about the properties, about the desirability of buying properties.

Q. In other words, he would talk to you and suggest that it was desirable to do something?

A. Yes sir.

Q. And you would discuss it and if it was concluded it was desirable then he would consummate it?

A. Yes sir.

Q. That is what you mean by saying he had charge of it?

A. Yes sir.

Q. And there was always one other factor at that time, wasn't there, and that is where you could borrow the money?

A. The question of funds, yes sir.

Q. I imagine that was a live one?

A. That was always a live question.

Q. Who prepared the original articles of incorporation of the Des Moines Union Railway Company?

A. I don't know.

Q. You were not present at the meeting at which they were adopted? A. No sir.

Q. You don't know whether they were submitted to counsel for the Wabash Company, or whatever the name was, and approved or not? A. No sir.

Q. You don't know whether they were prepared by such counsel or not? A. No sir.

Q. You have no personal knowledge as to the action of the Wabash Company in adopting those original articles?

A. No sir.

Q. So that you don't know of your personal knowledge whether it was the purpose of whoever represented the Wabash interests then to in any way affect the contract of 1882, or not? A. No sir.

Q. The only inference that you could make about that would be by looking at the articles and seeing what they said? A. Yes sir.

Q. How long is it since you read this contract of January 2d, 1882?

A. I read it this morning.

Q. Now, you state that while you were connected with the company you were not authorized to make any changes in this contract, as I understood you on your direct-examination: who did represent the Wabash in Des Moines Union matters while you were its general manager?

A. I was a director on the Board, I think we had two or three directors, two I think, Col. How and myself.

Q. And who was Col. How?

A. He was at that time vice-president of the company.

Q. You and Mr. How represented the Wabash interests in connection with the Des Moines Union during the time that you were general manager of the Wabash? A. Yes sir.

Q. And you voted the Des Moines Union stock that was held by the Wabash or the Purchasing Committee?

A. Yes sir.

Q. And by voting that stock you elected yourselves and others directors of the company, the Des Moines Union Company?

Counsel for complainants object to the question for the reason that the articles of the Des Moines Union Company provide that the railway companies which organized the Des Moines Union Railway Company should nominate the directors, and, for the further reason, that there was no stock issued or outstanding of the Des Moines Union Railway Company at any time during Mr. Hays' connection with the Wabash properties.

A. I was going to raise the same point that Mr. Minnis has. My recollection is our holding gave each of the proprietary companies the right to nominate their directors in the company, and the Colonel and myself were nominated as directors for the Wabash in that company; I don't think we were elected by the usual method.

Q. You know that the records of the Des Moines Union showed each year that you had a stockholders' meeting?

A. Of course I don't go back on the records, I assume, Mr. Guernsey, that if the record did show it it was a matter of confirmation of the nomination of the Wabash road, I think.

Q. I find this in the record of a meeting of the board of directors of the Des Moines Union Railway held November 8th, 1887: "The meeting being called to order by the vice-president, and the death of A. A. Talmage being suggested, Charles M. Hays was unanimously elected to fill the vacancy caused by his death, and said Hays being present took his seat on the board;" your recollection is that that is the record of your first election as a director of the Des Moines Union Railway Company, is it not? A. Yes sir.

Q. Now, I notice the first thing that was done here was this: "On motion of Mr. Charles M. Hays it was unanimously resolved that this company be authorized to purchase from Messrs. Polk & Hubbell two lots described as follows, to-wit: Lots No. 2 and 3 in Block 33 of Keene & Poindexter's Addition to the City of Des Moines, at such price as may be agreed upon between Messrs. Polk & Hubbell and O. D. Ashley, secretary of the Purchasing Committee, and the Wabash, St. Louis & Pacific Railway Company, said lots to be paid for in the bonds of this company at par"; now, is that one of the purchases that you referred to of which Mr. Hubbell had charge? A. Yes sir.

Q. Now, it appears that you offered the resolution and that the purchase was from Mr. Hubbell and one of the grantors?

A. I think he probably handed me the resolution to offer.

Q. And that the price was to be agreed upon by Mr. Ashley and the Wabash on the one side and Polk & Hubbell on the

other; now, would you say that Mr. Hubbell had more to do with that than the Wabash or Mr. Ashley? A. No.

Q. Now, Mr. Hays, I want to read to you a part of the stockholders' meeting held on March 31st, 1888: "The stockholders' met this day pursuant to adjournment at the office of the company in Des Moines, Iowa. There were present and represented at the meeting the following named stockholders of said company, to-wit: G. M. Dodge, Jefferson S. Polk, Charles M. Hayes, F. M. Hubbell, James F. How, W. H. Blodgett, and L. M. Martin. On motion G. M. Dodge was elected chairman and F. M. Hubbell secretary of the meeting. The Chairman then requested the reading of the minutes of the meetings of the board of directors for the past year, which was done, and after consideration of the same, the action of the board as therein indicated was approved. On motion the meeting proceeded to the election of a board of directors for the ensuing year. James F. How, on behalf of the Wabash, St. Louis & Pacific Railway Company, and of the Des Moines & St. Louis Railroad Company, and of the Wabash Western Railway Company, nominated Charles M. Hays, W. H. Blodgett, John S. Polk, and James F. How to be voted for as directors to represent said interests. F. M. Hubbell, on behalf of the Des Moines & Northwestern Railway Company, nominated Jefferson S. Polk and F. M. Hubbell to be voted for as directors to represent said company. G. M. Dodge, on behalf of the St. Louis, Des Moines & Northern Railway Company, nominated L. M. Martin and G. M. Dodge to be voted for as directors to represent the interests of said company. A ballot was then taken for the election of said board of directors and it appearing that each of the above persons so nominated received the unanimous vote of the stock present and represented for said office were each declared directors of this company for the ensuing year"; now, that is the record of the first stockholders' meeting at which you were elected a director?

A. Yes sir.

Mr. Minnis: You were reading the minutes kept by Mr. F. M. Hubbell when, I understand, it is agreed on all hands that the stock of the Des Moines Union Railway Company was not issued to anybody until 1890. You are interrogating the witness about minutes that purport to be stockholders' meetings, when, as I understand, everybody agrees there was no stock issued them at all.

Mr. Guernsey: I am not agreeing to anything now, I am just asking questions.

Mr. Minnis: I object to that unless the witness first is interrogated as to whether there were any stockholders' meetings.

Mr. Guernsey: I suppose that would be asking for a conclusion of law and I have great confidence in the witness' experience, judgment and ability. I don't know that he has ever qualified as a member of the bar.

Mr. Minnis: The point is you are reading to Mr. Hays what purports to be minutes of stockholders' meetings. There was no stock issued at that time.

Mr. Guernsey: What the fact is about that will appear, and I believe—

Mr. Minnis: If Mr. Hays merely means by saing "Yes" to your question that that is recited there, that is one thing.

The Witness: Of course, that is what I mean; he is reading the record of a meeting and I say "Yes, that is the record".

Mr. Guernsey: I do not hope by indirection to get anything out of Mr. Hays, and, in the next place, I don't suppose he could determine the legal effect of these things, and we cannot ask him to do it anyhow.

The Witness: I think it is fair for me to qualify that and say yes, it is, if you read it out of the record. I take it for granted that you are reading a correct copy of a correct record, of course, and that is all.

Mr. Guernsey: I believe I am, and I believe I am reading it correctly.

The Witness: It is fair to assume that you are.

Q. Now, then, at this meeting it appears, if this record is correct, that Mr. How nominated one half of the directors of the Des Moines Union for the ensuing year; Mr. How was at that time the vice-president, and what other office, if any, did he hold in the Wabash? A. I think that is all, vice-president.

Q. And that Mr. Dodge nominated two more directors representing the road, and that Mr. Hubbell nominated only two directors out of the eight, so that at that time the Hubbell interests had simply one-fourth of the directors of this property, that is correct, isn't it? A. Yes sir, according to the record.

Mr. Minnis: That is correct if the record is, Mr. Hays don't know.

Mr. Guernsey: I do not say Mr. Hays will say that he can remember that on a certain day certain action was taken, I would like to have Mr. Hays say this, that all he knows as to what transpired at these meetings is what the record of the meetings show, if it is true.

The Witness: If the records are correct.

Q. Can you, without the records tell us what transpired at any meeting? A. No.

Q. The only evidence that you would have, if you wished yourself to ascertain what transpired at any one of these meetings, would be the records of those meetings, that is right, isn't it, you can't remember?

A. I can't remember, no, I must depend on the accuracy of the record.

Q. You were a director in 1888 in how many corporations?

A. A large number, I couldn't tell you the number of them.

Q. You couldn't remember what they were, could you?

A. No sir, I could remember a number of them, but whether I got them all in or not, I couldn't say.

Q. You couldn't pretend to remember what transpired at the various meetings of the board of directors or the stockholders of those various corporations? A. Not in detail.

Q. Could you give us a general outline at this time?

A. I have a general recollection of our meeting for certain purposes and to do certain things and that would be such acts as were customary for directors to take at such meetings.

Counsel for defendants states that he would like to have the record show that this cross-examination as to this matter of Mr. Hubbell representing the Wabash interests in the Des Moines Union is subject to his objection to this testimony given on the direct examination; that he does not want to have it through inadvertence appear that he waives it.

Q. Now, what interests had the Wabash in Des Moines that Mr. Hubbell represented?

A. Its interests in this terminal property.

Q. During all of the time that it was interested in this terminal property, it had its own members of its board of directors, didn't it? A. Yes, but they lived in St. Louis.

Q. But they came to Des Moines to attend the directors meeting, didn't they?

A. Yes sir, but the general supervision and oversight of the property was left to Mr. Hubbell.

Q. And they frequently conferred with the people in Des Moines, didn't they, the Wabash directors?

A. I assume so.

Q. And the president of the company was Gen. Dodge; when did he cease to be president with reference to the severance of your connection with it?

A. My recollection is, that the General was president only for a short time after my connection, I don't think more than a short time after my connection with it.

Q. We can get it probably in a moment; our memorandum shows that F. C. Hubbell was elected president on the 7th of January, 1892, and he succeeded Gen. Dodge?

A. I have no recollection of the General presiding at a meeting more than once or twice.

Q. I can't tell you without looking at these meetings, but if the memorandum—

A. I have an impression that the General did not come out much, I very rarely saw him.

Q. Well, the record will show, it seems he was chairman here in 1888, I will turn over to the next year, we will get that hereafter. When Gen. Dodge ceased to be president he was succeeded by Mr. F. C. Hubbell, wasn't he? A. Yes sir.

Q. Mr. F. C. Hubbell then had the active supervision of the operation of the Des Moines Union property, hadn't he?

A. Yes sir.

Q. Now, Mr. F. M. Hubbell was interested in the Des Moines & Northwestern Railway,—I won't attempt to name that with absolute accuracy, because the name changed so many times?

A. The St. Louis, Des Moines and Northers, and Des Moines & Northwestern are the two small lines.

Q. The St. Louis, Des Moines & Northern was Gen. Dodge's line? A. I thought he was interested in both.

Q. He was interested in both but he had a preponderating interest in the St. Louis, Des Moines & Northern, or the Boone line and Mr. Hubbell had the controlling interest in the Des Moines & Northwestern?

A. I didn't know anything about their respective interests, I knew they were both in both properties.

Q. Do you know of anything that Mr. Hubbell ever did in connection with the Des Moines Union property outside of purely formal operating matters without conference with the Wabash directors?

A. No, my recollection of the situation is this, we went up there to Des Moines, Mr. Hubbell and his son were living in Des Moines, they knew more about the property than anybody else, we valued their advice and judgment and we did about what they thought we ought to do.

Q. That was in the acquisition of additional property?

A. Yes sir, or anything about the property, for that matter.

Q. Well, what other questions were there of that kind, aside from the acquisition of additional property that occurs to you?

A. The question of the creating of a fund for operating expenses.

Q. During the early period—

A. Questions of policy in connection with the property, in other words, their relations were such as happens with lines of every railroad where they have some associate or someone

connected with the property whom they look to to attend to everything connected with their interests. I will illustrate what I mean, because this happens on all roads, that it was like a Mr. J. F. Joy did at Detroit, who was left to do everything for the road at Detroit, and Mr. Hubbell was such a man for us at Des Moines.

Q. When did Mr. Hubbell acquire the Des Moines & Northwestern? A. I don't know, sir.

Q. After Mr. Hubbell acquired the Des Moines & Northwestern, did you expect him to represent the Wabash where the interests of the two companies were adverse?

A. I did not see any reason why they would be adverse.

Q. Did you expect Mr. Hubbell, where the interests of the two were adverse, after the acquisition of the Des Moines & Northwestern to represent the Wabash?

A. I always considered they were the same, they were identical.

Q. Then as far as you know Mr. Hubbell never did represent the Wabash in any matter where the interests of the Wabash were adverse to the Des Moines & Northern and Des Moines & Northwestern? A. No sir.

Q. What he did was this, wasn't it, there was this terminal company there in Des Moines, Mr. Hubbell was on the ground, the Wabash was interested in it; now, as questions arose affecting the terminal company, you naturally asked his advice and were naturally inclined to rely on the information that he had as to that local situation there, do I get it correctly?

A. Practically so; we would meet there and Mr. Hubbell would say, "I should think we ought to do this, that and the other thing," and we naturally acquiesced in what Mr. Hubbell said.

Q. You state that you did not subscribe for any Des Moines Union stock, did you ever hold any?

A. Not to my knowledge.

Q. As a matter of fact, isn't this correct, that one share of the Wabash stock was put in your name to qualify you as one of the Wabash directors?

A. I presume so, but I didn't hold it, it was left in the record book, it was just there to qualify me.

Q. You were not the beneficial owner of it?

A. No sir.

Q. But you were there in a representative capacity, representing the Wabash interests, and the stock necessary to qualify you had been put in your name?

A. That is subject to what was stated before, Mr. Minnis said there was no stock issued.

Q. I am not asking what Mr. Minnis said, but what you remember about it?

A. I don't remember anything about the stock standing in my name, the certificate would be made up and stand in the book and never taken out, just stand in the certificate book.

Q. And it might be taken out? A. Yes sir.

Q. You have no recollection about that?

A. I mean it would not be taken out and handed to me, no stock was ever taken out and handed to me as a director.

Q. That is, you have no recollection of that? A. No.

Q. And still if we should produce the stock book and show your receipt for it, you would think that you had receipted for it?

A. That would be pretty good evidence.

Q. Now, who was Jefferson S. Polk?

A. Well, he was known by me as an associate of Mr. Hubbell's.

Q. Was he a lawyer? A. I think so.

Q. Was he a member of the firm of Polk & Hubbell?

A. That is my understanding.

Q. Will you say that Mr. Polk did not have charge of the preparation of these papers and things of that kind?

A. No.

Q. You don't know, do you? A. I don't know.

Q. Who was the attorney for the Wabash in Des Moines during this period? A. I think Mr. A. B. Cummins.

Q. Not the first part, Mr. Runnells?

A. Mr. Runnells, yes.

Q. Mr. John S. Runnells, and he was one of the Wabash directors for the Des Moines Union for sometime, was he not?

A. I don't recollect about that.

Q. And after Mr. Runnells went to Chicago, Mr. A. B. Cummins became the attorney for the Wabash in Des Moines?

A. Yes sir.

Q. And was nominated as one of the Wabash directors?

A. I can't say positively as to that.

Q. Now, passing that for the present, you said, I believe, that you never intended to in any way modify or affect the contract of January 2nd, 1882? A. Yes sir.

Q. Now, when you adopted the amended articles of incorporation you intended to adopt them, didn't you?

A. Yes sir.

Q. And you intended then to have the effect that the law would give to them, didn't you? A. Yes sir.

Q. And you were not the counsel for the Wabash Company at that time, were you? A. No sir.

Q. And you relied so far as questions as to the effect of those things, upon the counsel for the company, didn't you?

A. Yes sir.

Q. You did not attempt to decide those things?

A. No sir.

Q. Now, do you remember whether you were present at a meeting of the stockholders of the Des Moines Union Railway Co., held on January 3rd, 1890?

A. No sir, I don't remember the date.

Q. Do you remember that was the year in which these Articles of incorporation were amended?

A. I only know it by you gentlemen having mentioned it.

Q. Now, assuming that the record of the meeting of the stockholders of the Des Moines Union Railway Co., purporting to have been held on the 3rd of January, 1890, contains this; "James F. How moved that the question of amending the articles of incorporation of this company as well as the question concerning the issuing of stock for the purchase price of the terminal property be referred to attorneys W. H. Blodgett and A. R. Cummins for their investigation and recommendation," that that motion was seconded and carried, would you say that the amendment to the articles made in 1890 was suggested by Mr. How or not?

Counsel for complainants objects to the question for the reason that the question does not call for knowledge or information that the witness has, but asks an opinion merely.

Q. I will change the form of the question, I suppose that could be construed that way, but assuming that the record of this meeting contains the statement that I have just read to you, would you say that the change in those articles was suggested by Mr. Hubbell, or not?

Counsel for complainants objects to the question, because it does not call for the recollection of the witness or his knowledge of the facts.

A. I don't recall anything about it.

Q. Then you would have to say that you don't recollect who in the first instance suggested that matter, that is the change of the articles? A. Yes sir.

Q. Now the W. H. Blodgett referred to here is Col. Blodgett, who was at that time the general counsel or general solicitor for the Wabash Company, that is right, isn't it?

A. Yes sir.

Q. And Mr. A. R. Cummins at that time was the local attorney in Des Moines for the Wabash Company?

A. Yes sir.

Q. These two gentlemen were both Wabash directors of the Des Moines Union at that time? A. Yes sir.

Q. And Mr. How at that time was the vice-president of the Wabash Company and also a Wabash director of the Des Moines Union? A. Yes sir.

Q. Now, it appears in a record of what purports to be a meeting of the stockholders of the Des Moines Union Railway, held on February 18th, 1890, that the following proceedings were had: "Thereupon A. B. Cummins presented certain amendments to the articles of incorporation; thereupon F. M. Hubbell moved that the meeting of the stockholders do now adjourn for the purpose of having further opportunity to examine said amendments to meet on Tuesday, the 8th day of April, 1890 at 10 o'clock A. M., which motion being seconded was unanimously carried, and thereupon the meeting of stockholders adjourned to meet as aforesaid;" have you any recollection of the matters that are referred to in the extract that I have just made from that record? A. No sir.

Q. Now, turning to the meeting of April 8th, 1890, we find this, "Thereupon F. M. Hubbell moved that Article 1 of the Articles of Incorporation be stricken out and the following substituted in lieu thereof 'Article 1, the name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be at Des Moines in the County of Polk, in the State of Iowa.' This motion was seconded by C. M. Hays and was adopted by the vote of all the stockholders of the corporation;" have you any recollection with reference to that matter? A. No sir.

Q. It then appears that "C. M. Hays moved that Article 2 be stricken out and the following substituted in lieu thereof," a long Article 2 following, have you any recollection of that?

A. No sir.

Q. Then Mr. Martin made a motion as to Article 3, I presume you have no recollection as to that? A. No sir.

Q. And Mr. Martin, by the way, was an officer of Gen. Dodge's railroad at that time, wasn't he?

A. General freight agent, I think.

Q. And did not Mr. Martin also sustain some relation to the Wabash?

A. Later on he did, I am not sure whether it was at that period or not.

Q. He represented the Wabash in Des Moines in some capacity later on while you were connected with the Wabash?

A. Yes sir.

Q. And in what capacity did he later on represent it?

A. General agent, I think.

Q. Having charge of what business there?

A. Our freight and passenger business.

Q. Then Mr. Cummins moved that Article 4 be stricken out and something substituted for it; Mr. Cummins was at that time your local attorney in Des Moines, wasn't he?

A. Yes sir.

Q. You have no recollection of that, I suppose?

A. No sir.

Q. Have you, aside from the records, any recollection of the fact that these articles were amended?

A. No sir, I have not.

Q. Have you read these records recently? A. No sir.

Q. So that you had, when you testified on your direct examination, no personal recollection of these transactions relating to the amendment to the articles? A. No sir.

Q. That is, you mean you had no such recollection?

A. I had no recollection of the amending of the articles.

Q. Have you any reason to suppose that you didn't do at that meeting what the records of that meeting show you did do?

A. No sir, always qualifying, if the records are correct.

Q. Now, the record shows this, referring to that meeting: "C. M. Hays moved to add to the articles of incorporation Article 15, as follows: The proceedings of a meeting held December 10th, 1884, with certain preambles including a contract executed on the 2d day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as part of the articles of the incorporation of this company, are hereby repealed, stricken out and expunged, which motion was adopted", and so on; in the first place, do you know now what meeting of December 10th, 1884, is referred to there?

A. No sir.

Q. And when you testified on your direct examination did you know that the records show that you moved that the article I have just read be adopted?

A. No sir; wasn't this December, 1884?

Q. This was the meeting of April 8th, 1890, did you at that time recollect that such an article had been adopted at the meeting of April 8th, 1890?

A. This article that you have just read?

Q. The one I have just read? A. No sir.

Q. And did you at that time recollect that you had signed and acknowledged the amended articles of incorporation containing this article that I have just read? A. No sir.

Q. Now, if, as a matter of fact, the record of this meeting, April 8th, 1890, shows that the article I have just read was adopted, and if, as a matter of fact, it appears that you

signed these amended articles containing this article so adopted, then you wouldn't say that that transaction did not occur, would you? A. If the record was correct.

Q. Well, suppose we assume that the record was incorrect, but we assume that the amended articles have your name signed to them and that you acknowledged them before a Notary Public, in the face of that would you say that they were not adopted? A. No sir.

Q. And in the face of that you would not say that you did not sign them, would you? A. No sir.

Q. Now, then, if this record appeared to show that the matter of these amended articles was referred to Col. Blodgett, the General Solicitor or General Counsel at that time of the Wabash Company, and to Mr. Cummins, its local attorney, would you say that these amended articles were not prepared by them?

Counsel for complainants objects to the question because the question does not call for any recollection or information of the witness.

Q. What I want to know is this, if the record shows those things, have you an independent recollection which you would be willing to rely on yourself which would enable you to say that Col. Blodgett and Mr. Cummins did not prepare these amendments?

A. I would not be able to say whether they did or did not.

Q. You would say this, would you not, that it would be a very unusual thing for you to act on such a matter as this without submitting it to the Legal Department of your company? A. Yes sir.

Q. And you would be able to say, would you not that you were entirely confident that it had been submitted to the Legal Department of your company and approved by it before you acted on it? A. Yes sir.

Q. Do you remember whether you discussed these amended articles with Mr. Hubbell or not? A. No sir.

Q. You may have and may not? A. Yes sir.

Q. Now, you were asked whether Mr. Hubbell at any time claimed to be acting for himself in those matters, I think the exact question was, "Did he at any time claim to be acting for himself in those matters"; now, during all the time that Mr. Hubbell was a Des Moines Northwestern Railroad Company director in the Des Moines Union, he claimed to be such director, didn't he? A. Yes sir.

Q. And he claimed to be representing that company on the Des Moines Union board, didn't he? A. Yes sir.

Q. Just as you other gentlemen claimed to be representing the other companies? A. Yes sir.

Q. And that was clearly and distinctly understood, wasn't it? A. Yes sir.

Q. Mr. Hays, if you yourself were trying to get at the true inwardness of these old transactions involving this Des Moines Union Railway Company property, would you go to the records or would you rely on your recollection?

A. I would go to the records.

Q. Now, you were asked about the resolution adopted in May, 1888, by the board of directors of the Des Moines Union Railway Company which provided the basis for the distribution of the expenses incident to the operation of the property there, including the taxes, and so on; have you any recollection of that matter, or do you simply rely on the record there?

A. I have a general recollection of that matter.

Q. Do you remember when the Des Moines Union actually took over the operation of the property?

A. My recollection is it was sometime in 1887.

Q. Do you remember how long it was before there was a written contract signed with reference to the matters that were referred to in this resolution?

A. No sir, I don't recall the time that intervened.

Q. You do, however, recall the fact that at first there was simply a resolution passed? A. Yes sir.

Q. And that later there was a formal written contract entered into that was intended to carefully define the rights of all the parties there? A. Yes sir.

Q. And if you were endeavoring for your own benefit without reference to this lawsuit to ascertain just what the rights of the parties were at that time, you would go to that contract, wouldn't you? A. Yes sir.

Q. And you would rely on that as against your recollection, wouldn't you? A. Yes sir.

Q. Now, your attention was called to a resolution of February 11th, 1891, with reference to what we call the surplus earnings; have you any definite recollection with reference to that resolution aside from what was read to you from the record? A. Only a general recollection of the meeting.

Q. As a matter of fact were there any surplus earnings prior to February 11th, 1891? A. Surplus in what respect?

Q. In the sense that we have used it through all this controversy?

A. You mean when you say surplus earnings we were taking the current earnings, do you mean current earnings or surplus earnings? The current earnings of course—when you say surplus you mean over and above the amount of fixed charges on the property, I assume you mean current earnings.

Q. No, I mean surplus earnings, perhaps in an improper sense, but in the sense in which the term has been used for twenty years in reference to these earnings here of the Des Moines Union, it is the personal use of the term made by the parties to that arrangement, but I will abandon that; taking the earnings referred to in the resolution of February 11th, 1891, from rents of real estate and switching for other roads, were there any earnings of that kind of any consequence prior to the date of that resolution, as far as you know?

A. There were current receipts, what the amount of them was I don't know.

Q. You think there were some?

A. I think there were some, yes.

Q. After January 7th, 1892, and while you were with the Wabash Company, were these earnings from switching, and revenue derived from real estate, ever divided among the tenant companies?

A. My recollection is in the way that was spoken of in the direct examination, by crediting on the bills of the companies.

Q. Your recollection is that they were so divided?

A. Yes sir, credited on the expenses of the companies according to their wheelage.

Q. I think that is an error, Mr. Hays?

A. How long they continued to be credited, I do not know.

Q. You do know, don't you, that thereafter various amounts of those earnings were used for capital expenditures of the Des Moines Union with your concurrence?

A. No, I do not, my understanding of it was that we created a temporary fund, supposed to be temporary, for the purpose of meeting the current expenses, and that ran along without any distribution.

Q. You have no recollection of any use being made of that fund except for current expenses?

A. That is all, as far as I remember.

Q. I want to call your attention to this from a record of a meeting of what purports to be the minutes of the monthly meeting of the directors of the Des Moines Union Railway Company held at the office of the company at ten o'clock a. m. July 10th, 1894— A. Was I present?

Q. I was just looking to see; no, but you are referred to. Now, in the record of that meeting this appears: "On motion F. M. Hubbell, the treasurer, was directed to pay the Abbie-Bechtel mortgage of $2000 with accrued interest thereon upon the south 44 feet of Lot 10 in Block 35, Fort Des Moines, Iowa, upon which is situated in part the freight house of this company, and upon payment of same to have the mortgage cancelled of record, provided, however, that the written con-

sent of Charles M. Hays could be procured"; now, do you remember thereafter writing and consenting to the payment of this money? A No sir.

Q. Mr. Hays, I call your attention to a letter marked Defendant's Exhibit No. 1, A. E. M., and ask you whether that is a letter which you wrote to Mr. Hubbell at about its date with reference to the matter referred to in this resolution?

A. Yes sir, that is my signature.

Q. This letter reads as follows, doesn't it: "The Wabash Railroad Company. Office of Charles M. Hays, Vice-President and General Manager. St. Louis, Mo., August 9th, 1894. Mr. F. M. Hubbell, Secretary and Treasurer. Dear sir: I have yours of the 7th showing surplus earnings of Des Moines Union Railway on hand July 1st of $15,312.89, and after paying note of L. P. Hill of $4000 and interest, $180, $11,132.89 on hand. I approve of your application of $2000 of this amount to the payment of the Abbie-Bechtel mortgage. Yours truly, Charles M. Hays, Vice-president and General Manager"?

A. Yes sir.

Q. This mortgage was a part of the purchase price of some property acquired for the Terminal Company there?

A. Evidently.

Q. And the Hill mortgage also referred to here, L. P. Hill, was also a like payment? A. Yes sir.

Q. I call your attention to another letter that has been marked Defendants' Exhibit No. 2, A. E. M., and ask you whether that is also a letter which you wrote to Mr. F. M. Hubbell? A. Yes sir.

Q. That letter also refers to this Hill mortgage?

A. Yes sir, refers to the L. P. Hill note of $4000.

Q. I will ask you if I am reading this into the record correctly, it reads as follows, doesn't it: "The Wabash Railroad Company, Office of Charles M. Hays, Vice-president and General Manager. St. Louis, Mo., June 19th, 1894. Mr. F. M. Hubbell, President, Des Moines, Iowa. Dear Sir: Referring to the M. L. P. Hill note of $4000 which you reported at a meeting of directors of the Des Moines Union Railway Company, held June 7th, as having been paid by you which you suggested should be taken out of the surplus earnings of the Des Moines Union Railway, and upon which I withheld my vote until I could consult with President Ashley of the Purchasing Committee, after discussion of the matter with Mr. Ashley and General Solicitor Blodgett, they concur in the opinion that a proper disposition of the payment will be to charge it to the surplus earnings as proposed, and you may therefore be governed accordingly. Please ascertain from treasurer and advise me what balance this still leaves in the hands of treasurer

to the credit of 'surplus earnings.' Yours truly, Charles M. Hays, Vice-President and General Manager"?

A. Yes sir, that is a correct reading.

Q. For the purpose of seeing whether it refreshes your recollection, Mr. Hays, I want to call your attention to the record of June 7th, 1894, a directors' meeting where it appears from this record that you were present and from which I read the following: "The records of the meeting of May 26th, 1894, were read, and the proceedings therein set forth were on motion unanimously approved and agreed to with the exception of the resolution to pay the mortgage on Lot 7 in Block 15 of the original town of Fort Des Moines amounting to $4000 out of the funds on hand realized from the rents of real estate and switching cars. On motion to approve this part of the record Mr. Hays wanted further time"; now, does that refresh your recollection so that you remember that meeting? A. No.

Q. Have you any recollection as to whether, after the meeting was held, you took the matter up with Mr. Ashley and Col. Blodgett? A. No sir.

Q. You would simply have to rely on the record and your letter? A. Yes sir.

Q. And have you any recollection now as to what in fact was done with the surplus earnings after January 7th, 1892?

A. No sir.

Redirect Examination

By Mr. Minnis:

Q. Mr. Hays, early in your cross-examination Mr. Guernsey read from the records of the Des Moines Union Railway Company recitals which purport to be minutes of stockholders' and directors' meetings of that company; did you, in your answers to questions Mr. Guernsey propounded to you in connection with those recitals, intend to give the impression that the matters recited in such minutes were true, or that you remembered the occurrences referred to in such recitals, or the transactions referred to in such recitals? A. No sir.

Q. Do you know whether the minutes are correct accounts of the proceedings of the meetings of the directors or stockholders of the Des Moines Union Railway Company?

A. No sir.

Q. Do you recall any stockholders' meetings of the Des Moines Union Railway Company?

A. No sir, no specific meetings.

Q. You were asked by Mr. Guernsey whether Mr. Hubbell represented the Wabash interests in any transactions wherein the Northwestern had an adverse interest; do you recall any instance where the Northwestern had interests adverse to the Wabash in connection with the Des Moines terminals?

A. No sir, I so replied to him that I could not conceive of any adverse interests.

Q. Did you at any time hear Mr. Hubbell or anybody else claim that he or the Des Moines Union Railway Company held interests in the Des Moines terminals adverse to the Wabash interests? A. No sir.

Q. You were asked by Mr. Guernsey whether Mr. Hubbell did not represent the Northwestern and what we call the Northern Company on the board just as representatives of the Wabash represented the Wabash on the board of the Des Moines Union Terminal? A. Yes sir.

Q. Then Mr. Hubbell did assume in acting on the board to represent the Northwestern and the Northern Companies?

A. Yes sir.

Q. Did he at any time claim any adverse interests in the Des Moines terminals to them, or that the Des Moines Union Railway had adverse interests? A. Not to my recollection.

Q. Assuming for the purpose of the question that the defendants Hubbell now claim by reason of the adoption of the amended articles the Wabash Company surrendered to the Des Moines Union Railway Company the right to perpetually use the Des Moines terminals, I will ask you to state whether you would have known of a purpose on the part of the Wabash Company to surrender to the Des Moines Union Railway Company its perpetual right to use the terminals at Des Moines?

Counsel for defendants objects to the question as incompetent and calling for an opinion of the witness.

A. I certainly did not know of any such intention.

Q. Was it at any time the purpose of the Wabash Company to surrender to the Des Moines Union Railway Company its rights in the Des Moines terminals?

Counsel for defendants makes the same objection.

A. Not to my knowledge.

Q. You say that, notwithstanding your attention has been called to the purported minutes at which the alleged amended articles were adopted and also to the fact that you signed and acknowledged the amended articles? A. Yes sir.

Q. You have said that Mr. Hubbell represented the Northwestern and the Northern on the board of the Des Moines Union Railway Company; I will ask you whether he also did not represent the Wabash interests in that property?

A. Not as a director but as general advisor and representative of the joint interests.

Re-cross Examination

By Mr. Guernsey

Q. Did you ever know that Mr. Hubbell was a stockholder in the Des Moines Union? A. No sir.

Q. Did you ever hear that the Wabash had sold him any stock in the Des Moines Union or that the Purchasing Committee had?

A. I have heard it just since the reading of this record of this suit.

Q. You mean since this suit was commenced? A. Yes sir.

Q. Prior to that time you had never heard that the Wabash had sold Mr. Hubbell any stock in the Des Moines Union?

A. No sir, not to my recollection.

Q. And you didn't know either he or F. M. Hubbell & Son owned any stock?

A. Except as representatives of the two companies, the Des Moines and Northwestern, and the St. Louis, Des Moines & Northern.

Q. Did you know anything about the two contracts which the Purchasing Committee made with Mr. Hubbell for the sale to him of stock in the Des Moines Union Railway Company in 1890? A. No sir.

Q. That is, you have no personal recollection of them?

A. No sir.

Q. Do you remember a contract that was made in 1897 between the Des Moines Union and the Wabash—

A. I had left the road, you know.

Q. That was after you had left? A. Yes sir.

Q. Now, the record of the meeting of the board of directors of the Des Moines Union Railway Company held April 8th, 1890, shows this: "C. M. Hays offered the following resolution: Resolved that the shares of the capital stock of this corporation of the par value of $50,000 sold by the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Railroad Company, be approved and the transfer thereof to said Hubbell on the books of the company be and the same is hereby ordered. C. M. Hays moved the adoption of the said resolution, and it was thereupon adopted by the vote of all the directors"; now, assuming that the record of the Des Moines Union Railway Company shows this, would you say that you did not offer that resolution? A. No sir, assuming that the record is correct.

Q. Now, I will call your attention to two papers marked Defendants' Exhibit No. 3 and Defendants' Exhibit No. 4, A. E. M., and ask you whether you recognize the signature to those papers, and, if so, whose it is?

A. Yes sir, I recognize the signature of O. D. Ashley, Secretary of the Purchasing Committee.

Q. I want to read Exhibit 4 to you, and see if that refreshes your recollection about this matter, it reads as follows: "Know all men by these presents. That the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company for and in consideration of the sum of $67,000,000., and interest thereon at the rate of five per cent per annum from November 1st, 1889, the receipt of which is hereby acknowledged, has sold, assigned, and set over, and by these presents does sell, assign and set over unto F. M. Hubbell, Des Moines, Iowa, 67 bonds of the Des Moines Union Railway Company for $1000 each, and also one-eighth of the capital stock of said Des Moines Union Railway Company,

"And said Committee hereby authorizes and impowers said Des Moines Union Railway Company, or the proper officers thereof, to issue to said Hubbell or his assigns one-eighth of all the capital stock in said Des Moines Union Railway Company,

"The said Purchasing Committee hereby guarantees the approval of the Des Moines & St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days.

"In Testimony Whereof said Committee has caused these presents to be signed by its secretary this 11th day of February, 1890"; now, does that refresh your recollection as to whether Mr. Hubbell did purchase of the Purchasing Committee some stock?

A. Did this purport to have been read at the meeting of the directors?

Q. No, this was not read?

A. How would I get knowledge of this?

Q. Let me see if this does not suggest it, this is my theory at least, let me also read Exhibit 3: "Memorandum of agreement made between the purchasing Committee of the Wabash, St. Louis & Pacific Railway Company and F. M. Hubbell.

"Whereas, it is provided in the articles of incorporation of the Des Moines Union Railway Company that the Wabash, St. Louis & Pacific Railway Company shall nominate four of the directors of said Des Moines Union Railway Company, and

"Whereas the stock of said Des Moines Union Railway Company is now held by different parties and in different proportions from what it was when said articles were adopted,

"Now, therefore, it is agreed between the purchasing Committee of said Wabash, St. Louis & Pacific Railway Company (the successors of said Wabash, St. Louis and Pacific Railway Company) and F. M. Hubbell, who has acquired the ownership of one-eighth of the stock of the said Des Moines Union Railway Company, that said Purchasing Committee will consent to such change in said articles of incorporation as will permit one director of said company to be nominated by any person or corporation holding one-eighth of the stock of the said Des Moines Union Railway Company.

"In Witness Whereof said Purchasing Committee has caused these presents to be signed by its secretary this 11th day of February, 1890. O. D. Ashley, Sec'y. Purchasing Committee"; now, in the first place you will notice that one of these exhibits refers to an amendment to the articles, and you will remember that it was in this same year that this record, if it is right, shows that the articles were amended, and, in the next place, this Purchasing Committee guarantees the approval by the Des Moines & St. Louis of this transfer; now, what I thought was that perhaps this reference to the amendment to the articles in connection with your apparent presence at that meeting amending them, and also in connection with some action which my recollection is that you took part in of the Des Moines & St. Louis, might recall this to your mind so that you would remember this purchase?

A. I thought you were reading this as purporting to be a part of the proceedings of the meeting of the Des Moines Union?

Q. No, part of the Des Moines Union meeting was this: "C. M. Hays offered the following resolution", and this was the 8th of April, the same day that the stockholders amended the articles, "Resolved, that the shares of the Capital stock of this corporation of the par value of $50,000 sold by the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Union Railroad Company, be approved, and the transfer thereof to said Hubbell on the books of the company be and the same is hereby ordered"; now, my inference was that this was a part of the same transaction, and that it might refresh your recollection with reference to it?

A. No, I did not recall that all, until you told me it was on the records, and I don't recollect seeing this and should not assume it was a part of the record.

Q. And you probably knew of the purchase, if that is so?

A. Undoubtedly, if the records are correct.

Q. But if you did know it you have forgotten it?

A. Yes sir; wouldn't those, as a matter of fact, naturally form a part of the record?

Q. These two things? A. Yes sir.

Q. No, this was the contract with the Purchasing Committee. Do you remember at the same time that Gen. Dodge also bought one-eighth of this stock? A. No sir.

Q. Now, you don't know anything about the acquisition of five-eighths of this stock by F. M. Hubbell & Son, or F. M. Hubbell, Son & Co., from the Des Moines Northern & Western Railway Company?

A. I would have no means of knowing it.

Q. That was after your time—no, it was not, either, that was during your time?

A. I would have no means of knowing it unless it formed a part of the record of some meeting at which I was present.

Q. I want to call your attention to this from what purports to be a record of the meeting of the Des Moines Union?

A. Was I present?

Q. I will show it up to you in a moment. On October 4th, 1893, at a directors' meeting, at which you were not present, this appears: "The Des Moines, Northern & Western Railway Company, by its president, F. M. Hubbell, stated that it had found it necessary to transfer twenty-five hundred (2500) shares of their stock in the Des Moines Union Railway to F. M. Hubbell & Son, by stock certificate No. 26, dated October 4th, 1893, and asked that the directors of this company consent to the transfer above mentioned; whereupon it was moved by L. M. Martin that the board of directors of this company hereby consent to the transfer of twenty-five hundred (2500) shares of the stock of this company to the said F. M. Hubbell & Son as represented by stock certificate No. 26. Said motion was seconded by H. D. Thompson. Whereupon a vote was taken which resulted in the adoption of said resolution by the unanimous vote of all the directors present"; and also to the minutes of a short meeting of stockholders which was held January 25th, 1894, at which you were present, and at which it appears "On motion the minutes of the proceedings of all the meetings of the board of directors, stockholders, and the executive committee held during the year 1893, were read and approved, all of the acts of the board of directors and officers done during the year 1893 were confirmed and ratified"; now, does that refresh your recollection so that you can say whether you remember anything about the acquisition of this stock by Mr. Hubbell?

A. No, it does not, because that is the usual resolution ratifying all the proceedings, I don't know whether they were all read or not.

Q. That has been done ever since the company was organized, it is done now, and I am one of the directors now. Now, at that meeting that was held on January 25th, 1894, as at the preceding meeting, the stock present was listed, and it appears that F. M. Hubbell & Son holding 2500 shares were present, and isn't it your recollection that from that time on but one Wabash director was elected?

A. I would have to rely on the record on that.

Q. Let me read the record here of the next year—by the way, do you remember the fact that the record shows that you were chairman of the meeting in January, 1894? A. No sir.

Q. You wouldn't say you were not?

A. If the record was correct and says I was I would have no more to say.

Q. If you found that on the record you would find no warrant in contradicting it? A. No sir.

Q. Now, if you turn to the record of the next annual meeting, January 16th, 1895, that was still in your time, wasn't it?

A. Yes sir, that would be the last one I attended if I was present.

Q. It appears that it was adjourned twice on account of your absence, and at a short meeting on February 14th, 1895, you were present, and if that record shows that F. M. Hubbell & Son then held 2500 shares of stock you wouldn't say that was incorrect? A. No sir.

Q. In connection with what you said about Mr. Hubbell's purpose and statements, if, as a matter of fact, Mr. Hubbell had purchased this stock from the Wabash, and, if, as a matter of fact, the record shows he held 2500 of the shares, you don't mean to be understood as saying that he did not claim to own that stock, do you? A. No sir.

Q. You don't mean to be understood as saying that the Wabash Company claimed to own stock that the Purchasing Committee had sold to Hubbell, do you? A. No sir.

Q. Or any stock that the Purchasing Committee had sold to anybody else? A. No sir.

Q. You said that you did not remember of any difference between the Des Moines and Northwestern and the Wabash, or apprehend a possibility of it; do you remember a controversy as to how the interest on the bonds ought to be paid?

A. No sir.

At this point the further taking of testimony was adjourned until 11 a. m., December 1st, 1909.

A. E. MOONEY,
Commissioner.

Pursuant to adjournment, as above stated, on Wednesday, December 1st, 1909, the parties met and I resumed the taking of testimony as follows:

Present: J. L. Minnis, Esq., counsel for complainants, and N. T. Guernsey, Esq., counsel for defendants.

Counsel for complainants hands to the commissioner a copy of a letter dated New York, August 15th, 1898, addressed to F. M. Hubbell, Esq., Des Moines, Iowa, signed O. D. Ashley, and asks him to mark it Complainant's Exhibit 8 (as exhibits attached to complainants' bill and with the letter B), which is accordingly done.

Counsel for defendants states that defendants have in their possession the original of this letter and concede that such a letter was sent by Mr. Ashley to Mr. F. M. Hubbell at about the date shown on Exhibit 8 and admit that Exhibit 8 is a correct copy, subject to verification with the original hereafter, if desired.

Counsel for complainants offer in evidence Exhibit 8, which is in words and figures, as follows, to-wit:

(COMPLAINANTS' EXHIBIT 8.)

New York, Aug. 15, 1898.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I have yours of August 11th, enclosing certificate for 998 shares of the Capital Stock of the Des Moines Union R'y Co. of which stock you asked me to assign 198 shares to you. This is all right, if in the sale of the $135,000. of bonds, which were divided into two lots of 67 and 68, the obligations for 1/3 of the stock to each were made to you. The transfer, which you now request, covers the two lots, and my impression is that one of the lots was to go to Gen. Dodge. I have no doubt this is all right, but, of course, I shall want the two obligations for 1/3 each of the stock to be returned to me, understanding that I am now to make the transfer which fulfills those obligations. If this is all right, please let me know, and I will return the certificate properly assigned. I suppose my signature as Secretary will be all you want. If not, it will take me some time to get the individual signatures of the Committee.

I notice that the authorized Capital Stock is $2,000,000. Am I to understand that $200,000 is the whole amount of stock issued?

Yours respectfully,

O. D. ASHLEY,
President.

Counsel for complainants hands to the commissioner a letter dated Des Moines, Iowa, August 19th, 1890, addressed to O. D. Ashley, President, 195 Broadway, New York, and purporting to be signed by F. M. Hubbell and asks him to mark it Complainants' Exhibit T, which is accordingly done.

Counsel for defendants states that defendants admit that the paper marked Complainants' Exhibit T is a letter in three sheets signed by the defendant Frederick M. Hubbell and was mailed to O. D. Ashley, President, at about its date.

Counsel for complainants offer in evidence Complainants' Exhibit T, which is in words and figures as follows, to-wit:

(COMPLAINANT'S EXHIBIT T.)

Des Moines & Northwestern Railway,
F. M. Hubbell, Pres't.

Des Moines, Iowa,
August 19, 1890.

O. D. Ashley, Pres't,
195 Broadway, New York.

Dear Sir:

I have yours of August 15th and in reply have to say, that the one-quarter interest in the stock of the Des Moines Union, which was sold by the Purchasing Committee to F. M. Hubbell, together with the 135,000 of terminal bonds, was settled and disposed of some time ago. That you may understand this matter fully, I will give you a list of the stock which has been issued, and to whom.

The authorized capital is $2,000,000, but the amount issued is $400,000, and a one eighth interest represents 500 shares.

Originally your Committee were entitled to one-half of the stock, and when it came to be issued, the one quarter which was first sold to me, was issued in two certificates, and deducted from your half of the stock, namely:

No. 12, to F. M. Hubbell..... 500 shares
No. 14, to G. M. Dodge..... 500 shares.

The 400,000 of stock was issued on the 8th day of April, 1890, as follows:

No. 1, to Dodge	1 share.
No. 2, to Hubbell	1 share.
No. 6, to James F. Hoy	1 share.
No. 7, to C. M. Hayes	1 share.
No. 9, to the Purchasing Committee	996 shares.
Total	1000 shares.

This being one fourth of the entire stock and belongs to the Purchasing Committee. Certificates Nos. 1 and 2 have been issued erroneously, No. 1 having been assigned in blank by Dodge, No. 2 is assigned in blank by me.

No. 3 to F. C. Hubbell for	1 share.
No. 4 to H. D. Thompson for	1 share.
No. 11 to D. M. & N. W. Railway Co.	998 shares.
Total	1000 shares.

which is the one fourth interest belonging to the Des Moines & N. W. Ry. Co.

No. 5 to L. M. Martin	1 share
No. 8 to A. B. Cummins	1 share
No. 10 to the D. M. & Northern Ry. Co.	998 shares
Total	1000 shares.

being one fourth which is owned by the Des Moines & Northern Railway.

No. 12 to F. M. Hubbell	500 shares
No. 14, to G. M. Dodge	500 shares
Total	1000 shares.

This is the 1000 shares of stock sold by your Committee to F. M. Hubbell, with the 125,000 of bonds.

Certificate No. 13, has never been issued and is cancelled in the stock book, for the reason that a mistake was made in it and it was thought better to cancel it than to change the face of the certificate. This makes 4000 shares which is all of the Capital Stock of the Company.

I prefer to have all of the members of the Purchasing Committee affix their signatures to the assignment of the 498 shares to me, being a part of certificate No. 9.

Please let me hear from you now whether this is perfectly plain and satisfactory.

Yours truly,

F. M. HUBBELL.

It is agreed by counsel that in taking the testimony in this case, including both the complainants' testimony and the defendants' testimony, copies of documentary evidence offered may be incorporated in the record and the parties may retain the originals in their possession, subject, however, to the right of either party to have the originals produced in lieu of the copies if desired, otherwise the copies are to be used in lieu of the originals and with the same force and effect as the originals.

Counsel for complainants hands to the commissioner a letter dated New York, October 6th, 1896, addressed to F. M. Hubbell, Esq., Sec'y. Des Moines Union Railway Co., Des Moines, Iowa, and signed J. C. Otteson, Sec'y., and asks him to mark it Complainants' Exhibit U, which is accordingly done.

Counsel for defendants states that it is conceded that Exhibit U is a letter press copy of a letter written by J. C. Otteson, Secretary of The Wabash Railroad Company, under date of October 6th, 1896, to F. M. Hubbell, Esq., Secretary of the Des Moines Union Railway Company and was mailed in due course, but that this admission is subject to the correction of this copy if it develops that defendants have the original of the letter in their possession and it should appear that the copy is not entirely accurate.

Counsel for defendants offers in evidence Complainants' Exhibit U, which is in words and figures as follows, to-wit:

(COMPLAINANT'S EXHIBIT U.)

New York, Oct. 6, 1896.

F. M. Hubbell, Esq., Sec'y.,
Des Moines Union Ry. Co.,
Des Moines, Iowa.

Dear Sir:

Will you be good enough to let me know, for Mr. Ashley, the amount of Des Moines Union Ry. Co. stock originally issued to the Purchasing Committee, or to The Wabash Railroad Co., and give me transcript of all transfers made to date, and oblige,

Yours truly,

J. C. OTTESON,
Secretary.

Counsel for complainants hands to the commissioner a letter dated October 9th, 1896, and addressed to Mr. J. C. Otteson, Secretary, No. 195 Broadway, New York, and signed F. M. Hubbell, Secretary, and asks the commissioner to mark the same Complainants' Exhibit V, which is accordingly done.

Counsel for defendants states that it is admitted that the signature to Exhibit V, a letter written under date of October 9th, 1896, is the genuine signature of F. M. Hubbell, and that this letter was transmitted by mail to Mr. J. C. Otteson, Secretary of the Wabash Railroad Company at or about its date.

Counsel for complainants offers in evidence Complainants' Exhibit V, which is in words and figures, as follows, to-wit:

(COMPLAINANT'S EXHIBIT V.)

The Des Moines Union Railway Company,

General Office.

F. M. Hubbell,
Secretary & Treasurer.

Des Moines, Iowa, Oct. 9, 1896.

Mr. J. C. Otteson, Secretary,
195 Broadway,
New York, N. Y.

Dear Sir:

I am in receipt of yours of the 6th inst. In reply have to say that there was originally $200,000. of stock owned by the Purchasing Committee of the Walash, St. Louis & Pacific R'y. Co. The Committee sold one half of the stock to G. M. Dodge and F. M. Hubbell, I think some time prior to April 28, 1890. There had never been any stock certificates, or stock issued until that date. At that time there was issued $400,000. of stock, as follows:

1,000	shares	to the	Des Moines & Northern R'y. Co.	
1,000	"	"	"	Des Moines & Northwestern R'y. Co.,
1,000	"	"	"	Purchasing Committee of the Wabash, St. Louis & Pacific R'y. Co.,
500	"	"	"	F. M. Hubbell, and
500	"	"	"	G. M. Dodge.

The stock of the Wabash Company was represented by certificate #9 for 996 shares, and 4 certificates for one share each were issued to qualify Directors in the Company to vote.

Afterward the Purchasing Committee sold 500 shares to me and the transfer was made August 22, 1890. There was assigned by the Purchasing Committee to me, out of certificate #9, 498 shares and there was re-issued to the Purchasing Committee certificate #15 for 498 shares which still stand in the name of that Committee. When this sale of 500 shares last named, to F. M. Hubbell, was completed the Committee then owned the following stock:

Certificate #15 for	498	shares
" # 6 to Jas. F. How, for	1	share,
" # 7 to Chas. M. Hays, for	1	share,
Total	500	shares.

On the 1st of February, 1895, certificate #6 was cancelled and re-issued to H. L. Magee, who now holds certificate #27 for one share of stock. On December 9, 1895, certificate #7 standing in the name of Chas. M. Hays was assigned to Jos. Ramsey, Jr., and re-issued to the last named person on that day, by certificate #28 which now stands in the name of Jos. Ramsey, Jr.

As I understand it, the Purchasing Committee now owns the following stock:

Certificate #15 for	498	shares,
" #27 for	1	share
" #28 for	1	share.
	500	shares.

Yours truly,

F. M. HUBBELL,
Secretary.

At this point the further taking of testimony was adjourned, notice of the time and place of the next meeting to be given under the terms of the stipulation.

A. E. MOONEY,
Commissioner.

Pursuant to notice given under the stipulation heretofore entered into in this case the further taking of testimony was resumed on December 15th, 1909, at the office of Guernsey, Parker & Miller, in the Fleming Building, Des Moines, Iowa.

Present: J. L. Minnis, Esq., and J. C. Cook, Esq., counsel for complainants, and N. T. Guernsey, Esq., counsel for defendants.

HORACE SEELY, being produced as a witness by complainants, after being duly sworn by F. A. Brown, a Notary Public within and for Polk County, Iowa, duly commissioned and qualified under the laws of Iowa to administer oaths at the time and place aforesaid, testified as follows:

Direct Examination

By Mr. Cook:

Q. Give your name, age, and present place of residence?

A. Horace Seely, 48 years of age, I reside at Glendale, a suburb of Los Angeles, California.

Q. Did you formerly reside at Des Moines, Iowa, and, if so, during what years?

A. I resided in Des Moines from 1881 until 1902 almost continuously.

Q. During that time were you employed by the Wabash, St. Louis & Pacific Railway Company, the St. Louis, Des Moines and Northern Railway Company, the Des Moines Northwestern Railway Company, and the Des Moines Union Railway Company, in the City of Des Moines, in any capacity, if so, state for what companies and in what capacity?

A. In June, 1883, I went to work for the Wabash, in Des Moines, as chief clerk and cashier of a local freight office, and I served in that capacity for the Wabash and St. Louis, Des Moines and Northern until November 1st, 1887, at which time I was made agent for the Des Moines Northern and Western, the Wabash and St. Louis, Des Moines and Northern, and continued as agent until some time in 1889 or 1890, I am not certain as to the date, when I was made in addition to that Superintendent of the Des Moines Union Railway, which position I held until February, 1893.

Q. So that, as I understand you, you have been Superintendent of the Des Moines Union from the year 1889 or early in 1890, until when? A. Until February, 1893.

Q. What were your duties while acting as Superintendent of the Des Moines Union?

A. I had charge of the property, the maintenance and operation of it.

Q. What, if anything, did you have to do with the keeping of the accounts of the Des Moines Union, and the rendering of accounts to the railroad companies that were then using the Des Moines terminal property?

A. I had charge, subject to an auditor, under me, of all the accounts of that work.

Q. Were you subject to the auditor or was he subject to you?

A. He was subject to me.

Q. During the time that you were thus in charge of the accounts of the Des Moines Union Railway Company were there any earnings made by that company in the way of rents received and in the way of charges rendered to other companies for switching service, I mean companies aside from the Wabash, or Des Moines and St. Louis, and the Des Moines Northwestern, and the Des Moines & Northwestern, and the St. Louis, Des Moines & Northern, subsequently the Des Moines and Northern, and subsequently the Des Moines, Northern and Western Railroad, I mean were there earnings from switching done for companies other than these?

A. We had earnings from the rents of houses and switching charges for cars placed for other lines.

Q. What disposition was made of these earnings by the Des Moines Union?

Defendants' counsel objects to the question as incompetent and not the best evidence, the books being the best evidence of the accounts and what was done with the earnings.

A. We credited them on the bills, on the interest bills, that is, first the bill was rendered for the full amount and whatever was collected during the month was credited on that bill to the different roads and the balance pro rated among the roads.

Q. Against what companies were these bills for interest rendered?

Defendants' counsel states that he makes the same objection, because the records and the bills themselves are the best evidence.

A. Against the Des Moines North-Western, the St. Louis, Des Moines & Northern and the Wabash.

Q. In other words, as I understand you, these bills were rendered to the companies that controlled the Albia Line, the Boone Line, and the Fonda Line?

Defendants' counsel states that he makes the same objection.

A. Yes, sir.

Q. These bills against these companies you say were for interest upon what?

Defendants' counsel states that he makes the same objection.

A. The outstanding bonds of the Des Moines Union Railway.

Q. What in addition, if anything, to the interest on these bonds was included in the bills rendered against the companies owning those three lines?

Defendants' counsel states he makes the same objection.

A. All expenses for operation.

Q. Operating the Des Moines Union?

Defendants' counsel states he makes the same objection.

A. Yes, sir.

Q. And maintenance of the Des Moines Union?

Defendants' counsel states he makes the same objection.

A. Yes, sir.

Q. Were these bills rendered by you under the direction of your superior officers of the Des Moines Union, and, if so, by whom, who were such superior officers?

Defendants' counsel states he makes the same objection and also objects as calling for a conclusion.

A. General G. M. Dodge, and what was termed the executive committee of the Des Moines Union, and Mr. F. C. Hubbell, as President of the Des Moines Union.

Q. Will you look at the bills which I now hand you and state whether or not those are some of the bills that were rendered by you as Superintendent of the Des Moines Union, to the Company that was then operating the Albia Line, being Des Moines Union bill #1315 for $618.16; #1375 for $683.46; #1435 for $643.70; #1636 for $320.53; #3080 for $972.94; #3151 for $978.10; #3154 for $732.58; #3155 for $948.09; #3212 for $725.60; #3213 for $1033.57; #3233 for $796.55; #3234 for $1540.52; #3267 for $627.98; #3268 for $1204.90; #3400 for $924.30; #3401 for $2121.20; #3471 for $883.92, #3472 for $1925.18; #3539 for $980.82; #3543 for $2081.11; #3637 for $870.12; #3639 for $1920.04; #3704 for $783.44; #3706 for $1943.56; #3786 for $702.18; #3788 for $1428.99, which bills are marked Complainant's Exhibits W, X, Y, and Z, and then Complainant's Exhibits AA to VV, inclusive?

A. Yes, they were bills rendered by me as Superintendent of the Des Moines Union against the Wabash Railroad Company.

The bills referred to are in words and figures as follows, to-wit:

COMPLAINANT'S EXHIBIT W.

In making settlement please refer to Auditor's Bill No. 1315.

Des Moines, Iowa, December 31st, 1889.

The Wabash Railroad Company,
St. Louis, Mo.

To The Des Moines Union Railway Co., Dr.

1889.	For proportion of rental during December 1889.	
	5% of $462,000.00.....$23,100.00	
	One month	$1925.00

Credit: Rental C. S. P. & K. C. Ry. Co. 500.00
% switching collected.. 88.00
% rents collected 63.50 651.50 $1273.50

Wheelage,
Wabash 2375
D. M. & N-W. 1585
D. M. & N. 933
Your proportion 4854% 618.16

Registered Month of Folio

Correct: Approved: Horace Seely, Superintendent. Audited: W. S. Godfrey, Auditor.

If upon examination, an error be found in the amount of this bill, return it WITH ALL PAPERS to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT X.

In making settlement please refer to Auditor's Bill No. 1375.

Des Moines, Iowa, January 31st, 1890.

The Wabash Railroad Company,
St. Louis, Mo.
To The Des Moines Union Railway Company, Dr.

1890 For proportion of rental during month of January, 1890
5% of $462,000.00 .....$23,100.00
One month $1925.00

Credit: Rental C. S. P. & K. C. Ry. Co. $500.00
" For switching collected. 86.00
" For rents 74.50 660.50 $1264.50

Wheelage.
Wabash 2253
D. M. & N. W. 1160
D. M. & N. 755 4168
Your proportion 5405% 683.46

Registered Month of Folio.

Correct: Approved Horace Seely, Superintendent. Audited: W. S. Godfrey, Auditor.

If upon examination, an error be found in the amount of this bill, return it WITH ALL PAPERS to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT Y.

In making settlement please refer to Auditor's Bill No. 1435.

Des Moines, Iowa, February 28th, 1890.

The Wabash Railroad Company,
St. Louis, Mo.
To The Des Moines Union Railway Co., Dr.

1890: For proportion of rental during month of February, 1890.

5% of $462,000.00.....$23,100.00

	One month .....$ 1925.00			
Credit:	Rental of C. S. P. & K. C. Ry. Co.	500.00		
"	For collection % switching	86.00		
"	For rents &c collected..	82.50	$668.50	
				$1256.50

Wheelage.		
Wabash	2120	
D. M. & N. W.	1215	
D. M. & N.	803	4138
Your proportion 5123%		$643.70

Registered Month of Folio

Correct: Approved Horace Seely, Superintendent. Audited: W. S. Godfrey, Auditor.

If upon examination, an error be found in the amount of this bill, return it WITH ALL PAPERS to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT Z.

In making settlement please refer to Auditor's Bill No. 1656

Des Moines, Iowa, May 31st, 1890.

The Wabash Railroad Company,
St. Louis, Mo.
To The Des Moines Union Railway Co., Dr.

1890: For proportion of following items to be divided among all roads in month of May

Passenger Depot:	
Ticket clerk	$ 110.00
Janitor	35.00
Baggage men	100.00
Mail carrier	35.00
1 duster 10c, 2 brooms 50c, 1 mat 20c, 1 bucket 35c	1.45
20 gallons H. L. Oil $2.40, 12 lbs. waste 90c	3.30
Letterbox-material $8.10, labor $11.56.	19.66
Repairing steam pipes	4.24
Electric light fixtures	2.46
Electric light	8.99
2995′ water at 1⅛	3.37
5400′ gas at 1.80	9.72
200 bu. range coal .10	2.00
1500 lbs. ice .20	3.00
Freight Depot:	
1 keg 20d nails	2.75
4 running plates	4.25
25 bu. range coal .10	2.50
18200 cu. ft. gas 1.80	32.76
General Offices:	
2995 ft. water 1⅛	3.37
5400 " gas 1.80	9.72
1500 lbs. ice .20	3.00
20 bu. range coal .10	2.00
Electric light	8.99
N. G. Transfer:	
Foreman	55.00
Labor, 283 hours at $1.75	49.50
Labor, 1940 hours at 1.50	291.00
230′ D. Pine, $3.60, 3 brooms 75c, 2 tin-cups 10c, 2 buckets 70c	5.15
Forward	808.18

Forward.....		$ 808.18
Union Yard:		
Yard masters	185.00	
Foremen and switchmen	441.15	
Policemen	50.00	
5 gals. black oil 48c, 14 gals. sig. oil $4.90, 20 gals. H. L. Oil $2.40.....	7.78	
5 gals. M. S. Oil 75c, matches 10c, 3 lanterns 1.50, 5 globes 75c, 4 burners 40c	3.50	
Miscellaneous:		
Salaries Supt. and Auditor.....	40.00	
Printing and stationary.....	9.50	
Sprinkling streets 1½ mos. to June 1st, at $15.00	22.50	
	$1567.61	
Deduct		
Chicago, St. Paul & Kansas City % 3254	510.10	$1057.51
Credit:		
For switching and rents collected....		218.00
		839.51

Wheelage:		
Wabash 1958		
D. M. & N. W....1399		
D. M. & N.....1771	5128	
Your proportion 3818 %.....		320.53

Registered Month of ..... Folio. .....

Correct: Approved: Horace Seely, Superintendent. Audited: W. S. Godfrey, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

(COMPLAINANT'S EXHIBIT AA.)

In making settlement please refer to Auditor's Bill No. 3080.

Des Moines, Iowa, Dec. 31st, 1890.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1890: For proportion of following Terminal expenses in December.

Pass Dep't:		
Ticket clerks	$ 110.00	
" " East Des M.	51.65	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
Soap 10, wicks 01, L. Chim. 5, 2 brooms 50, 2 gal H. L. 25	.91	
Door spring 21, water faucet 75	.96	
Water supply Aug. 1st to Dec. 31, 33685 cu ft. $1 1/8 per M	37.90	
Repairs to water closet	11.00	
1550# ice, 20c	3.10	
(Pass. Depot) 9950 ft. gas 1.60	15.92	
36,300 ton coal 1.80	65.07	
(Gen'l. Offs) 9950 ft. gas 1.60	15.92	
Repairs on building, labor	8.55	
24 placard	2.50	$ 503.48
Supt's. Office:		
Salary of Supt	41.66	
" " clerks	75.00	
Ptg. & Sta. $20.00, postage $6.00, telegrams 1.60, expense 35	27.95 x	
1 high stool 1.00, 1 blank book for aud'r. 1.25	2.25	
Official railway guide for 1891	5.00	151.86
Freight Depot:		
Agents and clerks	693.35	
Warehouse foreman	65.00	
Check clerks	85.00	
Labor 125 2/10 1.50	187.80	
" 180 4/10 1.25	225.48	
Policeman	50.00	
2 letter file clips 3.20, hauling wght to scales 90	4.10	
Burner 10, door lock 75, lanterns 1.00, six lantn globes 90	2.75	
1 high stool 1.00, ptg & sta. 30.00	31.00	
Repr on building, labor	2.67	
19400 ft gas 1.60	31.04	1378.19

(Forward).....		(2633.53)
N. G. Transfer:		
Foreman	55.00	
Labor 195 8/10 days 1.50.....	293.70	
1 gal sig. 35, 1 gal H. L. 13, 1 keg nails 3.15	3.63	
Hauling material	.50	
	352.83	
Credit: Transfg. 4 cars frt. for D. M. & K. C. Ry.	12.00	340.83
Union Yard:		
Yard master	110.00	
Foreman & switchmen.....	709.63	
1 globe 15, 1 broom 25, matches 01, 2 butts 10	.51	
27# wrot 95, 6 ft. oak 18, dr lock & key 75	1.88	
Sw. lamp 2.50, sw. key 15, 1 white globe 15	2.80	
3 torches 60, 3 BC wick 06, 2 pick handles 30	.96	
3 torches 60, matches 06, lantern 50, Lwick 03, ...	1.19	
1 broom 25, 2# hex nuts 10, 1# sheet rubber 10, matches 02.....	.47	
Hand oiler 30, lantern 50, globe 15, wicks 07.....	1.02	
Lantern 50, 8# frog bolts 32, 2# washers 10	.92	
5½ gal sig 1.93, 4¾ gal min. seal 5.50 5 gal. H. L. 67.....	8.10	
4# wash 30, 86# wrot 3.01, 6# mach. steel 36	3.67	
	841.15	
Credit Dec. switching bill	200.00	641.15

Miscellaneous:		
Ginsburg's bill for freight damaged in yard	5.00	
D. & R. A. Patchins, bill for med. services September 26th to Dec. 31st.	58.00	
D. & G. L. Bagley, bill for attendance, F. W. Hitchcock, injured Dec. 6....	10.00	
Truss for injured employee $3.00, carriage injured employee 1.00.....	4.00	
Med. services for injured employees Litching $3.90, Crawford $16.25....	20.15	
Drayage, McNutt & Sons.....	1.75	98.90
		$3114.41

Wheelage:

Wabash 2680		
D. M. & N. W...1612		
D. M. & N.....1700		
C. S. P. & K. C...2588	8580	
Your pro 3124%.....		972.94

Registered Month of ..... Folio. .....

Correct: Approved: Horace Seely, Superintendent. Audited: W. S. Godfrey, Auditor. (Achg. N.)

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

(Complainant's Exhibit BB.)

In making settlement please refer to Auditor's Bill No. 3131.

Des Moines, Iowa, January 31, 1891.

The Wabash Railroad Co.,

St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of following terminal expense in January.

Pass Depot:		
Ticket clerks	$ 110.00	
Ticket clerk, East Des Moines	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
10810 cu ft water at $1.1/8 per thousand	12.16	
18100 cu ft gas at $1.60 per thousand.	28.96	
Electric light meter 279. Jan'y. 8 to Feb. 2, 1891	25.17	
Scoville Plumbing Co's. bill for cleaning pipes	1.00	
2 gal. sig. oil 70, 2 gal H. L. 25	.95	
Chair for despatcher's office	6.00	
Mops 20, soap 10, 2 L. Chim. 15, wicks 02, 3 brooms 75	1.22	
Switch lock 55, 2 tin cups 05	.60	
Nails 04, 12 ft W. pine 36	.40	
Labor, carpenter, E. D. M. Depot	.90	$417.36
Supt. Office:		
Salary Sup't.	$ 41.66	
Salary, clerk	40.00	
Ptg. & Sta. $7.50, paper fasteners 30, To expense 2.00	9.80	
Legal cap 4.50, pins 40,	4.90	
Labor on Master Mechanic's office	35.15	131.51
Freight Depot:		
Agent and clerks	687.50	
Warehouse foreman	65.00	
Check clerks	347.55	
Labor 129 7/10 days at 1.25	162.12	
Policeman	50.00	
Stationery (Wabash Nov. bill)	16.47	
2 chairs 3.00, 96 ft. flooring 1.92,	4.92	
5000 tins seals and rivets 11.25, 20' white pine 60	11.85	
18600 cu. ft. gas at $1.60	29.76	
Outside electric light Jany. 1 to Feby 1, 1891	14.00	
Labor (carpenter)	2.40	1291.57
(Forward)		($1940.44)

N. C. Transfer:		
Foreman	55.00	
Labor 179 days at 1.50	268.50	
2 brooms 50, 2 cups 25, bellcord 06, 1 part for shovel 13	.74	
1 gal H. L. Oil 13	.13	
Labor Car Dep't.	1.65	
	326.02	
Credit: Transferring 1 car salt for D. M. & K. C. Ry. Co	3.00	323.02
Union Yard:		
Yard master	110.00	
Foreman and switchman	758.45	
3 lanterns 1.50, matches 04, red lant 60, green lant 60,	2.74	
Glass 35, 7 glass 84, 4 W. handles 60, switch key 15,	1.94	
Tin cups 03, W. Globe 12, Red Globe 22, Green globe 22,	.59	
5 switch lamps 12.50, 1-2 gal. can 38, wicks 15,	13.03	
4 brooms 1.60, bucket 35, switch locks 1.10 burners 25	2.70	
Chalk 20, 200 round pins (1100#) 28.00, freight on same 2.50	31.30	
360 links (3143#) 86.43, freight on same 7.50	93.93	
8 gal sig. oil 2.80, 30 gal H. L. 3.75 4# waste 30	6.85	
	1021.53	
Credit: ⅓ switching in January	203.00	818.53
Miscellaneous:		
Bill of City of Des Moines, reprs. sidewalk, E. D. M.	3.57	
100 engineer's trip books 12.50, composition on crew time card $15.00 ..	27.50	
1300 defective car cards 3.50	3.50	34.57
		3116.56

Wheelage:

Wabash 2451			
D. M. & N. W..1221			
D. M. & N. ...1465			
C. St. P. & K. C. 2194	Your pro 3343%		1041.86
Credit			
% Error Electric light bills Nov. and Dec.			63.76
			978.10

Registered month of ..... Folio. .....

Corrected: Approved: Audited:
Horace Seely, Superintendent
Horace Seely, Auditor.
(Achg. n.)

If upon examination, an error be found in the amount of this bill, return it With All papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT CC.

In making settlement please refer to Auditor's Bill No. 3154.

Des Moines, Iowa, February 28, 1891.

The Wabash Railroad Co.,
St. Louis.

To The Des Moines Union Railway Co., Dr.

1891:	For proportion of rental for February 1891		
February 5% of $497,000.00		$24850.00	
1 month 1/12 of 24850			$2070.83
Credit	a/c rents collected in Jany. & Feb. 1891		190.00
			1880.83

Wheelage:

Wabash 2582		
D. M. & N. W. ..1018		
D. M. & N. 1195		
C. St. P. & K. C..1834		
Total 6629		
Your proportion 3895%		$732.58

Registered month of ..... Folio. .....

Correct: Approved: Audited:
Horace Seely, Superintendent.
Horace Seeley, Auditor.
Actg. C.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT DD.

In making settlement please refer to Auditor's Bill No. 3155.

Des Moines, Iowa, Feby. 28, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following Terminal expenses in February 1891:

Pass Depot:		
Ticket clerks	$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
10500 cu ft. gas at 1.60 per thousand..	16.80	
8845 cu ft. water $1.18 per thous.	9.95	
950# Ice at 15	1.42	
2 brooms 50, 1 glass 32, 30# wrot 1.05 2 door knobs 10	1.97	
1 key 10, 1 gal H. L. 12	.22	
1 toilet paper	11.40	
Labor, (repairs)	12.49	
20 tons coal (January) at 1.60	32.00	
22 tons coal (February) at 1.60	35.20	
4 tons coal (February) E. D. M. 1.60.	6.40	467.85
Freight Depot:		
Agent and clerks	658.33	
Policeman	50.00	
Warehouse foreman	65.00	
Check clerks	85.00	
Labor	346.77	
19800 cu ft. Gas at 1.60	31.68	
1-8 qr. Register joint way bills	6.50	
1 case paper fasteners 25, 1 ribbon for typewriter 1.00	1.25	
Padlock 90, hasp 08, 2 lanterns 1.00, 6 W. Globes 90,	2.88	
Freight charges on seals and rivets changed in January	.63	
Bill of S. L. Fisher, Cashier, for stamps, messages, express and box rent January $12.45, February $4.70	17.15	
5 tons coal at 1.60	8.00	
Labor, repairs	7.60	
	1280.79	

Credit:			
a/c double charge warehouse foreman in Jany.		65.00	1215.79
	Ford		$1683.64
Gen'l Office:			
Salary, superintendent	$	41.66	
" clerk		50.00	
10500 cu ft gas at 1.60		16.80	
1-4 Qr. ledger 1.60, 5000 letterheads 8.00 5000 envelopes 8.75		18.35	
300 time cards Des Moines Union No. 60		4.50	
Wabash December bill for sta		9.87	141.18
N. G. Transfer:			
Foreman		55.00	
Labor, 148 days at 1.50		223.50	
1060′ pine 31.80, labor, repairs, trestle, 7.43		39.23	
		317.73	
Credit: a/c transferring five cars for D. M. & K. C. Ry. Co		15.00	302.73
Union Yard:			
Yard master		110.00	
Foreman and switchmen		736.70	
102 flat pins, 100 round pins, 1261# at 2.60		32.79	
Freight on same		2.50	
Matches 02, 1 W. lantern 50, wicks 01, 1 W. globe 15		.68	
5 gal. sig. 1.75, 1 gal. H. L. 12, 3 gal. W. S. 41		2.28	
		884.95	
Credit: a/c switching collected in February		754.00	130.95

Miscellaneous:

Repairs tenement houses, 1000 shingles 2.50, 2 shts tin 20, 10# nails 40, 150 ft. pine 4.50, labor 4.50	12.10	
Claim of D. B. Davidson, a/c freight stolen in December	10.00	
Claim Frank Hitchcock, personal injury in Dec	6.25	
Claim James Hartman, injured by switch eng. February 12	40.00	
Bills of L. J. Wells, carriage for injured engineer February 10th	.75	
Bill of Norman Lichty for medicines furnished Hitchcock & Hamilton injured employees	5.70	
Bill of J. W. Laird for medicines furnished Rabbitt, employee, injured about Feby. 10	4.25	
American Surety Company's premium of D. M. Ry. Co's. employees, bonds $20,500.00 at .004%	82.00	
Same unpaid from last year	14.58	175.63
(Forward)		($2434.13)

Wheelage:

Wabash	2582
D. M. & N. W.	1018
D. M. & N.	1195
C. StP. & K. C.	1834
Total	6629

Your proportion 3895% ... $ 948.09

Registered Month of ..... Folio .....

Correct:

Approved:
Horace Seely,
Superintendent,

Audited:
Horace Seely,
Actg. C.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT EE.

In making settlement please refer to Auditor's Bill No. 3212.

Des Moines, Iowa, March 31, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891			
	For proportion of rental for March, 1891, 5% of $497,000.00		
March	.....	$24,850.00	
	One month, 1/12 of.	24,850.00	$2070.84
Credit:	a/c rents collected, March		90.50
			1980.34

Wheelage:

Wabash	2861
D. M. & N. W.	1220
D. M. & N.	1441
C. StP. & K. C.	2287
	7809

Your proportion 3664% ..... $ 725.60

Registered Month of ..... Folio: .....

Correct: Approved: Horace Seely, Superintendent. Audited: Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT FF.

In making settlement please refer to Auditor's Bill No. 3213

Des Moines, Iowa, March 31, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891: For proportion of following terminal
March expenses in March, 1891.

Pass Depot:		
Ticket clerks	110.00	
" " E. D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
18995 cu. ft. water at 1⅛ per thousand	21.37	
16200 cu. ft. gas at 1.60 per thousand	25.92	
1140# ice at 15c	1.71	
Scoville Plumbing Co's. bill, repairs gas pipe	1.60	
15 tons coal at 1.60	24.00	
2 tons coal E. D. M. at 1.60	3.20	
4000# lump coal at 2.50	5.00	
2 gal. H. L. 24, soap 15, cups 06, mops 20	.65	
Repairs baggage room	2.95	
		426.40
Freight Depot:		
Agent and clerks	743.33	
Warehouse foreman	65.00	
Policeman	50.00	
Labor 123 days at 1.50	184.50	
" 257 7/10 days at 1.25	322.14	
3 #4 Full ironed trucks 17.70, freight on same 2.41	20.11	
10400 cu. ft. gas at 1.60	16.64	
14 tons coal at 1.60	22.40	
8 gal. sig. 2.80, broom 25, matches 15	3.20	
Stamps, messages and express	11.85	
Day book 1.00, fasteners 25, counter books 2.00, pins 29	3.54	
Paper 1.00, 2 doz. W. B. Imp. books 14.75, 3½ doz. memo books 2.25	18.00	
9 quarts ink 7.25, mucilage 75, carbon 2.33, pencils 2.16	7.49	
Pens 1.52, imp. book 6.40, sealing wax 28, ribbon 15	8.35	
Erasers 30, oil sheets 36, bands 44, ruler 07, fasteners 60	1.77	$1478.32
(Ford)		($1904.72)
Gen'l. Office:		
Salary Superintendent	41.66	
Salary, clerk	50.00	
5000 envelopes 9.75, 4 tissue letter books 3.26, ink 30	12.81	104.47

N. G. Transfer:		
Foreman	55.00	
Labor 192 days at 1.50	288.00	
1 gal. sig. 35, shovel 1.05, water pail 25	1.65	
Labor, Machy. Dept	2.46	
	347.11	
Credit: Transferring 6 cars for D. M. & K. C. Ry. Co	18.00	329.11
Union Yard:		
Yard Master	110.00	
Switchmen	773.64	
1 gal. sig. 35, 2 gal. H. L. 24, 2 gal. W. S. 24, ½# waste 04	.87	
2 Lant 1.00, burners 10, L. Globe 08, wicks 05	1.23	
Switch lamp 2.75, matches 05	2.80	
Labor, Machy. Dept	.80	
	889.34	
Credit: a c switching, March	474.00	415.34
Miscellaneous:		
Bill of R. A. Patchen, M. D., for surgical services D. M. Union employees	$ 40.00	
Bill of City of Des Moines, repairs sidewalk	1.25	
Taxes 1890 West 100 ft. Lot 2 SW ¼ lot 8 in Sec. 9-78-24	25.98	67.23
		$2820.87

Wheelage:

Wabash	2861	
D. M. & N. W.	1220	
D. M. & N.	1441	
C. M. & St. P. Ry.	2287	7809
Your proportion 3664/7809		$1033.57

Registered Month ..... Folio .....

Correct: Approved: Horace Seely, Superintendent. Audited: Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT GG.

In making settlement please refer to Auditor's Bill No. 3233.

Des Moines, Iowa, May 31st, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891:	For proportion of rental for May, 1891		
May	5% of $497,900.00	24850.00	
	One months, 1/12		$2070.83
Credit:	Account, rents collected during May		260.50
			1810.33
	Wheelage:		
	Wabash	3825	
	D. M. & N. W.	931	
	D. M. & N.	1408	
	C. St. P. & K. C.	2529	8693
	Your pro .4400%		3796.55

Registered Month of ..... Folio. .....

Correct:

Approved:
Horace Seely,
Superintendent.

Audited:
Chas. Seely,
Auditor.

If, upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT *HH*.

In making settlement please refer to Auditor's Bill No. 3234.

Des Moines, Iowa, May 31st, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891 May	For proportion of the following terminal expenses in May, 1891:	

Pass. Depot:		
Ticket clerks	$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
2 mops 20, soap 20, L. Chim. 08, L. globe 08, matches 02	.58	
22 roles paper 4.40, 19 yards border 76,	5.16	
10200 cu ft. gas at 1.60	17.44	
2985 cu ft. water at 1 1/8	3.35	
1580 pounds ice at .15	2.37	
Sprinkling streets during May 1891,..	18.00	
1 gal sig 35., 3 gal H. L. 36, 7# waste 15,	.86	
Labor repairs	3.00	$390.76
Freight Depot:		
Agent and clerks	841.88	
Warehouse foreman	65.00	
Policeman	50.00	
Labor 113 8/10 days at 1.50	170.70	
Labor 367 days at 1.25	458.84	
½ doz. L. Globes 50, 6 gal. sig. oil 2.10	2.60	
Rim latch 65, 2 M. car seals 4.50, freight 25,	5.40	
19400 cu ft. gas at 1.60	31.04	
Stamps, messages and express	9.25	
Repairs rubber stamp	1.00	
1-8 qr. register joint way bills	6.50	
1 only mimeograph	17.00	
Time books 40, blotters 56, oilsheets 36, fasteners 40,	1.72	
Pens 90, muslin 60, sealing wax 28, blotters 60	2.38	
10 W. B. Imp. Books 6.00, ribbon 15, fasteners 60, carbons 1.20,	7.95	
1 doz. Imp. Books 7.80, 5 reams Imp. paper 4.00.	11.80	
2 qts ink 70, 3 doz. pencils 73, pen-holders 10	1.53	$1684.70
(Ford)		($2075.35)
Genl. Office:		
Salary Superintendent	41.66	
Salary Auditor	75.00	
1000 wreck reports 6.50, 1000 store keepers orders 1.00	7.50	
1000 letterheads	3.00	127.16

N. G. Transfer:		
Foreman	35.00	
Labor 257 5/10 days at 1.50	386.25	
1 keg 8d wire nails 3.20, bucket 35,.	3.55	
Chalk 05, broom 25, 1 gal 8ig. 35, 1 gal H. L.	12.77	
24 1/2# 1 Manilla rope	3.31	
Labor, Mchy. Dept.	.80	
	449.68	
Credit: a/c transferring	6.00	443.68
Union Yard:		
Yardmaster	100.00	
Foreman and switchmen	765.65	
4 W. Lant. $2.00, matches 05, wicks 05, 2 gal sig. 70,	2.80	
2 gal. M. S. 24, 5# waste 38,	.62	
	869.07	
Credit: a/c switching during May	148.00	721.07
Miscellaneous:		
Repairs derrick, 4 lag screws 08, 50 ft. 3/8" chains, $4.30, labor 9.83	14.21	
Insurance, Health Elevator,	44.33	
Bill, Cent. Trust Co., disbursing money for coupons	61.37	
Advertising coupons D. M. N. Ry. Bonds	14.00	133.91
		3501 17

Wheelage:

Wabash	3825	
D. M. & N. W.	931	
D. M. & N.	1408	
C. St. P. & K. C.	2529	8693
Your pro 4400%		1540.52

Registered Month of .....Folio .....

Correct:

Approved
Horace Seely,
Superintendent.

Audited:
Chas. Seely,
Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT H.

In making settlement please refer to Auditor's Bill No. 3267.

Des Moines, Iowa, April 30th, 1891.

The Wabash Railroad Co.,
St. Louis.
To The Des Moines Union Railway Co., Dr.

1891:	For proportion of rental for April 1891			
April	5% of 4970000.00		$248250.00	
	One month 1/12 of		248250.00	2070.83
Credit:	a/c rents collected in April		73.00	
	Four months rent from D. M. & K. C. Ry.		200.00	272.00
				1797.83

Wheelage:

Wabash	2783	
D. M. & N. W...	999	
D. M. & N.	1624	
C. St. P. & K. C.	.2267	7968
	Your pro 3493/%	627.94

Registered Month of ..... Folio.....

Correct: Approved: Audited:
Horace Seely, Chas. Seely,
Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT *JJ*.

In making settlement please refer to Auditor's Bill No. 3268.

Des Moines, Iowa, April 30th, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891:	For proportion of the following Terminal	
April	expenses in April, 1891:	

Pass. Depot:		
Ticket clerks	$ 110.00	
" clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
21010 cu ft water at 1 1/8 per thous.	23.63	
14500 cu ft gas at 1.60 per thous	23.20	
1445# lve at 15	2.16	
7 tons soft coal at 1.60	11.20	
1 # 1166 Fairbanks Scale 56.40, Freight 2.30	58.70	
1 baggage wagon 33.53, freight 5.46	38.99	
1 iron safe for ticket office	70.00	
Repairs, clock, Depot's office	3.50	
4 feather dusters 1.60, wicks 02, 3 brooms 75, paper 02	.79	
Labor repairs	4.00	$ 578.47
Freight Depot:		
Agent and clerks	765.83	
Policeman	50.00	
Warehouse foreman	65.00	
Labor, 126 6/10 days at 1.50	189.91	
" 343 2/10 days at 1.25	429.00	
33100 cu ft gas at 1.60	52.96	
5.1660 tons coal at 1.60	9.32	
Switch boards 2.03, Labor, repairing same, 3 hrs and 40, 1.20	3.23	
Wicks 05, L. Globe 08, broom 25, lantern 50	.88	
Nails 04, 32 ft. pine 96, 3 gal sig. 1.05, 3 gal. H. L. 36	2.41	
3 reams W. R. Imp. Paper 2.40, 3 qts ink 1.20, 2 gro. pens 65	4.25	
Rubber bands 20, 6 doz pencils 2.10, 1 doz. penholders 50	2.80	
Mucilage 25, padlock 50	.75	
Stamps, messages and express	8.50	
Labor repairs	4.06	1588.90
Ford		2167.37

Ford.....		(92167.2
Gen'l. Office:		
Salary Superintendent	41.66	
Salary, Auditor	75.00	
1500 letterheads 3.25, 200 monthly expense blanks 13.75.....	17.00	
500 sheets 1 2 cap 7= at 15.....	1.05	
5000 manilla envelopes.....	7.00	141.7
N. G. Transfer:		
Foreman	33.00	
Labor 210 5 10 days at 1.50.....	315.75	
4 scoop shovels 4.20, 1 barrel 1.00....	5.20	
	373.95	
Credit: a c transferring.....	15.00	358.9
Union Yard:		
Yard Master	100.00	
Switchmen	712.00	
100 links and 100 pins 1452= at 2.45, 835.57, freight 3.23.....	38.80	
200 Standard pins 1316= at 2.45, 32.24, freight 3.30.....	35.54	
Matches 07, 3 L. Glides 24, 6= chalk 40, ...	.71	
2 gal H. L. 24, 2 gal. C. S. 21, 5= waste 41, ...	.89	
Labor, Machy. Dept.....	7.57	
	895.51	
Credit: a c switching.....	120.00	77
Miscellaneous:		
Bill of J. S. Nutt for repairs to Hartman's wagon, injured by D. M. N. Ry. switch engine in February, 1891...	38.00	
Bill L. J. Wells for carriage hire, injured employee	.50	
Bill J. Barrick Patching Roof Co. house	10.00	
65 ft pine 1.95, nails 04, 1 4M shingles 75, labor 3.34.....	6.08	3
		356

Wheelage:

Wabash	2783		
D. M. & N. W.	999		
D. M. & N.	1624		
C. St. P. & K. C.	2562	7968	
Your prop	3493/7968		1222.59
Your proportion		1222.59	
Credit: a/c insurance of bonded employees for 1891, paid in February $48.29, Your proportion		17.69	
			$1204.90

Registered Month of ..... Folio.....

Correct: Approved: Horace Seely, Superintendent. Audited: Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT KK.

In making settlement please refer to Auditor's Bill No. 3400.

Des Moines, Iowa, June 30th, 1891.

The Wabash Railroad Co.,
St. Louis.
To The Des Moines Union Railway Co., Dr.

1891: June	For proportion of rental for month of June, 1891:		
	5% of $4970000.00	$248500.00	
	One month, 1/12		$2070.84
Credit:	a/c rents collected		163.50
			1907.34

Wheelage:

Wabash	4551
D. M. & N. W.	942
D. M. & N.	1618
C. St. P. & K. C.	2280
Your pro 4846/9426	924.30

Registered Month of ..... Folio .....

Correct: Approved: Horace Seely, Superintendent. Audited, Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT LL.

In making settlement please refer to Auditor's Bill No. 3401.

Des Moines, Iowa, June 30th, 1891.

The Wabash Railroad Co.,
St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following terminal
June expenses in June, 1891:

Pass. Depot:			
Ticket clerks	$	110.00	
Ticket clerk, East D. M.		50.00	
Baggagemen		110.00	
Janitor		35.00	
Mail carrier		35.00	
10000 cu. ft. gas at 1.60		16.00	
2490 cu. ft. water at 1.1/8		2.80	
2785 pounds ice at .15		4.17	
Sprinkling streets during June		18.00	
Plans for new Union Depot		200.00	
Chair, ticket office, 1.25, ticket dater 4.84		6.09	
2 mops 20, 2 brooms 50, wicks 10, rings and staples 10		.90	
Eng. Venn (1.00) 90, 1# Mace Green varnish 1.50, 50 c knobs 25		1.81	
40½ ft. gutter 4.85, labor repairs 5.71		10.56	$600.33
Freight Depot:			
Agent and clerks		832.64	
W. H. Foreman, 70.00, policeman 50.00		120.00	
Labor 149 3/10 days at 1.50		223.80	
Labor 366 days at 1.25		457.50	
18500 cu. ft. gas at 1.60		29.60	
1700# ice at 15c, 2.55, stamps 7.00		9.55	
4 qts. ink, 1.40, 2 doz. Memo. books 1.50, ink pad 25		3.15	
9 doz. pencils, 2.85, sealing wax, 42, mucilage, 25		3.52	
300 carbons 1.00, 4 reams imp. paper 320, pins 75		4.95	

Oil sheets 24, bands 14, 3 Imp. books 1.80, sprinkler 90	3.08	
Empire wringer 4.00, 5 M. car seals 12.75	16.75	
Repairs typewriter 1.75, ribbon 1.00, 16 hrs letterwriting	10.75	
1 stamp 50, ½ doz. Lant Globes 50, 5 gal. Sig. 1.40	2.40	
Cleaning gutter 2.50, 800 ft. W. Pine 16.00	18.50	
Labor	6.50	1742.69
(Ford)		($2343.02)
Gen'l. Office:		
Salary, Superintendent	41.66	
Salary, Auditor	75.00	
Treas. Book 5.50, 11000 manilla envelopes 19.00	24.50	
7500 letterheads	14.00	155.16
N. G. Transfer:		
Foreman	55.00	
Labor 384 7/10 days at 1.50	577.05	
6 links #88 chain 97, cup 03, M. Wrench 1.05	2.05	
File 20, 5# nails 18	.38	
Labor repairs	2.34	636.82
Union Yard:		
Yard Master	100.00	
Foremen and switchmen	815.25	
3 W. Lant. 1.50, 2 burners 10, matches 05, wicks 05	1.70	
3 gal. H. L. 36, 3 gal. M. S. 36, 4# Waste 30	1.02	
	917.97	
Credit: a/c switching 92.00	92.00	825.97
Miscellaneous:		
Insurance D. M. Union Ry. property from June 27th, 1891, to June 27th, 1892, $55500.00 at .00¾%	416.25	416.25
		4377.22

Wheelage:

Wabash	4551		
D. M. & N. W.	942		
D. M. & N.	1618		
C. St. P. & K. C.	2280	Your pro 4846%	2121.20

Registered Month of.....Folio.....

Correct: Approved: Audited:
Horace Seely, Chas. Seely,
Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT MM.

In making settlement please refer to Auditor's Bill No. 3471.

Des Moines, Iowa, July 31st, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891: July	For proportion of rental for month of July, 1891:		
	5% of 497000.00.....	$24850.00	
	One month 1/12.....	24850.00	$2070.83
	Credit, a/c rents collected.....		145.50
			1925.33

Wheelage:

Wabash	4262	
D. M. & N. W....	974	
D. M. & N.....	1754	
C. St. P. & K. C...	2293	9283
Your proportion 4951%...		$ 883.92

Registered Month of..... Folio. .....

Correct: Approved: Audited:
Horace Seely, Chas. Seely,
Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT NN.

In making settlement please refer to Auditor's Bill No. 3472.

Des Moines, Iowa, July 31st, 1891.

The Wabash Railroad Co.
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following terminal
July expenses in July, 1891:

Pass. Depot:		
Ticket clerks	$ 110.00	
Ticket clerk, E. D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
Electric light meter 279.95% 12.40 9600 cu ft. gas at 1.60	15.36	
1830 cu ft water at 1 1/8	2.05	
3675 pounds ice at 15	5.51	
Sprinkling streets during July	18.00	
Scoville Plumbing Co's. bill, cleaning closet	.50	
E. D. Janes & Co's. bill, repairs	12.25	
Lock and key 70, glass 15, 1 gal H. L. 12	.97	
Labor, repairs	8.45	403.09
Freight Depot:		
Agent and clerks	809.13	
Policeman	50.00	
W. H. foreman	70.00	
Labor 140 1/10 days at 1.50	210.15	
Labor 396 3/10 days at 1.25	495.99	
19500 cu ft gas at 1.60	31.20	
1840 pounds ice at 15	2.76	
Stamps 8.00, message 75, express 1.00.	9.75	
2 car records	20.00	
Fastener 60, pens 95, 3 qts ink 75, 4 qts mucilage 1.00	3.30	
5 reams tissue 4.00, carbons 35, pencils 45, 12 counter books 48	5.28	
10 yds. Imp. cloth 60, 3 stamps 2.45, repairs stamp 65	3.70	
Scoville Plumb. Co's. bill repairs gas leaks	1.50	
Inspector's bill testing scales	4.50	
Matches 04, 2 lant 1.00, 6 globes 48, 5 gal. sig. 1.75, 15# waste 52	3.79	
Labor	6.60	1727.65
(Ford)		($2130.74)

Gen'l. Office:		
Salary Supt.	41.66	
Salary, Audr.	75.00	
6000 SK orders 4.75, 100 statements 3.75, 700 reports 5.45	13.95	
5000 manilla env.	9.50	
Stamps for Treas. Feb. 14 to July	7.25	147.36
N. G. Trabsfer:		
Foreman	55.00	
Labor 419 8/10 days at 1.50	629.75	
Labor, 17 days at 75	12.75	
1 steel wheelbarrow	1.75	699.25
Union Yard:		
Yardmaster	100.00	
Foremen and switchmen	869.15	
300 link, 406 pins 5586# 139.65, freight 13.75	153.40	
5# W. Chalk 25, matches 09, 3 lant. 1.50, 4 lant. globes 32	2.16	
2 gal. H. L. 24, 2 gal. M. S. 24	.48	
	1125.19	
Credit: a/c switching	67.00	1058.19
Miscellaneous:		
Bill N. Lichty, medicines furnished injured emp.	3.75	
Bill D. M. & K. C. Ry. Reprs. House Cor. 7th & Cherry	11.25	
Claim Tiffany a/c damages to property caused by placing piling under D. M. River bridge during ice gorge Spring, 1891	75.00	
Reprs tool house 21# nails 74, 11 gal. M. Red 11.00, 2500 shingles 7.50, 29 1/2 gal. M. L. 3.04, 3# waste 32, 8# wrot 28, 10# tool steel 60, labor 27.22	31.86	
Repairing building for yardmaster...$	6.75	
Labor on inventory 8 days at 1.25	9.99	157.84
		4193.38

Wheelage:
Wabash 4262
D. M. & N. W... 974
D. M. & N.....1754
C. St. P. & K. C...2293 9283
Your pro 4591% 1925.18
Registered Month of..... Folio. .....

Correct: Approved: Audited:
Horace Seely, Chas. Seely,
Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT OO.

In making settlement please refer to Auditor's Bill No. 3539.

Des Moines, Iowa, August 31st, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891: For proportion of rental for month of
August August, 1891:

5% of $500,000.00...$25000.00 $2083.33
One month 1/12.....$2083.33
Credit: a/c rents collected..... 136.50

1946.63

Wheelage:
Wabash 5294
D. M. & N. W.....1077
D. M. & N.....1850
C. St. P. & K. C...2287

10508

Your pro .....5038% $980.82
Registered Month of..... Folio. .....

Correct: Approved: Audited:
Horace Seely, Chas. Seely,
Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT PP.

In making settlement please refer to Auditor's Bill No. 3543.

Des Moines, Iowa, August 31, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891: August — For proportion of the following terminal expenses in August.

Pass. Depot:		
Ticket clerks	$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
10000 cu ft gas at 1.60	16.00	
1405 cu ft water at 1 1/8	1.59	
3775 pounds ice at 15c	5.65	
Bill E. W. Smith & Co. repairs safe	34.00	
3 sash cords 95, padlock 60, 2 brooms 50, 2 mops 20	2.25	
Bell cord 12, 1 gal. H. L. 12	.24	
Labor repairs	1.00	$ 400.74
Freight Depot:		
Agents and clerks	808.60	
Warehouse foreman	70.00	
Policeman	50.00	
Labor 133 3/10 days at 1.50	202.95	
Labor 296 7/10 days at 1.25	370.86	
Outside electric lights		
21400 cu ft gas at 1.60	34.24	
2605 pounds ice at 15	3.90	
Spring for typewriter	.75	
1-8 qr. register joint way bills	6.50	
Bill S. L. Fisher, cashier, stamps, messages, etc.	11.90	
5000 car seals at 1.75	8.75	
Broom 25, 5 gal sig. 1.75, 2# waste 15,	2.15	
Labor repairs	2.81	1573.41
(Ford)		($1974.15)

General Office:		
Salary Sup't.	$ 41.66	
Salary, Audr.	75.00	
1000 stamped envelopes for Treas....	22.00	
Postal cards	5.00	
1000 storage receipts 3.50, 1000 letterheads 3.50, 100 comp. statements 1.75	8.75	
5000 baggage tags	5.00	157.41
N. G. Transfer:		
Foreman	65.00	
Labor 466 9/10 days at 1.50.....	700.35	
Labor 6 days at 75.....	4.50	
1 tape 60, rule 50.....	1.10	
File 15, 3 brooms 75, chalk 01, 1 keg nails 3.05	3.96	
Labor, Mchy. Dept.....	.46	775.37
Union Yard:		
Yard master	100.00	
Foreman and switchman	904.40	
Screws 10, 2 lant. 1.00, 2 burners 10 wicks 02, matches 06	1.28	
1 gal. sig. 35, 2 gal H. L. 24, 1 gal M. S. 12	.71	
	1009.39	
Credit: a/c switching	42.00	967.39
(Ford)		($3874.32)
Miscellaneous:		
Bill of R. A. Patchen M. D. for surgical services rendered injured employees from May 15 to Aug. 24, ...	52.00	
Bill G. W. McLain, damage to Garden a/c yard office	2.00	
Repair oil house and R. house, labor ..	21.51	
Repair, tool house	8.25	
Yard office:		
100 ft. 1½" half round 90, 250 ft. 2¼" qr. round 1.50, 2000 feet ceiling 55.00	57.40	
68 ft. flooring 13.60, 6M shingles 17/10, 3 bundles siding 75, 6 bbl flooring 60, ...	32.05	
20# nails 60, screws 25, locks 65, ...	1.50	
2 rim locks 1.40, keys 40, 10# w. lead 80, 2 gal paint 4.00	6.60	

2 gal. B. Oil, 130, bucket 35, soap 05, whiting 01, 1# waste 08, ...	1.79	
Broom 25, feather duster 40, ...	.65	
96 ft. ceiling 2.64 88 ft. pine 53, 40 ft. poplar 1.60	4.77	
20 pcs moulding	2.50	
Labor	65.49	256.51
		4130.83

Wheelage:

Wabash 5294		
D. M. & N. W. ..1077		
D. M. & N. 1850		
C. St. P. & K. C. .2287	10508	
Your pro 5038%		2081.11

Registered Month of .....Folio .....

Correct: Approved: Horace Seely, Superintendent. Audited: Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it with All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT QQ.

In making settlement please refer to Auditor's Bill No. 3637.

Des Moines, Iowa, Sept. 30, 1891.

The Wabash Railroad Co.,
St. Louis.
To The Des Moines Union Railway Co., Dr.

1891: Sept.	For proportion of rental for month of September, 1891:		
	5% of 500000.00	25000.00	
	One month 1/12		$2083.33
	Credit a/c rents collected		128.00
			1955.33

Wheelage:

Wabash	4388	
D. M. & N. W.	1351	
D. M. & N.	1809	
C. St. P. & K. C.	2312	9860

Your pro 4450% $870.12

Registered Month of ..... Folio .....

Correct: Approved: Horace Seely, Superintendent. Audited: Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it with All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT RR.

In making settlement please refer to Auditor's Bill 3639.

Des Moines, Iowa, Sept. 30, 1891.

The Wabash Railroad Co.,
St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: Sept. For proportion of the following terminal expenses in September.

Pass. Depot:		
Ticket clerks	$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
12100 cu ft. Gas at 1.60	19.36	
2175 cu ft. water at 1 1/8	2.45	
3630 pounds ice at 15	5.47	
Sprinkling streets during August	18.00	
1 case toilet paper	9.50	
1# hex nuts 06, 3/4# rubber 15, oil barrel 75, mops 20, broom 50,	1.66	
136# cast 2.72, 2 Gal H. L. 20, labor repairs 15.74	18.70	$415.14

Freight Depot:		
Agents and clerks	869.33	
W. H. Foreman	70.00	
Policeman	50.00	
Labor 143 days at 1.50	214.50	
Labor 385 5/10 days at 1.25	481.98	
23400 cu ft gas at 1.60	37.44	
2180 pounds ice at 15	3.27	
Tel rental		
44 hours letter writing at 50	$ 22.00	
Stamps and messages and express	11.35	
Bullinger Guide 1.50, ink 25, mucilage 50, inkwells 20, pens 1.11	3.56	
Pencils 2.00, 5 R. Imp. paper 4.00, fasteners 20, carbon 1.00, pens 06, mem. bks. 50, oil sheets 36	8.12	
Pens 1.65, pencils 3.30, carbons 39, ink 2.00, seal wax 42, 1 doz Imp. books 6.00	13.76	
Mem books 50, Imp. paper 4.00, paper files 2.00 ribbon 1.00	7.50	
Mem books 25, counter book 25	.50	
Gas pipe 88, matches 01, 3 lant 1.50, lant globes 30, 3 ft. oak 09	2.78	
3 gal. sig. 1.05	1.05	$1797.18
(Ford)		($2212.32)
General Office:		
Salary, Supt.	41.66	
Salary, Audr.	75.00	
Rubber stamps 3.05, pens 45, journal 6.48, 2 blk books 84	10.82	
Mucilage 50, letter file 25, 1 doz. counter books 90	1.65	
1 doz. mem books 2.35, journal 2.00, invoice book 2.00	6.35	
Letter file 50, env. 91, ink 35, pens 45	2.21	137.69
N. G. Transfer.		
Foreman	65.00	
Labor 397 9/10 days at 1.50	596.85	
40# nails 2.00, 2 kegs nails	7.90	
	669.75	
Credit: a/c labor performed for C. St. P. & K. C. & Perkins & P.	16.35	653.40
Union Yard:		
Yard master	100.00	
Foreman & switchmen	1276.65	

Wringer 2.00, chalk 40, 1/2 doz cuspidors 1.00	3.40	
1 flat top desk 14.00	14.00	
	1394.05	
Credit: a c switching	129.00	1265.05
Miscellaneous:		
Bill W. P. Graham, cleaning vaults, Co. houses	22.50	
Bill R. A. Patchen, M. D. surgical services, Sept.	11.00	
Bill Ingersoll & Howell, additional insurance	12.75	43.25
		4314.71
Wheelage:		
Wabash 4388		
D. M. & N. W. 1351		
D. M. & N. 1809		
C. St. P. & K. C. 2312	9860	
Your pro 4450/		1920.04

Registered Month of ..... Folio .....

Correct: Approved: Audited:
Horace Seely, Superintendent. Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT 88.

In making settlement please refer to Auditor's Bill No. 3704.

Des Moines, Iowa, October 31st, 1891.

The Wabash Railroad Co.,
St. Louis.
To The Des Moines Union Railway Co., Dr.

1891: October	For proportion of rental for month of October 1891:		
	5% of $500000.00	25000.00	
	One month one twelfth	2083.34	
Credit:	a/c rents collected	214.00	
			1869.34

Wheelage:

Wabash	4305	
D. M. & N. W.	1498	
D. M. & N.	1947	
C., St. P. & K. C.	2523	10274
Your pro 4191⅔		$ 782.44

Registered Month of ..... Folio .....

Correct: Approved: Horace Seely, Superintendent. Audited: Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT TT.

In making settlement please refer to Auditor's Bill 3706.

Des Moines, Iowa, October 31, 1891.

The Wabash Railroad Co.,
St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: October — For proportion of the following terminal expenses in October

Pass: Depot:

Ticket clerks	$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
Policeman	45.00	
14700 cu ft gas at 1.60	23.52	
3000 cu ft water at 1 1/8	3.35	
12 tons coal at 1.80	21.60	
2600 pounds ice at 15	3.90	
Ticket report book 3.00, 500 ticket reports 20.00, folio 1.50	24.50	
Brush 1.05, 24 fine plugs 96, basket 20, shovel 70	2.91	
Oil can 30, emery 06, ax 70, 19# cast 38	1.44	
28# 20d nails 1.40, saw 75, 1 gal H. L. 12, 1 gal M. S. 12	2.39	
Labor, repairs	1.01	469.62

Freight Depot:		
Agent and clerks	1055.00	
W. H. Foreman 70.00, policeman 50.00	120.00	
Labor 216 4/10 days at 1.50	324.60	
Labor 359 6/10 days at 1.25	449.50	
Labor 74 3/10 days (transferring carloads) at 1.50	111.45	
39600 cu ft. gas at 1.60	32.96	
One W. B. Press 12.00, less old one returned 4.00	8.00	
18 W. B. Imp. books 10.20, carbons 1.35, muslin 60, ink 25, pens 1.00	13.60	
Ribbon 15, 7 com. imp. books 2.80, Imp. paper 4.30, fasteners 1.00	8.25	
Mem. books 88, pencils 1.32, penholders 10, blk. books 2.75, r. bands 44, pins 80,	6.29	
5 jts. 8. pipe 75, 2 elbows 20, 1000 tracing sheets 5.25, 5000 letterheads..	19.95	
Ink 40, 3 W. B. Imp. Books 2.10, mem. Books 30, 5 reams tissue 3.75, stamps and mesgr. 13.00	19.55	
2# 2264 6tons depot scales 308.00, frt. from Chicago 15.68	323.68	
Broom 25, 1. Globe 10, 2 gal Sig. 70	1.05	
128# Ice at 15	1.92	
		2495.80
(Ford)		(82963.42)
General Office:		
Salary, Supt.	41.66	
Salary, Audr.	75.00	
6 journals 1.50, 3000 registers 7.75, 5000 env. 9.00, 1000 time checks 4.00	22.25	
11000 letterheads 27.00, 6000 env. 8.40, 300 defect cards 1.00, coal statements 4.50	40.90	
Interest on over-draft month October	5.69	
Stamps for Treas 2.00, sign Treas. Window 3.00	5.00	190.50
Union Yard:		
Yard Master	100.00	
Foremen and switchmen	1325.66	
6000 links and pins 4740# at 2¾	130.35	

6 car records 2.00, 12 scr books 7.00, 2 train registers 8.00	27.50	
10 W. lanters 5.00, wicks 13, L. Globe 10, Matches 05, ...	5.28	
Burner 09, 7 gal H. L. 90, 3 gal M. S. 36, 16# Waste 1.20	2.51	
4¼ gal Sig. 1.48	1.48	
Whiting 05, gasoline 03, C. Hod 30, Thimble 10, labor repairs 28	.76	
	1593.54	
Credit: a/c switching	112.00	1481.54
		4637.46

Wheelage:

Wabash 4305		
D. M. & N. W. ..1498		
D. M. & N. 1947		
C. St. P. & K. C..2523	10273	
Your pro	4191%	1943.56
Registered Month of ..... Folio.		

Correct: Approved: Horace Seely, Superintendent Audited: Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT UU.

In making settlement please refer to Auditor's Bill No. 3786.

Des Moines, Iowa, Nov. 30, 1891.

The Wabash Railroad Co.,
St. Louis.
To The Des Moines Union Railway Co. Dr.

1891: Nov.	For proportion of rental for month of November, 1891:		
	5% of $50000.00	25000.00	
	One month, 1/12		$2083.34
Credit:	a/c rents collected		170.50
			1912.84

Wheelage:
Wabash 3393
D. M. & N. W. ..1518
D. M. & N. ...1904
C. St. P. & K. C. .2428 9243
Your pro. .3679% $702.18
Registered Month of ..... Folio. .....

Correct: Approved: Audited:
Horace Seely, Chas. Seely,
Superintendent Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT VV.

In making settlement please refer to Auditor's Bill No. 3788.

Des Moines, Iowa, Nov. 30, 1891.

The Wabash Railroad Co.,
St. Louis.
To The Des Moines Union Railway Co. Dr.

1891: For proportion of the following terminal
Nov. expenses Nov. 1891:

Pass. Depot:

Ticket clerks	$ 110.00
Ticket clerk, East D. M.	50.00
Baggage men	110.00
Janitor	35.00
Mail carrier	35.00
Policeman	45.00
1800 cu ft gas at 1.60	28.80
2025 pounds ice at 15	3.03
2535 cu ft water at 1 1/8	2.85
Sprinkling streets, Sept. 1 to Nov. 15	45.00
Bill E. D. Jones & Co. for repairs	9.10
Plumbing during Nov	3.25
6 tons soft coal at 1.80	10.80
2 mops and stick 30, wicks 02, matches 04, 3 gal H. L. 36, 12# waste 90	1.62
Labor, repairs	.75
	490.20

Freight Depot:		
Agent and clerks	982.33	
Warehouse foreman	70.00	
Policeman	50.00	
Labor, 143 3/10 days at 1.50	214.95	
Labor, 344 1/10 days at 1.25	430.10	
20400 cu ft gas at 1.60	32.64	
300 pounds ice at 15	.45	
Stamps, messages and express	11.75	
Sealing wax 14, 4 qts ink 1.00, 10 W. B. Imp. Books 6.00, pins 1.24	8.38	
Fast 65, files 1.20, mucilage 50, pencils 2.01 memo books 1.65	5.96	
Paper 80, R. Bands 56, 1# pins 40, 10 Imp. books 6.00	7.26	
Carbons 75, erasers 30, oil sheets 30, 1 W. B. press 12.00	13.35	
Rubber stamps	3.15	
6000 #10 envelopes 10.80, 1000 tags 75, 7# mim. paper 1.05	13.60	
Bill of E. D. Jones, repairs	4.75	
2 No. 1 Chief stoves 46.00, 1 No. 2 Chief stove 17.00	63.00	
30 Jts. S. pipe 9.25, elbows 1.60, collars 10	10.95	
2 grates 1.00, zinc 1.20	2.20	
(Frd)		($490.20)
Freight Depot: continued:		
2 lant 1.00, mop 20, wick 01, 4 Gal H. L. 48	1.69	
3 dusters 1.20, 2 c hods 60, cup 05, shovel 30	2.15	
Repairing desks, 3 gal varnish 6.75, 1 gal filler 2.00, labor 15.00	23.75	
11 tons coal at 1.80	19.80	
		1972.21
General Office:		
Salary, Supt.	41.66	
Salary, Audr.	75.00	
Stamps 2.00, ink 75	2.75	
10 M #10 Env. 11.30, 10 M #6 Env. 7.50	18.80	
Bill C. L. Dahlberg, letter writing for Treas	4.75	
1 #2 Chief Stove 17.00, 1 #6 Oak Stove 15.00	32.00	
2 zinc 2.75, 5 lengths pipe 2.00, goose neck 75, 3 collars 25	6.75	181.71

Union Yards:

Yardmen and switchman	1269.56	
Clock 8.00, 2 lamps 6.00, frt charges links and pins Oct. 8.38.....	22.38	
8 lant. 4.00, soap 15, 4 globes 40, wicks 02	4.57	
Matches 06, 1# chalk 03, 2 gal. can 40, broom 25.....	.74	
5 1/2 gal Sig. 1.92, 6# waste 45	2.37	
	1299.62	
Credit: a/c switching	51.00	
		1248.62

Wheelage:

Wabash 3393		
D. M. & N. W...1518		
D. M. & N.....1904		
C. St. P. & K. C..2428	9243	
Your pro 36709%.....		1428.99

Registered Month of ..... Folio .....

Correct: Approved: Horace Seely, Superintendent. Audited: Chas. Seely, Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

Q. Did you at the same time that you rendered the foregoing bills to the Wabash Company also render similar bills to the company that was operating the Boone line and the company that was operating the Fonda line, at the time.

Defendants' counsel objects to the question as incompetent, calling for secondary evidence, and not the best evidence.

A. I did.

Q. And, as I understand you, these bills were all rendered by you under instructions to do so by your superior officers in the Des Moines Union Railway Company? A. Yes, sir.

Cross-Examination

By Mr. Guernsey:

Q. I notice, Mr. Seely, taking this bill No. 3400 as an illustration, there are various papers attached to it; what was rendered by you is the bill, that is approved by you as Superintendent, that is right, isn't it? A. Yes, sir.

Q. That is true as to each one of these bills that have been shown you? A. Yes, sir.

Q. And the part of the bill that was rendered by you, or the part of the papers shown that was rendered by you, is what precedes your signature in connection with the approval?

A. Yes, sir, headed "Des Moines Union Railway Company Bills."

Q. But it is not headed that way?

A. Well, the billhead shows "Des Moines Union Railway".

Q. The bill is made out as a bill against the Wabash Railroad Company apparently in each instance, to the Des Moines Union Railway Company, is it not? A. Yes, sir.

Q. You did not make out these bills yourself?

A. No, sir.

Q. They were made out by the auditor? A. Yes, sir.

Q. By whom were they transmitted to the Wabash?

A. Usually by myself.

Q. You usually wrote the letters transmitting them?

A. Yes, sir.

Q. And after the bills were made out by the auditor they were handed to you for your approval, and you approved them? A. Yes, sir, I examined them and approved them.

Q. That is true as to all of them? A. Yes, sir.

Q. Now, you referred to instructions received from Gen. Dodge, were those verbal or written?

A. As a rule they were written instructions, sometimes oral.

Q. Well, I mean the instructions that you refer to with reference to these bills, he didn't give them frequently, did he?

A. No, sir.

Q. Now, were your instructions as to these bills received from Gen. Dodge, oral or written instructions?

A. Sometimes they would be oral and sometimes written.

Q. Can you remember any particular time when he gave you any instructions with reference to them?

A. I cannot give any specific time, no.

Q. Can you remember any specific thing that he ever told you with reference to making out these bills?

A. Well, we were instructed to make them out on a wheelage basis and keep records.

Q. Now, was that written or oral?

A. I think that was probably an oral instruction.

Q. Why do you say that was probably an oral instruction?

A. Well, because I don't remember of receiving a letter, and we talked the matter over.

Q. That was, of course, the whole basis of the making out of the bills? A. The wheelage proposition, yes, sir.

Q. The fundamental thing? A. Yes, sir.

Q. Now, as to what matters did he instruct you in writing in connection with the making out of these bills?

A. I don't know as I can specify anything particular now.

Q. As a matter of fact, can you remember any specific instructions from him or from F. C. Hubbell with reference to the matter? A. I know they were—

Q. I didn't ask you that, I asked you whether you can remember any specific instructions from him or from Mr. F. C. Hubbell with reference to it?

A. Yes, sir, I told you I remembered getting instructions for making the bills.

Q. Where did Gen. Dodge reside? A. New York City.

Q. How often was he in Des Moines when you were Superintendent?

A. Well, I don't know just how often he was there, I suppose he was here three or four or a half dozen times, I saw him that often, at least.

Q. Who, of the executive committee, gave you the instructions that you have referred to?

A. Well, it would be a joint committee, or any one of them would be respected somewhat.

Q. I didn't ask you that, you said you received instructions from them, I want to know whom you referred to?

A. That would be Mr. Hays or the Des Moines & North Western representative, or the St. Louis &—

Q. You don't know that as a matter of fact, you know they were your superiors? A. Yes, sir.

Q. And that is all you know about the Dodge business and the Hubbell business as far as you have any recollection on that now? A. That they delivered their orders?

Q. Yes, and that they were your superior officers?

A. Yes, sir.

Q. You don't remember detailed instructions received by you from any of them, do you?

A. I remember them in a general way.

Q. I know, but do you remember any specific conversation with Gen. Dodge or with Mr. Hubbell—take Gen. Dodge, he ceased to be president on the first of January, 1892, didn't he?

A. I think probably it was that year.

Q. You don't remember what year it was, do you?

A. Well, it must have been at that time.

Q. Do you remember what year it was?

A. I know he was president part of the time, and I don't know whether it was the first of the year or shortly after.

Q. Do you remember whether in 1891 or 1892 Gen. Dodge gave you instructions, or Mr. Hubbell did?

A. I think in 1891 General Dodge did.

Q. Do you remember that? A. Yes, sir.

Q. During what time was Mr. Hayes a member of this executive committee?

A. I think all the time I was there.

Q. Were there any changes in the membership of this committee during the period you were there?

A. It seems to me there was some but I can't say just what it was.

Q. You could not remember what years one man served or another man served on that committee, could you?

A. I don't recollect, no.

Q. Now, what is your present business?

A. Christian Science practitioner.

In the Circuit Court of the United States, Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company, Complainants,
vs. In Equity.
The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, Respondents.

Now, on this 26th day of January, 1911, 10:30 A. M., the further taking of testimony in the above entitled cause was resumed and there were present:

Col. Wells H. Blodgett and J. L. Minnis, representing the Wabash Railroad Company,

J. C. Cook, representing the Chicago, Milwaukee & St. Paul Railway Company,

N. T. Guernsey, representing the Defendants; and the further taking of testimony on the part of Complainants was resumed under the following

Stipulation:

It is stipulated that the deposition of Mr. Edward B. Pryor and Col. Wells H. Blodgett, on behalf of the complainants, may be taken at this time and place, at Des Moines, Iowa, on the 26th day of January, 1911, before J. P. Blaise, as Special Examiner, the depositions to be taken in shorthand by the examiner, and the shorthand notes to be transcribed by him and certified to be a full, true and complete transcript of the testimony of the said witnesses, and this transcript to be filed as their deposition.

EDWARD B. PRYOR being called and duly sworn on the part of Complainants, and examined by Col. Wells H. Blodgett, testified as follows:

Q. Where do you reside and what is your occupation?

A. I reside at St. Louis, Missouri; am Vice President of the Wabash Railroad Company.

Q. How long have you been connected with the Wabash Railroad Company as an employe and official?

A. A little over 31 years.

Q. I suppose you meant the Wabash Railroad Company and its predecessors? A. Yes.

Q. In what department of the service have you been employed and in what department are you now employed?

A. In the Accounting Department originally, where I was first a clerk, and then Chief Clerk, and then Assistant Auditor, and I was afterwards made Assistant to the President, and then and now, Vice-President—afterwards and now Vice-President, in charge of the accounts.

Q. Have you ever had any official connection with the Des Moines Union Railway Company, one of the defendants in this case? A. I have, as a director of the company.

Q. How long have you been acting as a director of that Company?

A. Since January 1906; I think it was January 5, is my recollection.

Q. Have you, as an officer of the Wabash Railroad Company, or as a director of the Des Moines Union Railway Company had occasion to examine, and have you examined the accounts and account books of the latter Company? A. I have.

Q. Did you ever examine the books and accounts of the Des Moines Union Railway Company for the purpose of ascertaining what they showed respecting the receipts of cash money into the treasury of that Company, on account of the issue or sale of its capital stock? A. I have.

Q. Will you state what the books of the Des Moines Union Railway Company show with respect to the receipt of money in its treasury on account of the issue or sale of its capital stock?

Objected to on the part of the respondents as not the best evidence and calling for a conclusion, the books themselves being the best evidence. Further, that it is irrelevant and immaterial, because whether the stock was paid up and how it was paid up, or whether the books show it was paid up, is immaterial to this controversy.

Mr. Minnis: We ought to have the books, unless you agree to the production of the books.

Mr. Guernsey: I would rather have the books.

Mr. Minnis: Where are they?

Mr. Guernsey: I don't know. I don't know what books he means.

The Witness: I have examined all the books, the cash books, general ledgers and the journals.

Mr. Guernsey: From the organization down to date?

The Witness: Yes, sir. If you want to produce the books, I will say that the old cash books are in the possession of Mr. H. D. Thompson, in his office. The general ledgers and journals are in Mr. Hubbell's office.

A. I have examined the cash books of the Company in the Treasurer's office. I have examined the general ledgers and general journals in the Auditor's office, and none of those books show that any cash was at any time paid for the capital stock.

Mr. Minnis: Now, Mr. Guernsey, if you wish the books produced, they are in your possession and control, if you will produce them here.

Mr. Guernsey: Let us go ahead and we will see whether we want to or not.

Q. Did you ever examine the books and accounts of the Des Moines Union Railway Company for the purpose of ascertaining what they show respecting the payment of money out of its Treasury, to either James F. How, Granville M. Dodge, the Des Moines & St. Louis Railway Company, or the St. Louis Des Moines & Northern Railway Company, on account of real estate or other property conveyed by them or either of them to said Des Moines Union Railway Company? A. I have.

Q. Will you state what the books and accounts of the Des Moines Union Railway Company show respecting the payment of money out of its treasury, either to said How, to said Dodge, to the Des Moines & St. Louis Railway Company, or the St. Louis, Des Moines & Northern Railway Company, on account of property conveyed to it by them or either of them?

Respondents interpose the same objection as last above made.

A. The books do not show that any money was paid out of the Treasury of the Des Moines Union Railway Company to any of the parties named.

Q. State, if you know, whether the books of the Des Moines Union Railway Company have been so kept as to show in detail the payments made from time to time on account of interest on the bonds of said Company since the beginning of the year 1889? A. They do.

Q. State if you know, either from your examination of said books, or otherwise, how and by whom the funds necessary to meet and pay the interest on said bonds, since the beginning of the year 1889 have been supplied?

Objected to for the same reasons; also because it calls for a conclusion on the part of the witness.

A. The funds were furnished by the railroad companies, parties to the agreement of May 10, 1889—the Wabash, St. Louis & Pacific, the Des Moines & Northwestern and the St. Louis, Des Moines & Northern, and their successor companies?

Q. On what basis?

A. On the basis of wheelage. I should have said in giving the names, the Des Moines & St. Louis, the Des Moines Northwestern, the St. Louis, Des Moines & Northern and their successors.

Q. State if you know whether the books of the Des Moines Union Railway Company have been so kept as to show in detail the payments made by it since the beginning of the year 1889, on account of maintenance and repair of the tracks, depots, round houses, engine houses, and other terminal properties used by the plaintiffs in the City of Des Moines, and commonly known as the tracks and terminals of the Des Moines Union Railway Company in said city.

A. They do; they have been so kept and do show the detail.

Q. State if you know, either from an examination of said books or otherwise, how and by whom the funds necessary to meet and pay for the maintenance and repair of the tracks, shops, round houses and other terminal properties, since the beginning of the year 1889 have been supplied?

Same objection.

A. By the railroad companies named in the answer to the last question.

Q. You mean the companies party to the contract of 1889 and their successors? A. Yes, sir.

Mr. Minnis: You better name those companies, because the Des Moines Union was a party to that contract.

A. The funds were furnished by the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern and their successor companies.

Q. State if you know, whether the books of the Des Moines Union Railway Company have been so kept as to show in detail the payments made from time to time, on account of general and special taxes levied upon or against the terminal prop-

erties mentioned in the preceding interrogatories, since the beginning of the year 1889?

A. They have been so kept and show the same in detail.

Q. State, if you know, either from your examination of said books or otherwise, how and by whom the funds necessary to meet and pay said taxes, since the beginning of the year 1889, have been supplied.

Same objection.

A. By the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern, and their successor companies.

Q. You mean successors in title to the different railroads?

A. Yes.

Q. State, if you know, whether the books of the Des Moines Union Railway Company, since the beginning of the year 1889, have been so kept as to show minutely the cost of operating the engine houses and their appurtenances, including the cost of turning and housing the engines, the cost of furnishing water and fire and the cost of wiping and washing the engines, and the cost of firing them up?

A. They do. The books have been so kept and show that information.

Q. You stated, Mr. Pryor, that the funds required to pay interest on bonds, taxes and maintenance and repair of property, had been furnished by the railroad companies you have mentioned. Now, in what proportion have they contributed?

A. In the proportion of their wheelage.

Q. Wheelage use of the property?

A. Yes, sir; wheelage use of the property.

Q. Now state, if you know, either from your examination of said books, or otherwise, how and by whom the cost of operating the engine houses and their appurtenances, the cost of turning and housing the engines, the cost of furnishing water and fire, the cost of wiping and washing the engines, and the cost of firing them up, has been paid since the beginning of the year 1889?

Same objection.

A. They have been paid by the railroads for whom the facilities were furnished, on the basis of engines in and out of the round house, the proportion chargeable against the switch engines using these facilities being paid by the Des Moines & St. Louis, the Des Moines Northwestern, and the St. Louis, Des Moines & Northern Railway Companies, or their successors, on the basis of the wheelage use of the property.

Q. The cost of caring for and housing the engines used by the Des Moines Union has been on a wheelage basis?

A. Yes, sir.

Q. And the other expenses have been distributed according to the number of engines housed and cared for?

A. Yes, sir.

Q. State, if you know, whether the books of said Des Moines Union Railway Company have been so kept as to show in detail the amount of repairs on engines and other work done by it from time to time, since the beginning of the year 1889, for the plaintiffs in this case and their predecessors in the use of said terminals?

A. They have been so kept.

Q. State, if you know, from your examination of said books or otherwise, how the repairs on engines and other work done from time to time by the Des Moines Union Railway Company for the plaintiffs in this case and their predecessors in the use of said terminals, have been paid for?

Same objection.

A. They have been paid for by the railroad companies.

Q. On what basis?

A. On the basis of cost.

Q. State, if you know, whether the books of said Des Moines Union Railway Company have been so kept as to show in detail the amount of fuel and other material furnished from time to time by the Des Moines Union Railway Company to the plaintiffs in this case and their predecessors in the use of said terminals in the city of Des Moines, since the beginning of the year 1889?

A. The books have been so kept and show the information in details.

Q. State, if you know, from your examination of said books, or otherwise, how the fuel and other material furnished by the Des Moines Union Railway Company to their predecessors in the said terminals have been paid for?

Same objection.

A. They have been paid for by the companies for whom the material was furnished on the basis of cost.

Q. Do you know from your examination of the books of said terminal company, whether any engines or cars have been acquired for the use of said terminal properties, since the beginning of the year 1889, and if any have been acquired, state if you know how and by whom they were paid for?

A. There have been a number of switch engines and some few cars acquired, and the engines have been paid for partly by the Des Moines & St. Louis the Des Moines & Northwestern and the St. Louis, Des Moines & Northern and their successors on the basis of wheelage. Some of the engines have been paid

for partly by the use of bonds of the Des Moines Union Railway Company, and the balance paid by the three companies just mentioned; and other engines have been paid for out of the revenue accruing from switching, rental of houses, etc.

Q. The revenue derived by the Des Moines Union Railway Company from the switching and handling of cars, is that a part of the revenue that is referred to in the resolution and proceedings of the Des Moines Union Railway Company as "surplus earnings" of that Company or "Surplus earnings" in that company?

A. Yes, sir.

Q. When cars and traffic have been switched and handled over the terminals since the beginning of the year 1889, for the plaintiffs in this cause, what engines have been employed in that service?

A. The switch engines that I have just mentioned.

Q. When cars and traffic have been switched and handled over said terminals for others than the plaintiffs in this suit—the other question related to the plaintiffs—when cars have been switched and handled over said terminals for other than the plaintiffs in this suit, since the beginning of the year 1889, what engines have been employed in that service?

A. The same engines.

Q. State, if you know, either from your examination of the books of the Des Moines Union Railway Company, or otherwise, how and by whom the expenses of the switching service performed for all parties by the Des Moines Union Railway Company, such as the wages of engineers, firemen, switchmen and yardmen, have been paid since the beginning of the year 1889?

Objected to as incompetent, irrelevant and immaterial, because the obligations and rights of the parties are fixed by written contracts.

A. They have been paid for by the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern, and their successor companies.

Q. You mean their successors in the use of the terminals?

A. In the use of the terminals.

Q. State, if you know, how and by whom, coal, water, oil and other material, consumed in switching and moving engines, cars and traffic in the yard and over said tracks and terminals in Des Moines, have been paid for since the beginning of the year 1889?

Same objection.

A. By the same companies named in the answer to the last question.

Q. State, if you know, from your examination of said books or otherwise, how and by whom, the salaries and wages of the officers and employes engaged in operating and maintaining, repairing and managing the said terminals have been paid since the beginning of the year 1889?

Same objection.

A. By the same companies, viz: the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern and their successor companies in the use of the terminals.

Q. If there have been any other expenses than those already mentioned connected with the maintenance, operation and repair of said terminals, including terminal station, freight and passenger depot, depot grounds, round houses, tracks, transfers and other properties, excepting such expenses as were connected with housing and caring of the engines, state, if you know, how and by whom they have been paid.

Same objection. Also as being irrelevant and immaterial.

A. The expenses of every nature have all been paid by the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern, and their successors in the use of the terminals.

Q. I will ask you whether the expense of operating and maintaining the terminal tracks and properties generally, have been paid by the companies you mentioned, on the same basis as they have paid for maintaining and operating the engine houses?

Same objection.

A. With the exception of the payments made by the companies for repair, other than engine and round house expenses and the fuel and other supplies furnished to their own companies direct, all of the expenses have been paid by the companies named on the basis of wheelage.

Q. Did you except from your answer the cost of maintaining the engine houses, the expense incurred in operating and managing the engine houses, were they paid on the basis of wheelage?

A. Yes, they are paid on the basis of the expense of operating them; they are all paid on the basis of wheelage.

Q. But the cost of operating the engine houses, how is that expense distributed among the parties, the engine houses?

Same objection.

A. On the basis of engines in and out of the house.

Q. The number of engines?

A. The number of engines in and out of the house by each party.

Q. State, if you know, from your examination of said books, or otherwise, what sources of revenue the Des Moines Union Railway Company now has, or has had, since the beginning of the year 1889, aside from the rentals by it from other railroad companies for the use of said tracks and terminal properties in Des Moines, rentals received by it for the use of terminal buildings and other properties conveyed to said company, and the revenues received by it for service in switching, handling and moving and storing cars, and trackage?

Same objection.

A. The rentals collected by it for the use of terminal buildings and other properties, and the revenues received by it for the services in switching, handling, moving and storing cars and traffic, and the privileges in the Union Station, and the collections made by it for demurrage on cars, covered its entire source of revenue. In other words, it has no other revenues than those mentioned.

Q. None other than those you mentioned?

A. No, sir.

Q. State, if you know, what proportion of the cost of producing the revenue collected by the Des Moines Union Railway Company for switching, handling, moving and delivering cars and traffic over said tracks and terminals in and about the city of Des Moines, has been paid by the complainants and their predecessors in title, and in the use of said property since the beginning of the year 1889?

Same objection.

A. The companies have paid the entire cost of producing the revenue.

Q. Did you include in your answer the revenue received from other railroad companies than the proprietary companies?

A. I don't think that is what Mr. Minnis is getting at.

Q. Did the Des Moines Union Railway Company receive any compensation for handling and switching the cars of the railroad companies parties to the agreement of 1889?

Objected to as incompetent and calling for a conclusion, and because the agreement is the best evidence.

A. No, it does not. The proprietary companies paid to the Des Moines Union Railway Company all the expenses, but I have not regarded that as a source of revenue.

Q. Did you include in your answer the revenues received by the terminal company from other railroad companies than those who were parties to the agreement of 1889 and their successors? A. No, I did not.

Q. That is a source of revenue?

A. My answer contemplated explaining what was considered as surplus earnings. But there were other revenues received by the Des Moines Union Railway Company from railroad companies for the use of the terminals, but these amounts so collected were applied or credited on the monthly bills of the proprietary companies.

Q. By the proprietary companies, you mean the companies parties to the agreement of 1889 and their successors?

A. Yes, sir.

Mr. Minnis:

Q. I ask you to restate the sources of revenue of the Des Moines Union Terminal. That includes all sources of revenue, regardless of whether it is credited on the bills of the proprietary companies or not.

A. The sources of revenue of the Des Moines Union Railway Company are:

First, the amounts collected of the Des Moines & St. Louis, the Des Moines & Northwestern, and the St. Louis, Des Moines & Northern railroad company, and their successors in title in the use of the terminals, reimbursing the Des Moines Union Railway Company for the expenses of every nature.

Second, certain rentals collected from railroad companies, such as the Chicago, Burlington & Quincy, the Chicago, Great Western, the Minneapolis & St. Louis, the St. Paul & Des Moines, for fixed monthly amounts, which amounts are credited on the monthly bills of the complainants and their predecessor companies.

Third, the revenues from the rentals of buildings and revenues received for service in switching, handling, moving and storing cars and traffic; collections made for privileges in the Union Station, and demurrage charges collected on cars, detained cars. Does that answer your question?

Q. Have you mentioned all the sources of revenue of the terminal company? A. I think I have.

Q. Now, I will ask you again to state, if you know, what proportion of the cost of producing the revenue collected by the Des Moines Union Railway Company for switching, handling, moving and delivering of cars and traffic over said tracks and terminals in and about the City of Des Moines, has

been paid by the complainants and their predecessors in title since the beginning of the year 1889?

Objected to as incompetent, because calling for a conclusion, and irrelevant and immaterial, and also incompetent, because offered for the purpose of changing a written contract between the parties.

A. The entire cost has been paid by the plaintiff companies and their predecessors.

Q. State if you know, either from your examination of said books, or otherwise, whether the terminal properties in Des Moines have been operated since you have been familiar with them, in accordance with the terms of any particular contract between the Des Moines Union Railway Company and the railroad companies using said terminals?

A. They have. Since May 10th, 1889, they have been operated in accordance with the terms of the contract of that date, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railroad Company, and the St. Louis, Des Moines & Northern Railroad Company, and their successors in the title and use in the terminals.

Q. Now, I ask you to state if you know whether the accounts between the railroad companies you have just mentioned, and the Terminal Company have been made up by the Terminal Company and paid by the railroad companies using said terminals in accordance with that contract you have just mentioned?

A. They have.

Q. State if you know, from your examination of said books or otherwise, how and by whom the moneys that have been from time to time paid out by the Terminal Company, on account of injuries occasioned to persons and property in the operation and use of said terminals since the beginning of the year 1889, have been provided.

Same Objection.

A. They have been provided by the companies named, the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern, and their successors in title in the use of the terminals, on the basis of wheelage.

Q. Now, Mr. Pryor, I will ask you again to state the revenues that have been referred to in the proceedings of the Des Moines Union Railway Company as "Surplus Earnings"?

A. They were the revenues derived from the switching of cars, the collections made for the use of privileges in the Union Station, and demurrage collections, and the rentals of buildings of the Company.

Q. Mr. Pryor, were the revenues or funds collected by the Des Moines Union Railway Company, and which you have designated as "surplus earnings", ever credited on the monthly bills rendered by the terminal company against the railroad companies that were using said terminals under the contract of May 10, 1889, if so, state, if you know, when the terminal company ceased to so credit?

Objected to as incompetent and immaterial; incompetent if offered for the purpose of modifying the terms of the contract between the parties, the contract itself being clear.

A. They were so credited on the monthly bills from the time there were any such earnings up to the first of December, 1891.

Q. Up to when?

A. 1st of December, 1891.

Q. Do you know, from your examination of said books, or otherwise, how the so-called "surplus earnings" of the Terminal Company have been disposed of since on or about the 1st day of December, 1891?

A. They have been held by the Des Moines Union Railway Company, but that Company has charged against these so-called "surplus earnings" amounts from time to time for additions and betterments to the property, and the cost of switch engines, etc.

Q. Then since on or about the 1st day of December, 1891, they have not been credited on the bills of the railroad companies using the property under the contract of 1889 and their successors?

A. No, sir; they have not.

Q. Do you know from your examination of said books, or otherwise, whether since May 10, 1889, any money has been paid to the Des Moines Union Railway Company by other railway companies under contracts for the use by them of said terminal properties, or parts thereof?

A. Yes, there have.

Q. State if you know from your examination of said books or otherwise whether money so received by the terminal company from railroad companies other than the plaintiffs in this suit has been so applied or used?

A. It has been applied on the monthly bills against the complainant companies or their predecessors.

Q. Have you now before you the orginal records of the proceedings had at the meetings of the stockholders and directors of the Des Moines & St. Louis Railroad Company, from the date of its organization down to and including the year 1890?

A. Yes, sir.

Q. Who was Secretary of the Des Moines & St. Louis Railroad Company from the date of its organization down to and including the year 1890?

A. Mr. F. M. Hubbell.

Q. Have you ever examined that record book of the Des Moines & St. Louis Railroad Company to see whether it contains any entry or writing showing that the stockholders or directors of that Company, either by resolution or otherwise, authorized any one to attend as its agent, or proxy, a meeting of the stockholders of the Des Moines Union Railway Company, to be held at the office of said company in the city of Des Moines, on the 3rd day of January, 1890, the 18th day of February, 1890 or on any subsequent date, for the purpose of considering or voting upon any proposed amendments to or changes in the original Articles of Incorporation of the Des Moines Union Railway Company, or authorizing any one to be present as its agent or proxy, at any adjourned or subsequent meeting of said stockholders of the Des Moines Union Railway Company to consider or vote upon any proposed changes or amendments in its said Articles of Incorporation?

Objected to as irrelevant and immaterial, because the parties then beneficially interested in the Des Moines & St. Louis Railroad Company participated in said meeting, voted in favor of everything that was done there, and received and now retain the benefits of the sale to the Des Moines Union Railway Company; and for the further reason, if there had been any irregularity in the said proceedings, it was acquiesced in for nearly 20 years, if not quite 20 years, before any protest was made of any kind before this suit was brought.

A. I have examined the record book of the Des Moines & St. Louis Railroad Company. It does not contain any entry or writing showing that the stockholders or directors of the Company, either by resolution or otherwise authorized any one to attend as its agent or proxy a meeting of the stockholders of the Des Moines Union Railway Company, held on January 3, 1890, or February 18, 1890, or on any subsequent date for the purpose mentioned in your question.

Q. Mr. Pryor, it is stated in paragraph 25 of the answer in this case as follows:

"These respondents further admit that they claim and assert that the only rights of the complainants in the said Terminal property are their rights under the contracts Exhibits "P" and "R", and that upon the expiration of said contracts, the complainants will not have the right to use the said Terminal property except upon reasonable terms and conditions and

upon payment by them of a reasonable compensation for the rights which may be granted to them under contracts which may then be made with the Des Moines Union Railway Company."

Now, I will ask you when you first heard the defendants or either of them or any one else assert the claim of title in the Des Moines Union Railway Company, or the substance of such a claim of title in the terminals, as is set forth in that part of the answer I have just quoted?

A. I never heard any such claim asserted by any one until sometime in October, 1905, when the claim was made by Mr. F. M. Hubbell in Mr. Earling's office, the President of the Milwaukee & St. Paul Railroad, in Chicago.

Q. State what occurred there; I don't know what was said.

A. We were there in a meeting, discussing the disposition of these so-called "surplus Earnings", and Mr. Hubbell wouldn't concede that these amounts should be credited on the monthly bills of the complainants and their successors, and we claimed they should be. Finally Mr. Hubbell made the assertion that at the end of the present contract of May 10, 1889, that he would show us what we would have to pay then, and that we could not have the right to use the terminals except upon such terms and conditions as he might make.

Q. Meaning the Des Moines Union?

A. The Des Moines Union.

Q. That is he might make after the expiration of the—

A. May 10, 1889 contract.

Q. Mr. Pryor, it is provided in Article IV of the Articles of Incorporation of the Des Moines Union Railway Company, adopted in 1884, and attached to the bill of complaint as Exhibit "B" that

"No contract, lease or other agreement amounting to a permanent charge upon the property of the corporation shall be entered into by the Board, unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis Des Moines & Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders duly called, and shall have been approved by more than $\frac{3}{4}$ of all the stockholders, and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided."

Now, I will ask you whether you have examined that record book of the Des Moines & St. Louis Railroad Company to see

whether it contains any entry or writing showing that the stockholders or directors of that company, have either by resolution or otherwise ever at any time authorized or approved the execution of any deeds, contracts, leases or other agreements by the Des Moines Union Railway Company with other parties respecting said terminal properties in the city of Des Moines, and if so, state what deeds, contracts, leases or other agreements of the Des Moines Union Railway Company with other parties are shown to have been authorized by the Des Moines & St. Louis Railroad Company?

Objected to as irrelevant and immaterial, in so far as it relates to any contracts made after April 18, 1890, because at that time this article was amended, and the portion of it quoted was eliminated from it. And it is further objected to as irrelevant and immaterial, because the successors in interest of the Des Moines & St. Louis Railroad Company and that company have acquiesced in and received the benefits of all contracts made with other railroad companies by the Des Moines Union Railway Company, and have participated in the making of said contracts.

A. Well, the original record book of the Des Moines & St. Louis Railroad Company, which I have before me shows, on page 127, that at a meeting of the Board of Directors, May 25, 1889, the Board approved the agreement between the Des Moines Union Railway Company the Des Moines & St. Louis Railroad Company, and Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company of date May 10, 1889, and authorized and directed the President and Secretary of the Company to execute the same. On Page 146 of the record, it shows that the stockholders on January 3, 1890, ratified and approved the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company. On page 158 the record shows, that on January 15, 1897, the Board of Directors of the Des Moines & St. Louis Railroad Company passed a resolution assenting to and approving of the contract between the Des Moines Union Railway Company and the Chicago Great Western Railroad Company, dated July 2, 1896. Page 165 shows that on February 8, 1897, the Board of Directors voted that the President of the Company be and is hereby authorized to execute the new agreement between the Des Moines Union Railway Company and the tenant or proprietary companies, substantially upon the terms and conditions of the one now in existence with the approval of the same by Col. Wells H. Blodgett, counsel for the Wabash Railroad Company. This ratification of the contract of May 10, 1889, is shown in Exhibit "R" attached to the bill of Complainant.

I do not find any record of any other contracts or leases than those mentioned.

Q. Mr. Pryor, did the Wabash, St. Louis & Pacific Railway Company ever operate the Des Moines & St. Louis Railroad, extending from Albia to and into the City of Des Moines?

A. Yes, sir.

Q. Do you remember about the time when the Wabash, St. Louis & Pacific ceased to operate it? A. May 29, 1884.

Q. Did the Wabash, St. Louis & Pacific Railway Company, while operating the Des Moines & St. Louis line use in connection with that road any terminals in the city of Des Moines, and if so, state what terminals it so used?

A. It used the same terminals; these same terminals covered by the contract of May 10, 1889, or those that were in existence at that time.

Q. During the time that the Wabash, St. Louis & Pacific Railway Company operated the Des Moines & St. Louis railroad, did it use any terminals in Des Moines other than those you have mentioned as belonging to the Des Moines Union Railway Company? A. It did not—

Q. I will change that question before you answer it: I will say, commonly known as the terminals of the Des Moines Union Railway Company? A. It did not.

Q. Who, or what company or corporation succeeded the Wabash, St. Louis & Pacific Railway Company in the operation and management of the Des Moines & St. Louis Railroad?

A. The Purchasing Committee of the Wabash St. Louis & Pacific.

Q. Do you remember who they were, the names of the parties composing that Committee?

A. Yes, sir. James F. How, Thomas H. Hubbard, Oshen D. Ashley and Edgar T. Wells.

Q. Did the Wabash Purchasing Committee in operating the Des Moines & St. Louis Railroad use in connection with that line any terminals in the city of Des Moines, if so, please state, if you know, what terminals the committee so used?

A. It did. It used the terminals known as the Des Moines Union Terminals.

Q. What company or corporation succeeded the Wabash Purchasing Committee in the operation and management?

A. The Wabash Western Railway Company.

Q. Did the Wabash Western Railroad Company in operating the Des Moines & St. Louis Railroad, extending from Albia to Des Moines, use any terminals in the city of Des Moines in connection with that line; if so, state what terminals it so used, if you know?

A. It did. It used the same terminals known as the Des Moines Union terminals.

Q. What company or corporation succeeded the Wabash Western Railroad Company in the operation or management of the Des Moines & St. Louis Railroad?

A. The Wabash Railroad Company.

Q. Has the Wabash Railroad Company in operating the Des Moines & St. Louis Railroad, extending from Des Moines to Albia, used any terminals in the city of Des Moines in connection with that line of road; if so, state what terminals in the city of Des Moines the Wabash Railroad Company has so used?

A. The same terminals, known as the Des Moines Union Terminals.

Q. Mr. Pryor, it is stated in paragraph 23 of the defendants' answer in this case:

"These respondents further respectfully show to the Court, that ever since the execution of said exhibits "P" and "R" the complainants and their predecessors in interest have accepted the said contracts as binding and in full force and effect in all respects, and have made payments for the use of the terminals and facilities furnished to them by reason of said contracts";

Now, will you look at exhibit "P" attached to the bill of complaint in this case, and state whether it is the contract entered into May 10, 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines Northwestern railway company? A. It is.

Q. Will you look at exhibit "R" to the Bill of Complaint, and state whether it is what is called the ratification contract, executed on or about July 31, 1897, between the Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines Northern & Western Railroad Company?

A. It is.

Q. Now, I will ask you whether those two contracts are the only one that have been executed, to your knowledge, between the Des Moines Union Railway Company and the Complainants and their predecessors in interest, respecting the use and operation of said terminals in the city of Des Moines?

A. They are.

Q. You have been familiar with the accounts that have been rendered from time to time by the Des Moines Union Railway Company, against the Wabash Railroad and its predecessors, have you? A. Yes, sir.

Q. Now, in so far as you know, have all the bills and accounts between the parties to this contract (exhibits "P" and "R") been made by the Terminal Company and paid by the

complainants or their predecessors in accordance with these agreements? A. They have.

Q. Mr. Pryor, you have referred to a resolution that was adopted by the Directors of the Des Moines Union Railway Company, December 11, 1891 respecting the "Surplus Earnings" did you not? A. Yes, sir.

Q. And will you read it?

A. "Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenues from the tenant companies;

Therefore, Be It Resolved, that until the further action of the Board, the sums received as rents of real estate and of switching charges, shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purpose."

Q. Were those surplus earnings credited upon the monthly bills of the Railroad Companies, parties to the agreement of 1889, up to that date?

A. They had been up to the 1st of December, 1891.

Q. Now, did you ever as a member of the Board of Directors of the Des Moines Union Railway Company, offer any resolution or vote for any resolution, or co-operate with any one representing either of the complainants in this suit, in an effort to have the so-called "Surplus Earnings" again credited on the bills of the railroad companies, complainants in this suit?

A. I never attended any meeting of the Board of Directors of the Des Moines Union Railway Company, without bringing up this subject of crediting the revenues derived for switching and rental of houses, etc., on the monthly bills, and at the Board meetings insisted on this being done.

The record of the minutes of the meeting of the Board of directors held March 12, 1906, which I have before me, of the Des Moines Union Railway Company, shows that a notice and demand was read to the directors.

Mr. Guernsey: I think we want to object to this part of it as not the best evidence.

A. (Cont'd) The minutes of the meeting of the Board of Directors of the Des Moines Union Railway Company, held March 12, 1906, and which I have before me state: That Mr. Charles E. Vroman, Assistant General Solicitor, on behalf of the Chicago, Milwaukee & St. Paul Railway Company, then read a notice and demand of which the following is a copy, to-wit:

"To the Des Moines Union Railway Company, its Officers and Board of Directors:

The repeated requests heretofore made upon you for the distribution and crediting to the tenant companies of the receipts from real estate rentals, switching charges, etc., having been ignored, the Chicago, Milwaukee & St. Paul Railroad Company formally demands that you and each of you, without further delay cause all moneys arising from rents of real estate, switching charges, etc., heretofore and hereafter collected to be credited on the bills against this company on the basis of its proportion to the total wheelage.

(Signed) CHICAGO, MILWAUKEE & ST. PAUL RAILROAD COMPANY.
By Charles E. Yroman, Assistant General Solicitor.

And the same was received and ordered placed on file."

Thereupon Mr. C. M. Travous, General Solicitor for the Wabash Railroad Company, read and notice and demand of which the following is a copy, to-wit:

"To the Des Moines Union Railway Company, its Officers and Board of Directors:

The repeated requests heretofore made upon you for the distribution and crediting to the tenant companies of the receipts from real estate rentals, switching charges, etc., having been ignored, the Wabash Railroad Company hereby formally demands that you and each of you, without further delay cause all moneys arising from rents of real estate, switching charges, etc., heretofore and hereafter collected to be credited on the bills against this Company on the basis of its proportion to the total wheelage.

(Signed) WABASH RAILROAD COMPANY.
By C. M. Travous, General Solicitor.

And the same was received and ordered placed on file.

Mr. Pryor offered the following preamble to the resolution, which was seconded by Mr. McKenna:

Whereas, it appears from the books of this company that expenditures aggregating a large amount have been made for additional property and improvements, other than supplies and current expenses;

And, Whereas, said expenses have been temporarily made from moneys derived from real estate rentals, switching charges, etc., to which the tenant companies are entitled on the basis of their respective wheelage;

And, Whereas, the cost of said property and improvements is properly chargeable to the monthly account;

Therefore, be it Resolved, that the Trustees in the mortgage heretofore executed by this Company be requested to certify and issue the remaining unissued bonds of this Company secured by said mortgage in accordance with section 27 of the contract of this Company and the tenant companies, of date, May 10, 1889, and that the same be applied towards re-imbursing the tenant companies. Resolved further, that the President and other officers are hereby instructed to do and perform all things necessary and proper to carry out this resolution.

Mr. Pryor offered the following resolution, seconded by Mr. McKenna, to-wit:

Whereas, the distribution and crediting to the tenant companies all rents collected for the use of real estate and charges for switching was discontinued in accordance with the following resolution adopted by the Board of Directors of this Company on the 7th day of January, 1892, to-wit:

'Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenues, from the tenant companies;

Therefore, be it Resolved, that until the further action of the Board, the sums received as rents of real estate and of switching charges, shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purpose.'

And, Whereas, the moneys collected from the aforesaid sources now exceed the amount necessary for the cash or working capital contemplated in said resolution;

Therefore be it Resolved, that all moneys now on hand or hereafter received as rents of real estate and switching charges, over and above what may be required to maintain a cash working capital of $25,000.00, to purchase supplies and pay current bills pending receipt of the monthly revenues from the tenant companies, be credited upon the bills of the different tenant companies, as per order of the Board passed February 11, 1891, and giving to each company its share ascertained by wheelage.

Mr. McKenna then offered the following resolution:

Resolved that the demands this day made by the Chicago, Milwaukee & St. Paul Railway Company, and the Wabash

Railroad Company, with respect to the payment and the crediting of the rentals from real estate and charges for switching be complied with, and the officers of this Company are hereby directed to make such payments and credits."

The minutes of the meeting of the Board of Directors of the Des Moines Union Railway Company, which I have before me, of January 18, 1907, show that I offered the following protest:

"The Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company hereby again enter formal protest against the action of the officers of the Company, in making charges of payments of any kind against or from the so-called "Surplus Earnings" and request that this protest be entered upon the records of this meeting."

The minutes of the meeting of the Board of Directors of the Des Moines Union Railway Company, held January 3, 1908, read:

"The following protest was read to the meeting and filed:

Des Moines, Iowa, January 3, 1908.

As the representatives of the Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company, and also as Directors in the Des Moines Union Railway Company Board of Directors, we again make formal protest against the practice of charging expenditures of any description against the so-called surplus earnings account, it being claimed by us at all times that the revenues accruing from rentals and switching earnings, etc., should be applied monthly to the reduction of the expenses of the Des Moines Union Railway Company, and the balance of the expenses be collected from the companies, we further protest against that part of the superintendent's report just submitted in which he states that a part of the earnings for 1907 had been appropriated to the payment of two switching engines, $23,050.00; two shares of capital stock of the Iowa Transfer Railway Company, $200.00; and a siding to the Iowa Glue Company, $824.08—total, $24,074.08. We do not protest against these improvements, but against the application of earnings towards the payment thereof.

(Signed) WABASH RAILROAD COMPANY,
By E. B. Pryor, Vice-President.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
By E. W. McKenna, Second Vice-President.
E. W. McKenna, E. B. Pryor and Charles E. Vroman, Directors."

Q. I will ask you whether the records show whether these several motions and resolutions you have enumerated were adopted, or whether any of them were adopted?

A. The records show none of them were adopted. The record shows that the resolutions that were offered at the meeting of March 12, 1906, were voted in favor of by Messrs. Pryor, McKenna and Underwood. And the following directors voted against the adoption: F. M. Hubbell, F. C. Hubbell, G. C. Hubbell, H. D. Thompson and C. Huttenlocher; that being the vote on each of the resolutions.

At the meeting of January 18, 1907, the vote in favor was Messrs. McKenna, Pryor and Vroman. Those voting against, Messrs. F. C. Hubbell, F. M. Hubbell, G. D. Thompson, C. Huttenlocher and G. C. Hubbell.

At the meeting of January 3, 1908, there was only a protest at that meeting. There was a resolution offered at the meeting of January 18, 1907.

Mr. Guernsey: On that protest of 1908, what if anything was done; any action taken on it at all?

A. It was simply filed.

At the meeting of January 18, 1907, there was a resolution offered that the amount to be paid for the new switch locomotives when paid be carried on the books of this Company in suspense. Upon this resolution Messrs. McKenna, Pryor and Vroman voted aye. F. C. Hubbell, F. M. Hubbell, H. D. Thompson, G. C. Hubbell and C. Huttenlocher voted no.

At the same meeting a resolution was offered by Mr. Pryor that the amount paid for the two shares of capital stock of the Iowa Transfer Company be carried on the books of the Company in suspense. Messrs. McKenna, Pryor and Vroman voted aye. Messrs. F. M. Hubbell, F. C. Hubbell, H. D. Thompson, G. C. Hubbell and C. Huttenlocher voted no.

Q. Mr. Pryor, how much money had been expended by the Wabash St. Louis & Pacific Railroad Company, the Des Moines & St. Louis Railroad Company, and their successors, in Des Moines, for terminal purposes, prior to May 1st, 1888?

A. $312,977.75.

Q. What was the total sum that had been expended up to the date mentioned by the Wabash, the Des Moines & St. Louis, the St. Louis Des Moines & Northern and the Des Moines & Northwestern Companies in the purchase of terminals in Des Moines? A. $370,200.91.

Q. Did you have any correspondence with any official of the Des Moines Union Railway Company respecting the non-distribution of the surplus earnings among the railroad companies on their monthly bills? A. I did.

Q. State what correspondence you had.

A. When I discovered no credits were made on the monthly bills for the month of December, 1891, I wrote to Mr. Horace Seeley, who was the Superintendent of the Des Moines Union Railway Company and had charge of the management of the property, asking why the credit had not been made on the monthly bill for December for the switching earnings and rentals, etc., and I have before me his original letter in answer to that inquiry, it is as follows:

"March 2, 1892.

D. B. Howard, Auditor Wabash Railway,
St. Louis, Mo.

Dear Sir:

Replying to yours of the 1st inst., in regard to the allowance for switching, rentals, etc., that should be made on our bills for the months of December and January, I have to say, that at a meeting of the Executive Committee, held January 7, 1892, it was decided not to distribute these collections for a period of time, until the Des Moines Union Railway Company could accumulate a small fund for working capital. I presume this will continue in effect until January, 1893. You will be furnished each month a statement showing the amount of this rental, and your proportion of the same, so you can make a charge against the D. M. U. Railway and carry it on your books, as you see fit for future adjustment.

Yours truly,

HORACE SEELEY, Superintendent."

That is written on the letterhead of the Des Moines Union Railway Company, General Offices.

G. M. Dodge, President
F. M. Hubbell, Secy-Treas
Horace Seeley, Supt.

Dated, Des Moines, Iowa, March 2, 1892.

Mr. Guernsey: This letter is objected to and the defendants move to strike it out, so far as it is intended to vary or modify the contract between the parties, because the Superintendent had no authority to make or change this contract, and it is also objected to in so far as it attempts to construe what he calls the resolution of the executive committee, which was in fact a resolution of the Board of Directors, as incompetent.

By Agreement of the parties, at this time, 12 M. an adjournment was taken until 1:30 P. M. of this day.

Afternoon Session.

Jan., 26, 1911.

Now, at this time, pursuant to the adjournment, the further taking of testimony on the part of Complainants is resumed as follows:

EDWARD B. PRYOR, recalled for further direct examination. Examined by Mr. J. L. Minnis, and testified as follows:

Q. Mr. Pryor, you were asked whether all bills and accounts between the parties to the contracts, exhibits "P" and "R" were made by the Terminal Company and were paid by the complainants and their predecessors in accordance with these contracts, and you answered yes. Now, I will ask you whether you wish to modify that answer?

A. My answer is, that all bills and accounts between the parties to these contracts have been made by the Terminal Company and paid by the complainants and their predecessors in accordance with the agreements, with the exception of their failure to credit the switching earnings and rentals which we have claimed should be credited under the contract, and which Mr. Hubbell claimed should not be.

Q. Mr. Pryor, who managed and operated the terminal properties now managed and operated by the Des Moines Union Terminal Railway Company, after the execution of the contract of January 2, 1882, and prior to the execution of the contract of May 10, 1889?

A. The Des Moines & St. Louis Railroad Company had the management of the terminal property under the contract of January 2, 1882, and operated it under that agreement for the parties to the contract up to May 1, 1888, and that was the date upon which the Des Moines Union Railway Company assumed the management of the property.

The defendants move to strike from the answer, the statement that the Des Moines & St. Louis was in control under the contract of 1882, and the statement that it operated under the contract, as conclusions of the witness and incompetent.

A. (Cont'd) And after the 1st of May, 1888, the Des Moines Union Railway Company had the management of the property up to the date of the agreement of May 10, 1889, and it was operated under the terms of the agreement of January 2, 1882.

Defendants move to strike from the answer "and it was operated" and what follows, as a conclusion and incompetent on that account.

Q. Who paid the disbursements of the Des Moines & St. Louis Railroad Company during the period it managed the terminal property; that is, the disbursements in connection with the operation and maintaining of the property?

A. The Wabash, St. Louis & Pacific—I didn't catch the intent of your question.

(Question and answer withdrawn.)

Q. How were the expenses and disbursements made in connection with the maintenance and operation of the terminal property, paid during the period the Des Moines & St. Louis Railroad Company managed the terminal properties?

The defendants object to all of this prior to the organization of the Des Moines Union Railway Company, as irrelevant and immaterial for any purpose, so far as it is concerned.

A. They were paid by the railroads party to the agreement of January 2, 1882, namely, The Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company on wheelage basis.

Q. Who paid the expenses and disbursements made by the Des Moines Union Railway Company in connection with the maintenance and operation of the terminal properties during the period beginning with its organization and ending with the execution of the contract of May 10, 1889?

Objected to as irrelevant and immaterial and calling for a conclusion.

A. The same companies, namely, the Des Moines & St. Louis, Des Moines Northwestern, and St. Louis, Des Moines & Northern Railway. That is to say, from the 1st of May, 1888, when the Des Moines Union took charge of the property, up to the date of the contract of May 10, 1889.

Q. During the period between the execution of the contract of January 2, 1882, and the execution of the contract of May 10, 1889, who paid for the equipment purchased by the Des Moines Union Railway Company for use on the Des Moines Terminals?

A. The first equipment that was purchased by the Des Moines Union Railway Company, were engines purchased in the latter part of 1888, and the payments for those engines extended over a period, commencing in the latter part of 1888, over into 1889; so that those payments were over the two different periods covered by your question, both prior to and after the 10th of May, 1889; but the payments were made by the Des Moines & St. Louis, Des Moines Northwestern, St. Louis,

Des Moines & Northern on a wheelage basis during both those periods, both before and after May 10, 1889.

Q. By the complainants and their predecessors?

A. Yes, sir.

Q. Mr. Pryor, you were asked whether you had examined the record book of the Des Moines & St. Louis Railroad Company, from the date of its organization, down to and including the year 1890, to ascertain whether it contained any entry or writing, showing that the stockholders or directors of that Company, either by resolution or otherwise, had authorized any one to attend as its agent, or proxy, the meeting of the stockholders of the Des Moines Union Railway Company, to be held at the office of said Company in the city of Des Moines, on the 3rd day of January, 1890, on the 18th day of February, 1890, or on any subsequent date, for the purpose of considering or voting upon any proposed amendment to or changes in the original Articles of Incorporation of the Des Moines Union Railway Company, or authorizing any one to be present, as its agent, or proxy, at any adjourned or subsequent meeting of said stockholders of said Des Moines Union Railway Company, to consider and vote upon any proposed changes in or amendment to its said articles of incorporation, and you answered, that said record does not show that any one was authorized, either as agent or proxy, to attend any of said meetings for said purpose. Now, I will ask you if you have examined the stock book of the Des Moines Union Railway Company, with respect to when the certificates of shares of stock in that company were first issued.

A. I have.

Q. Were any of the certificates of shares of stock of the Des Moines Union Railway Company issued on January 3, 1890, or February 18, 1890, or prior to April 8, 1890?

A. No, sir. The stock certificate books show there were no certificates of stock issued prior to April 8, 1890.

Q. When do the stock books show that certificates of shares were first issued? A. On the 8th day of April, 1890.

Cross-Examination

By N. T. Guernsey, Esq.:

Q. When was the first time you came to Des Moines, Mr. Pryor?

A. In connection with looking into the affairs of the Company, you mean? A. Yes.

A. I don't remember exactly the first time I came. I think that the first time I attended a meeting of the Board of Directors of the Company, was in 1901.

Q. When was the first time you came to Des Moines, either with reference to this Company, or any other matter?

A. I don't remember.

Q. Did you come to Des Moines as early as 1888?

A. No, sir.

Q. As early as 1890? A. No, sir.

Q. As early as 1895?

A. I think I did in 1895, but I am not positive about that.

Q. The first time you came up here was about August 26, 1896, wasn't it, and in this connection I will show you a letter, to refresh your recollection, which I will ask the reporter to insert in the record, as follows:

"The Wabash Railroad Company,
Office
J. Ramsey, Jr., Vice-President & Gen'l Manager.

St. Louis, Mo.
Aug. 26th 96.

Mr. F. C. Hubbell,
Pres't. D. M. U. Ry. Co.,

Dear Sir:

This will be handed you by Mr. Pryor, our Assistant Auditor, whom I have requested, in company with Mr. Garrett, to go to Des Moines, and look over the methods and cost of operating the joint terminals.

I do not do this because I have any doubts or apprehensions as to the property being handled in the best way possible for the interests of all, but only in order to fully post myself on the whole situation at that point.

I find our company has not been in the habit of receiving any statement from the Des Moines Union, other than the one showing the cost of operation, and we have no information, whatever, as to the revenues of the Company, their general disposition, etc., nor any of the detailed information which I think we should have in order to keep properly informed.

Will you kindly have the officers of the Des Moines Union furnish Messrs. Pryor and Garrett every opportunity necessary for them to become properly posted in the premises.

Yours truly,

J. RAMSEY, Jr.,
Vice-Pres't & Gen'l Manager".

A. Yes, August 26, 1896.

Q. Is that the first time you came up here?

A. I think it is.

Q. So that you have no personal knowledge as to the matters which transpired in Des Moines prior to August 26, 1896, as to which you testified?

A. With the exception of the handling of the bills and vouchers between the companies interested, and the Wabash Railroad Company, I was perfectly familiar with all the manner in which the bills were rendered and vouchered and paid.

Q. That I don't think answered my question; what I asked you was, whether you had any personal knowledge with reference to the matters as to which you testified, which transpired in the City of Des Moines prior to August 26, 1896?

A. My answer was, only through being perfectly familiar with the bills as rendered and paid.

Q. Do you claim that you had personal knowledge of the matters which transpired here in Des Moines prior to your first trip to Des Moines, which was on August 26, 1896?

A. Only as shown by the bills and vouchers.

Q. And that is your idea of personal knowledge?

A. It is.

Q. Now then, you stated that the Des Moines and St. Louis Railroad operated the Des Moines Union during some period, didn't you?

A. I said it operated the terminals during some period.

Q. What period was that?

A. I don't recall without looking back at the records, but I think it was from the time of the inception of the terminals up to the time they were turned over to the Des Moines Union Company, May 1, 1888.

Q. What employe of the Des Moines & St. Louis Railroad was in active charge of those terminals at that time?

A. I don't recall.

Q. At that time was the Des Moines & St. Louis Railroad Company operating its own railroad?

A. No, sir.

Q. Did it have any employes of any kind?

A. It had officers, including Mr. F. M. Hubbell, Secretary.

Q. I didn't ask you that; did it have any employes?

A. I don't know.

Q. Did it keep any books of account?

A. I don't know. I think all the books of account were kept by the Wabash, St. Louis & Pacific Railway Company.

Q. Did the Des Moines & St. Louis Railroad Company ever have any employe to whom it paid a salary?

A. I don't know.

Q. Did it keep any books of account which showed the expense of operating this terminal?

A. I don't know. I think not.

Q. Then what do you mean when you say that it operated it?

A. I mean that it was operated in its name.

Q. Well, but what did the Des Moines & St. Louis Railroad Company or any officer or employe of that company do in connection with the operation of this terminal during the period you refer to, so far as your own knowledge goes?

A. I don't know.

Q. You don't know anything about it, do you?

A. No.

Q. Now, as a matter of fact, who owned the stock of the Des Moines St. Louis Railroad Company?

A. I don't know.

Q. Don't the record of the Des Moines, St. Louis Railroad Company show who subscribed for that stock and who voted that stock? A. Voted which stock?

Q. The stock of the Des Moines & St. Louis Railroad Company?

A. I don't know. I haven't examined the record in that connection.

Q. Could you examine the entire record so as to testify it doesn't show certain things without examining all of it, of the Des Moines St. Louis Railroad Company?

A. Certainly, I could.

Q. Now, in connection with the examination of this record, did you notice a provision in the contract that is set out in the meeting of December 5, 1880, headed:

Meeting for the Purpose of Organizing the Des Moines & St. Louis Railroad Company between Jefferson S. Polk, James S. Clarkson, Frederick M. Hubbell and John S. Runnells, and the Wabash St. Louis & Pacific Railway Company, party of the second part, in which it is stated that the first parties, that is the individuals named, will subscribe to the capital stock of said Company such amount as will be necessary to qualify themselves as directors thereof and no more, and will receive no other subscription to the capital stock of said Company except the following: they will accept a subscription to the capital stock of said company to be made by such person or persons as shall be designated by the second party hereto amounting to the entire capital stock of the company except that which shall have been subscribed by themselves, as above. Do you remember that?

A. I did not read that part of the record in connection with looking for the action of the Board of the Des Moines & St. Louis authorizing any agent or proxy to attend the meeting of January 3, 1890, or thereafter.

Q. Have you ever read the part of this record I just referred to?

A. I may have at some previous time.

Q. You know, as a matter of fact, that the Wabash, St. Louis & Pacific Railway Company subscribed for all the stock of this Des Moines & St. Louis Railroad Company?

A. No, I do not know. I know it was among its assets of the stock. I presume, of course, the record shows that action.

Q. Weren't you familiar with all of those accounts at that time, and didn't you know who was subscribing for this stock and who was paying this money?

A. No; that wasn't necessarily a part of my duties at that time, in 1880.

Q. What were your duties in 1880?

A. I was clerk in the Auditor's office in 1880, handling bills and vouchers.

Q. Now then, you do know as a matter of fact that the Wabash, St. Louis & Pacific Railway Company subscribed for all the stock to build the Des Moines & St. Louis Railroad Company and took the bonds that were issued, and then took the property over on a perpetual lease and operated it?

A. The record will show that, I presume.

Q. I am asking you what you know about it?

A. I think that is true.

Q. You do know as a matter of fact that the Des Moines & St. Louis Railroad Company never operated anything, don't you? A. I presume that is true.

Q. Now then, what part of this record did you examine in order to ascertain whether or not there was any authority for anybody to represent the Des Moines & St. Louis Railroad Company at the meetings of the Des Moines Union Railway Company, held in January and February, 1890 and thereafter?

A. I examined the record book commencing with the meeting of the stockholders on January 1, 1885, and from that on through.

Q. You referred to the Purchasing Committee as operating this road some time; during what period did the Purchasing Committee operate this Des Moines & St. Louis Railroad?

A. It operated the same way the Des Moines & St. Louis Railway Company did—

Q. I asked you what period that was.

A. From May 29, 1884, the date of the Receivership of the Wabash, St. Louis & Pacific Railway Company.

Q. Did the Purchasing Committee take it on the day the receivers were appointed?

A. The property never passed under the hands of the receivers.

Q. When was the Purchasing Committee organized?

A. I don't recall.

Q. Was it before or after the receivers were appointed?

A. After the receivers were appointed.

Q. It didn't take over the property before it was organized?

A. No.

Q. Now, I notice here in the record of the meeting of the stockholders of the Des Moines & St. Louis Railroad Company, of January 3, 1890, that the stock present was this: F. M. Hubbell, representing 1 share; J. S. Polk, representing 1 share; C. M. Hayes, representing 1 share; James F. How, representing 1 share; the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, represented by James F. How, ... shares: Now, I will ask you, are you familiar enough with the accounts and books of the Wabash St. Louis & Pacific Railway Company, to be able to tell us whether at this time the Purchasing Committee was the owner of the stock of the Des Moines & St. Louis Railroad Company, which had theretofore been held by the Wabash, St. Louis & Pacific Railway Company?

Objected to on the part of complainants, because the Wabash, St. Louis & Pacific Railway Company never owned that stock.

A. My recollection is that the Purchasing Committee owned that stock at that time.

Q. Now the Board of Directors elected at that time—page 146 of this record, were first, James F. How—was he a member of the Purchasing Committee? A. No, sir.

Q. What relation did he sustain to the Wabash, St. Louis & Pacific Railway Company?

A. Why, the Wabash, St. Louis & Pacific Railway Company had been foreclosed in 1890.

Q. And he sustained no relation at that time?

A. No; he was Vice-President of the Wabash Railroad Company at that time.

Q. That had been organized at that time? A. Yes, sir.

Q. What relation did Mr. How sustain to the Purchasing Committee?

A. He was the general agent for the receivers, but he sustained no relation to the Purchasing Committee that I had ever heard of.

Q. None whatever? A. No.

Q. Now, you called attention to the fact that Mr. Hubbell was Secretary right straight through, as you would observe by reading these records up to some time in 1890, of the Des Moines & St. Louis; did you read them carefully enough to notice who the other officers were? A. Yes, sir.

Q. Now, he was the President in 1890? A. Yes, sir.

Q. The Directors after Mr. How—Mr. A. B. [illegible]mmins, ..., did he sustain any relation to the Wabash Railroad Company? A. He was Assistant Attorney.

Q. Next is C. M. Hayes? A. General Manager.
Q. The next is O. D. Ashley.
A. He was President of the Wabash Railroad Company.
Q. Is he also a member of the Purchasing Committee?
A. Yes, sir.
Q. The next is W. H. Blodgett.
A. Yes, sir; General Counsel.
Q. The next one is H. S. Priest; did he sustain any relation to the Wabash then?
A. I think he was Assistant Attorney; he was an attorney for the Wabash.
Q. And the other two are J. S. Polk and F. M. Hubbell, and they weren't officers or attorneys of the Wabash, as far as you know? A. No, sir.
Q. In connection with this question of authority to vote the stock of the Des Moines & St. Louis Railroad Company at meetings of the Des Moines Union Railway Company in January 1890, and thereafter, you are familiar with the resolutions which were adopted by the Des Moines Union Railway Company on the 8th of April, 1890, are you not, Mr. Pryor?
A. Yes, sir; I read them.
Q. And you know that those resolutions recited on page 91 of the Des Moines Union Record, as follows, don't you: Whereas it was and is agreed that said property was fairly worth the sum of $861,257.21, of which purchase price the Des Moines St. Louis Railroad Company, the Wabash, St. Louis & Pacific Railway Company, or its representative, the Purchasing Committee, the said Purchasing Committee being now the real owner of the Des Moines St. Louis Railway Company, were and are entitled to $470,110.80 of said purchase price: Do you remember that?
A. I remember the record shows that.
Q. Then you remember the record shows further, after recitals and resolutions, among other things, as follows: (p. 93 of Des Moines Union Record) That but to complete the payment of such purchase price the President and Secretary are hereby authorized to issue certificates for 3992 shares of stock (which sahres including 8 already issued on behalf of said parties, aggregate 4000 shares) as follows:

To the Purchasing Committee of the Wabash St. Louis & Pacific Railway Company 3996 shares.

You are familiar with that also?
A. I am familiar with the fact that the record shows that.
Q. You know as a matter of fact that stock was issued to the Purchasing Committee, don't you? A. Yes, sir.

Q. And you know among the persons who voted for that resolution, were Mr. J. F. How, then President of the Wabash Railroad Company, one of the complainants?

A. He was Vice President at that time. He never was President.

Q. And Mr. C. M. Hayes, General Manager of that Company? A. Yes, sir; I know the record states that.

Q. And you know also, don't you, as a matter of fact, the Purchasing Committee accounted to the Wabash Railroad Company what it received for the sale or a part of this stock?

A. Yes, I know they accounted for the sale of the bonds and stock together.

Q. And that the stock in the Des Moines Union Railway Company which the Wabash Company now holds is a part of this stock?

A. Yes, sir. I want to call attention to the fact, in your quoting from the records of the Des Moines Union Railway Company you didn't start at the beginning of that subject. You just referred to; the record shows that thereupon A. B. Cummins offered the following preamble to the resolution, to-wit: Whereas, there appears to be some inadvertance, there appears to be some uncertainty—

Mr. Guernsey: Please do not read it all, we will offer that ourselves.

Q. You began your testimony with reference to the payment for the stock of the Des Moines Union Railway Company, as I recollect it. Do you mean to say that the books of the Des Moines Union Railway Company do not show that anything was ever received by the Company on account of the stock issued by the Company? A. No money received.

Q. And your answer was intended to be limited to the payment of actual money?

A. My answer was that the books of the Company did not show any money had ever been received in the way of payment for the stock.

Q. As I said, you intended your answer to be limited to payment by actual money?

A. Yes, sir. The books of the Company show an entry was made charging the cost of the road with the amount of the outstanding bonds and stock, and there is no other entry on the books, I could find, in connection with the issue of stock.

Q. So far as the books are concerned, they show that this stock was paid up in property but not money?

A. It doesn't show anything of the kind. It shows just simply an entry made on the journal charging the cost of the road and equipment with the amount of the outstanding bonds

and total amount of capital stock; no reference to the value of property in the entry or anything else.

Q. You misunderstood my question, if you thought it referred to value. There was an entry on the journal that referred to the property which the company owned in connection with its outstanding stock and bonds?

A. Only just to the extent of the words I have just quoted.

Q. You do not pretend that it is a literal quotation?

A. I think it is, absolutely—cost of road and equipment, Dr. so much money; first mortgage bonds, so much money; capital stock $400,000.00, with no explanation in the entry whatever.

Q. What book did you find that entry in?

A. I found that in the first Journal of the Des Moines Union Railway Company.

Q. Do you know where those books are? A. Yes, sir.

Q. Where?

A. In Mr. F. C. Hubbell's office; I saw them this morning.

Mr. Guernsey: We have not been able to find them; we are much obliged to you.

Q. Will you point out this entry to us so we can get it from the book? A. Yes, sir.

Q. You testified, I believe, that these books did not show any payment to Dodge, for instance, for real estate?

A. Payment in money, I said; yes.

Q. Now, you knew when you gave that answer, didn't you, Mr. Pryor, that the books of the Wabash St. Louis & Pacific Railway Company show that prior to the time that this property was conveyed to the Des Moines Union Railway Company, the Wabash had reimbursed Dodge for what he had put into it, and had become the owner of whatever interest he had there? A. It is my recollection that the books show—

Q. I didn't ask you that. I wish you would read the question to the witness.

(Question read to the witness)

Q. Didn't you know that at that time?

A. No; I don't remember that now.

Q. And when you stated that the books didn't show that they had paid Mr. How anything, you knew that the money to buy the property that stood in How's name had been advanced by the Wabash, and that the bonds and stock had been issued to the Wabash to reimburse them for this expenditure, didn't you, or cover this expenditure?

A. The Wabash was reimbursed by the money expended in the way of issue of bonds.

Q. You knew, that as between How and the Wabash, How was not entitled to any part of that consideration?

A. I have just testified to that exactly in response to the question asked as to whether the books of the Des Moines Union Railway Company showed the payment of any money to those parties.

Defendants move to strike the answer as not responsive.

(Question repeated)

A. I do not exactly get that.

Q. Didn't you know that as between How and the Wabash, when this property was transferred to the Des Moines Union, How was entitled to none of the consideration which the Des Moines Union gave for the property?

A. I knew, individually Mr. How had never paid anything for the property.

Q. Now then, you referred to this contract of May 10, 1889, between the Des Moines Union, the Des Moines & St. Louis Railroad, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, which is exhibit "P" to the Bill several times; you are familiar with the terms of this contract? A. Yes, sir.

Q. The contract provides in the sixth section, "the party of the first part," that is the Des Moines Union Railway Company, "in consideration of the payments to be made to it by said parties of the second part, hereby grants to said parties the use of its terminal properties aforesaid", and then the first party agrees to maintain them, and so on. Now these payments were to be made up by ascertaining first the amount of interest on the bonds, and then by taking the expenses of maintenance and repairing the property, then the taxes, general and special, and insurance, and then all other costs and expenses growing out of the operation of the property, and deducting from them, using the language of the contract, "the amount, if any, which other railway companies may be under obligation to pay by virtue of the contracts for the use of said property, or parts thereof for the preceding month". And after that deduction was made, the remainder was divided between these tenant companies in proportion on the wheelage?

A. Yes, sir.

Q. Now, after that division was made, the bills were made out against the tenant companies for these payments?

A. Yes.

Q. And the tenant companies paid them? A. Yes.

Q. Now then, I wish you would state, what, if any payments, so far as you know, the Wabash Railroad Company, or the Des Moines & St. Louis Railroad Company made after

the date of this contract, to the Des Moines Union, except in payment of bills rendered, as I have just stated?

A. It paid all the bills that were rendered.

Q. What bills were rendered, except bills rendered, as I have stated for the construction called for by this contract exhibit "P" to the complainants bill of complaint?

A. I don't exactly catch your meaning; do you mean, were any other bills made?

Q. Yes.

A. No other bills were made by the Des Moines Union except under this contract.

Q. Then all of the payments that you have testified to that were made by the Wabash Railroad Company or its predecessors in interest, since the date of this contract, were in payment of bills rendered under this contract, such as I have called your attention to? A. Yes, sir.

Q. And what you meant then, when you said that it had paid interest on the bonds was, that it had paid an amount ascertained under this contract, and that in ascertaining the amount the interest on the bonds was to be taken into account as provided for in this contract? A. Yes, sir.

Q. What you meant by saying it had paid the expenses, following it down item after item here, on account of maintaining and repairing the property of the Des Moines Union Railway Company, is that its expenses of maintenance and repairing had been taken into account in making up these bills, as prescribed in this contract? A. Yes, sir.

Q. And the same thing is true with reference to tracks and depots, round houses, engine houses, taxes, general and special, and everything else that you mentioned?

A. Yes, sir; the only difference being, we claimed on these monthly bills, they were incorrect to this extent, they did not show any credit for the switching earnings which we claimed they should show. I think that will be conceded that is the point of difference between us all the time.

Mr. Guernsey: I have understood there was a controversy about that, Mr. Pryor.

Q. Now then you talk about payment by the Chicago, Milwaukee & St. Paul Railway Company and its predecessors in interest. Did that company or its predecessors in interest make any payments, so far as you know, except in payment of bills rendered under this contract of May 10, 1889?

A. None that I know of.

Q. Now, referring to this what you added to your last answer, section 4 in connection with deductions says, that after this monthly aggregate has been ascertained "there shall be deducted therefrom the amount, if any, which other railroad

companies may be under obligation to pay by virtue of contracts for the use of said property or parts thereof for the preceding month"—I think I read all that relates to deduction—that is the disputed provision in the contract?

A. I think it is; yes, sir.

Q. It is under that you claim that rentals from houses rented to various people and earnings from switching to the various industries, and things like that, should be deducted?

A. Not that alone, but the practice that these credits had been allowed from the inception of the operation of the terminals, and also by the Des Moines Union from the time it took the management of the property, up to the passage of this resolution on January 7, 1892; that is part of our contention.

Q. I will put it in a different way: this is the only provision in the contract made May 10, 1889, or any subsequent contract, upon which you rely as supporting your claim that after this contract was made you were entitled to these deductions?

A. I think it is the only clause in the contract—

Complainants object to the last question and answer, because it calls for and gives merely a construction of the witness as to the part of the contract under which our claim is made.

Q. Now, Mr. Pryor, I notice that reference was made on your direct examination, to the complainants as the proprietary companies. Now, I notice that in the resolution adopted February 11, 1891, which is set out on page 61 of the printed bill, which first ordered the application of surplus earnings on the bills of the complainants, that these companies are referred to as the tenant companies. I notice also in the resolution adopted January 7, 1892, which is set out on the same page of the bill, they are referred to as the tenant companies, and that in the protest made by Mr. Vroman, that you have referred to in the meeting of March 12, 1906, these companies are referred to as the tenant companies, and that in the protest made by you at the same meeting these companies are referred to as the tenant companies. Now, so far as you know, is there any place in this record where prior to the bringing of this suit they are referred to as proprietary companies? A. No, sir.

Q. I undestood you to say on direct examination, with reference to surplus earnings since December 1, 1891, that they had been held by the Des Moines Union Railway Company, but that the Company had had charged against them the costs of some betterments and additions to the plant and equipment. What did you mean by the use of the word "held"; do you mean the Company has the money or spent it?

A. It still has the most of the money.

Q. Has it the money that is represented by these charges?

A. No, that has been spent and the expenditure charged against it.

Q. And so far as that money has been used, it has been used in additions to the property and plant and equipment of the Des Moines Union Railway Company?

A. Yes, sir.

Q. You referred to other railroads who are using the terminals, aside from the Wabash, Chicago, Milwaukee & St. Paul Railroad Companies. The Wabash, and the Chicago, Milwaukee & St. Paul Railroad Company, are the only present users of the terminals who are successors to the original parties of the second part to the contract of May 10, 1889?

A. Yes, sir.

Q. Now, the other railroads which are now using the terminals, or parts of them, are the Chicago, Great Western, the Chicago, Burlington & Quincy, the Minneapolis & St. Louis Railroad Company, and the St. Paul & Des Moines Railroad Company? A. Yes, sir.

Q. The amounts which these companies are under obligation to pay by virtue of their contracts for the use of the property for the preceding month, using the language of the contract, "are deducted from the bills rendered to your Company and the Chicago, Milwaukee & St. Paul Railway Company? A. They are.

Q. And among other amounts, since 1897, the Chicago Great Western Railroad Company, and its predecessor, the Chicago Western Railway Company, has been paying one-third of all the taxes as a part of the rent which it pays?

A. Yes, sir.

Q. And has been paying an amount equal to one-third of the maintenance as a part of the rent which it pays?

A. Yes, sir.

Q. It also pays other amounts that are specifically set out in its contract, in addition to the what I have referred to?

A. Yes, sir.

Q. Now, with reference to this resolution which you offered, you state that the vote in favor of the resolution, in 1906, I believe, giving this additional credit on the bills, was the vote of yourself, Mr. McKenna and Mr. Underwood?

A. Yes.

Q. And in that instance and in each other instance, the votes cast in favor of these resolutions were cast by one representative of the Wabash Company and two of the Milwaukee Company?

A. They were cast by three directors of the Des Moines Union Railway Company, Pryor, McKenna and Underwood. We were voting as directors of the Des Moines Union Railway Company.

Q. And at that time what relation did you sustain to the Wabash Railroad Company? A. Vice-President.

Q. What relation did Mr. McKenna sustain to the Chicago, Milwaukee & St. Paul?

A. Second Vice-President.

Q. What relation did Mr. Underwood sustain to the Chicago, Milwaukee & St. Paul Railway Company?

A. General Manager.

Q. What had the Wabash Railroad Company to gain by the passage of these resolutions?

A. Its wheelage proportion of all these credits.

Q. What had the Des Moines Union to gain?

A. To give over to the proprietary companies their proper dues.

Q. What had it to gain by the enactment of this resolution?

A. Nothing to gain.

Q. The Milwaukee Company had some kind of an interest in the passage of the resolution, that the Wabash had?

A. Yes, sir.

Q. And whatever those two companies would gain in the passage of this resolution, the Des Moines Union would lose?

A. Our contention was that the Des Moines Union wasn't entitled to anything; we was only claiming that.

Q. Was that claim made as a director of the Des Moines Union Railway Company? A. Yes, sir.

Q. Now, then, the other persons interested in the Des Moines Union Railway Company, took the opposite view, didn't they? A. Yes, sir.

Q. And in voting for this action, that would take this money away from the Des Moines Union over the protest of a majority of its directors and stockholders and give it to the Wabash, you were acting solely, as you believed, in the interest of the Des Moines Union?

A. Yes, sir, as I thought was right and proper. I would like to have that go in there too.

Q. I have no doubt you thought your construction of the contract was correct.

A. That was the only way I was basing it. It is the universal practice, to make these credits by the terminal companies on the bills for operating expenses.

Defendants move to strike the answer, that it is the universal practice, as irrelevant and immaterial, and as something which could not affect the contract in controversy in this case at bar, and for the further reason that the contracts under which the practice referred to is alleged to exist are not in evidence, and it does not appear whether they provide for it or do not provide for it.

Q. Mr. Pryor, where did you get this $312,977.75, which you stated was the amount which had been invested by the purchasers of the Wabash Railroad Company?

A. That was the amount of expenditures made by the Railroad Company up to the 29th May, 1884, and by General Dodge, and was taken from the adjustment of the account when the bonds of the Des Moines Union Railway Company were issued.

Q. Was that on the books of the Wabash Railroad Company?

A. The Wabash, St. Louis & Pacific Railway Company; that includes the cost of the round house in Des Moines, but does not include the adjustment of the interest on these expenditures up to the time the bonds were issued.

Q. Who operated the terminal properties after January 2, 1882?

A. The parties to the contract of 1882, which were the Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern. My recollection is they were managed by the Des Moines & St. Louis, in the name of the Des Moines & St. Louis.

Q. Now, by that contract of January 2, 1882, you mean the contract of that date which is incorporated in the original articles of incorporation of the Des Moines Union Railway Company?

A. Yes, sir. This contract or the parties to this contract were the Des Moines, St. Louis Railway Company, the St. Louis, Des Moines & Northern, the Des Moines Northwestern Railway Company, C. M. Dodge, James F. How, James F. How Trustee, the Wabash St. Louis & Pacific Railway Company, the latter company consenting to the contract.

Q. You don't mean that each of these parties operated this road?

A. No, I mean—I catch from your question who managed and operated?

Q. Yes, who operated it?

A. The St. Louis & Pacific had the actual management and operation of it.

Q. Now, when did the Des Moines Union take over the property and begin to operate it? A. May 1, 1888.

Q. How did you get that date?

A. That is my recollection of it. I think the cash books of the Des Moines Union Railway Company show they commenced to operate it on that date.

Q. Aside from some record you wouldn't remember the date?

A. Only from looking over the records and being familiar with the record.

Q. You don't remember the exat date when the Purchasing Committee commenced operating the Des Moines & St. Louis?

A. Not exactly.

Q. Nor the date when the Purchasing Committee stopped operating it? A. No.

Q. Nor the day when the Wabash Western commenced operating it? A. Yes.

Q. When was that?

A. April 1, 1887. The Wabash Railroad Company, on or about the 1st of August, 1889, when it was formed.

Q. I mean the day it actually began to operate?

A. That is when it commenced to operate any of the property.

Q. Was that the day it was organized?

A. The date of its organization.

Q. They got them all turned over and commenced operating—

A. They took possession of the property and commenced to operate on the 1st of August, 1889, although some of the mortgages were dated prior to that time.

Q. Now, there is set out here as exhibit "G" to the Bill, a resolution adopted by the Des Moines & St. Louis Railroad, January 1, 1885; it is page 19 of the exhibits, I guess, and says at the end of the exhibit here: Resolved that the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the Company, on the 1st of January or as soon thereafter as practicable. Now, weren't you mistaken as to the date when the property was turned over to the Des Moines Union, and was it not turned over under this resolution of January 1, 1885?

A. No, my recollection is it was on the 1st of May, 1888.

Q. I see there is another resolution—

A. That resolution says, the 1st of January or soon thereafter. It looks like it took a long while thereafter.

Q. I call your attention to another resolution; this may clear it up some. There was a resolution adopted on the 8th of November 1887 by the Board of Directors of the Des Moines & St. Louis, which is exhibit "H"; that wasn't so very long before the property was turned over. Would you say that resolution confirms your recollection that the property was not turned over in 1885, under the earlier resolution?

A. I don't think it was turned over until May 1, 1888. I think this resolution of November, 1887 authorized the making of deeds from How to Dodge to the Des Moines Union Railway Company, and the last part of the resolution provides that the President and Secretary be and they are hereby authorized and directed to execute deed to the Des Moines Union

Q. You think no action was taken under that earlier resolution?

A. No, sir; I don't think any action was taken until May 1, 1888.

Q. There was a resolution, I think, passed by the St. Louis, Des Moines & Northern, January 1, 1885; that is exhibit "D" page 15 of the exhibits, and then it seems to have passed a subsequent resolution on the 5th of November, 1887. Your idea would be it was turned over under that second resolution, and not as early as the date of the first one?

A. I think not.

Q. Which do you think not?

A. I think it wasn't turned over until the 1st of May, 1888.

Q. I noticed you referred to a memorandum on your direct examination; did you have all the questions propounded to you written out? A. Most of them.

Q. And the answers? A. No answers.

Q. Just the questions? A. Just the questions.

Witness Excused.

WELLS H. BLODGETT being duly sworn, examined by J. L. Minnis, Esq., on the part of complainants, testified as follows:

Q. What was your professional business in January, 1890?

A. General Solicitor of the Wabash Railroad Company.

Q. Where were the General Offices of the Wabash Railroad Company located in January 1890; where did you reside?

A. The General Offices of the Wabash Railroad Company were located in St. Louis, Missouri, and my home was there.

Q. Where have the general offices of that Company been located, and where have you resided since that date?

A. The general offices of the Wabash Railroad Company have been located in St. Louis since the date of the organization, of that Company, in 1889, and I have resided there all that time.

Q. Who was President of the Wabash Railroad Company during the years 1889 and 1890? A. O. D. Ashley.

Q. Where did he reside?

A. He resided in New York City.

Q. Who was James F. How and where did he reside?

A. Mr. James F. How was in 1889 and 1890 and on up to the time of his death in 1896 Vice President of the Wabash Railroad Company, and he resided in St. Louis at the time of his death.

Q. And prior thereto?

A. Yes, sir, from the date of the organization, of the Company.

Q. Who was C. M. Hayes and where did he reside?

A. He was the General Manager of the Wabash Railroad Company and he resided in St. Louis.

Q. Do you recall when he became General Manager of the Wabash?

A. On the organization of the Company. He was the General Manager of the property for some two years, of the receivership; but I think he was made General Manager in 1887; that is my recollection, on the death of Mr. Talmage.

Q. How long did he remain General Manager?

A. He remained General Manager of the Wabash Railroad Company up to 1895.

Q. Were the offices of Mr. How, Mr. Hayes and yourself in the same building in St. Louis? A. They were.

Q. Did you ever confer with Mr. How as Vice-President, and Mr. Hayes as General Manager, respecting the property interests and business affairs of the Wabash Company?

A. Yes, daily; almost daily; always daily when I was in the city; when we were all in the city.

Q. You were their legal advisor?

A. I was general solicitor of the Company.

Q. Did you ever own any stock in the Des Moines Union Railway Company? A. I never did.

Q. Were you at the so-called annual meeting of the stockholders of the Des Moines Union Railway Company, held in Des Moines on or about January 3, 1890? A. I was not.

Q. You say you had frequent conferences with Mr. How, the Vice-President, and Mr. Hayes, the General Manager of the Wabash Company? A. Yes, sir.

Q. Now, I will ask you, whether at any time during the year, 1890, or before that date, you ever suggested to them, or either of them that it was necessary or advisable to amend in any respect the Articles of Incorporation of the Des Moines Union Railway Company?

Objected to as being secondary and incompetent to any issue in this controversy, and is immaterial, because the advice that may have been given to these gentlemen on the subject, cannot affect the fact that they themselves signed the amendments and acknowledged them, or the legal effect of the amendments as signed and acknowledged.

A. I never did. I never so advised. I never suggested that amendments were necessary.

Q. Did Mr. How or either of them ever suggest to you it was necessary or advisable to amend in any respect the articles of incorporation of the Des Moines Union Railway Company?

Same objection as last above.

A. They never did. They never conferred with me on that subject, or took my advice respecting the matter.

Q. Will you look at the record of the proceedings had at an alleged meeting of the stockholders of the Des Moines Union Railway Company on the 3rd day of January, 1890, and see whether any mention is there made of any proposed changes of the articles of incorporation of the Des Moines Union Railway Company, and if you find anything, will you please state what is there stated?

A. Yes, sir; I find in the record of the meeting held at Des Moines, Iowa, January 3, 1890, the following: "James F. How moved that the question of amending the articles of incorporation of this Company, as well as the question concerning the issuing of stock for the purchase price of the terminal property be referred to attorneys W. H. Blodgett and A. B. Cummins for investigation and their recommendation."

Q. Were you present at that meeting? A. No, I wasn't.

Q. Did the Wabash Railroad Company have an attorney or legal advisor at Des Moines, during the year 1890 and before that date?

A. Yes, sir; Mr. A. B. Cummins was our legal advisor here at Des Moines; he was the head of the firm; it may have been that we corresponded in the name of the firm of Cummins & Wright and whoever was associated with him.

Q. When did he become attorney for the Wabash Railroad Company at Des Moines?

A. Mr. Cummins began representing the Wabash interest, I think, when Mr. Runnells left, which was probably, as near as I recollect, in 1888.

Q. How long did Mr. Cummins remain the legal representative of the Wabash Company at Des Moines?

A. Well, we always regarded Mr. Cummins as our counsel here up to the time when he was elected Governor. I don't remember the year; I would say five or probably six years ago. After he was elected, I never corresponded with him about any legal matters.

Q. When and from whom did you first learn that it had been suggested as being either necessary or advisable to amend the articles of incorporation of the Des Moines Union Railway Company?

A. I first heard of the proposition to amend the articles in January, 1890, in a letter written to me by Mr. Cummins.

Q. Have you that letter? A. Yes, sir.

Mr. Minnis: I will read the letter, which is as follows:

"Cummins & Wright,
Attorneys. Des Moines, Iowa, Jan. 22nd, 1890.

Wells H. Blodgett,
Gen'l Sol'r Wabash Railroad Co.
St. Louis, Mo.

Dear Sir:

At the last annual meeting of the stockholders of the Des Moines Union Railway Company, I suggested to those present several matters, in which, in my opinion, the articles of incorporation of the company ought to be amended. Upon this there was a resolution offered and adopted, appointing you and myself a Committee to redraft these articles, and present our changes to a meeting of the stockholders on the 18th of February. I have made a draft of amended articles thinking it would save time to be able to present something tangible to you whenever we could get together. I regard the matter as an important one, and a change as absolutely necessary for the proper conduct of the company. We shall have to hold a consultation in regard to the matter within a short time, and I write to ask you when and where this consultation shall be held. If you desire me to come to St. Louis, I will endeavor to do so. If you can fix a day sometime three or four days in advance of the time you write. Be good enough to give me an early reply and oblige.

Yours very truly,
(Signed) A. B. CUMMINS."

Q. Did you have anything to do with the preparation of the alleged articles of incorporation of the Des Moines Union Railway Company?

A. No, I never took any part in the drafting of the amended articles. I left that to Mr. Cummins.

Q. The record Book of the Des Moines Union Railway Company shows that the annual meeting of the stockholders of that Company, held in January, 1890, was adjourned to meet the 18th of February, 1890; did you attend the adjourned meeting? A. No, I did not.

Q. You didn't attend it? A. No.

Q. The record book of the Des Moines Union Railway Company shows that at the adjourned meeting of the stockholders of said Company on the 18th day of February, 1890, the meeting was again adjourned until April 8, 1890. I will ask you whether you attended any meeting of said stockholders held on or about April 8, 1890? A. I did not.

Q. I believe you have said you owned no stock?

A. No, I owned no stock.

Q. Did you give any proxy or writing to any one?

A. I wouldn't say that I didn't because if I had a share of stock and Mr. Hubbell asked me to sign a proxy, I would have signed it.

Q. You would have signed any statement?

A. Anything of that sort, if Mr. Hubbell had said so that it was necessary or proper for me to sign.

Q. I believe Mr. F. M. Hubbell had been identified with the Wabash interests after the organization of the Des Moines & St. Louis Railway Company?

A. Yes, we always regarded Mr. Hubbell as a representative of the Wabash interests in Des Moines; I will say that from 1880 or 1881, I don't remember just which it was, when we commenced the construction of the line from Albia up to the City of Des Moines.

Q. And how long thereafter?

A. Oh, I always regarded him as a representative of the Wabash interests and do now. We have always conferred with him freely about all our matters here.

Q. When he set up this claim that the Des Moines Union Railway Company owned this terminal property, was that the first time you was advised of him occupying an antagonistic attitude towards the Wabash interests here?

A. Yes, that was the first I heard of Mr. Hubbell making a claim to anything that was adverse to the Wabash.

Q. Between the date on which you received the letter I have read from Mr. Cummins, and the 8th of April, 1890, did you have any personal conference with Mr. Cummins in which he explained to you wherein it would be beneficial to the Wabash interests to amend the articles of Incorporation of the Des Moines Union as he had proposed?

Objected to as being immaterial.

A. I have no recollection of meeting Mr. Cummins or conferring with him, or about the proposed amendments to the articles. It is possible that I may have written him on the subject in reply to his letter, but my letter books for that year were burned. I see there is a memorandum in my hand writing in pencil on this letter from Mr. Cummins to the effect that I answered it sometime in February.

Q. You havn't got the answer?

A. I say, my letter book for this year was destroyed.

Q. Do you remember the contents of the letter?

A. No, I couldn't recollect. I am quite sure if I had a personal conference with Mr. Cummins on the subject, I would recall it; I have no recollection of having any.

Q. Did you ever, as General Solicitor of the Wabash Company or otherwise, suggest to Mr. How, the Vice-President, or Mr. Hayes, the General Manager of that Company, that it

would be prejudicial to the Wabash interests to have the articles of incorporation of the Des Moines Union Railway Company amended as prepared by Mr. Cummins?

Objected to as secondary, hearsay and incompetent.

A. I never did. I never advised that it would be either beneficial or prejudicial.

Q. Did you give any advice at all about it?

Same objection.

A. I left that entirely to Mr. Cummins and to Mr. Hubbell as our representatives here. I wouldn't have undertaken to have advised against their judgment.

Defendants move to strike the last statement of the witness as purely argumentative and a statement not of any fact, but what the witness thinks he might have done under circumstances that may have existed or may not.

Q. You have stated that Mr. Hubbell was the representative of the Wabash interests in Des Moines. I will ask you if he purchased any property for terminals or tracks, or superintended their purchase for Des Moines Terminals?

A. Yes, sir; I know from my knowledge of what was being done respecting the terminals, and my association and conversation with Mr. Hubbell that he took an interest in securing and purchasing for the Wabash Railroad Company, or with funds supplied by the Wabash Railroad Company, property here in Des Moines for terminal purposes, and also that he represented the Wabash interests in securing ordinances from the City of Des Moines respecting the laying of tracks in and across streets. I knew from conversations with Mr. Hubbell and what I knew of the business, that he was taking an interest in these matters.

Q. In whose name did he take the title to property purchased by him?

A. I think mostly in the name of How and How, Trustee.

Q. Did he take any?

A. I wouldn't say that Mr. Hubbell negotiated for all that was taken in the name of Mr. How or How, Trustee, but that he took an interest in the purchase of a considerable portion of that, and also that Mr. Hubbell took some in his own name.

Q. Did he execute a declaration of trust with respect to the parcels purchased in his own name?

A. Yes, for instance, Lots 12 and 13, Block 11. Lots 10 and 11 in Block 12 Lot 16 in Block 13, Lot 7 in Block 16 and Lot 9 in Block 21, were taken in the name of Mr. Hubbell and

he executed this Declaration of Trust, stating that he held for the Wabash Railroad Company and that he would convey the same.

Q. Please read the Declaration of Trust.

The Witness reads as follows:

"Know all men by these presents that I F. M. Hubbell of Des Moines, Iowa, hold in trust for the Des Moines & St. Louis Railroad Company and for the Des Moines Northwestern Railway Company the title to the following real estate:

Lots 12 and 13 in Block 11
lots 10 and 11 in block 12
lot 16 in block 13
lot 7 ain block 16
lot 9 in block 21

all in the town of Demoine now in the corporate limites of the city of Des Moines, Iowa.

And I agree to convey the same to said companies, or to such person as they may direct whenever requested so to do.

In witness whereof I have hereto set my hand this March 11, 1881.

F. M. HUBBELL".

State of Iowa,
Polk County.

On this Mar. 11, 1881, before me a Notary Public in and for said county personally came F. M. Hubbell personally to me known to be the identical person whose name is affixed to the above instrument as grantor and acknoled the same to be his voluntary act and deed for the purpose therein expressed.

Witness my hand and seal on the date last above written.

(Seal)

C. HUTTENLOCHER,
Notary Public,
Polk Co., Ioa."

On the back of said instrument appears the following:

"F. M. Hubbell
to
Des Moines & St. Louis R. R. Co., & Des Moines Northwestern Railway Co.,

Declaration of Trust.
March 11, 1881.

Lots	12	and	13	block	11 deed
"	10	"	11	"	12 deed
"			16	"	13 deed
"			7	"	16 deed
"			9	"	21 deed

In pencil the following:

"Above property conveyed by Hubbell by deed dated March 3rd—81 to Jas. F. How Trustee—Recorded in Book 101 page 119."

Q. To what company was the property purchased by Mr. Hubbel, in Des Moines, or on account of the Wabash interests, subsequently conveyed?

Objected to as not the best evidence and incompetent on that account.

A. I will state it was conveyed to the Des Moines Union Railway Company; I will state that for what it is worth.

Mr. Guernsey: I will withdraw the objection. I didn't know what the answer was going to be.

Q. Do you recall to have signed and acknowledged a paper about the month of April, 1890, in which it was stated that the articles of incorporation of the Des Moines Union Railway Company had been amended? A. I do.

Q. At the time that you signed that paper had you attended any meeting of the stockholders of the Des Moines Union Railway Company, at which action had been taken respecting any amendments of the articles of incorporation of that company? A. I had not.

Q. Do you know who prepared that paper?

A. I know that Mr. Hubbell brought it to me and that he said it had been prepared by Mr. Cummins, but Mr. Cummins wasn't with Mr. Hubbell when the paper was brought to me in St. Louis.

Q. When you say Mr. Hubbell, you mean Mr. F. M. Hubbell?

A. Yes; I haven't spoken of Mr. F. C. Hubbell in my testimony.

Q. What induced you to sign and acknowledge that paper?

Objected to as irrelevant and immaterial.

A. I signed it because it was brought to me by Mr. Hubbell, and I regarded Mr. Hubbell as a representative of all our business interests here outside of our law business.

Q. And he stated, that Mr. Cummins, the Wabash attorney had prepared the articles:

A. Yes, he stated to me it was prepared by Mr. Cummins, or that Mr. Cummins had advised it.

Q. What investigation, if any, did you make respecting the paper?

Objected to as irrelevant and immaterial.

A. Absolutely none. I did not exercise my judgment on these matters. I relied implicitly on Mr. Hubbell and Mr. Cummins respecting all Wabash business matters in Des Moines.

Defendants move to strike the answer as irrelevant and and immaterial, and for the further reason, that it does not appear that the witness did not have ample opportunity to examine this paper or every other paper he ever signed, and to exercise his judgment in reference to it if he cared to.

Q. Were you ever authorized by the Wabash Company to sign that paper?

Same objection, and as calling for a conclusion.

A. Oh no, I just signed it and acknowledged it. I remember very well when Mr. Hubbell brought it to the office, to the Wabash office in St. Louis, and I signed it and acknowledged it along with Mr. How or Mr. Hayes, perhaps both, but I don't think I signed it in their presence. I think I signed it in my own office.

Q. Were you a director of the Des Moines Union Railway Company at that time?

A. Well, I wouldn't say. The Record may show I was a director; I wouldn't say that I was.

Q. Did you in signing these articles act for the Wabash Railroad Company, or did you act on the suggestion of Mr. Hubbell as a director or supposed director of the Des Moines Union?

Objected to as calling for a conclusion and incompetent on that account.

A. I understood from Mr. Hubbell that the record did show that I was a director, and that was a reason why he asked me to sign the paper. I was so unfamiliar with the matters here that I couldn't state whether my name did or did not appear as a director on the record of the Des Moines Union.

Q. You mean a director of the Des Moines Union Railway Company? A. Yes.

Q. Who prepared the instrument dated May 10, 1889 that is attached to the Bill of Complaint in this case as exhibit "P"? A. I did; I prepared it.

Q. At whose request?

A. Well, at the request of Mr. Hayes, General Manager of the Wabash, and General Dodge, and I think, Mr. Hubbell. I was here in Des Moines about the time it was agreed to be necessary to have such a paper and at one time when we conferred about it, Mr. Hayes and General Dodge was here, and of course, we conferred with Mr. F. M. Hubbell.

Q. According to their statements, what was the purpose of making that agreement?

Objected to as calling for a conclusion, hear-say testimony and incompetent. And further, it is incompetent because the instrument speaks for itself and cannot be varied by parol evidence.

Q. Mr. Hubbell was present?

A. He was present at the meeting when the resolutions were adopted respecting that matter. I am sure General Dodge was present, and I know, either Mr. Hayes or Mr. How, one of them, and perhaps both; my impression is they were both here.

Mr. Guernsey: I want to show that so far as the testimony being hear-say is concerned, the objection is in behalf of the Des Moines Union and the defendants other than Mr. Hubbell.

Q. What was said about the objects and purposes of making that agreement?

Same objection.

A. It was considered necessary to have something in addition to the agreement of January 2, 1882, for these reasons: In the first place the agreement of January 2, 1882 made no provision for the payment of interest and did not provide how the interest charge should be distributed among the railroad companies using the property. That was one reason. Another reason was, that the contract of January 2, 1882, did not obligate the railroad companies who were parties to it or their assigns to use the terminal.

Q. Or pay interest.

A. Nor pay the interest. Let me see—there was the interest charge and the matter of using the property, and then the contract of January 2, 1882, put everything, all the expenses of maintenance and operation of all the property on a wheelage basis, and Mr. Hayes and General Dodge and all the parties interested thought that the cost of operating the round houses should not be on a wheelage basis, but should be distributed among the railroad companies according to the number of engines that were housed and taken care of for each company; and those were the three things wherein, I think, the contract of May 10, 1889, differed from the contract of January 2, 1882.

Q. It was to cover those points?

A. It was for those reasons that all parties agreed it would be advisable to have a supplemental agreement.

Defendants move to strike all this testimony for the reasons last urged against it.

Q. The Des Moines Union had theretofore, made a mortgage and issued a series of bonds? A. Yes.

Q. Do you recall how long those bonds were to run?

A. They matured 30 years from May 1, 1888.

Q. In section 8 of that agreement. Exhibit "P", it is provided that "so far as relates to the rental necessary to raise a fund for the payment of interest upon the mortgage bonds, this contract shall be retrospective and shall govern from and after the 1st day of May, 1888". That was the date of the maturity of the bonds, was it not?

A. Thirty years from May 1, 1888, the bonds matured.

Q. How long was the contract of May 10, 1889, exhibit "P" to remain in force?

A. It was to remain in force for thirty years from May 1, 1888.

Q. So the contract provided for the payment of interest on these bonds for the entire period?

Objected to as being argumentative and not the best evidence.

Q. In paragraph 25 of the answer in this case, it is stated as follows: "These respondents further admit that they claim and assert that the only rights of the complainants in the said terminal property are their rights under the contracts exhibits "P" and "R", and that upon the expiration of the said contracts the complainants will not have the right to use the said terminal property except upon reasonable terms and conditions, and upon payment by them of a reasonable compensation for the rights which may be granted to them under contracts which may then be made with the Des Moines Union Railway Company".

Now, I will ask, when you first heard the defendants or anyone else assert a claim of title to these terminals in the Des Moines Union Railway Company, adverse to any title of the plaintiffs in this case, such as is stated in that part of the answer I have quoted?

Objected to as being irrelevant and immaterial.

A. I first heard that the claim had been made from Mr. Pryor. He stated, that it had been made by Mr. Hubbell at a meeting that he had attended in Chicago at the office of the Chicago, Milwaukee & St. Paul Railroad Company, something

like, I would think, six months or a year after that, I attended a meeting at the office of the Milwaukee & St. Paul Railroad Company, at which Mr. McKenna, Mr. Pryor, Mr. Hubbell and Mr. F. C. Hubbell were present, and Mr. Hubbell there stated that they made the claim that is asserted in the answer, respecting their title to the terminal property in Des Moines. That was the first that I heard of that claim through Mr. Hubbell or any one representing Mr. Hubbell.

Q. You may state whether that was the first time that you were informed that Mr. Hubbell was not acting, so far as the Wabash Company was concerned, in its interest and behalf?

Objected to for the same reasons, also calling for a conclusion and incompetent on that account.

A. Mr. Hubbell asserted a claim that didn't take effect for some ten or twelve years after he made the claim. So that I always regarded him as representing Wabash interests in Des Moines under the existing contract of May 10, 1889. But the claim that he made was one that would take effect some ten or 11 years after the date on which he stated that that was his claim.

Defendants move to strike the answer of the witness, so far as he states how he regarded the situation, as incompetent, because it is a mere statement of his own personal opinions.

Ans. Cont'd. With reference to the date of that meeting, I would say it was just about one year before this suit of the Wabash and the Milwaukee & St. Paul against the Des Moines Union was commenced.

Q. Did Mr. Hubbell state to you at the time he brought to you the alleged amended articles for your signature, that the object of the amended articles and the effect of them would be to vest title to the terminal properties in the Des Moines Union Railway Company?

Objected to as incompetent and hear-say; for the further reason, that the representatives of the Wabash Railroad Company had ample opportunity to read these amended articles and the record of the Des Moines Union Railway Company shows they were present when they were adopted and moved the adoption of many of them, so that it would be immaterial, what, if anything Mr. Hubbell said on the subject.

Q. Now, state, what, if anything he said on the subject?

Same objection.

A. I don't think Mr. Hubbell ever made any explanation to me as to their effect, or made any statement respecting what effect they would have.

Q. Are you still connected with the Wabash Railroad Company, and have you been since the date of its organization?

A. I am still connected with the Company.

Q. What is your position now?

A. Vice-President and General Counsel.

Q. I believe you are also a member of the Board of Directors? A. Yes.

Q. Did the alleged amendments to the articles of incorporation of the Des Moines Union Railway Company affect in any manner the management of the terminal property, or the business relations of that company to the railroad companies using the terminals under the contract or instrument dated May 10, 1889, which is attached to the Bill as exhibit "P"?

Objected to as incompetent and calling for a conclusion.

A. The change in the articles of incorporation of the Des Moines Union Railway Company, made no change in the relations, in the present relations of the Wabash Railroad and the other companies using the terminals.

Q. Or to the public?

Same objection.

A. It had no effect at all; nothing has ever been done to my knowledge, under the amended articles.

Q. As I understand, Mr. Hubbell's claim is merely, that at the expiration of the contract of date, May 10, 1889, exhibit "P", their rights will be asserted?

Same objection.

A. That it will be necessary to make a new contract is Mr. Hubbell's claim, but the relations of the parties under the contract of May 10, 1889, has never been changed or affected in any way by reason of these amendments.

Cross-Examination

By N. T. Guernsey, Esq.:

Q. I want to call your attention to the original amended articles of incorporation of the Des Moines Union Railway Company, and ask you whether the signatures of Charles M. Hayes, James F. How and yourself are the genuine signatures there? (presents amended articles to witness)

A. They are.

Q. How many articles of incorporation have you signed, or amendments to articles, in the last 20 years?

A. I don't recall that I have ever been an incorporator.

Q. Now then, Colonel, since, 1890, has a copy of these amendments been in your office?

A. I wouldn't say they never come under my observation.

Q. I simply ask you whether since 1890 you had a copy there?

A. I wouldn't say whether there was a copy sent to my office or not; I couldn't say that.

Q. Now, you remember a printed pamphlet headed: "Original and Amended Articles of Incorporation and Mortgage of the Des Moines Union Railway Company?

A. Yes.

Q. You have one of them as one of your exhibits here?

A. Yes.

Q. And that has been in your office for at least 15 years, hasn't it?

A. I wouldn't say the first time that I ever read the article or examined it. I wouldn't say what printed pamphlet there was in my office, because that would be impossible.

Q. Would you say affirmatively that there has been any time since the adoption of these amendments, that the Wabash Railroad Company has not had a copy of it?

A. I wouldn't say they havn't had a copy of them.

Q. You wouldn't say they havn't had a copy of them ever since they were adopted? A. Oh, no.

Q. You wouldn't say they havn't had an opportunity to examine them whenever they wanted to?

A. No, I wouldn't say that, they had abundant opportunity.

Q. Now, do you remember the Wabash Railroad Company's objecting to making leases to other railroads for the use of those terminals, unless it could have an extension of its lease?

A. I don't think I ever did.

Q. Do you remember such things occurring prior to September, 1901?

A. I never heard it contended by anybody connected with the Wabash that the Wabash Company would not or should not assent to leases by the Des Moines Union Railway Company of its property to other railroad companies, unless there should be an extension of the existing contract of May 10, 1889. I never heard of that. It might have been made by Mr. Ramsey, or might have been made by Mr. Ashley; but I didn't hear of any objection on that ground.

Q. Who was Mr. Ramsey?

A. Mr. Ramsey was the General Manager of the Wabash Railroad from 1895 or 1896, I think, for nine years.

Q. He was also Vice President?

A. He was Vice President, yes, sir.

Q. Now, the claim that Mr. Hubbell asserted, if I understood you, the one you referred to, was, that at the expiration of this contract, the Wabash, in order to continue the use of the property, would have to enter into another contract?

A. That was the substance of it.

Q. Now, you knew that the Purchasing Committee of the Wabash Railroad Company had sold to Mr. Hubbell, or him and his associates, some stock in the Des Moines Union Railway? A. Yes, stock and bonds; I knew that.

Q. And you knew, in connection with that sale of stock, and prior to the meeting of January, 1890, they had been writing and undertaking to agree to some amendments of the articles of incorporation of the Des Moines Union Railway Company?

A. Oh, no; I didn't know that; I wouldn't know that.

Q. You wouldn't say that wasn't so?

A. Oh, no; I couldn't tell; I wouldn't say it wasn't so, but I didn't know it. I didn't know of the sale of stock and bonds to Mr. Hubbell for probably, for a good many months after it had taken place.

Q. You remember, don't you that out of this sale that was made involving some of the interests in this terminal property, a controversy arose between the Des Moines Northern & Western and perhaps Polk & Hubbell and the Purchasing Committee?

A. The only controversy that I remember is one respecting a lot up here.

Q. That was a controversy that arose when?

A. Well, I wouldn't state when; I couldn't state the date because I wasn't in charge of the litigation; only remember of the suit.

Q. Didn't you have anything to do with the litigation, Colonel? A. Not directly.

Q. Didn't you in connection with that litigation write a letter in which you stated that the ownership of the property was represented by the stock and direct that a defense be made upon that ground? A. Oh, I don't know.

Q. I will read to you a letter dated January 11, 1897, which is as follows:

"The Wabash Railroad Company.

General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Jan. 11, 1897.

W. A. Park, Esq.,
Atty., Des Moines, Iowa.

Dear Sir:

I have been absent in the east for ten days and only returned to my office this morning. On my table I find yours of the 8th, and in reply beg leave to say, that Mr. James F. Joy is dead, and I think notice thereof should be given to the plaintiff. In regard to the question involved in the litiga-

tion I think the first one is the one you state concerning the title acquired by the plaintiffs in the contracts. Should that be held against us, then a question arises on the construction of the contracts themselves. I know that what the Purchasing Committee intended to convey free from all incumbrances, was the stock and not the lots and real estate owned by the Company. That was certainly the understanding of every member of the Wabash Purchasing Committee throughout the negotiations and correspondence, and that is the point on which the Purchasing Committee have always relied for their defense, and that is a point in the case which they want fully presented, and on which they desire to take the opinion of the court. I have not got the contract before me to-day but will endeavor to examine it and write you more fully by to-morrow's mail.

Very truly yours,
(signed) WELLS H. BLODGETT."

I will ask you whether that letter was signed by you about the time it was written?

A. That letter is signed by me; that is my signature.

Q. And that relates to this controversy that you have referred to?

A. Well, I don't remember; there was one suit that grew out of a claim to a lot or some real estate, and if there was more than that one I don't recall it.

Q. In this suit that you remember, Colonel, the contention was this, wasn't it, the Des Moines Northwestern claimed that the Purchasing Committee in selling that road had sold with it one-fourth of the terminal property, and that that was to be free from incumbrance, and that an incumbrance on the lot of some $2800.00 or $3,000.00 was something that came within that contract and the Purchasing Committee ought to take care of it. Doesn't that refresh your recollection, so that you remember what the suit was?

A. No; I couldn't remember how the claim came about. Really, I don't think I ever gave it any personal attention at all.

Q. You did write the letter which has just been shown to you?

A. Oh, yes, I wrote the letter. No doubt I stated there what I understood to be the situation.

Q. I want to call your attention to another letter, which I will read, the letter being dated November 23, 1895, which is as follows:

"The Wabash Railroad Company

General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Mo. Nov. 23, 1893.

W. A. Park, Esq.
Atty., Des Moines, Iowa.

Dear Sir:

An attachment suit was brought recently in the district court of your city by the Des Moines Northern & Western Railway Company, and the Des Moines Union Railway Company vs. James F. Joy, O. D. Ashley, Thomas H. Hubbard and Edgar T. Wells, constituting the Wabash Purchasing Committee. The action is for breach of covenant contained in a certain contract under which the Purchasing Committee conveyed, or agreed to convey, to Polk & Hubbell, the Des Moines Northwestern Railroad and an interest in certain Des Moines terminal properties.

They claim that the Committee contracted to give them a clear title, and that some of the property was incumbered. An attachment has been issued and levied on the interest of the Committee in the Des Moines & St. Louis Railroad. The amount involved is between twenty-seven and twenty-eight hundred dollars. Mr. Cummins, who represents the plaintiffs, has said he would take no default for a few days, but the time will expire very soon, perhaps Monday.

I have written to New York for instructions concerning a settlement, but have received no reply, and it is necessary to have an answer in at once. Will you please take charge of the case and file an answer on Monday, or see Mr. Cummins and get the time for answering extended by stipulation. The Committee may think the proper thing to do, will be to make the plaintiffs prove their case. They are trustees and may consider it their duty to do so. What I want is to prevent a default until I hear from them with respect to their wishes in the premises.

Wire me on Monday whether you receive this and will attend to the matter.

Very truly yours,

WELLS H. BLODGETT."

Now, I will ask you whether that is a letter written by you about this same suit, about its date?

A. That letter is signed by me and no doubt is genuine. I don't recall having written it. I don't recall having ever met

Mr. Park, and he must have been suggested to me as a proper man to employ in that case to represent the company, because of the fact that Mr. Cummins was representing the Des Moines Northern & Western road in this particular case.

Q. Now, Mr. Park was employed to represent the defendants in the case by you, was he not?

A. I suppose he must have been, but I didn't know him personally, and he must have been recommended to me by some one here.

Q. Of course, whether he was recommended or not is immaterial. Afterwards he was succeeded by some other lawyers with whom you had correspondence, was he not?

A. Well, now, Mr. Guernsey, I don't remember that there were two firms connected with it. Lawsuits were such common things with me.

Q. Much more common than directors' meetings?

A. Yes, more common than directors' meetings.

Q. Baily, Ballrich & Preston were employed after Mr. Park's death to finish up this litigation for you?

A. I presume that is true. You state that in your answer.

Q. And they defended on the ground you suggested, namely, on the ground, what was sold was the stock, and that represented the interest in the terminal property, and therefore there wasn't any breach in the contract?

A. I don't remember having suggested that. I think what I said in my letter is a sound proposition.

Q. And the Wabash paid them for their services in the case?

A. Oh, I suppose they did, it was my custom always.

Q. Now, you have no recollection about this suit aside from what these letters show?

A. But for those letters, I wouldn't have any recollection about it, the details of the suit. I would remember there was a suit and that it involved a controversy about some real property in Des Moines on which there was some incumbrance.

Q. Now, this contract, Colonel, on which this suit was brought, contains this language—I am reading now from the copy of it that is attached to the petition—I will read from the second contract; there is a contract, and a more formal contract:

"Simultaneously with the execution and delivery of said bond, the Committee will transfer to Messrs. Polk & Hubbell or their assigns, their one-fourth interest in the terminal property at Des Moines, and will transfer also 5037 shares of stock of the Des Moines Northwestern Railway Company, and also all the interest of the parties of the second part in the

equipment of the said Des Moines Northwestern Railway Company".

Now, then, you say in this letter of January 11, 1897, "I know that what the Purchasing Committee intended to convey free from all incumbrances was the stock and not the lots and real estate owned by the Company." Referring to the conveyance, you mean this conveyance that is specified in this contract?

A. I didn't prepare that contract; it was prepared in Des Moines. I wasn't familiar with it, unless I had a copy.

Q. Now, I will call your attention to a letter, that is dated November 25, 1895, addressed to W. A. Park, Esq., Des Moines, Iowa, signed in type-writing, Wells H. Blodgett, General Solicitor, and I will ask you if you recognize that as a letter which came from your office at about that time?

A. Well, it looks as though it come from my office, but I don't think it was dictated by me. I think it was dictated by Mr. Winston at my office. I always signed my letters, but I have no doubt this one came from my office though.

Q. This letter says, you enclose copy of petition and exhibits in the case of the of the Des Moines Northern & Western Railroad Company et al, vs. James F. Joy, et al, concerning which you wired Saturday.

A. That is a few days after the letter you handed me.

Q. That is about two months before the letter I handed you, the other is November 25. So that prior to your writing this letter of January 11th, 1897, you had in your office there the copy of this petition, which includes these contracts?

A. I would suppose so, although I have no distinct recollection about it; I would assume that I had.

Q. Now then, when you used this language in the letter: I know that what the Purchasing Committee intended to convey free from all incumbrances was the stock and not the real estate owned by the Company, you referred to the obligation of the Committee to convey the one-fourth interest in the terminal property in Des Moines?

A. From my present recollection, I couldn't say.

Q. Will you look at the contract and see whether there is anything else you could have referred to?

A. These are the papers that I sent, are they?

Q. It is a copy of the petition and papers attached to it.

A. I suppose I must have had them and sent them to Mr. Park.

Q. That is not the question; what I want to get at is this: whether there is anything in that contract that you could have referred to when you said that you knew that the Purchasing Committee when it agreed to convey a one-fourth interest in

the terminal property, intended to make that conveyance by a transfer of the stock?

A. I couldn't say whether there was anything like that in the contract. I may have said it from information outside of the contract. I stated in the letter that it was stock and not property.

Mr. Guernsey: I would like to have the record show that I have persistently requested counsel to allow the Colonel to be cross-examined without suggestions.

Mr. Minnis: Counsel made no suggestions, but supposed he was at liberty to speak to the counsel on the other side without it being taken into the record.

(Last question repeated to the witness.)

A. Mr. Guernsey, I will answer the question, I can't say whether I based that statement in my letter of January 11th, on this contract or not.

Q. Well, you based it on something that made you confident at that time that the interests in the terminal property was to be transferred by a conveyance of the stock, didn't you?

A. Just reading that, I would assume, if I had this contract before me—that in case the terminal property at Des Moines should be merged in the terminal Company, either before or after the transfer of the one-fourth interest as above, the bonds and stock received from the terminal company in exchange for such one-fourth interest shall be transferred in lieu of the property to Polk & Hubbell. I would assume, if I got the idea from this contract with the alternative stated there; that if there was a merger the stock and the bonds were transferred to Mr. Hubbell—you see, it is in that alternative. The stock and bonds of the terminal company were to go to Mr. Hubbell, instead of the property; that is what I would say about that now.

Q. As a matter of fact, the stock and bonds were transferred under this contract?

A. They were; do you say they were? I don't know.

Q. As a matter of fact you know, don't you, that the stock and bonds were transferred to Polk & Hubbell or their assigns under this contract, as a compliance with the agreement to transfer that interest in the terminal property?

A. Mr. Guernsey, I couldn't say that it was done under that contract; I know it was done.

Q. You don't remember what contract it was done under?

A. No, really, I do not.

Q. Mr. Hubbell was interested in the Des Moines, Northwestern Railroad up to the time that was acquired by the Wabash from the date of this contract referred to, commencing

in 1886, and was also thereafter interested as a stockholder, and this interest continuing down to the present time?

A. I want to know whether that is stockholder in the Des Moines Union.

Q. Yes.

A. I have always understood that Mr. Hubbell was a stockholder in the Des Moines Union, but just when he acquired his stock, or whether there have been years in which he has not been a stockholder, and years in which he has been, I don't know, because I never examined the books, the stock books of the Des Moines Union Company to see when Mr. Hubbell became a stockholder, but it was my understanding that he became a stockholder in 1890. But I always understood that he has been an officer of the Company, but as to his stock ownership, and whether it has been continuous or not, I don't know.

Q. So far as 1890 is concerned, you take that date, because that is your information as to the date of the first stock certificates issued?

A. And I get that date from the correspondence between Mr. Hubbell and Mr. Ashley, which I have seen.

Q. Now, what other representatives did the Wabash have in Des Moines, aside from Mr. Hubbell in these early days?

A. First it had Polk & Hubbell, J. S. Runnells and J. S. Clarkson.

Q. And when Mr. Hubbell was buying this property for the Wabash, it was Mr. Clarkson that had to approve the vouchers, wasn't it?

A. Well, you know, I wouldn't know about that; that wouldn't come under my observation.

Q. During how much of the time prior to 1888, did the Wabash have a Superintendent living here in Des Moines?

A. I can't say whether prior to 1888 the Wabash Company had a superintendent located in Des Moines.

Q. Was Mr. C. F. Meek a Wabash employe?

A. Mr. Meek; I am not sure whether he was superintendent or Division Freight Agent. He represented the Wabash interests here for a number of years.

Q. Was he during any of that time director of the Des Moines Union?

A. Mr. Guernsey, I couldn't say whether he was or not.

Q. How many years was he in Des Moines representing the Wabash in some capacity, in connection with the operation of its road?

A. I should say, he was here representing the Wabash for about four years; that is my recollection.

Q. Colonel, you said that you didn't attend this meeting of April 8, 1890, but stated that if Mr. Hubbell had asked you for

a proxy, you would have given him one; as a matter of fact you gave your proxy to Colonel How, didn't you?

A. I don't remember. That wouldn't be a matter that would impress me.

Q. In the meeting of February 18, you gave your proxy to Mr. Cummins?

A. Well, I gave it; I suppose Mr. Hubbell had the benefit of it.

Q. That is what the record shows, and you have no recollection of it? A. No.

Q. And after these amended and substituted articles were adopted, do you remember whether there was any stock of the Des Moines Union issued to the Wabash?

A. Well, I wouldn't know about that; I never would see that, if there was.

Q. Colonel, did I understand you to say Mr. Cummins didn't have a conference, a conversation with you in reference to these articles, prior to the meeting of April, 1890?

A. Well, I would say, to the best of my recollection, he did not, because I believe that if he had had one, I would remember it.

Q. In his letter that you read here, he wrote to you under date of January 22, 1890, and he suggested a conference?

A. Yes.

Q. And you referred to a memorandum, which don't appear on this copy; I don't know whether you wanted it or not; it was answered the same day?

A. I think it was February 7, I answered it, 1890.

Q. You have no recollection what that answer was and you have no copy?

A. I can't recall what I wrote, and have no recollection of a conference with Mr. Cummins.

Q. And you find no further letters from Mr. Cummins with reference to this matter?

A. No, only this one that I read.

Q. I will call your attention to a letter written by Mr. Cummins to Mr. F. C. Hubbell, under date of February 24, 1897, and I will ask you whether you remember examining a copy of these amended articles at that time?

A. Respecting that matter of the contract that was under discussion in 1897, my recollection is—

Q. I didn't ask you about that contract; I asked you whether this letter refreshed your recollection, so that you could say you had examined these amended articles, at least as early as 1897?

A. Oh, I think the statement made in that letter written by Mr. Cummins to Mr. Hubbell, that he had sent me a copy of the amended articles is true. He says in this letter is follows;

"I have a telegram from Colonel Blodgett, asking me to send him a copy of the amended articles which will go to-day, and as soon as he has examined it, he will reply to my letter in which I pointed out the protection his company will receive through them".

Q. In view of that letter, don't you remember, that he not only sent you a copy of the amended articles, but that you examined them?

A. I know, at that time I did examine them. I know there was a contract about which considerable correspondence had taken place between Mr. Ramsey and Mr. Hubbell. I think I examined that correspondence, and I think reference was made there to the amended articles, but I couldn't find a copy and asked him to send me a copy.

Q. This was what you call the ratification contract of July 1897, exhibit "R" I think it is.

A. The correspondence was respecting what should be in the new contract which culminated in the execution of the ratification contract of July 1897.

Q. Colonel, did you draw the mortgage that the Wabash Railroad Company gave in 1897?

A. The Wabash Mortgage on its line?

Q. Yes.

A. There were three; I think I drew the first two. The third was a Debenture; I turned that over after struggling with it to New York, and I didn't draw it. The first and second mortgages I drew, and I don't think there were any changes—I prepared them in my office.

Q. You drew the mortgage, did you, that was dated January 1, 1899, from the Wabash Railroad Company to the Continental Trust Company of the City of New York, and called the Des Moines Division First Mortgage?

A. I prepared that.

Q. That describes the property as follows, does it not:

"all the following described real and personal property, towit: All the railroad, road-bed, tracks and right of way of the Company known as "The Des Moines and St. Louis Railroad", as the same now is, or may be hereafter constructed, or operated in the state of Iowa, commencing at a point in or near the City of Des Moines where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the counties of Polk, Marion and Monroe to the town or city of Albia in said county of Monroe, a distance of about sixty-seven miles; also, all the railroad road-bed, tracks and right of way of the Company in the state of Iowa known as the Moulton, Albia and Des Moines Railroad as the same now is or

may be hereafter constructed, operated or acquired, commencing at a point in or near the town or city of Albia, in said county of Monroe, where the same connects with the tracks of the road known as "The Des Moines and St. Louis Railroad", and extending from thence in a southerly direction through the counties of Monroe and Appanoose, a distance of about twenty-seven miles, to a point in or near the town or city of Moulton, in said county of Appanoose, where the same connects with the main track or tracks of the Company now constructed and extending from St. Louis, in the state of Missouri, to Ottumwa, in the State of Iowa; also, all the railroad, road-bed, tracks and right of way of the Company in the State of Illinois known as the Hannibal and Quincy Railroad as the same now is, or may be hereafter constructed, acquired or operated, commencing at a point in or near East Hannibal, in the County of Pike, where the same connects with the present track or tracks of the Company and extending from thence through the Counties of Pike and Adams a distance of about seventeen miles to and into the city of Quincy, and also, all the rights, privileges, franchises, appurtenances, embankments, bridges, turnouts, switches, sidetracks, yards, structures, water tanks, shops, engine houses, depots, turntables, engines, cars and other rolling stock, machinery, tools, lots, lands, buildings, offices and all other things, real and personal, now owned or used, or that may be hereafter owned or used by the Company in connection with the lines of railroad herein and hereby granted to the Trustee in both said states of Iowa and Illinois; also twenty thousand (20,000) shares of the capital stock of the Des Moines and St. Louis Railroad Company, of the par value of one hundred ($100) dollars each; also five hundred (500) shares of the Capital stock of the Des Moines Union Railway Company, of the par value of one hundred ($100) dollars each; also all the capital stock of the Hannibal and Quincy Railroad Company that may be subscribed for or issued; also all the capital stock of the Moulton, Albia and Des Moines Railroad Company that may be subscribed for or issued; and also all the leasehold rights and privileges of the Company to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in or near said City of Des Moines, including also the rights and interests of the Company in and to a certain terminal contract, dated the 31st day of July, 1897, and made by and between the Des Moines Union Railway Company, the Company and the Des Moines Northern and Western and Western Railroad Company, and in and to another contract, dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines and St. Louis Railway Company, the Des Moines and Northwest-

ern Railway Company, and the St. Louis, Des Moines and Northern Railway Company."

A. Mr. Guernsey, if you will want it, I will read it.

Q. I don't want you to read it; I will have him copy it.

A. I suppose that description is correct.

Q. Now, Colonel, I wish you would look at a telegram to F. M. Hubbell, of March 10, 1899, which is as follows:

"The Western Union Telegraph Company.

3/10/99

76 CH. KT. 53 dh.
St. Louis Mo 10th—99

F. M. Hubbell,
Des Moines, Iowa.

If I send you written consent of Des Moines Union Railway Company and of Des Moines Northern and Western to Execution of Mortgage by Wabash Company to continental trust Company of its stock in Des Moines Union and the terminal contracts along with the Des Moines & St. Louis railroad will you sign such consent and return to me?

WELLS H. BLODGETT.

1259 PM"

and state whether that is a telegram you sent to Mr. Hubbell with reference to this mortgage?

A. I haven't any doubt, Mr. Guernsey that I sent Mr. Hubbell such a telegram, it has every appearance of being genuine.

Q. Now, this letter that I now hand you is a letter written by you to Mr. Hubbell, with reference to this same matter, under date of March 11, 1899, the letter being as follows:

"The Wabash Railroad Company
General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis March 11" 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I am much obliged for your dispatch of yesterday, saying if I would send documents you would attend to getting formal consent of Des Moines Union Ry Co to our mortgage of contract and stock to Continental Trust Company.

I now send you papers as follows: 1st, the proxies of Mr. Ramsey and Mr. Magee to vote at meeting of Board Des Moines Union Ry Co.

2nd, Resolution of Board of Des Moines Union Ry Co authorizing President to execute consent of Company to the assignment.

3rd. The Written Consent of Des Moines Union Ry Co to the assignment of the contract and shares of stock.

The form of the mortgage is such as to make these papers necessary. After you have signed we will take the matter up with President of Des Moines Northern & Western Company at Chicago.

We are anxious to perfect these details as soon as practicable and will greatly appreciate your early attention to matter.

With kindest personal regards I remain,

Yours very truly,

WELLS H. BLODGETT."

A. Yes, sir, that is my letter; I wrote it to Mr. Hubbell.

Q. And in relation to this same matter?

A. It relates to the execution of the mortgage to the Continental Trust Company.

Q. The letter which I now hand you, dated March 20, 1899, is another letter written by you to Mr. Hubbell, referring to the same matter, and is as follows:

"The Wabash Railroad Company
General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Mar. 20, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I wrote you Saturday that I had prepared and sent to Mr. Ashley a quit claim deed from the Wabash Railroad Company to Des Moines Union Railway Company, for the tract of land in Des Moines acquired from Hoyt Sherman. I now write to say there is not the least danger that our new mortgage will cast a cloud on your title to that tract. The mortgage only conveys to the Trust Company the Des Moines & St. Louis Railroad" as the same now is or may be hereafter constructed or operated in the state of Iowa, commencing at a point in or near the city of Des Moines, where said road connects with the tracks Union Railway Company, and extending from thence in a southerly direction through the counties of Polk, Marion and Monroe, a distance of about 67 miles..... and also all the leasehold rights and privileges of the Wabash Company to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Com-

pany in or near said city of Des Moines, including also the rights and interests of the Wabash Company in and to a certain terminal contract, dated the 31st day of July 1897, and made by and between the Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines Northern & Western Railroad Company, and in and to another contract dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines & St. Louis Railway Company, the Des Moines & Northwestern Railway Company and the St. Louis Des Moines and Northern Railway Company.

I think it might be well, however, for you to hold the quit claim deed from Mrs. How and her sons until Mr. Ashley has executed and returned the quitclaim deed from the Wabash Company to the Des Moines Union Railway Company, and if, in the mean time, the new Wabash mortgage is placed on record, and you and Mr. Cummins think it would be better not to record the deed I sent you from Mrs. How and her sons to the Wabash, and afterwards record the quit claim deed from the Wabash to your Company, I will then take the matter up with Mrs. How and her sons, and endeavor to have them execute the new deed directly to your company, without passing the title through the Wabash Company. It is rather a delicate matter, however, and I would rather not ask them to execute a new conveyance without it seems really necessary to do so. It will not be any trouble to secure a new conveyance from Mrs. How and one of the sons, but the other son has very queer notions about such things. He refuses to accept any portion of his father's estate, and it is quite difficult to get him to sign any paper which seems to imply that he has any interest, by inheritance or otherwise, in anything that belonged to his father. This latter information I give to you privately, so that you may know my reasons for preferring to work the matter out without obtaining from him any further conveyance.

Very truly yours,

WELLS H. BLODGETT."

A. Yes, I wrote that letter.

Q. You also wrote the letter to Mr. Hubbell of March 23, 1899, which I now hand you and which is as follows:

"The Wabash Railroad Company
General Solicitor's Office.

Wells H. Blodget, Gen'l Solicitor.

St. Louis, March 23, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I am in receipt of yours of yesterday concerning quit claim deed from Wabash Railroad Co. to Des Moines Union Ry. Co., for tract of land in Des Moines conveyed by Hoyt Sherman to James F. How Trustee.

I herewith enclose same and request that you put same on record at once. I do not, as I have already written, think the new Wabash mortgage would cloud the title of the Terminal Company, but to save all questions on that ground I have asked Mr. Cummins to hold the mortgage until your quit claim deed is recorded. As soon as that is done please inform Mr. Cummins and oblige

Yours very truly,

WELLS H. BLODGETT."

A. Yes, I wrote that letter.

Q. Now, Colonel, to this defendants exhibit "4-a" the lead pencil writing below the typewriting is in your hand writing, is it?

A. Yes, that is in my hand writing. Don't you want to read that separate from the letter?

Q. I will put that in the record. Now, this defendants exhibit "4" is a fair copy of the draft of defendants exhibit "4-a", is it?

A. It is the executed contract of O. D. Ashley, Secretary of the Purchasing Committee of the preceding paper paper marked defendants exhibit "4-a".

Q. "4-a" is a rough draft of that exhibit "4"?

A. Yes; No. 4 is the executed instrument.

Q. And this defendants exhibit No. "3" is apparently a part of the same transaction?

A. I have no knowledge of this, but that is Mr. Ashley's signature.

Q. You will notice these are dated the same day and refer to the same matter, on the same kind of paper. What do you say whether the are a part of the same transaction?

A. I would say they were a part of the same transaction; that is my judgment.

Q. And that you were present; you would say that too, wouldn't you?

A. Of course, I must have been present at the time of the first draft; but I will not say that I was present at the time Mr. Ashley executed the subsequent papers.

Q. Now, the statement in your hand writing is "The said Purchasing Committee hereby guarantee the approval by the Des Moines and St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days."

Is that the approval by the Des Moines and St. Louis Railroad Company that is referred to in the bill, when you charge that it was fraudulently obtained by Mr. Hubbell?

A. Well, I don't know about that. You don't want me to say here as a witness that Mr. Hubbell has done anything that was fraudulent?

Q. Not unless you say you were fraudulent.

Do you know of any approval of that transfer of the Des Moines and St. Louis Railroad Company, except the one that was made pursuant to this contract?

A. Let me see how much this covers: Sixty-seven bonds of one thousand dollars each and 1/8 of the capital stock of said Des Moines Union Railway Company. I might say what is in pencil on that sheet of paper I wrote.

Q. I asked you whether you knew of any other approval of this transfer of this stock except the one had under this contract? A. You mean by the Purchasing Committee?

Q. No, by the Des Moines & St. Louis Railroad Company; I understand your bill alleges we fraudulently caused that to be approved?

Objected to because it assumes a thing which is not in evidence.

A. I wouldn't say there was no other, but I would say that I recall no other.

Q. Now, refreshing your recollection of these contracts, what do you say, as to whether prior to April 8, 1890, you knew that some amendments at least to the articles of incorporation of the Des Moines Union Railway Company were contemplated by your clients, that is, the Wabash interests, I mean?

A. I wouldn't know there was anything contemplated in the way of amending the articles of incorporation. You see, that in the contract of May 10, 1889, you know there was a limitation on the power to transfer stock, and I would say that was added for that purpose. Is that 1890?

Q. This is 1890, February 1890.

A. Well, at that time, it would have been necessary under the contract of 1889 to have the consent, as I recollect the contract of 1889, but I don't think there is anything of that

kind in the original articles of incorporation; I don't recall anything.

Q. You haven't overlooked this provision in this contract of February 11, 1890: That the purchasing committee will consent to such changes of said articles of incorporation as will permit one director of said company to be elected by any person or corporation holding 1/8 of the stock in said Des Moines Union Railway Company?

A. You know I had nothing to do with that contract of February 1890; that must have been executed in New York, not in St. Louis, because I never saw that. I never knew of that agreement on the part of the purchasing committee.

Q. Don't you see when you look at those two contracts, of February 11, 1890, one of them drawn in accordance with the draft corrected by you, apparently written on the same kind of paper; they bear the same date, relate to the same matter, and a part of the same transaction, and having that in mind will you say affirmatively, having drafted one of them, you never saw the other part of this transaction?

A. I will state positively to the best of my recollection, I had no knowledge of that arrangement by which there was to be a change in the manner of nominating or electing directors; that I learned from Mr. Hubbell, I think, himself. Now, that is something I didn't know anything about, the arrangement on the part of the Purchasing Committee to consent to such change in said articles of incorporation as would permit one director to be elected by the holder of 1/8 of the stock in said Des Moines Union Railway Company.

Q. That is, you don't remember, you mean?

A. No, I don't remember.

Q. You didn't remember the other contract unless you saw the hand writing there?

A. No, but the matter of consenting to the change suggested; I would have remembered that, I think.

Q. And Colonel, a while ago, you didn't remember you had anything to do with the purchase of this stock and testified you didn't; isn't that so; that you had nothing to do with those sales of stock to Mr. Hubbell; don't you remember telling us that?

A. No, I don't remember that.

Q. You didn't remember this contract of February 11, 1890, until I showed you your own hand writing, did you?

A. No, I didn't. But if the change in regard to the right of nominating a director had ever been discussed with me, I don't recollect it.

Q. That is what I supposed you meant.

A. Yes.

Witness Excused.

STIPULATION OF COUNSEL RESPECTING COMPLAINANTS EXHIBITS.

In the Circuit Court of the United States, for the Southern District of Iowa, Central Division.

The Chicago, Milwaukee and St. Paul Railway Company, and The Wabash Railroad Company, Plaintiffs,

vs.

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, Defendants.

Stipulation of Counsel Respecting the Admission of Copies of Certain Documentary Evidence on the Part of the Plaintiffs.

It is hereby stipulated and agreed by and between counsel for the plaintiffs and defendants in the above entitled cause, that copies of the contracts, resolutions, records, deeds, mortgages and documents, list of which is hereto attached, may be considered as offered and admitted in evidence in said cause on the part of the plaintiffs, subject, however, to all and every objection thereto, on the part of the defendants, that might be made or urged against the originals. It being the intention that said copies shall be given the same effect as evidence, as would be given to the originals of said several contracts, resolutions, deeds, mortgages and documents.

The list of said contracts and documents, copies of which are above mentioned and referred to, is hereto attached, marked "A".

Said copies shall be designated as "Plaintiffs' Exhibits", and shall be numbered consecutively from No. one to No. Seventy-nine, inclusive, each of said Exhibits being identified by the initials of counsel for the respective parties.

J. C. COOK, E. R. MASON,
WELLS H. BLODGETT,
Attorneys for Plaintiffs.

N. T. GUERNSEY,
Attorney for Defendants.

The List and Copies of Contracts, Resolutions, Records, Deeds, Mortgages and Documents, Mentioned and Referred to in the above Stipulation of Counsel, Hereto Attached, and marked "A" is as follows:

Plaintiffs' Exhibit No. 1.

Copy of agreement entered into December 8, 1886, between Jefferson S. Polk, James S. Clarkson, Frederick M. Huidell, and John S. Runnels, joint parties of the first part, and the Wabash, St. Louis and Pacific Railway Company, party of the second part.

Plaintiffs' Exhibit No. 2.

Copy of agreement entered into December 8, 1886, between the Des Moines Northwestern Railway Company, the Narrow Gauge Construction Company, and the Wabash, St. Louis and Pacific Railway Company.

Plaintiffs' Exhibit No. 3.

Copy of articles of incorporation of the Des Moines & St. Louis Railroad Company, dated December 15, 1880.

Plaintiffs' Exhibit No. 4.

Copy of contract entered into January 2, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Ry. Co., the St. Louis, Des Moines & Northern Ry. Co., G. M. Dodge, James F. How, and James S. How, trustee. (Exhibit A. to Bill of Complaint.)

Plaintiffs' Exhibit No. 5.

Copy of proceedings of Board of Directors Des Moines Northwestern Ry. Co. at meeting held December 9, 1884.

Plaintiffs' Exhibit No. 5½.

Copy of original articles of incorporation of Des Moines Union Railway Co. adopted December 10, 1884.

Plaintiffs' Exhibit No. 6.

Copy of proceedings had at first meeting of incorporators Des Moines Union Railway Company, December 10, 1884, together with copy of original articles of incorporation.

Plaintiffs' Exhibit No. 7.

Copy of proceedings had at meeting of stockholders St. Louis, Des Moines & Northern Ry. Co. held January 1, 1885.

Plaintiffs' Exhibit No. 8.

Copy of proceedings had at meeting of stockholders Des Moines Northwestern Ry. Co. held January 1, 1885.

Plaintiffs' Exhibit No. 9.

Copy of proceedings had at meeting of stockholders Des Moines and St. Louis Railroad Company, held January 1, 1885.

Plaintiffs' Exhibit No. 10.

Copy of proceedings had at meeting of the board of directors Des Moines Union Railway Company, held January 1, 1885. ("Exhibit C" to Bill of Complaint.)

Plaintiffs' Exhibit No. 11.

Copy of proceedings had at meeting of board of directors St. Louis, Des Moines & Northern Ry. Co. held November 5, 1887. ("Exhibit E" to Bill of Complaint.)

Plaintiffs' Exhibit No. 12.

Copy of proceedings had at meeting of board of directors, Des Moines and St. Louis Railroad Company, held November 8, 1887.

Plaintiffs' Exhibit No. 13.

Copy of notice delivered November 8, 1887 by the Des Moines and St. Louis Railroad Company to the Des Moines Union Railway Company. ("Exhibit I" to Bill of Complaint.)

Plaintiffs' Exhibit No. 14.

Copy of notice delivered November 8, 1887, by the St. Louis, Des Moines & Northern Ry. Co. to the Des Moines Union Railway Company. ("Exhibit J" to Bill of Complaint.)

Plaintiffs' Exhibit No. 15.

Copy of notice delivered November 8, 1887 by the Des Moines Northwestern Ry. Co. to the Des Moines Union Ry. Co.

Plaintiffs' Exhibit No. 16.

Copy of ordinance, City of Des Moines, granting right over certain streets, alleys, etc. to the Des Moines & St. Louis Railroad Company, dated March 22, 1881.

Plaintiffs' Exhibit No. 17.

Copy of deed from James F. How to the Des Moines Union Railway Company, dated November 19, 1887. ("Exhibit L" to Bill of Complaint)

Plaintiffs' Exhibit No. 18.

Copy of deed executed by James F. How to Des Moines Union Ry. Co. dated December 10, 1887. ("Exhibit M" to Bill of Complaint)

Plaintiffs' Exhibit No. 19.

Copy of deed executed by James F. How to Des Moines Union Ry. Co. dated April 28, 1888. ("Exhibit N" to Bill of Complaint.)

Plaintiffs' Exhibit No. 20.

Copy of deed from G. M. Dodge to the Des Moines Union Railway Company dated November 7, 1887. ("Exhibit O" to Bill of Complaint.)

Plaintiffs' Exhibit No. 21.

Copy of deed from St. Louis, Des Moines & Northern Ry. Co., to the Des Moines Union Railway Company, dated November 7, 1887.

Plaintiffs' Exhibit No. 22.

Copy of deed from Des Moines and St. Louis Railroad Company to the Des Moines Union Railway Company, dated February 21, 1888.

Plaintiffs' Exhibit No. 23.

Copy of deed of trust or mortgage executed by the Des Moines Union Railway Company to the Central Trust Company of New York, dated November 1, 1887, to secure bonds of the Des Moines Union Railway Company.

Plaintiffs' Exhibit No. 24.

Copy of resolutions of stockholders Des Moines & Northwestern Ry. Co. adopted January 2, 1890, ratifying execution of mortgage of Des Moines Union Railway Company to Central Trust Company of New York.

Plaintiffs' Exhibit No. 25.

Copy of resolutions adopted at a meeting of stockholders Des Moines & St. Louis Railroad Company, January 3, 1890, ratifying execution of mortgage by Des Moines Union Railway Company to Central Trust Company of New York.

Plaintiffs' Exhibit No. 26.

Copy of resolutions of stockholders Des Moines Union Railway Company, adopted March 31, 1888, authorizing the execution of contract between Des Moines Northwestern Ry. Co.

the St. Louis, Des Moines & Northern Ry. Co., the Des Moines and St. Louis Railroad Company, with Des Moines Union Railway Company, (being contract of May 10, 1889.)

Plaintiffs' Exhibit No. 27.

Copy of contract entered into May 10, 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Ry. Co., and the Des Moines and Northwestern Ry. Co.

Plaintiffs' Exhibit No. 28.

Copy of record Des Moines Union Railway Company, showing proceedings had at meeting of stockholders, April 8th, 1890.

Plaintiffs' Exhibit No. 29.

Copy of resolutions adopted by board of directors Des Moines Union Railway Company, February 11th, 1891, respecting surplus earnings.

Plaintiffs' Exhibit No. 30.

Copy of resolutions adopted by board of directors Des Moines Union Railway Company, on the 7th day of January, 1892, respecting disposition to be made of surplus earnings.

Plaintiffs' Exhibit No. 31.

Copy of annual report of Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending December 31st, 1888.

Plaintiffs' Exhibit No. 32.

Copy of annual report of Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending December 31st, 1889.

Plaintiffs' Exhibit No. 33.

Copy of annual report of Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending December 31st, 1890.

Plaintiffs' Exhibit No. 34.

Copy of annual report of the Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending January 1st, 1892.

Plaintiffs' Exhibit No. 35.

Copy of annual report of the Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending January 1st, 1893.

Plaintiffs' Exhibit No. 36.

Copy of annual report of Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending January 1st, 1894.

Plaintiffs' Exhibit No. 37.

Copy of contract entered into July 31st, 1897, between the Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company, respecting contract of May 10th, 1889.

Plaintiffs' Exhibit No. 38.

Copy of mortgage executed December 1st, 1881, by Des Moines & St. Louis Railroad Company to Central Trust Company of New York, and James Cheney.

Plaintiffs' Exhibit No. 39.

Copy of release executed November 13th, 1895, by Central Trust Company of New York, and James Cheney, of mortgage Des Moines & St. Louis Railroad Company to them, dated December 1st, 1881.

Plaintiffs' Exhibit No. 40.

Copy of lease executed March 1st, 1882, by Des Moines and St. Louis Railroad Company to Wabash, St. Louis and Pacific Ry. Co.

Plaintiffs' Exhibit No. 41.

Copy of resolutions of board of directors Des Moines and St. Louis Railroad Company, consenting to cancellation of lease dated March 1st, 1882, to Wabash, St. Louis and Pacific Ry. Co.

Plaintiffs' Exhibit No. 42.

Copy of resolutions of stockholders Des Moines and St. Louis Railroad Company, adopted February 3rd, 1899, authorizing conveyance of railroad property and franchises of Company to the Wabash Railroad Company.

Plaintiffs' Exhibit No. 43.

Copy of resolutions of board of directors Des Moines and St. Louis Railroad Company, adopted March 16th, 1899, authorizing conveyance of railroad property and franchises of Company to the Wabash Railroad Company.

Plaintiffs' Exhibit No. 44.

Copy of deed executed January 1st, 1899, by Des Moines and St. Louis Railroad Company to Wabash Railroad Company.

Plaintiffs' Exhibit No. 45.

Copy of deed executed April 25th, 1888, by Wabash, St. Louis and Pacific Railway Company to the Wabash Purchasing Committee.

Plaintiffs' Exhibit No. 46.

Copy of deed executed August 18th, 1898, by Wabash Purchasing Committee to Wabash Railroad Company.

Plaintiffs' Exhibit No. 47.

Copy of mortgage executed August 1, 1881, by the St. Louis, Des Moines & Northern Railway Company to the Mercantile Trust Company, Trustee, and of a supplemental mortgage made by the said grantor to the said trustee on the 2nd day of October, 1889.

Plaintiffs' Exhibit No. 48.

Copy of bill of complaint filed in the United States Circuit Court for the Southern District of Iowa, Central Division, October 7, 1889, by said Mercantile Trust Company, Trustee, against said St. Louis, Des Moines & Northern Railway Company.

Plaintiffs' Exhibit No. 49.

Copy of final decree entered in said cause October 15, 1889.

Plaintiffs' Exhibit No. 50.

Copy of report of the Master's sale under the decree Exhibit 50, filed November 28, 1889.

Plaintiffs' Exhibit No. 51.

Copy of Master's deed made under said sale by Geo. F. Henry, Commissioners, to Solon Humphreys and J. T. Granger on Nov. 22, 1889.

Plaintiffs' Exhibit No. 52.

Copy of order confirming said sale entered November 23, 1889.

Plaintiffs' Exhibit No. 53.

Copy of articles of incorporation of the Des Moines & Northern Railway Company.

Plaintiffs' Exhibit No. 54.

Copy of deed by Solon Humphreys and Ellen Humphreys his wife and J. T. Granger and Carrie H. Granger, his wife, to the Des Moines & Northern Railway Company, dated November 23, 1889.

Plaintiffs' Exhibit No. 55.

Copy of resolution adopted by the board of directors of the St. Louis, Des Moines & Northern Railway Company dated January 23, 1882, relative to execution and delivery of a conveyance to the Des Moines, Northwestern Railway Company of all its right, title and interest to its branch road from Clive to Waukee, and one-half of its road Clive Station to Farnham street in the city of Des Moines, and an agreement as to the operation of said property.

Plaintiffs' Exhibit No. 56.

Copy of record of board of directors of Des Moines Northwestern Railway Company at a meeting of January 23, 1882, relative to the matter last above referred to.

Plaintiffs' Exhibit No. 57.

Copy of contract between St. Louis, Des Moines & Northern Railway Company and Des Moines Northwestern Railway Company, dated January 23, 1882, as to matter last above referred to.

Plaintiffs' Exhibit No. 58.

Copy of mortgage executed by the Des Moines Northwestern Railway Company to the Central Trust Company and James Cheney, trustees, February 28, 1881.

Plaintiffs' Exhibit No. 59.

Copy of foreclosure of said mortgage in the United States Circuit Court in and for the Southern District of Iowa, Central Division, entered on the 11th day of November, 1887.

Plaintiffs' Exhibit No. 60.

Copy of order of the said court entered June 2, 1888, confirming and approving deed of Geo. F. Henry, Commissioner, to Jefferson S. Polk and F. M. Hubbell, said order containing a copy of said Master's deed, dated May 19, 1888.

Plaintiffs' Exhibit No. 61.

Copy of articles of incorporation of the Des Moines and Northwestern Railway Company adopted October 3, 1887.

Plaintiffs' Exhibit No. 62.

Copy of deed from Jefferson S. Polk and F. M. Hubbell and their wives to the said Des Moines and Northwestern Railway Company dated December 21, 1887.

Plaintiffs' Exhibit No. 63.

Copy of record of stockholders' meeting of Des Moines and Northwestern Railway Company held August 17, 1891, relative to consolidation.

Plaintiffs' Exhibit No. 64.

Articles of consolidation and incorporation of the Des Moines Northern & Western Railway Company, December 14, 1891.

Plaintiffs' Exhibit No. 65.

Copy of mortgage executed by the Des Moines Northern & Western Railway Company to Metropolitan Trust Company of New York as trustee, dated December 15, 1891.

Plaintiffs' Exhibit No. 66.

Copy of decree of foreclosure of the said mortgage entered by the Circuit Court of the United States for the Southern District of Iowa, Central Division, Nov. 7, 1894.

Plaintiffs' Exhibit No. 67.

Copy of report of sale by Geo. F. Henry, Commissioner, under said decree dated Dec. 18, 1894.

Plaintiffs' Exhibit No. 68.

Copy of order confirming the said report of sale entered February 7, 1895.

Plaintiffs' Exhibit No. 69.

Copy of deed from Geo. F. Henry, Commissioner, to G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, dated February 15, 1895.

Plaintiffs' Exhibit No. 70.

Copy of articles of incorporation of the Des Moines, Northern & Western Railroad Company dated January 1, 1895.

Plaintiffs' Exhibit No. 71.

Copy of deed from G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, to Des Moines, Northern & Western Railroad Company, dated February 23, 1895.

Plaintiffs' Exhibit No. 72.

Copy of the record of a meeting of the stockholders of the Des Moines, Northern & Western Railroad Company, held April 24, 1899.

Plaintiffs' Exhibit No. 73.

Copy of resolution by directors of Des Moines Northern & Western Railroad Company, dated April 24, 1899.

Plaintiffs' Exhibit No. 74.

Copy of deed from the Des Moines, Northern & Western Railroad Company to the Chicago, Milwaukee & St. Paul Railway Company, dated May 1, 1899.

Plaintiffs' Exhibit No. 75.

Copy of what purports to be a record of the stockholders' meeting of the Des Moines, Northern & Western Railroad Company of date June 12, 1907.

Plaintiffs' Exhibit No. 76.

Copy of what purports to be deed from Des Moines Northern & Western Railroad Company to Chicago, Milwaukee & St. Paul Railway Company dated June 19, 1907.

Plaintiffs' Exhibit No. 77.

Copy of trust conveyance and convention from F. M. Hubbell and wife to Frederick M. Hubbell, et al., trustees of the Frederick M. Hubbell Estate dated December 31, 1903.

Plaintiffs' Exhibit No. 78.

Copy of deed executed October 16, 1886, from the Mercantile Trust Company of New York as trustee to James F. Joy, Ossian D. Ashey, Thomah H. Hubbard and Edgar T. Welles.

Plaintiffs' Exhibit No. 79.

Tabulation of stock certificates issued by Des Moines Union Railway Company.

PLAINTIFFS EXHIBITS

Referred to in Stipulation (ante, page 159) and, Numbered from No. 1 to No. 79 Inclusive, are as follows:

Plffs. Exhibit No. 1.

Contract of December 8" 1880 between Wabash St. Louis & Pacific Ry. Co., J. S. Polk, James S. Clarkson, Frederick M. Hubbell and John S. Runnells.

This Memorandum of an agreement, made at the City of New York, this eight day of December, A. D. 1880, by and between Jefferson S. Polk, James S. Clarkson, Frederick M. Hubbell and John S. Runnells, joint parties of the first part, and the Wabash, St. Louis and Pacific Railway Company, party of the second part, witnesseth:

The first parties above named are interested in a railroad extending northwesterly from Waukee, Dallas County, Iowa, and are desirous of obtaining for the said railroad a connection with the railroad of the second party hereto. The second party owns and controls a system of railroads, one of which extends as far as Albia, in the State of Iowa, and is desirous of extending said railroad to a connection at at Des Moines, Iowa, with the railroad of the first parties above-mentioned. Thereupon it is mutually covenanted between the parties above named as follows:

First. The first parties above named will immediately proceed to incorporate themselves under the laws of Iowa a railroad corporation, to be known as the "Des Moines & St. Louis Railroad Company," with a capital stock of two millions of dollars, and authorized to construct a railroad from Des Moines, Iowa, to Albia, in said State. They will give their time and personal attention as directors and officers of said Company, so far as the same may be necessary, to the location and economical construction of said railroad, all of which location and construction shall be subject to the approval of second party hereto. They will personally exert themselves to procure subsidies, to be voted along the line, and also to procure donations of land for stations and right of way, and other benefits, in aid of the construction of the railroad of said Company. They shall jointly receive as compensation for their services as officers and agents of said company, and in procuring subsidies and other aid from the time of the execution of this contract to the time of the completion of said railroad, the sum of ten thousand dollars in money, and the further sum of 5% of the amount of all of said subsidies which shall be actually paid, and five per cent, of the value of all lands donated for right of way or station purposes, and 5% of the value of all other aid to the construction of the railroad of said Company which may be expressly accepted by the second party hereto. In the event that more ground is donated in consideration of the location of a station at any point than is required upon a liberal construction for those purposes, the surplus shall belong absolutely to the first parties hereto. The value of property donated for right of way shall be estimated at four hundred dollars per mile. The said sum of ten thousand dollars shall be paid on the completion of the first five miles of said railroad as hereinafter provided, and the commission of five per cent on the completion of said railroad.

It is expressly understood that the expenses of the parties above named, as officers and directors of said company, and while personally engaged in procuring subsidies or right of

way, and their office and clerical expenses, and the legal expenses of said company for condemnation and other proceedings, shall be defrayed from funds of said company and not at their personal cost.

Second. The first parties above named will subscribe to the capital stock of said company such amount as shall be necessary to qualify themselves as directors thereof, and no more, and will receive no other subscription to the capital stock of said company except the following:

They will accept a subscription to the capital stock of said company, to be made by such person or persons as shall be designated by the second party hereto, amounting to the entire capital stock of said company, except that which shall have been subscribed by themselves as above, and which subscription shall be conditioned that the subscriber shall, with all reasonable dispatch, locate, provide right of way and grounds for, construct, complete and reasonably equip the railroad aforesaid, from Des Moines, Iowa, to a connection with the railroad of the second party hereto, at Albia, as above mentioned, and shall further pay all the compensation and expenses of the first parties hereto, as in this agreement defined, all of which location and construction shall, by the subscriber aforesaid, be done to the approval of the second party hereto, and shall be further conditioned, that in payment for such location, right of way, construction and equipment, the subscriber shall receive the entire amount of capital stock, by him subscribed as above, and in addition thereto, for each mile of said railroad, fifteen thousand dollars in bonds of the second party hereto, of the issue secured by its General Mortgage, and further secured by Special Mortgage on the railroad and equipments of said company, and all appurtenances thereto. As fast as each section of five miles of said railroad is completed, there shall be issued to the subscriber, the entire amount of fifteen thousand dollars per mile, of said bonds, and one hundred and twenty-five thousand dollars of said capital stock, the remainder of said capital stock to be issued and delivered when such contract of subscription is complete.

In addition to the payment above set forth, there shall be transferred to said subscriber, by said company, all sums of money or monied obligations which said company may receive in consideration of the construction of said railroad, from persons or private and municipal corporations; and so much of the capital stock of said company as the laws of Iowa may require said company to transfer to persons or corporations, in consideration of such local aid, shall, by said company, be so transferred and deducted from the amount of said capital stock, otherwise payable to the subscriber aforesaid.

If from the death or disability of either of said parties of the first part, or from other cause, the second party hereto shall deem that its interests require the surrender by said first parties, or any of them, of the amount of stock held by said first parties or any of them, in order to qualify themselves as directors of said company, then, upon the demand of said second party, either or all of said first parties shall transfer to said second party, the stock by them individually held.

In the event of the retirement of any or all of said first parties by this means, upon the demand of the second party hereto, such retirement shall not affect the interest of such person or persons in the sum of ten thousand dollars above mentioned, or in the commission of 5%, so far as the latter relates to the value of such aid, as shall have been voted or secured from other sources prior to such demand by the second party hereto.

The first parties above named will, as officers and directors of said company, upon the demand of the second party hereto, execute and deliver to said second party a lease in perpetuity of the said railroad and equipment, conditioned that the second party hereto, as lessee, shall, during its tenure under said lease, maintain said railroad and equipment in as good order as received, and shall operate the same, as required by law; shall pay all taxes and assessments on the same; shall fully protect the interest accruing upon the bond above mentioned, and shall pay annually such further rental as a due proportion of the earnings of said railroad shall afford.

And in consideration of the premises, the second party above named will provide persons who shall make the subscription above set forth, and fully perform the same. And the said second party will also demand and accept a lease of the said railroad and equipment, upon the terms above defined. The second party further agrees, that it will furnish to the company to be organized as above, the bonds of the second party secured by its General Mortgage, in such amounts and at such times as shall be required for payment for construction and equipment of the railroad of said company, under the subscription above mentioned.

It is, moreover, expressly understood by said second party that said first parties expect to secure to themselves personal advantage, from the location of stations on the line of said railroad, adjacent to lands, mines and quarries, which said first parties shall purchase, lease, or otherwise acquire or become interested in.

In Witness Whereof, the first parties above named, have hereunto set their hands and seals, and the second party here-

to, has caused its signature and seal to be, by its President and Secretary, affixed hereto, the day and year above written.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY,
By Solon Humphreys,
President.

Attest:
Jas. F. How,
Secretary,

(Seal)

JEFFERSON S. POLK,
JAMES S. CLARKSON,
FREDERICK M. HUBBELL,
JOHN S. RUNNELLS.

Plffs. Exhibit No. 2.

Contract of December 8th, 1880, between the Wabash St. Louis & Pacific Ry. Co. and Des Moines Northwestern Railway Co. and Narrow Guage Construction Co.

This memorandum of an agreement, made and entered into by and between the Des Moines Northwestern Railway Company, hereinafter for convenience styled the Des Moines Company, of the one part, the Narrow Gauge Railway Construction Company, hereinafter called the Construction Company, of the second part, and the Wabash, St. Louis & Pacific Railway Company, hereinafter called the Wabash Company, of the third part, witnesseth:

Whereas, the Des Moines Company has heretofore constructed its road from Waukee, a point on the Des Moines & Fort Dodge Railroad, about 15 miles west of Des Moines, to Panora, in Guthrie County, Iowa, and thereupon suspended further construction of said railroad, for want of funds.

Whereas, said company desires to raise funds to further extend its railroad, pay off its floating debt, and fund its bonded debt at a lower rate of interest and on longer time.

Whereas, so much of its said railroad as is now completed was built under a contract with the Construction Company, whereby the Des Moines Company agreed to issue to the Construction Company $7,500. per mile of its capital stock, and $5,000. per mile of its bonds, bearing 7% interest, and payable in 20 years, secured by mortgage on its road, all of which should be received by said Construction Company in payment for the completion of said contract on its part.

Whereas, said Construction Company has completed its contract with said Des Moines Company, and has received from

said Company the bonds and stock it was entitled to under said contract.

Whereas, said Construction Company and its members, individually, still own and hold said stock and bonds, which stock is all the capital stock of said Des Moines Company, except about $30,000, issued, and to be issued, for subsidies and conditional subscriptions, and the bonds so held by the members of the Construction Company constitute the entire bonded debt of the Company.

Whereas, said Construction Company and its members own or control the entire floating debt of the said Des Moines Company.

Whereas, said Construction Company and its members desire to put the Des Moines Company in position to raise funds to further extend its road, pay off its floating debt, and fund its outstanding bonds at a lower rate of interest, and to that end are willing to surrender the stock and bonds now held by it and them, and to pay off the floating debt of the Des Moines Company, receiving therefor new stock and bonds of the Des Moines Company hereinafter mentioned, on such terms as may be just and equitable.

And Whereas, the Des Moines Company did on the 18th day of November, 1879, enter into a contract with the Des Moines & Fort Dodge Railroad Company, for the disposition of its business, to which reference is hereby made, and has certain contract relations with the Western Union Telegraph Company.

And Whereas, The Wabash Company is now negotiating for the purchase or lease of the Des Moines & Fort Dodge Road aforesaid.

And Whereas, the Wabash Company has entered into an arrangement with the Des Moines & St. Louis Railroad Company, whereby the Wabash Company is to have a lease in perpetuity of said Des Moines & St. Louis Railroad when completed, which will give the Wabash Road a route to Des Moines.

And Whereas, the Wabash Company desires to obtain the through business arising on the Des Moines Road, and to have said road extended, for the purpose of increasing the business to be derived therefrom.

Now Therefore, in consideration of the premises and to carry out the objects above mentioned, it is agreed and stipulated by and between the several parties hereto:

First. That the Construction Company shall surrender to the Des Moines Company all the stock and bonds of the Des Moines Company held by it or its several members, and the same shall be cancelled and the mortgages given to secure said bonds released of record, and will further cause to be paid, released or discharged the entire floating debt of said Des Moines Company, so that the mortgage hereinafter mentioned shall be the first mortgage on said company's property.

Second. The Construction Company shall further cause all the floating debt of the Des Moines Company to be surrendered or discharged, so that the said railroad shall be free from debt and from all liens, except by way of contract with the Western Union Telegraph Company, and with the Des Moines & Fort Dodge Railway Company, as hereinbefore referred to.

Third. The Construction Company will also, with all reasonable dispatch, locate, provide right of way and grounds for, construct, complete and reasonably equip, an extension of the Des Moines Company's railroad for 30 miles northwesterly from Panora, and such further extensions northwesterly as far as Spirit Lake, or to some point in that vicinity; or to the north line of Iowa, with a branch, if required, to Sioux City, as the Des Moines Company may, hereafter, demand upon the terms and conditions hereinafter set forth. Any demand for extension beyond thirty miles from Panora shall be made within three years from this date.

Fourth. In consideration of the foregoing, the Des Moines Company will pay to the Construction Company for each mile of its railroad now complete, and for each mile which the Construction Company shall hereafter complete, $7,000, in bonds of the Wabash Company, of the series issued under the general mortgage of that company, and the Des Moines Company shall further execute to the Trustees of said general mortgage a special mortgage, which shall be a first lien to the extent of $7,000, per mile on the railroad property, equipment and appurtenances of the Des Moines Company, then held or thereafter to be acquired, for the benefit of all holders of bonds issued under said general mortgage; said mortgage shall, however, be so written that no foreclosure shall take place so long as the interest upon an amount equal to $7,000, per mile in said bonds is paid to said Trustees, according to the tenor and effect of the said bonds.

Fifth. In further consideration of the foregoing, the Des Moines Company will pay to the Construction Company, $10,500, in the capital stock of the said Des Moines Company for each mile of its railroad now complete, and that may hereafter be completed, and will further pay and transfer to said

Construction Company all subsidies, donations and conditional benefits which said Des Moines Company may receive or secure in aid of the extension of its railroad as above set forth.

Sixth. To enable the Des Moines Company to make payment as above in its capital stock, the Construction Company will immediately subscribe to the Capital Stock of the Des Moines Company an amount equal to $10,500. for each mile of the said 30 miles immediately to be built, and will make like subscriptions prior to entering on the work of any subsequent extension. Every such subscription shall be payable in the construction and equipment of said railroad as above provided and shall stipulate that the subscriber shall receive proportionate amounts of all the bonds, stock and subsidies above enumerated, as fast as each successive section of five miles shall be complete.

Seventh. To enable the Des Moines Company to procure the bonds of the Wabash Company, above stipulated to be paid, the Construction Company agrees that as fast as the stock of said Des Moines Company or any part thereof, shall be received by it, whether issued on that part of said railroad already complete, or upon any extension thereof, it will divide equally with the Wabash Company such portion of said stock as shall remain after delivering to the parties who shall be entitled to receive stock in consideration of taxes paid or other conditional aid, so much as they are entitled to receive.

The intention and agreement of the Construction Company and the Wabash Company is hereby declared to be that each of said companies shall have an equal voice and interest in the control and earnings of said Des Moines Company, and to that end it is agreed that so much of the stock of the company as shall be issued in consideration of taxes paid or other conditional benefits shall be bought in for account of said Des Moines Company, as fast as practicable, from the earnings of said road or from funds provided by the parties hereto. Said stock, when paid for by the Des Moines Company, shall be immediately cancelled. Pending the purchase of said stock by the Des Moines Company, the Construction Company shall transfer to the Wabash Company an equivalent amount of the Des Moines Company's stock, to be returned as fast as the stock issued in consideration of taxes paid shall be bought in by the Des Moines Company, so that the Wabash Company shall have and control at all times, as exactly as possible, one-half of all outstanding stock of the Des Moines Company. If the Des Moines Company shall fail to take up any of said stock which shall be bought in by individual members of the Construction Company, the Wabash Company shall have the right

to one-half of any stock so purchased, upon paying one-half the cost.

It is further agreed by the Construction Company and the Wabash Company, that the stock of both companies shall be voted for a board of directors, consisting of nine members; four of whom shall be nominated by the Wabash Company, four by the Construction Company, and the remaining one shall be chosen by the eight persons thus selected.

The Des Moines Company on its part agrees:

First. It will immediately execute and deliver to the Wabash Company a lease in perpetuity of its railroad property and appurtenances from time to time as required.

It shall keep full and separate accounts, which shall be open to inspection by the parties hereto, of the earnings of said railroad, and shall apply the same, after paying the expenses of maintenance and operation as above.

First, to the payment of all taxes and assessments on the railroad and property of the said Des Moines Company.

Second, to the payment of interest on the bonds of said Wabash Company, to be issued as above at the rate of $7,000. for each mile of its railroad now complete, and to be issued at the same rate hereafter as each mile of any extension thereof as the same shall be hereafter completed.

Third, to the payment of dividends upon the capital stock of the said Des Moines Company.

The Wabash Company shall, however, in said lease expressly guarantee that the net earnings of said railroad shall at all times be fully equal to the taxes and assessments on said railroad and property, the necessary renewals of said railroad and equipment and to the payment of interest on said bonds. The amount so applicable to taxes, interest and dividends shall in each year be not less than 30% of the gross earnings of said railroad.

The Wabash Company shall, moreover, in said lease expressly stipulate that upon all through freight originating on the line of the said railroad and upon all through freight coming to said railroad from the railroad of the Wabash Company, and having final destination at some point on the railroad of the Des Moines Company, there shall be allowed to said Des Moines Company, and computed as part of said earnings, a division which shall amount to not less than 25% of the gross amount received for transportation of freight from or to Chicago, Peoria, St. Louis, or other points on the Mississippi River, ac-

cording to the destination of such freight. Freight passing to or coming from beyond the points above named shall be treated as if originating at or destined to those points. It shall, however, be expressly stipulated that a higher rate shall be allowed to the Des Moines Company whenever such higher rate is allowed to other local roads at Des Moines or places similarly situated, and in the event of a disagreement on this point between the Wabash Company and the Des Moines Company, or any stockholder thereof, the matter shall be submitted to and determined by arbitrators, as elsewhere provided in the agreement.

The Des Moines Company on its part agrees:

First. It will at once execute and deliver to the Wabash Company a lease of its railroad and property, upon the terms above described.

Second. It will execute a mortgage as above provided for, covering its railroad, equipment, property and incomes, to further secure such of the bonds of the Wabash Company of the series issued under the general mortgage of that company, as shall be delivered to the Des Moines Company to be used in accordance with its covenants, above set forth.

Third. It will accept from the Construction Company a subscription to its capital stock, payable in the construction of an extension of its road for 30 miles northwesterly from the present terminus of its completed road, and will hereafter accept and comply with such further subscriptions as the Construction Company may make, upon the same terms, for the further extension of its railroad within the limits above mentioned, to Sioux City and Spirit Lake.

Fourth. It will at once make further provision for an increase of its board of Directors to nine persons, as above provided for, and will further cause its articles of incorporation to be amended, so that the board of directors of said company shall have express authority to carry out the provisions of this agreement.

The Wabash Company on its part agrees:

First. It will accept a lease of the railroad and property of the Des Moines Company upon the terms above set forth, and will faithfully perform the conditions of said lease on its part to be performed.

Second. It will furnish to the Des Moines Company so many of the bonds issued under the General Mortgage of said Wabash Company as shall from time to time be required for delivering

to said Construction Company, upon compliance by said Construction Company with its covenants, above set forth.

Third. It will repurchase from the Construction Company all or any part of the bonds last above mentioned, at an agreed price of 95% of the par value of said bonds upon that sum, whenever the Construction Company shall not find a purchaser at a price above that sum.

The bonds so offered for purchase shall, however, be presented at the office of the Wabash Company, in the City of New York, and payment shall be made within three days from that date.

If the Wabash Company shall fail so to re-purchase the $210,000. of said bonds, to be issued on the 30 miles of said railroad now complete, then the Construction Company may declare this agreement void, provided said bonds are presented for repurchase within 60 days from the date of this agreement.

It is further mutually agreed by and between the parties above named, that if certain pending negotiations between the Wabash Company and the Des Moines & Fort Dodge Company shall result in the Wabash Company's acquiring control, by lease or otherwise, of the Des Moines and Fort Dodge Road, then the Des Moines Company shall have the right (upon terms to be fixed by agreement of the parties, otherwise to be settled under the general provisions herein made for arbitration) to extend its line into Des Moines, by laying a third rail upon the Des Moines and Fort Dodge Road.

It is further mutually agreed by and between the parties above named, that if the pending negotiations between the Wabash Company and the Des Moines and Fort Dodge Company shall fail, then the railroad of the Des Moines Company shall be extended to a connection with the railroad of the Des Moines and St. Louis Company, at or near Des Moines, substantially under the provisions of the foregoing agreement, but with such modifications as the greater cost of such extension may require. The Des Moines Company shall in that case have full right of entry into Des Moines, by laying a third rail on the Des Moines and St. Louis Road, and full use of the terminal facilities of that road, upon terms to be settled by agreement between the Des Moines Company and the Wabash Company, or else under the arbitration elsewhere provided for herein.

It is further agreed on the part of the Wabash Company, that if it shall acquire control of the Des Moines & Fort Dodge Road, then the Wabash Company will permit the Des Moines Company to lay down a third rail on the track of the Des

Moines & St. Louis Road, from the terminus of the Fort Dodge Road, in the City of Des Moines, eastwardly far enough to reach such pork houses and other sources of freight as are on the east side of the City of Des Moines, and are reached by the tracks of the Des Moines and St. Louis Road. Payment to be made to the Des Moines and St. Louis road by the Des Moines Company, upon reasonable terms, to be fixed by agreement, or by arbitration, above provided for.

The parties above named do further agree as follows:

First. The entire location and construction of the said extension of the Des Moines Railroad shall be under the supervision and control of the Wabash Company, which shall appoint an engineer to superintend the same.

It is further agreed between the parties hereto, that all matters of difference arising between them, or any of them, under this contract, shall be submitted to arbitration of three persons, one of whom shall be selected by the Wabash Company, one by the Construction Company, or its members, and the two thus selected shall choose a third, and their decision in writing touching all such matters as may be submitted to them in writing shall be final and conclusive between the parties.

In Witness Whereof, the parties above named have caused their respective signatures and seals to be affixed by their presidents, and attested by their secretaries respectively, this eighth day of December, A. D. 1880.

(Seal) THE WABASH, ST. LOUIS & PACIFIC RAILWAY CO.,
By Solon Humphreys, President.

Attest:
Jas. F. How,
Secretary.

(Seal) THE DES MOINES NORTHWESTERN RAILWAY CO.,
By J. S. Polk, Prest.

Attest:
J. S. Runnells,
Sec. D. M., N. W. R. Co.

(Seal) THE NARROW GAUGE RAILWAY CONSTRUCTION COMPANY,
By F. M. Hubbell, Prest.

Attest:
J. S. Runnells,
Sec. N. G., R. Cons. Co.

The undersigned, who are all the stockholders of the Construction Company mentioned in the above contract, hereby assent as such, to said contract.

J. S. POLK,
J. S. CLARKSON,
J. S. RUNNELLS,
F. M. HUBBELL.

December 16, 1880.

Plffs. Exhibit No. 3.

Articles of Incorporation
of the
Des Moines and St. Louis Railroad
Company.

Art. 1. The undersigned their successors and assigns hereby Associate themselves together into a corporation to be known as the Des Moines and St. Louis Railroad Company for the purpose of constructing, owning, and operating or constructing and leasing a railroad from the City of Des Moines in Polk County, Iowa, to a connection with the Wabash, St. Louis and Pacific Railway in the State of Iowa, and such corporation shall possess all the powers conferred by law upon corporations for pecuniary profit.

Art. 2. The capital stock of the corporation shall be 2,000,000. of Dollars which shall be divided into shares of one hundred dollars each, all of which shall be liable to payment at such time and in such manner as the Board of Directors may from time to time determine. The entire capital stock, or any part thereof, may at the discretion of the Board of Directors be issued for the purpose of carrying out the objects of this incorporation and may be paid for in work done or material furnished in the construction of the road.

Art. 3. The principal place of business shall be at Des Moines, Iowa, provided that it shall be at the discretion of the President to call any meeting of the stockholders or of directors at any other place than Des Moines, upon a publication of a notice thereof five days before the date of the proposed meeting in some newspaper published at Des Moines.

Art. 4. The affairs of the company shall be managed by a Board of four directors who shall be elected annually by the stockholders on the first Thursday in January, except as hereinafter provided, each share having one vote. The provisional Board of Directors who shall hold office until the first Thursday in January, A. D. 1882 (when the first meeting of the stockholders for the election of officers shall be held) shall con-

sist of J. S. Polk, J. S. Clarkson, J. S. Runnells and F. M. Hubbell. The directors shall have all the powers usually possessed by directors of similar corporations. They are hereby further authorized for the purpose of enabling them to carry out the objects of this incorporation to execute a mortgage upon the road, franchises and other property of this company to the amount of not less than $15,000. a mile to secure the bonds of the company or other evidences of indebtedness of a like amount approved by the Board and to issue full paid stock to the amount of not less than $25,000. a mile, all of which bonds or other evidences of indebtedness and stock together with all subsidies, taxes, gifts and donations which may be obtained to aid in the construction of the road, they are empowered and directed to transfer to such corporation or individual as they may elect for the purpose of securing the construction and operation of the road herein contemplated. They shall be further authorized to execute a lease of the road in perpetuity or otherwise when it shall have been constructed and they are hereby invested with all the powers which could be exercised by the stockholders when the latter are not in session. For the purpose of carrying out the objects of this incorporation a majority of the Board shall constitute a quorum and in the event of the death or resignation of a member, the remaining members may fill the vacancy thus occurring. The directors shall elect from their number a President, Vice-President, Secretary and Treasurer. Meetings of the Board may be held at any time upon the call of the President or in his absence of the Vice President, or any two members of the Board.

Art. 5. The President, Vice-President, Secretary and Treasurer shall constitute an executive committee who shall have power to make contracts binding upon the corporation and shall be intrusted with the immediate management of its affairs. They shall be authorized to act for the company in all matters affecting its interests and their undertakings as such committee shall be valid and binding to the same extent as would those of the full board of directors. They shall have power to act as herein provided at any time and place when and where two or more of them may be together.

Art. 6. The private property of the stockholders shall be exempt from liability for corporate debts and undertakings.

Art. 7. All contracts and certificates of stock shall be signed by the president and countersigned by the Secretary.

Art. 8. The highest amount of indebtedness to which the corporation may at any time subject itself is $1,300,000.

Art. 9. These articles may be amended by a vote of two-thirds of all the shares of stock subscribed in favor of the pro-

posed amendment upon publication of notice of the meeting at which such amendment shall be proposed thirty days before the date thereof in two papers published at Des Moines. Amendments may also be made without publication of notice, by the unanimous vote of the Board of Directors whenever they shall convene on call of the President or Vice-President.

Art. 10. This corporation shall commence on the 15th day of December, A. D. 1880, and continue 50 years with the right of renewal.

In Witness Whereof we have hereunto set our names this 15th day of December, A. D. 1880.

JAMES S. CLARKSON,
JEFFERSON S. POLK,
F. M. HUBBELL,
JOHN S. RUNNELLS.

State of Iowa,
Polk County—ss.

Before me, a Notary Public, in and for the County and State aforesaid, on this 15th day of December, A. D. 1880, personally appeared J. S. Polk, J. S. Clarkson, J. S. Runnells and F. M. Hubbell to me personally known to be the identical persons who executed the foregoing articles of incorporation, and acknowledged the execution thereof to be their voluntary act and deed for the purposes therein expressed.

Witness my hand and notarial seal the day and year last above mentioned.

(Seal) C. HUTTENLOCHER,
Notary Public.

Filed for Record Jany. 27th, 1881, at 2:30 o'clock P. M., and recorded in Book 3 Articles of Incorporation page 23, Polk Co., Ia., Records.

J. J. PAYNE, Recorder.

State of Iowa—ss.

Filed for record in office of Secy. of State Feb. 8th, 1881.

J. A. T. HULL,
Secy. of State.

Office of the Des Moines & St. Louis Railroad Company.

Des Moines, Iowa.

State of Iowa,
Polk County—ss.

I, F. M. Hubbell, Secretary of the Des Moines & St. Louis Railroad Company, do hereby certify that the following among

other proceedings were had by the Board of Directors of the Des Moines & St. Louis Railroad Company at its meeting regularly held on the 3rd day of January, A. D. 1884, to-wit:

"John S. Runnells moved that Article IV of the Articles of Incorporation of this Company be amended by striking out of the first section thereof the word "four" and inserting therein the word "nine" so that said Section of Article IV shall read as follows, to-wit:

"The affairs of the Company shall be managed by a Board of nine directors who shall be elected annually by the stockholders on the first Thursday in January except as hereinafter provided, each share having one vote."

The president thereupon submitted such resolution to the vote of the board and all members of the Board, to-wit: J. S. Clarkson, J. S. Runnells, J. S. Polk, F. M. Hubbell, being present and voting therefor it was declared carried by the unanimous vote of the Board of Directors.

On motion the Secretary of this Company was directed to cause this amendment to be duly recorded and a notice thereof published as provided by law."

And I further certify that a full, true and perfect transcript of the minutes of such meeting as set out in the records of said company so far as they relate to the amendment of Article IV of the Articles of Incorporation are set out above.

Signed this 23rd day of January, A. D. 1884, and attested with the seal of the Company.

(Seal) F. M. HUBBELL, Secretary.

Filed for record Jan. 23, 1884, at 4½ o'clock P. M. and recorded in Book 4, page 99, Records of Articles of Incorporation Polk County, Iowa.

J. J. PAYNE, Recorder.

State of Iowa—ss.

Filed for record in office of Secretary of State Jan. 31, A. D. 1884.

J. A. T. HULL,
Secretary of State.
W. T. Hammond, Deputy.

Plffs. Exhibit No. 4.

Contract entered into Jan. 2nd, 1882, between the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Ry. Co., the St. Louis, Des Moines & Northern Ry. Co., G. M.

Dodge, James F. How and Jas. F. How, Trustee, being "Exhibit A" to bill.

"This Agreement made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, and the several individual signers hereto,

Witnesseth:

First.

The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance, at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

Second.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually, James F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third.

It is mutually agreed by the parties above named, that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized [illegible] may take permanent charge of the property upon the t[illegible] herein set forth and that said Company may issue and [illegible]r to the Companies, parties hereto, its mortgage bonds [illegible]he amount of their respective portions of the cost of the [illegible] purchases and improvements.

Fourth.

The title to said property shall be and remain in a trustee to be named by agreement of said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth.

The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above re-

ferred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement.

Sixth.

The Des Moines and St. Louis Company shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two Companies, the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

Seventh.

The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

Eighth.

It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories and other sources of trade in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge trucks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefore shall be determined by arbitration.

Ninth.

Taxes and assessments levied upon said property shall be charged to maintenance account.

Tenth.

In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Rail-

road Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies parties hereto.

Eleventh.

All differences arising under this agreement shall be referred to arbitration, one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company and the third by the two thus selected.

The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis and the Des Moines Northwestern, then the second arbitrator shall be chosen by the Des Moines Northwestern and not by the St. Louis, Des Moines & Northern.

Twelfth.

It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement.

In Witness Whereof the said Railway Company, parties hereto, have caused these presents to be executed by their respective residents under their respective corporate seals, attested by the Secretaries of the said Companies and the several individual signers hereto have executed the same the day and year first above written.

THE DES MOINES AND ST. LOUIS RAILWAY COMPANY.

(Corporate Seal) By J. S. Clarkson, President.

Attest:

J. S. Polk, Secretary.

THE DES MOINES NORTHWESTERN RAILWAY COMPANY.

(Corporate Seal) By J. S. Polk, President.

Attest:

J. S. Runnells, Secretary.

THE ST. LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY.

(Corporate Seal) By J. S. Clarkson, President.

Attest:

J. S. Polk, Secretary.

(Seal) G. M. DODGE,

(Seal) JAMES F. HOW,

(Seal) JAMES F. HOW, Trustee.

The Wabash, St. Louis and Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines and St. Louis, and the Des Moines Northwestern Companies.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

(Corporate Seal) By Solon Humphreys, President.

Attest:

James F. How, Secretary.

Plffs. Exhibit No. 5.

Proceedings of Board of Directors,
Des Moines Northwestern Ry. Co.

Board Meeting—December 9th, 1884.

The Board met this day in regular session. A quorum being present, the meeting was called to order by the President and the minutes of the meeting of this Board for July, August, September, October and November being read, were approved and signed.

Thereupon John S. Runnells offered for the consideration of the Board the following resolution, to-wit:

"Whereas heretofore, to-wit, on the 2nd day of January, 1882, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, Jas. F. How, and Jas. F. How, Truster, entered into a contract whereby it was agreed to purchase and use certain real estate and franchises theretofore acquired by certain of said parties for terminals facilities in Des Moines; and,

Whereas, it is desirable that a corporation be organized for the purpose of taking and holding such property;

Now Therefore, be it Resolved, that J. S. Polk and F. M. Hubbell be and they are appointed to act for this Company in the organization of such corporation, and they are selected to act as two of the directors of said proposed corporation so to be organized for the purpose of carrying out the objects of said contract of January 2nd, 1882."

Said resolution after being duly considered was unanimously adopted.

There being no other business before the Board, it adjourned.

J. S. POLK, Prest.

J. S. Runnells, Secy.

Plffs. Exhibits Nos. 5½ and 6.

Proceedings had at First Meeting of Incorporators, Des Moines Union Ry. Co., together with original Articles of Incorporation, which Articles of Incorporation are "Exhibit B" to Amended Bill.

Des Moines, Ia., December 10th, 1884.

At a meeting held in Des Moines, Ia., on the 10th day of December, 1884, for the purpose of organizing a Union Depot & Railroad Company, to be run and operated in and around the City of Des Moines, Ia., in pursuance of a contract heretofore, to-wit: on the 2nd day of January, A. D. 1882, entered into by and between the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company, The St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee.

There were present: G. M. Dodge, who appeared for himself and in the interest of the St. Louis, Des Moines & Northern Railway Company, J. S. Polk, F. M. Hubbell, who appeared for the Des Moines Northwestern Railway Company, and John S. Runnells and C. F. Meek, who appeared for the Des Moines & St. Louis Railroad Company, as well as for James F. How, both as Trustee and in his individual capacity.

The meeting organized by electing G. M. Dodge President and F. M. Hubbell, Secretary.

The meeting was then called to order by the President and John S. Runnells offered the following, to-wit:

Resolved, that for the purpose of carrying out the objects and purposes of the agreement heretofore, to-wit, on the 2nd day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company and others, (which is set out in full in the following Articles of Incorporation.)

That the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company, to-wit:

Articles of Incorporation of the Des Moines Union Railway Company.

Whereas:

The Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Ia., and have secured certain franchises, purchased certain realty and made certain improvements thereon —which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions, at their joint expense—in accordance with a contract made and

entered into by and between said companies and Grenville M. Dodge and James F. How, Trustee, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to-wit:

"THIS AGREEMENT made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railroad Company, The Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company and the several individuals, signers hereto:

Witnesseth:

First: The Companies above named are engaged in the construction of railways converging at the City of Des Moines, and have heretofore agreed upon the purchase, construction and maintenance, at their joint expense, for terminal facilities in the City of Des Moines, to be held and used in common as hereinafter provided.

Second: In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually, James F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines & St. Louis Railroad Company and the construction of buildings and other improvements upon said premises have been begun.

Third: It is mutually agreed by the parties above named that the expenses incurred by the purchase and improvement above mentioned and such others as may be hereafter made shall be borne in the proportion of one-half by the Des Moines & St. Louis Railroad Company and one quarter by each of the other two companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth, and that said Company may issue and deliver to the companies parties hereto its mortgage bonds, to the amount of their respective portions of the costs of said purchases and improvements.

Fourth: The title of said property shall be and remain in a Trustee, to be named by agreement of said Companies, but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth: The individual signers hereto hereby declare said purchase to have been made in their names upon the trusts above referred to, and agree to quit-claim and convey the same to said Trustee upon demand and reimbursement.

Sixth: The Des Moines & St. Louis Company shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be ap-

portioned between it and the said other two companies—the apportionment to be determined by the use thereof which they shall respectively make—as evidenced by the wheelage; the payment of the sum required to be made monthly to the Des Moines & St. Louis Railroad Company within ten days after a rendition of an account stated.

Seventh: The control of said property by the Des Moines & St. Louis Railroad Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties, under this head, shall be settled by arbitration.

Eighth: It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories and other sources of trade, in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adopted for use for both broad and narrow gauge tracks, provided that in case either of said companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track and which of the parties hereto shall pay therefor, shall be determined by arbitration.

Ninth: Taxes and assessments levied upon said property shall be charged to maintenance account.

Tenth: In the event that any company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental, and its portion of the maintenance account; the rental to enure to the Companies hereto in the same proportion as the original outlay, and the sum due from such company, for maintenance account, to be determined in the same manner as the sums due from the other companies, parties hereto. Railroad Companies whose roads extend to Des Moines may be admitted to the use of said facilities by agreement of all the companies, parties hereto.

Eleventh: All differences arising under this agreement shall be referred to arbitration. One of said Arbitrators shall be chosen by the Des Moines & St. Louis Railroad Company, another by the St. Louis, Des Moines and Northern Railroad Company, and the third by the two thus selected. The judgment of any two of the said Arbitrators shall be final. If the matters of difference shall be between the Des Moines & St. Louis and the Des Moines Northwestern, then the second Arbitrator shall be chosen by the Des Moines Northwestern and not by the St. Louis, Des Moines and Northern.

Twelfth: It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street has been acquired under this agreement.

In Witness Whereof, the said Railway Companies, parties hereto, have caused these presents to be executed by their respective Presidents, under their respective corporate seals, attested by the Secretaries of the said Companies, and the several individual signers hereto have executed the same the day and year first above written.

THE DES MOINES AND ST. LOUIS RAILROAD CO.,
By J. S. Clarkson, President.

Attest:
J. S. Polk, Secy.

THE DES MOINES NORTHWESTERN RAILWAY CO.,
By J. S. Polk, President.

Attest:
J. S. Runnells, Secy.

THE ST. LOUIS, DES MOINES & NORTHERN RY. CO.,
By J. S. Clarkson, President.

Attest:
J. S. Polk, Secy.

The Wabash, St. Louis & Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines & St. Louis and the Des Moines & Northwestern Companies.

THE WABASH, ST, LOUIS & PACIFIC RAILWAY CO.,
By Solon Humphreys, President."

Attest:
Jas. F. How, Secy.

Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said Companies, and

Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was the understanding of the parties that such Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto.

Now Therefore, for the purposes aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following:

Articles of Incorporation.

Article 1.

The name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be Des Moines, Ia.

Article 2.

The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight-houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Ia., as well as the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, store-houses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter I. of Title IX. of the Code, and the amendments thereto. All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, The St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, Trustee, and Grenville M. Dodge. The said Company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company—provided that the assent in writing of the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and The St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

Article 3.

The capital stock of this corporation shall be One Million ($1,000,000.00) Dollars, which shall be divided into shares of one hundred ($100.00) Dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des

Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge.

Article 4.

The affairs of the Company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of each year. The provisional Board of Directors, who shall hold office until the first Thursday in January, A. D. 1886, shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the Stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive.

The provisions herein with respect to nomination for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and The St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the Stockholders as hereinbefore provided.

The Directors shall elect, from their number, a President, Vice President, Secretary and Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

Article 5.

The President, Vice President, Secretary and Treasurer, shall possess the powers and discharge the duties of like officers of similar corporations, subject to the limitations imposed by these Articles. The officers, hereby constituted, who shall hold their places until the first Thursday in January, 1886, or until their successors are duly chosen, shall be as follows:

President .....G. M. Dodge.
Vice President .....Jas. F. How.
Secy. & Treasurer.....F. M. Hubbell.

Article 6.

The private property of Stockholders shall be exempt from liability for corporate debts and undertakings.

Article 7.

The highest amount of indebtedness to which the corporation may at any time subject itself shall be the amount authorized by law.

Article 8.

Meetings of the Board of Directors may be called by the President or, in case of his absence or disability, by the Vice President, and shall be called upon request preferred in writing by two members of the Board.

Article 9.

These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation —published in the City of Des Moines, Iowa.

Article 10.

This corporation shall commence on the Fifth day of December, A. D. 1884, and continue fifty years, with the right of renewal.

In Testimony Whereof, we have hereunto set our names this 10th day of December, A. D. 1884.

J. S. POLK.
F. M. HUBBELL.
J. S. RUNNELLS.

State of Iowa,
Polk County—ss.

On this 10th day of December, 1884, personally appeare before me, C. Huttenlocher, a Notary Public in and for th

County of Polk, J. S. Polk, F. M. Hubbell and J. S. Runnells, to me personally known to be the identical persons whose names are affixed to the foregoing instrument as Incorporators, and acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

(Notarial Seal)

C. HUTTENLOCHER,
Notary Public, Polk Co.

Filed for record Dec. 10th, 1884, at 4½ a'clock P. M.

J. J. PAYNE,
Recorder.

Which resolution, after being considered by the meeting, was unanimously adopted, and said Articles of Incorporation were approved and the same were signed and acknowledged.

On motion, the Secretary was directed to file said Articles of Incorporation for record, and publish notice of same as required by law. Whereupon the meeting adjourned.

Attest:

F. M. Hubbell, Secretary.

Plffs. Exhibit No. 7.

Resolutions adopted at the Stockholders' Meeting of St. Louis, Des Moines and Northern Railway Company, January 1st, 1885, being "Exhibit D" to Bill.

Stockholders' Meeting, January 1st, 1885.

On motion of F. M. Hubbell, the following preamble and resolutions were submitted to the meeting for its consideration, to-wit, and were unanimously adopted:

Whereas the Des Moines and St. Louis Railroad Company, the Des Moines North Western Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge and James F. How and Jas. F. How, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate, and franchises, in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract; and

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated, and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate property, rights and franchises in the City of Des Moines, east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract ac-

quired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

Now Therefore:

1. Resolved, That this Company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

II. Resolved: That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City, now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased acquired or held in pursuance of said contract.

Plffs. Exhibit No. 8.

Proceedings had at Meeting of Stockholders Des Moines Northwestern Railway Company, January 1st, 1885, "Exhibit F" to Bill.

The stockholders met this day in regular session, a notice thereof having been published in The Daily Iowa State Leader, a copy of which is hereto attached.

The meeting being called to order by the President, it was ascertained that there were present and represented 10075 shares of stock. J. S. Runnels by power of Attorney, representing the stock of this Company, held, and controlled by the Mercantile Trust Company, F. M. Hubbell, President of the Narrow Gauge Railway Construction Company representing its stock, and Polk and Habbell, representing their own stock, in the Company. The President thereupon requested the Secretary to read the minutes of the last annual stockholders meeting which was done, and there being no objections made thereto, they were approved and the President and Secretary were directed to sign the same.

The reading of the minutes of the proceedings of the Board of Directors for the past year being called for by the stockholders, the same were read by the Secretary and after considering the same, they were approved and the acts of the Board and of the officers of the Company for the year 1884, were on motion of J. S. Clarkson, fully ratified and confirmed.

Thereupon J. S. Runnells presented a communication from Jas. F. How, Genl. Agt., which is in words and figures following, to-wit:

Wabash, St. Louis & Pacific Railway.
Solon Humphreys and Thomas E. Tutt,
Receivers.
Jas. F. How,
General Agent for the Receivers.

St. Louis, Mo. Dec. 27th, 1884.

Hon. J. S. Runnells,
Des Moines.

Dear Sir:

Enclosed please find proxy authorizing you to vote the stock held by the Mercantile Trust Company in the D. M. N. W. Ry. Co. Please vote for the following parties as Directors, J. S. Polk, John S. Polk, F. M. Hubbell, F. C. Hubbell, J. S. Runnells, J. F. How, A. L. Hopkins, J. S. Clarkson and A. A. Talmage.

Yours truly,

JAMES F. HOW,
Gen. Agt.

And moved that the meeting proceed to the election of a Board of Directors for the ensuing year, which was adopted.

Whereupon Mr. Hubbell, in behalf of the Narrow Gauge Railway Construction Company, nominated Jefferson S. Polk, John S. Polk, F. C. Hubbell and F. M. Hubbell, for election as members of the Board of Directors.

And Mr. Runnells in behalf of the Mercantile Trust Company nominated, J. F. Howe, A. L. Hopkins, J. S. Clarkson and A. A. Talmage. Mr. Hubbell then nominated J. S. Runnells to be voted for as the ninth member of said Board whose nomination was acceptable to the Mercantile Trust Company represented by said nominee.

Balloting for the persons thus nominated being in order, a vote was taken with the following results, to-wit:

10075 shares of stock being all stock present and represented, were voted for the nine gentlemen above nominated, and they

were declared duly elected as members of said Board for the ensuing year.

On motion of J. S. Runnells, the following resolution was offered:

Resolved, that this Company ratifies and approves the selection heretofore made of J. S. Polk and F. M. Hubbell to serve as directors of the Des Moines Union Railway Company in accordance with the provisions of Article four (4) of the Articles of Incorporation, of that Company authorizing this Company to nominate two members of the Board of Directors of said Company.

On motion of F. M. Hubbell, the following preamble and resolution were submitted to the meeting for its consideration, to-wit:

Whereas, The Des Moines, St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis Des Moines and Northern Railway Company, G. M. Dodge, James F. How, and James F. How, Trustee, on the 2nd day of January, 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines which had theretofore been held and used by certain of the individual parties hereto for certain purposes and upon certain conditions set out in said contract, and

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract, to acquire, hold, use and enjoy the real estate, property rights and franchises in the City of Des Moines East of Farnham Street in said City of the aforesaid railway company and signatories of said contract acquired or held thereunder, and to carry out the purposes of the said contract of January 2nd, 1882:

Now Therefore, Resolved, That this Company accepts and ratifies so far as its interests are affected, thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to

which it may be entitled under said contract to convey, assign and transfer to said company all its right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines East of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract.

The same having been duly considered, was on motion, adopted, all the stockholders present and represented voting therefor.

On motion of Mr. Runnells, the following resolution was submitted to the meeting, to-wit:

Resolved, That the proper officers of the company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the Company to the Des Moines Union Railway Company on the 1st day of January, 1885, or as soon thereafter as practicable, leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein, and the same being duly considered was adopted by the meeting, all the stock present and represented, voting therefor.

On motion of Mr. Hubbell, the following preamble and resolution were offered, to-wit:

That Whereas, the Wabash, St. Louis & Pacific Railway Company has defaulted in the payment of the interest due on its general mortgage bonds and its railroad and property, has on its own motion been put in the hands of a Receiver; and Whereas, it has failed to comply with the terms of the lease of this Company's road to it, and proceedings are about to be commenced by its bondholders to foreclose the mortgage given to secure the same, whereby this Company's rights may be prejudiced.

Now Therefore Be It Resolved, That the Board of Directors of this Company be and they are directed through its officers to take all necessary steps for the protection of this company's interest and the enforcement of the terms of said lease of this company's road to the Wabash, St. Louis & Pacific Railway Company.

And the action of the Board of Directors and the officers of this Company with reference thereto is approved and ratified.

There being no other business before the meeting, it on motion adjourned.

J. S. POLK,
Pres't.

J. S. RUNNELLS,
Secy.

Board Meeting.

January 1st, 1885.

The newly elected Board of Directors met this day, a quorum being present, to-wit:

Jefferson S. Polk, Jno. S. Polk, Fred C. Hubbell, F. M. Hubbell, J. S. Clarkson and J. S. Runnells.

Whereupon on motion of John S. Runnells, the Board proceeded to organize by the election of officers for the ensuing year, and

Jefferson S. Polk was elected President of the Company, J. S. Clarkson, Vice President, J. S. Runnells, Secretary and F. M. Hubbell Treasurer for the ensuing year.

And J. S. Polk, President, J. S. Clarkson, Vice President, J. S. Runnells, Secy., and F. M. Hubbell Treasurer, were elected Executive Committee of the Company.

Whereupon, J. S. Clarkson handed in his resignation as member of the Board of Directors, which is in words and figures following, to-wit:

Des Moines, Ia. Jan. 1st, 1885.

I hereby resign as member of Board of Directors of the Des Moines Northwestern Railway Company to take effect in (10) ten days from date.

J. S. CLARKSON.

Which was accepted. On motion the Board adjourned.

J. S. POLK,
Pres't.

Adjourned.

J. S. RUNNELLS,
Secy.

Plff's. Exhibit No. 9.

Proceedings had at Meeting of Stockholders Des Moines and St. Louis R. Co., January 1st, 1885, being "Exhibit G" to Amended Bill.

Stockholders Meeting.
January 1st, 1885.

The stockholders of the Des Moines & St. Louis Railroad Company met this day in regular session. A notice of such meeting having been duly published in the Daily Iowa State Register a copy of which is as follows, to-wit:

Notice.

The stockholders of the Des Moines & St. Louis Railroad Company are hereby notified to meet at the office of the Company in the Equitable Block, Des Moines, Iowa, at 10 o'clock A. M. on Thursday, January 1st, 1885, for the purpose of electing officers for the ensuing year and transacting such other business as may properly come before said meeting.

The transfer of the Company's interest in the terminal property at Des Moines to the Des Moines Union Railway Company will be considered, and such action taken as may be necessary to carry into effect the contract between the company and the other joint owners respecting it.

F. M. Hubbell,
Secretary.

J. S. CLARKSON,
President.

The meeting was called to order by the President, J. S. Clarkson, and it was ascertained that there was present, and represented the following stock, to-wit: The Mercantile Trust Company by its Attorney,

John S. Runnells	voted	9996	shares
J. S. Clarkson,	"	1	"
J. S. Polk	"	1	"
F. M. Hubbell,	"	1	"

The minutes of the preceding Stockholders meeting were read, approved and signed. It being made to appear that there was no meeting of the Board of Directors during the year 1884 by reason of there being no quorum at the regular monthly meeting of said Board and that no election of officers was had for such year, and that the officers elected for the year 1883 held over and continued to act as such.

On motion their authority so to do was recognized, and their acts approved, and it being further made to appear that some delay may be had in procuring a quorum of the Board hereafter for the election of officers for the ensuing year, it was on motion,

Resolved,

That the present officers of the company held over until their successors are elected and qualified.

Thereupon J. S. Runnells presented a communication of James F. How, General Agent etc., which is in words, and figures following:

"St. Louis, Dec. 27, 1884.

Hon. J. S. Runnells,
Des Moines, Iowa.

Dear Sir:

Enclosed please find proxy authorizing you to vote the stock held by the Mercantile Trust Company in D. M. & St. L. R. R. Co., at the annual meeting to be held January 1st, You will please vote this stock for the following gentlemen as Directors, J. S. Clarkson, F. M. Hubbell, J. S. Runnells, James F. How, W. H. Blodgett, A. A. Talmage, A. S. Hopkins, D. S. H. Smith, and J. S. Polk,

Yours truly,

JAMES F. HOW,
Gen. Agt. etc.

And moved that this meeting proceed to the election of a Board of Directors for the ensuing year which motion was adopted by the unanimous vote of the stockholders, and he thereupon nominated for such Board of Directors the following named gentlemen:

J. S. Clarkson,	F. M. Hubbell,	J. S. Runnells,
James F. How,	W. H. Blodgett,	A. A. Talmage,
A. S. Hopkins,	D. S. H. Smith,	J. S. Polk,

Whereupon a ballot was taken for such Board of Directors and it was ascertained that each of said named parties had received the unanimous vote of all of the stockholders present and represented and were declared unanimously elected as Directors for the ensuing year.

On motion of F. M. Hubbell, the following Resolution was unanimously adopted.

"Resolved,

That this company ratify and approve the selection heretofore made of J. F. How, A. S. Hopkins, A. A. Talmage & J. S. Runnells, to serve as Directors of the Des Moines Union Railway Company in accordance with the provision of Article 4 of the Articles of Incorporation of that company authorizing this company to nominate four members of the Board of Directors of said Company.

On motion of J. S. Polk the following preamble and resolutions were submitted to the meeting for its consideration to-wit:

Whereas the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Company, the St. Louis Des Moines & Northern Railway Company, G. M. Dodge, James F. How, and James F. How, Trustee, on the 2nd day of January A. D. 1882 entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises, in the city of Des Moines which had heretofore been held and used by certain of the individual parties thereto for certain purposes and upon certain conditions set out in said contract, and

Whereas on the 10th day of December A. D. 1884 a corporation under the name, and style of the Des Moines Union Railway Company was organized as contemplated, and provided, in the aforesaid contract to acquire, hold, use and enjoy the real estate, property, rights and franchises in the City of Des Moines, East of Farnham street in said City of the aforesaid Railway Companies and signatories of said contract acquired or held thereunder, and to carry out the purposes of said contract of January 2nd, 1882.

Now Therefore,

Resolved, that this company accepts and ratifies so far as its interests are affected thereby the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882 and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Co.

Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the Bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign, and transfer to said company all its right title and interest of whatever name and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines, East of Farnham street in said city now held enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882 or any agent or trustee thereof purchased acquired or held in pursuance of said contract.

The same having been duly considered was on motion adopted. All the stockholders present and represented voting therefor.

On motion of J. S. Runnells the following resolution was submitted to-wit:

Resolved, That the proper officers of the company be authorized to transfer the management and operation of its property in Des Moines so far as the same may now be vested in the company on the first day of January or as soon thereafter as practicable leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein.

And the same being duly considered was adopted by the meeting. All the stockholders present and represented voting therefor.

J. S. CLARKSON,
President.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 10.

Proceedings had at First Meeting Board of Directors, Des Moines Union Ry. Co., being "Exhibit C" to Amended Bill.

January 1st, 1885.

The Board met this day, pursuant to the call of the President, due notice thereof having been given to each member of the Board.

The members of said Board having each qualified by subscribing for one share of the Capital Stock of this Company.

There were present—G. M. Dodge, F. M. Hubbell, J. S. Runnells, J. S. Polk and C. F. Meek.

The meeting was called to order by the President.

On motion of John S. Runnells it was unanimously

Resolved, That the Secretary be instructed to procure a seal for said Company, which shall consist of a circular disc—having engraved around the outer edge thereof—the words "Des Moines Union Railway Company" and in the center the word "Seal," and that such device is hereby adopted as the seal of this Company, and until the same is procured, a scroll with the word "seal" written in the center thereof shall be regarded and treated as the seal of this company.

On motion of J. S. Polk, the following preamble and resolutions were submitted for the action of the Board, to-wit:

Whereas, the Des Moines and St. Louis Railroad Company, The St. Louis, Des Moines & Northern Railway Company, The

Des Moines Northwestern Railway Company, G. M. Dodge and James F. How, both in his individual right and as Trustee under the contract mentioned and set out in the Articles of Incorporation of this Company, have by their officers and by themselves, personally notified this Company that they have each for themselves approved of the organization of this Company, and have directed their officers, agents and trustees to surrender and deliver to this Company the railroad property and franchises mentioned in said contract, and requested it to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in said contract, and that said railway companies and individual signatories have indicated their desire and purpose to transfer said property to this Company in accordance with the terms of said contract.

Whereas, it is desirable that this Company should at once take possession of said property and maintain, control and operate the same, and that it should procure all necessary conveyances and transfers of the same as soon as practicable, and make provisions for and pay for said property so proposed to be conveyed to it, Now Therefore be it.

Resolved,

First.

That this Company accepts the transfer and management and operation of said property in the City of Des Moines, East of Farnham Street in said City, heretofore owned and controlled by the Des Moines & St. Louis Railroad, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as practicable, and it hereby instructs its President to make such order as may be necessary to render such control and management effective, as provided in said contract.

Second.

That the President, Vice President, Secretary and Treasurer, of this Company be, and they are hereby, appointed a Committee to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said properties provided for in said contract of January 2nd, 1882.

Third.

That to enable this Company to pay for the property and to maintain, operate and improve the same, and purchase other property necessary to carry out its objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same, the President and Secretary of this Company are hereby authorized and directed to issue full-paid capital stock of this Company, not to exceed One Million ($1,000,000.00) Dollars and not to exceed five hundred (500) bonds of this Company, of the denomination of One Thousand Dollars ($1,000.00); the form to be agreed upon hereafter by this Board.

And to secure said bonds, the President and Secretary are authorized and directed to execute, in the name of this Company, a first mortgage or deed of trust, conveying all of said property so to be conveyed to this Company or thereafter to be acquired, to a trustee therein named, the form of which deed of trust shall be hereafter determined by this Board.

And when said Committee shall have agreed with the said several parties to said contract as to the amount of bonds and stocks of this Company necessary to be delivered to them, and each of them, in payment for said railroad property and franchises, the President and Secretary of this Company shall deliver the same to said several parties as each appear to be entitled, on receipt of the conveyances and assignments of said property so to be made to this Company.

The remainder of said bonds and stock so authorized to be issued shall be, by order of this Board, signed and issued from time to time as they may be needed for the purposes of the resolutions above set out authorizing their issuance, and for no other purpose.

Fourth.

That said Committee shall from time to time report to this Board their acts and doings under the foregoing resolution.

And, after due consideration, said Preamble and Resolution were unanimously adopted.

On motion of John S. Runnells, the following resolution was unanimously adopted, to-wit:

Resolved, That G. M. Dodge, the President of this Company, or such officer or director as he may designate, be authorized to negotiate with any railway company whose lines extend into Des Moines, or which may wish to acquire the right to use any part of the property of the Company, with authority

to make and fix any terms upon which such right may be acquired or enjoyed, subject to the approval of the Board of Directors of this Company and to the limitations imposed by its Articles of Incorporation.

Which was adopted.

On motion of C. F. Meek, the following By-Laws were adopted, to-wit:

By-Laws.

1. There shall be regular meetings of the Board of Directors of this Company on the second Tuesday of each month at 2 o'clock P. M., of which every member of this Board is charged with notice.

2. All contracts of this Company shall be signed by the President and countersigned by the Secretary.

The President, on his own motion, nominated C. F. Meek as Superintendent of the Company's property, and said Meek having received a majority of the votes cast for such position, was declared elected thereto.

Attest:

F. M. Hubbell,
Secretary.

Plffs. Exhibit No. 11.

Resolution adopted at meeting of Board of Directors, St. Louis, Des Moines & Northern Railway Co., November 5, 1887, being "Exhibit E", to Amended Bill.

Board Meeting, November 5, 1887.

The Board met this day pursuant to the call of the President.

The following directors were present: C. F. Meek, J. S. Polk, F. M. Hubbell.

The meeting being called to order by F. M. Hubbell, Vice President, the minutes of the last meeting were read and approved.

J. S. Polk offered the following preamble and resolution to-wit:

Whereas James F. How, has prior to 1881 and since then purchased certain property and made expenditures on same as Trustee for this company, the money expended for said property being furnished by the Wabash St. Louis & Pacific Railway Company, and,

Whereas, under an agreement between this company and the Wabash, St. Louis & Pacific Railway Company and others it was intended that said property, standing in the name of James F. How Trustee should be transferred to the Des Moines Union Railway Company under certain conditions it is hereby

Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased on receiving from said company a stipulation that as soon as practicable after the transfer said Union Railway Co. is to deliver to him first mortgage bonds of that company to the amount of the money advanced for the payment of said property and improvements with interest on same and taxes paid thereon and also three fourths of the stock of the Des Moines Union Railway Company, said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash St. Louis & Pacific Railway Co. or their successors or assigns in lieu for the money advanced by said company to make the purchase of the above property and improvements and the payment of taxes for this company.

Which resolution after being duly considered were unanimously adopted.

C. F. Meek offered the following Resolution, to-wit:

Whereas, Grenville M. Dodge has prior to 1881 and since then purchased certain property and made expenditures on the same as Trustee for this company, the money expended for said property being furnished by the said Dodge, and

Whereas under an agreement between this company and the Wabash St. Louis & Pacific Railway Company and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee and Grenville M. Dodge, individually should be transferred to the Des Moines Union Railway Company under certain conditions, It is hereby

Resolved, That Grenville M. Dodge is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above so purchased on receiving from said company a stipulation that as soon as practicable said Union Railway Company is to deliver to him First Mortgage Bonds of that Company to the amount of the money advanced by him for the payment of said property and improvements with interest and taxes on the same and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

Which resolution after being duly considered was unanimously adopted.

C. F. Meek thereupon resigned his office as director which was accepted by the Board and L. M. Martin was unanimously elected to fill the vacancy caused by the resignation of said Meek.

Thereupon the Board adjourned.

J. S. POLK,
Asst. Secretary.

(pp. 65, 66 and 67 record)

Plffs. Exhibit No. 12.

Proceedings of Board of Directors Des Moines and St. Louis Railroad Company November 8, 1887, being "Exhibit 'H", to Amended Bill.

Board Meeting,
November 8th, 1887.

The Board met this day in regular session.

Present. James F. How, J. S. Clarkson, Wells H. Blodgett, John S. Runnells, J. S. Polk, and F. M. Hubbell.

The meeting being called to order by the President, J. S. Clarkson and the death of A. A. Talmage, one of the directors being suggested it was

Moved that the Board proceed to the election of a director to fill the vacancy caused by the death of said Talmage, which motion having carried James F. How nominated Charles M. Hays to be voted for, as such director, there being no other nominations a ballot was taken on the election of said Hays to fill such vacancy, and all the directors present having voted for him he was declared duly elected and he being present took his seat on the Board.

On motion of John S. Runnells the Board then proceeded to the election of officers of the company to act as such until the next regular election of the company and until their successors are duly elected and a ballot having been taken the following officers were elected to such offices to-wit:

J. S. Clarkson, was elected, President,
J. S. Runnells, was elected, Vice President,
F. M. Hubbell, was elected Secretary,
James F. How, was elected, Treasurer.

Charles M. Hays offered the following Resolution and moved its adoption to-wit:

Whereas, James F. How, has prior to 1881 and since purchased certain property and made expenditures on same as

Trustee for this company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, under an agreement between this company and the Wabash St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines, Union Railway Company, under certain conditions it is hereby

Resolved, that James F. How is requested by this company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said company a stipulation that as soon as practicable after the transfer said Union Railway Co. is to deliver to him first mortgage bonds of that company to the amount of the money advanced for the payment of said property and improvements with interest on same and taxes paid thereon and also three fourths of the stock of the Des Moines Union Railway Company: Said Bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash St. Louis & Pacific Ry. Co. or their successors or assigns in lieu for the money advanced by said Company to make the purchase of above property and improvements, and the payment of taxes for this company.

Said motion having been duly considered was unanimously adopted.

On Motion of John S. Runnells the following resolution was unanimously adopted, to-wit:

Whereas Grenville M. Dodge has prior to 1881 and since then purchased certain property, and made expenditures on the same as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and

Whereas under an agreement between this company, and the Wabash St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge individually should be transferred to the Des Moines Union Railway Company under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested by this company to transfer to the Des Moines Union Railway Company, the property referred to above on receiving from said company a stipulation that as soon as practicable said Union Railway Company is to deliver to him first mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on

the same and taxes, and also one fourth of the Capital Stock of the Des Moines Union Railway Company.

James F. How offered the following resolution, to-wit:

Resolved that the President and Secretary of this company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said company lying and being in the City of Des Moines, east of Farnham street, whether the same was acquired by grant from city of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second, 1882, entered into by and between this company, the Des Moines North Western Railway Company, the St. Louis Des Moines and Northern Railway Company and others.

Said motion having been duly considered was unanimously adopted.

There being no other business before the meeting it adjourned.

F. M. HUBBELL, Secretary.

Plffs. Exhibit No. 13.

Notice served by Des Moines and St. Louis Railroad Company on the Des Moines Union Railway Company, November 8th, 1887, being "Exhibit I" to Bill.

November 8th, 1887.

To The Des Moines Union Railway Co.,

This is to notify you that the Board of Directors of the Des Moines & St. Louis Railroad Co., at its meeting, November 8th, 1887, did pass the following resolutions, to-wit:

"Whereas, James F. How, has, prior to 1881 and since then, purchased certain property and made expenditures on same, as Trustee, for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Co., and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable after the transfer, said Union Railway Company is to deliver to him, first mortgage bonds of that Company, to the amount of the money advanced for the payment of said property and improvements, with interest on same and taxes paid thereon, and also three-fourths of the stock of the Des Moines Union Railway Company; said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company."

"Whereas, Grenville M. Dodge, has, prior to 1881, and since then, purchased certain property and made expenditures on the same, as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Co., and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge individually, should be transferred to the Des Moines Union Railway Co., under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, on receiving from said Company a stipulation that, as soon as practicable, said Union Railway Company is to deliver to him first mortgage bonds of that Company, to the amount of the money advanced by him for the payment of said property and improvements, with interest on the same and taxes, and also one-fourth of the capital stock of the Des Moines Union Railway Company."

Resolved, That the President and Secretary of this Company be, and they are hereby, authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all of its real estate, rights of way, franchise, roadbed and other property of said Company, lying and being in the City of Des Moines, East of Farnham Street, whether the same was acquired by grant from the City of Des Moines, by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date of January 2nd, 1882, entered into by and between this Company, The Des Moines Northwestern Railway Company, The St. Louis, Des Moines & Northern Railway Company and others."

And I hereby certify that the above is a true copy of the same.

Secretary of the D. M. & St. Louis Railroad Co.

Plffs. Exhibit No. 14.

Notice served by St. Louis, Des Moines and Northern Railway Company on Des Moines Union Railway Company, November 8th, 1887, being "Exhibit J" to Bill.

To the Des Moines Union Railway Company:

You are hereby notified that the Board of Directors of the St. Louis, Des Moines & Northern Railway Company did, at its meeting, held in Des Moines, Iowa, on the 5th day of November, 1887, pass the two following resolutions, to-wit:

"Whereas, James F. How has, prior to 1881, and since then, purchased certain property and made expenditures on same, as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Co., and others, it was intended that said property, standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes paid thereon, and also three-fourths of the stock of the Des Moines Union Railway Company; said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

No. 2. "Whereas, Grenville M. Dodge has, prior to 1881, and since then, purchased certain property and made expenditures on the same, as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others, it

was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable, said Union Railway Company is to deliver to him First Mortgage Bonds of that Company, to the amount of the money advanced by him for the payment of said property and improvements, with interest and taxes on the same, and also one-fourth of the capital stock of the Des Moines Union Railway Company."

And I hereby certify that the foregoing pages contain true copies thereof.

November 8th, 1887.

Secretary of the St. Louis, Des Moines & Northern Ry. Co.

Plffs. Exhibit No. 15.

Notice served by the Des Moines Northwestern Railway Company, on the Des Moines Union Railway Company, on November 8th, 1887, and being "Exhibit K" to Bill.

To The Des Moines Union Railway Company,

This is to notify you that the Board of Directors of the Des Moines Northwestern Railway Company, at its meeting held in Des Moines, Iowa, November 8th, 1887, did pass the following two resolutions, to-wit:

No. 1. "Whereas, James F. How has, prior to 1881, and since then, purchased certain property and made expenditures on the same, as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and,

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others, it was intended that said property, standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable after the transfer, said Union Railway Company is to deliver to him

First Mortgage Bonds of that Company, to the amount of the money advanced for the payment of said property and improvements, with interest on same and taxes paid thereon, and also one-half of the stock of the Des Moines Union Railway Company; said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company." No. 2. "Whereas, Grenville M. Dodge has, prior to 1881, and since, purchased certain property and made expenditures on the same, as Trustee for this Company, the money expended for said property being furnished by said Dodge, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property, standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable, said Union Railway Company is to deliver to him First Mortgage Bonds of that Company to the amount of money advanced by him for the payment of said property and improvements, with interest and taxes on the same, and also one-fourth of the capital stock of the Des Moines Union Railway Company."

And I hereby certify that the foregoing pages contain true copies thereof.

November 8th, 1887.

Secretary D. M. N. W. Ry. Co.

Plffs. Exhibit No. 16.

Ordinance City of Des Moines March 22nd 1881.

Des Moines & St. Louis Railroad.

An Ordinance Granting the right of way to the Des Moines & St. Louis Railroad Company and its assigns, over, across, along and upon certain Streets and Alleys in the City of Des Moines, Polk County, Iowa, and the right to bridge the Des Moines River on the south alley, in said City, between Court Avenue and Vine Street.

O. 216—P. March 22nd, 1881.

Section 1. Be it Ordained By the City Council of the City of Des Moines: That the right of way be and is hereby granted to the Des Moines & St. Louis Railroad Company or its assigns, through the City of Des Moines, on, over, along, upon and across the following streets and alleys, to-wit:

Commencing at the east end of Market Street in Brooks & Co's Addition and running thence west on Market Street, crossing Twenty-fourth Street, Twenty-third Street, Twenty-second Street, Nineteenth Street and Seventeenth Street, to the west line of East Eleventh Street. Thence westerly along and across Vine Street from East Eleventh Street to East Eight Street, and on, over and along the alleys in Blocks Twenty-one, twenty-two and twenty-three of Demoines Addition, crossing East Twelfth Street, East Eleventh Street, East Tenth Street and East Ninth Street; thence west between Court Avenue and Vine Street, crossing all the streets and alleys between East Ninth Street and East Fourth Street. Thence westerly along the south alley between Court Avenue and Vine Street to West Fifth Street, crossing East Fourth Street, East Third Street, East Second Street and Front Street, Water Street, West Second Street, West Third Street, West Fourth Street and West Fifth Street, and across all north and south alleys between East Fourth Street and West Fifth Street. Thence westerly on the alley between Cherry Street and Vine Street, from West Fifth Street to Fourteenth Street or Section Street, crossing West Sixth Street, West Seventh Street, West Eighth Street, West Ninth Street, West Tenth Street, West Eleventh Street, West Twelfth Street, West Thirteenth Street and West Fourteenth Street, and crossing all the north and south alleys between West Fifth Street and West Fourteenth Street, with the right to lay down a single or double track, with side-tracks, turn-outs and switches on the same, and to run such locomotives and trains of cars over the same as may be necessary in the operation of said road, and at such reasonable rates of speed as may from time to time be fixed by said City Council of Des Moines; provided, that said railroad company shall build its road on the grade of the City, or upon such grade as may be agreed upon by the City and said railroad company. Provided, also, that the right of way hereby granted shall in no case be construed to cover or extend more than forty-eight feet in width where said road crosses the public streets and alleys.

Section 2. Be it Further Ordained, That the right to build and operate a railroad bridge over and across the Des Moines river on the south alley between Court Avenue and Vine

Street, in the City of Des Moines, is hereby granted to the Des Moines & St. Louis Railroad Company or its assigns.

Section 3. Be it further Ordained, That said railroad company shall, in constructing its road, build and keep in repair at Street and alley crossings sufficient wagon-ways of the full width of the Street or alley, crossings for foot passengers, and water-ways or culverts, wherever the same may be necessary and of sufficient number and size to afford at all times the free passage of water and public travel without obstruction, and increase the number and size of such wagon-ways and crossings, waterways or culverts within the limits of the City of Des Moines wherever and whenever a majority of the members of the City Council shall order or direct; provided, that when the tracks of said railway crosses any street or alley at any other than a right angle, the Company shall be required to lay down plank on either side of the track directly across said street or alley from the point of entrance thereto and departure therefrom.

Section 4. Be it further Ordained, That the grant hereinbefore made is upon the express condition that the injury to property abutting upon the streets and alleys upon which such railway tracks is proposed to be located and laid down, shall be ascertained and compensated at the time and in the manner provided by the Statutes of this State for taking private property for works of internal improvement.

Section 5. Be it further Ordained, That said grant is hereby made upon the further express condition that said railroad company shall locate, build and maintain a passenger depot in East Des Moines, also one in West Des Moines, and shall stop all passenger trains at said depots a sufficient length of time for passengers to get on and off the trains.

Section 6. Be it further Ordained, That the grant made in the first section of this ordinance is upon the express condition that the railroad of the Des Moines & St. Louis Railroad Company shall be built and its cars running into the City of Des Moines by the first day of January, 1882.

Section 7. Be it further Ordained, That this ordinance shall operate as a contract between the City of Des Moines and the said Des Moines & St. Louis Railroad Company, if the grant herein made shall be accepted by the said Des Moines & St. Louis Railroad Company, which acceptance shall be entered upon the records of the City Council.

O.216 P. March 22nd, 1881.

Plffs. Exhibit No. 17.

Deed No. 1 from James F. How, Trustee, to Des Moines Union Railway Company, being "Exhibit L" to Amended Bill.

James F. How, Trustee,
to
Des Moines Union Ry. Co.

Deed.

Whereas, The property herein described was from time to time purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company a corporation; and Whereas for its convenience the legal title to said property was conveyed to me in trust; and Whereas said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company; and the St. Louis, Des Moines & Northern Railway Company; G. M. Dodge, James F. How and James F. How, Trustee; and which contract was consented to by said Wabash, St. Louis and Pacific Railway Company; and Whereas I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas the Board of Directors of said Des Moines & St. Louis Railway Company and the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas, James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement with this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now Therefore, Know All Men By These Presents:

That I, James F. How, Trustee, as aforesaid, of the City of St. Louis, State of Missouri, in consideration of the premises,

and of the sum of One Dollar, to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, the several lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows:

Official Plat Lot Three (3) in the northwest quarter of Section (9) Township Seventy-eight (78) Range Twenty-four (24) West of the 5th P. M. Iowa; Lot six, and the south half of Lot five in Block twenty-two (22) Lots five (5) and seven (7) and the south sixty-six (66) feet of Lot One (1) and two (2) and the south half of Lot three (3) all in Block thirty-one (31); Lots One (1) two (2) three (3) four (4) five (5) six (6) seven (7) in Block thirty-two (32) all in Keene & Poindexter's Addition to Fort Des Moines; Lot three, Block Fourteen, and Lot five and six in Block fourteen Lots five and six and the north two-thirds of Lots seven, in Block 18, Lot Three (3) in Block Twenty-two, Lot three and the west half of Lot five (5) and six (6) in Block Nine, all in Hoxies Addition to the Town of Fort Des Moines; Lot nine and the north two-thirds of Lot four in Block thirty-five (35); Lot four (4) and the north two-thirds of Lot Nine (9) in Block thirty (30); Lots four (4) and the south two-thirds of Lot Nine (9) in Block twenty-five (25); Lot nine and the south one-third of Lot ten (10) less a strip four feet in width from the north side of said one-third and the south one-third of Lot three (3) in Block Twenty (20); Lots one (1) two (2) seven (7) and eight (8) in Block fifteen (15); Lots One (1) two (2) and leasehold interest seven (7) and eight (8) in Block Nine (9); Lot two (2) in Block four (4) all in the original town of Fort Des Moines; Lots five (5) and six (6) in Block D, Lot Twelve (12) in Block I, Lots three (3) and twelve (12) in Block three (3) all in Scott & Dean's Addition to Fort Des Moines. The right of way in the rear of Lot seven (7) in Block Fourteen (14) beginning at the west line of Seventh Street and extending westward ninety-nine feet; Lots seven (7) and fifteen (15) in Block Sixteen (16); Lots Twelve (12) and thirteen (13) in Block Eleven (11); Lots ten (10) and eleven (11) in Block Twelve (12); Lots one (1) and nine (9) and official Plat Lot eleven (11) in Block Twenty-one (21); all interest in alley adjoining Lots One (1) and two (2) in Block thirteen (13); Lots eight (8) nine (9) fifteen (15) and sixteen (16) in Block Thirteen (13); Lot fifteen (15) in Block fifteen (15); the undivided one-fourth of Lot two (2) and

official plat lot thirteen (13) in Block Twenty-two (22); lots three (3) four (4) five (5) six (6) seven (7) and eight (8) in Block twenty-three (23) all in the Town of Demoine; Lot twenty-three (23) north two and seventy-five one hundredths acres of Block forty (40) west one-third (now official Plat Lot One) of Block forty-five (45), all of Lot thirty-six (36) all in Brooks and Company's Addition to the City of Des Moines.

To Have and to Hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me.

In Testimony Whereof, I have hereunto set my hand and seal this 19th day of November, A. D. One Thousand Eight Hundred and eighty-seven.

JAMES F. HOW.

City of St. Louis,
State of Missouri—ss.

On this sixteenth day of April, A. D. 1888, before me, a Notary Public within and for the City of St. Louis and State of Missouri, personally appeared James F. How, to me personally known to be the identical person whose name is affixed to the within and foregoing instrument of writing as grantor therein, and who acknowledged that he executed the same as his voluntary act and deed.

In Testimony Whereof I have hereunto set my hand and affixed my official seal at my office in said City of St. Louis, the day and year first above written. My term expires June 29th, 1889.

(Notarial Seal) MILLARD F. WATT.
Notary Public, City of St. Louis, State of Missouri.

Plffs. Exhibit No. 18.

Being "Exhibit M" to Amended Bill.

James F. How & Wife
To
Des Moines Union Ry. Co.

Deed.

Whereas, the property herein described was from time to time purchased with the moneys and funds of the Wabash, St.

Louis and Pacific Railway Company, a corporation; and Whereas, for its convenience the legal title to said property was conveyed to me in trust; and Whereas, said property was acquired and held for the purposes and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines and St. Louis Railway Company; the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, and which contract was consented to by said Wabash, St. Louis and Pacific Railway Company; and Whereas, I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing, that I held the legal title to the real estate hereinafter described in trust, for said Des Moines and St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas the Board of Directors of said Des Moines and St. Louis Railway Co. and the Board of Directors of said Des Moines Northwestern Railway Company did on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas James F. How has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company, and Whereas, under an agreement between this Company and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions It is hereby resolved that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now Therefore, Know all men by these Presents, That I James F. How of the City of St. Louis, State of Missouri, in consideration of the premises and of the sum of One Dollar to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents I do grant, bargain and sell and convey unto the Des Moines Union Railway Company the several Lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows: Lot one (1) of the Official Plat of Lot Twenty-four (24) and Lot Two (2) of the Official Plat of Lot Twenty-five (25) and Lot One (1) of the Official Plat of Lot twenty-six (26), all in Brook

and Company's Addition to the City of Des Moines; and the east one-half (½) of Lot two (2) in Block fifteen (15) in the original town of Fort Des Moines; also the right of way in alley adjoining Lots One (1) and Two (2) in Block Thirteen (13) in the Town of Demoine, and Lot Nine (9) in Block Twelve (12) in the town of Demoine, now a part of the City of Des Moines, and Eliza A. How, wife of the said James F. How, hereby relinquishes her right of dower in and to the above described premises.

To Have And To Hold all and singular the several pieces and parcels of real estate aforesaid with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me.

In Testimony Whereof I hereunto set my hand and seal this tenth day of December, A. D. One Thousand Eight Hundred and Eighty-seven.

(Seal) JAMES F. HOW,
(Seal) ELIZA A. HOW.

State of Missouri,
City of St. Louis—ss.

On this Seventeenth day of April, 1888, before me, a Notary Public within and for the City of St. Louis and State of Missouri, personally appeared James F. How and Eliza A. How, his wife, to me personally known to be the identical persons whose names are affixed to the within and foregoing instrument of writing as grantors therein, and who acknowledged that they executed the same as their voluntary act and deed.

In Testimony Whereof I have hereunto set my hand and affixed my official seal at my office in said City of St. Louis, the day and year first above written. My term expires June 29th, 1889.

(Notarial Seal) MILLARD F. WATTS,
Notary Public, City of St. Louis, State of Missouri.

Filed for Record April 27th, 1888, at 12 o'clock M.

D. C. BISHARD, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing is a copy from the original record

in my office, and of the whole thereof, and recorded in Book 201, page 176.

Dated at Des Moines, Iowa, in said County, this the ninth day of April, 1910.

MRS. FRANK W. DODSON, Recorder.
....., Deputy.

Plffs. Exhibit No. 19.

Deed from James F. How, Trustee, being "Exhibit N" to Amended Bill.

James F. How, Trustee,
To
Des Moines Union Railway Co.

Warranty Deed.

Whereas, the property hereinafter described was purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company a corporation; and whereas, for its convenience the legal title to said property was conveyed to me in trust; and whereas said property was acquired, and held for the purpose and upon the terms set forth in a certain contract made, and entered into on or about the 2nd day of January 1882, between the Des Moines & St. Louis Railway Company; the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge, James F. Howe and James F. Howe, Trustee, and which contract was consented to by said Wabash, St. Louis and Pacific Railway Company, and whereas, I have heretofore at the request of said Wabash, St. Louis and Pacific Railway Company, stated and declared in writing that I held the legal title to the real estate hereinafter described, in trust, for said Des Moines & St. Louis Railway Company, and said Des Moines Northwestern Railway Company, and whereas the Board of Directors of said Des Moines & St. Louis Railway Company, and the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November 1887 pass certain resolutions containing among other things the following, to-wit.

Whereas James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway, Company, and whereas, under an agreement with this Company and the Wabash, St. Louis & Pacific

Railway Company, and others, it was intended that said property standing in the name of James F. How, Trustee and should be transferred to the Des Moines Union Railway Company, under certain conditions. It is hereby Resolved that James F. How, is requested by this Company to transfer to the Des Moines Union Railway Company, the property above referred to. Now therefore, Know all men by these Presents that I, James F. How, as Trustee aforesaid of the City of St. Louis, State of Missouri, in consideration of the premises and of the sum of one dollar to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company a strip of land fifty (50) feet in width lying north of and adjoining the north line of the right of way of the Chicago, Rock Island & Pacific Railway, and being part of lot two (2) of the official plat of the north west quarter of the northeast quarter of Section eight (8) Township seventy-eight (78) north Range twenty-four west 5th P. M. lying and being in the city of Des Moines, County of Polk, State of Iowa. To have and to hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me. In Testimony whereof I have hereunto set my hand and seal this 28th day of April, A. D. one thousand eight hundred and eighty eight.

JAMES F. HOW.

State of Missouri,
City of St. Louis—ss.

On this 28th day of April A. D. 1888, before me, a Notary Public, within and for the City of St. Louis and State of Missouri, personally appeared James F. How, to me personally known to be the identical person whose name is affixed to the within and foregoing instrument of writing, as grantor therein, and who acknowledged that he executed the same as his voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said City of St. Louis the day and year, first above written.

(Notarial Seal) MILLARD F. WATTS,
Notary Public, City of St. Louis.

My Term expires June 29th, 1889.

Filed for record May 1, 1888, at 3:40 o'clock P. M.

D. C. BISHARD,
Recorder.

State of Iowa,
County of Polk—ss.

I, Mrs. Frank W. Dodson, Recorder of said County hereby certify that the foregoing is a copy from the original in my office, and of the whole thereof, and recorded in Book 201 page 187.

Dated at Des Moines, Iowa, in said County, this Ninth day of April 1910.

MRS. FRANK W. DODSON,
Recorder,
Deputy.

Plffs. Exhibit No. 20.

G. M. Dodge & Wife To Des Moines Union Ry Co., being "Exhibit O" to Amended Bill.

Quit-Claim Deed.

This Indenture, made the Seventh day of November in the year one thousand eight hundred and eighty seven, Between G. M. Dodge and Annie Dodge his wife, of Pottawattamie County, State of Iowa, parties of the first part and the Des Moines Union Railway Company, parties of the second part, Witnesseth;

That the said party of the first part for and in consideration of the sum of One dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid by the said parties of the second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged, have remised, released and Quit Claimed, and by these presents doth remise, release, and Quit-Claim unto the said parties of the second part, and to their heirs and assigns forever, all of the following described premises situated within the County of Polk and State of Iowa, to-wit: Lots numbered one and two in Block numbered twenty-two in H. M.

Hoxies Addition to the Town of Fort Des Moines now included in the corporate limits of the City of Des Moines.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also, all the estate, right, title and interest in the above described property possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part of, in or to, the above described premises and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said parties of the second part and assigns forever.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and Delivered in the
presence of
J. T. GRANGER,
L. F. BARTELS.

G. M. DODGE,
ANNIE DODGE.

State of New York,
City of New York,
County of New York—ss.

On the ninth day of November in the year one thousand and eight hundred and eighty seven, before me personally came G. M. Dodge to me known and known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

Witness my hand and notarial seal this ninth day of November, A. D. 1887.

(Notarial Seal)

HENRY E. WALLACE,
Notary Public.
New York Co. #172.

State of Colorado,
County of Arapahoe—ss.

On the fifteenth day of November in the year one thousand and eight hundred and eighty seven, before me personally came Annie Dodge to me known to be the individual described in and who executed the foregoing instrument and acknowledged that she executed the same.

Witness my hand and notarial seal this fifteenth day of November, A. D. 1887. My Commission expires August 1st, 1888.

(Notarial Seal)

LOUIS F. BARTELS,
Notary Public.

Filed for Record April 26, 1888, at 4 o'clock P. M.
D. G. BISHARD, Recorder.

State of Iowa,
County of Polk– ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book 201, page 171.

Dated at Des Moines, Iowa, in said County, this 8th day of April, 1910.

MRS. FRANK W. DODSON,
Recorded.
Deputy.

Plffs. Exhibit No. 21.

Deed from St. Louis & Des Moines & Northern Ry. Co., to Des Moines Union R. Co.

St. Louis, Des Moines & Northern Railway Company
to
Des Moines Union Railway Company.

Quit-Claim Deed.

This Indenture, made the Seventh day of November, in the year One Thousand Eight Hundred and Eighty-seven, between The St. Louis, Des Moines and Northern Railway Company of the County of Polk and State of Iowa, parties of the first part, and the Des Moines Union Railway Company, parties of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of One Dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released and quit-claimed, and by these presents doth remise, release and Quit-claim unto the said parties of the second part, and to their heirs and assigns forever, all of the following described premises situated in the County of Polk and State of Iowa, to-wit: Lots Seven (7) and eight (8) in Block Twenty-two (22) of Keene and Poindexter's Addition and fractional lot eight (8) in Block Twenty-two (22) of Hoxie's

Addition, all subject to the right of way of the Chicago, Rock Island and Pacific Railway Company over the same; also Lot six (6) in Block thirty-one (31) and Lots five (5) six (6) seven (7) eight (8) and nine (9) in Block thirty-three, all in Keene and Poindexter's Addition to Fort Des Moines; also Official Plat Lot Five (5) in the northeast quarter of Section eight (8) and Official Plat Lots two (2) and thirteen (13) in northwest quarter of Section Nine (9), all in Township seventy-eight (78) Range Twenty-four (24) West 5th P. M. Iowa, all included in the corporate limits of the City of Des Moines. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singular the above mentioned and described premises together with the appurtenances, unto the said parties of the second part and assigns forever.

In Witness Whereof the said parties of the first part have hereunto set their hand and seals the day and year first above written.

THE ST. LOUIS, DES M. & N. RY. CO.,
By G. M. Dodge, President.

Sealed and delivered
in the presence of
J. T. Granger.

State of New York,
City of New York,
County of New York—ss.

On the ninth day of November, in the year One Thousand Eight Hundred and Eighty-seven, before me personally came G. M. Dodge, to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

Witness my hand and Notarial seal this ninth day of November, A. D. 1887.

(Notarial Seal)

HENRY E. WALLACE,
Notary Public, New York Co. #172.

Filed for record April 26, 1888, at 4 o'clock P. M.

C. D. BISHARD, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing, is a copy from the original record in my office, and of the whole thereof, and recorded in Book 201, page 173.

Dated at Des Moines, Iowa, in said County, this the ..... day of ..... 19....

....., Recorder.
....., Deputy.

Filed April 26, 1888, Book 201, page 173.

Plffs. Exhibit No. 22.

Deed from Des Moines & St. Louis Railroad Co. to Des Moines Union Ry. Co.

Des Moines and St. Louis Railroad Company
To
Des Moines Union Ry. Company.

Warranty Deed.

Know All Men By These Presents, That the Des Moines and St. Louis Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, for and in consideration of One Dollar, to it paid by the Des Moines Union Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, the receipt whereof is hereby acknowledged, does hereby sell and convey unto the said Des Moines Union Railway Company, the following described premises, franchises and real estate, situated in the City of Des Moines, Polk County, Iowa.

Official Plat Lot Twelve (12) in Block twenty-two (22) Demoine; Lot two (2) in Block twenty-two (22) Demoine; Lot ten (10) in Block twenty-one (21) Demoine; Lots thirteen (13) and fourteen (14) in Block twelve (12) Demoine; Lots eight (8) and fifteen (15) in Block fifteen (15) Demoine; Lot eight (8) in Block Sixteen (16) Demoine; Lot three (3) in Block "I" Scott and Deans Addition; Lot Twelve (12) in Block "D" Scott and Dean's Addition; Lot four (4) in Block Thirty (30) Fort Des Moines; Lot seven (7) in Block Nine (9) Fort Des Moines; Lot Two (2) in Block Nine (9) Fort Des Moines; Lot Two (2) in Block four (4) in Fort Des Moines; East one-half (½) of Lot six (6) in Block Nine (9) Boxie's Addition; Lot three (3) in Block Eighteen (18) Boxie's

Addition; south one-half (½) of Lot Five (5) in Block twenty-two (22) Keene and Poindexter's Addition; south one-half (½) of Lots One (1) Two (2) and three (3) in Block thirty-one (31) Keene and Poindexter's Addition; North part of Lot thirty-nine in Brooks and Co's Addition. And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have acquired by grant, donation, purchase or otherwise, and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance "granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said City between Court Avenue and Vine Streets." And the said Des Moines and St. Louis Railroad Company hereby covenants to Warrant and Defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it. Signed this 21st day of February, A. D. 1888.

In Witness Whereof the said Des Moines and St. Louis Railroad Company has caused these presents to be signed in its corporate name by its President and attested by its Secretary, and has caused the corporate seal of said Company to be hereunto affixed as authorized, the date and year last above written.

(Corporate Seal) THE DES MOINES AND ST. LOUIS RAILROAD COMPANY,
By J. S. Clarkson, President.

Attest: F. M. Hubbell,
Secretary.

State of Iowa,
County of Polk—ss.

Be It Remembered that on this 21st day of February, 1888, before me, the undersigned Notary Public, within and for the County of Polk and State of Iowa, came J. S. Clarkson, President, and F. M. Hubbell, Secretary of the Des Moines and St. Louis Railroad Company, who are personally known to me to be the identical persons whose names are affixed to the within and foregoing instrument of writing as President

and Secretary respectively of said Des Moines and St. Louis Railroad Company, and who acknowledged the same to be their voluntary act and deed as President and Secretary, respectively, of said Des Moines and St. Louis Railroad Company, party thereto. And said J. S. Clarkson, President, further acknowledged that said instrument was executed by him in behalf of said corporation by authority of its Board of Directors and that he executed the same as the voluntary act and deed of said Des Moines and St. Louis Railroad Company for the uses and purposes therein mentioned. And said F. M. Hubbell, Secretary, as aforesaid, further acknowledged that said instrument was assigned and sealed by him in behalf of said corporation by authority of its Board of Directors, and he executed the same as the voluntary act and deed of said Des Moines and St. Louis Railroad Company for the uses and purposes therein mentioned.

In Testimony Whereof I have hereunto set my hand and affixed my official seal at my office in Des Moines, in the County of Polk, and State of Iowa, this 21st day of February, 1888.

(Notarial Seal) JNO. S. POLK,
Notary Public, County of Polk, State of Iowa.

Filed for Record April 26, 1888 at 4 o'clock P. M.

D. C. BISHARD, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 201, page 174.

Dated at Des Moines, Iowa, in said County, this the Ninth day of April, 1910.

MRS. FRANK W. DODSON,
Recorder,
Deputy.

Plffs. Exhibit No. 23.

Mortgage of Des Moines Union Ry. Co.,
To
Central Trust Company of New York.

Dated November 1st, 1887.

This Indenture, made and entered into this first day of November, A. D. 1887, by and between the Des Moines Union

Railway Company, a corporation duly organized and existing under the laws of the State of Iowa, party of the first part, and the Central Trust Company of New York as trustee, party of the second part,

Witnesseth:

Whereas: The Des Moines Union Railway Company is a corporation duly organized and existing under the laws of the State of Iowa, and as such is fully authorized to locate, construct, own and operate a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock yards and whatever may be useful and convenient for the operation of railways in said city, and the transfer of cars from the lines and depots of one railway to another, and from said depots to the various manufactories, warehouses, storehouses or elevators, and from one manufactory, warehouse, storehouses or elevator to another, as said depots, manufactories, warehouses, storehouses and elevators are now constructed or may be hereafter constructed in or around the said City of Des Moines, Iowa, and for such purposes has full right to acquire by purchase and condemnation all such right of way, land and lots as are necessary and proper for the operation and construction of such line of railroad, and to provide itself with depot grounds, yards, shops and other terminal facilities adequate for handling the traffic to be transported upon such railroad, and

Whereas, the Des Moines Union Railway Company has undertaken and partially completed the construction of a railroad in the City of Des Moines, Polk County, Iowa, extending from the main lines of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis Des Moines & Northern Railway Company to a connection with and across the lines of various other railroads which center or terminate in the said City of Des Moines, and to various manufactories and industries in said city, and has purchased and owns various structures and buildings used for depots, railway shops, round houses and other structures suitable and useful for railway purposes, and has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said city, and valuable franchises from the City Council of said city, and

Whereas, for the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds to the

amount of eight hundred thousand ($800,000) dollars, to be dated on the 1st day of November, 1887, in accordance with the resolutions and orders of its Board of Directors at a duly called and authorized meeting thereof; the said bonds to be authenticated by a certificate signed by said party of the second part, and which bonds with their certificates and interest coupons annexed, are to be in substantially the form following, to-wit:

$1,000. No.———.

United States of America.

The Des Moines Union Railway Co.
First Mortgage Bond.

Thirty years after date, for value received, the Des Moines Union Railway Company, a corporation of the State of Iowa, promises to pay at its financial agency in the City of New York to the holder of this bond, or in case this bond be registered, then to the registered owner thereof, one thousand dollars in gold coin of the United States, of the present standard of value; also interest thereon at the rate of five per centum per annum, payable semi-annually in like gold coin, on the first days of May and November in each year, on the presentation and surrender of the proper interest coupons hereto annexed as they severally become due.

This bond is one of a series of eight hundred bonds for the sum of one thousand dollars each, the payment of the principal and interest of which is secured by an indenture of mortgage of even date herewith, conveying to the Central Trust Company of New York, as trustee, the entire railway franchises, property and income of said Des Moines Union Railway Company, and is a first lien thereon. The issue of bonds under said mortgage is limited to the sum of eight hundred thousand dollars.

If default shall be made in the payment of any semi-annual installment of interest on this bond, or any bond of this series, when the same shall become due and be demanded, and shall remain unpaid for six months after such demand, the principal of said bond shall become due and payable in the manner provided in said mortgage. Payment of this bond is secured by mortgage on all the property now owned or hereafter acquired by the Des Moines Union Railway Company, but neither the officers nor stockholders of the company are to be held individually liable thereon by reason of their acts herein, or their subscriptions to the capital stock of said company.

Said company hereby waives the benefit of any extension, stay or appraisement laws now in force or that may hereafter be enacted. This bond is not to be valid until authenticated by a certificate endorsed thereon, signed by said Central Trust Company, of New York, trustee, to the effect that it is one of the bonds secured by said mortgage and is issued in conformity with its provisions.

This bond shall pass by delivery or by transfer on the books of the company, in the City of New York; but after registration of ownership, certified hereon by the transfer agent of said company, no further transfer, except on the books of the company, shall be valid, unless transferred to bearer on said books, after which this bond shall pass by delivery as at first, but it shall continue subject to registration and transfer to bearer successively at the option of each holder.

In Witness Whereof, the said Des Moines Union Railway Company has caused its corporate name to be hereunto signed by its President, and its corporate seal to be hereunto affixed, attested by its Secretary, and the annexed interest coupons to be executed with the engraved signature of its Treasurer, this, the first day of November, A. D. 1887.

DES MOINES UNION RAILWAY COMPANY,
By .....
President.

Attest:

.....
Secretary.

(Form of Coupon.)

On the first day of ..... A. D. 188.., the Des Moines Union Railway Company will pay the bearer, at its financial agency in the City of New York, twenty-five dollars, in gold coin of the United States, being interest for six months on bond No.....

(Form of Trustee's Certificate.)

This is to certify that this bond is one of the series of eight hundred bonds for one thousand dollars each, secured by and mentioned in the mortgage within referred to.

CENTRAL TRUST COMPANY OF NEW YORK, Trustee.
By .....
President.

Now this Indenture witnesseth, that the party of the first part, in consideration of the premises, and for the purpose of securing the payment of the principal and interest of all bonds which shall be made, executed and issued in accordance with the provisions of this mortgage, as the same shall become due and payable from time to time according to the tenor and effect thereof, and of the sum of one dollar lawful money of the United States, unto it well and truly paid by the said Central Trust Company of New York, trustee, at the time of the execution hereof, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, assigned and set over, and by these presents said Des Moines Union Railway Company does grant, bargain, sell, convey and confirm, assign and set over, unto the said Central Trust Company of New York, as trustee aforesaid, and to its lawful successor or successors in the trust hereby created, and its assigns forever, all and every part of the railroad and property described as follows, to-wit:

Commencing at the east end of Market street, in Brooks & Co.'s addition to Des Moines, Iowa, and running thence west on Market street, crossing Twenty-fourth street, Twenty-third street, Twenty-second street, Nineteenth street and Seventeenth street to the west line of East Eleventh street in said city, thence westerly along and across Vine street from East Eleventh street to East Eighth street and on, over and along the alleys in blocks twenty-one, twenty-two and twenty-three of the town of Demoine, now included in the City of Des Moines, crossing East Twelfth street, East Eleventh street, East Tenth street and East Ninth street, thence west between Court avenue and Vine street, crossing all the streets and alleys of said city between East Ninth street and East Fourth street, thence westerly along the south alley between Court avenue and Vine street in said city to West Fifth street, crossing East Fourth street, East Third street, East Second street and Front street, Water street, West Second street, West Third street, West Fourth street and West Fifth street, and across all north and south alleys between East Fourth street and West Fifth street of said city, thence westerly in said city on the alley between Cherry street and Vine street from West Fifth street to the line of Fourteenth street or Section street if extended south of Mulberry street, crossing West Sixth street, West Seventh street, West Eighth street, West Ninth street, West Tenth street, West Eleventh street, West Twelfth street, West Thirteenth street and thence westwardly to Farnham street, and crossing all the north and south alleys of said city between West Fifth street and West Thirteenth street, together with all

other lines, branches, extensions, switches and side tracks, which are now or may be hereafter constructed, to connect the lines or property of said company with the lines of other railway companies converging in Des Moines, Iowa, or which are or may be built to any other point within said city.

Also all lots of land upon any part of which the said railroad, its extensions, side tracks or branches, or any of them, or any depots, shops, round houses, water tanks or other structures now are or may be hereafter constructed, and of which the said railway company is or may become the owner or holder, by deed, lease or other beneficial interest, to the full extent of said railway company's interest therein, as the same does now or may hereafter exist.

Also the bridge of said railway company over and across the Des Moines River in said city, touching upon and lying immediately north of the south alley between Court avenue and Vine street in said city, with all the approaches and appurtenances thereto, owned or used by said company in connection therewith.

Also all the property and realty embraced in the several conveyances made to the said Des Moines Union Railway Company by James F. How, trustee, James F. How, Grenville M. Dodge, the Des Moines Northwestern Railway Company, the Des Moines and St. Louis Railway Company, and the St. Louis, Des Moines and Northern Railway Company, or any other person or corporation not specially named above, and for which conveyances reference is hereby prayed to the records of said Polk County, Iowa.

And all other branch or tributary roads which are now owned of that may hereafter be acquired, located or constructed, including the right of way therefor, the road-bed thereof, the superstructures and tracks placed or to be placed thereon and all station, depot and shop grounds, yards and other grounds used and to be used in connection therewith, and all rails, railways, bridges tracks, sidings, switches, fences, turntables, water tanks, viaducts, culverts, main passenger and other depots, station houses, freight houses, machine shops and all other structures, buildings and fixtures howsoever acquired or to be acquired for the use of the parties of the first part or the business thereof.

It being the intention of said Des Moines Union Railway Company to convey to said trustee, not only the property specifically described herein, but also

All and Singular the whole line of railroad of the party of the first part, as the same now is or may be hereafter

located, constructed or acquired under its charter, with all its tracks, side tracks and switches; and also all lines of road connecting its tracks with other lines of railroad with which it may join or intersect; and all such spurs, extensions, side tracks, yard tracks, turn outs, switches and appurtenances as it has constructed or may hereafter construct to enable it to connect with warehouses, elevators, stock yards, mills and manufacturing establishments along or near its routes, as well as all real estate now owned or hereafter acquired, with all the tracks and improvements thereon which said Des Moines Union Railway Company now has or may hereafter find it necessary or proper to have in order to enable it to transact a general railway transfer business in and about said City of Des Moines, Iowa.

Together With All the rolling stock, machinery, tools, implements, fuel and materials of the party of the first part now owned or that may hereafter be acquired for constructing, maintaining, operating, replacing, improving or repairing the said road, and its appurtenances, or any part thereof, or in or for the business of said railroad, and all the real estate of said party of the first part wherever the same may be situated, now held or hereafter to be acquired.

Together with all the corporate rights, privileges and franchises of the said party of the first part, now possessed or that may be hereafter acquired, connected with or relating to the said railroad and the construction, maintenance, use and enjoyment of the same.

Together with all the streets, ways, passages, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of the hereby granted and mentioned premises and estates, appertaining or belonging thereunto, with all the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand of every nature and kind whatsoever of the said party of the first part now owned and possessed, or that may be hereafter acquired, as well at law as in equity, of, in and to the same, and every part and parcel thereof.

To have and to hold the above described premises, property, rights, franchises and appurtenances, contracts, rentals and income, unto the said party of the second part, and its lawful successor or successors and assigns forever to and for the only proper use and behoof of the party of the second part, its successor or successors and assigns.

But in trust, nevertheless, for the equal pro rata benefit and security of all and every the persons or corporations who may be or become holders of the said bonds issued under and secured by this deed of trust or mortgage, or such of them as shall be issued by the said railroad company without preference, priority or distinction as to lien or otherwise of any over the others, and so that each and all of the said bonds issued and to be issued as aforesaid shall have the same right, lien and privileges under and by this deed of trust or mortgage, and shall all be equally secured thereby.

And it is hereby expressly covenanted and understood by and between the parties hereto, the party of the first part covenanting as well for itself as for its successors and assigns, and the party of the second part covenanting as well for itself as for its assigns and its successors or successors in the trust, that the said above described premises, property, rights, franchises and appurtenances are to be held by said trustees upon and for the trust, uses and purposes following, that is to say:

First. In case the party of the first part shall fail to pay the said interest coupons subjoined to the bonds so executed by that company, or any or either of the said coupons, or any part of the same, at the time or times and in the manner so as aforesaid provided for the payment thereof, and in case such default shall continue for the space of six months, the party of the second part or its successor may enter upon and take possession of all or any part of the above granted premises, and itself and by its attorneys, agents and servants, may take, hold, use and operate the same, making from time to time needful repairs and alterations, and may receive the tolls, rents, issues, profits and income derivable therefrom, and after deducting and paying out of such gross receipts and income the expenses of operating and managing the premises, and of such needful repairs and alterations, and any taxes and other necessary and proper charges upon or pertaining to the premises, and executing the hereby created trust, the party of the second part and its successor in the trust shall apply the surplus or net receipts and income so realized by it to the payment of said interest coupons in the order in which the same shall have become, or shall be, due and payable.

Second. In case default shall occur as aforesaid, in the payment of said interest coupons, or any of them, and shall continue for said period of six months, then and in such case after entry as aforesaid, or without such entry, and upon the written request of the holders of at least one-half of the aggregate amount of the bonds so executed by the Des Moines

Union Railway Company and then outstanding and unpaid, the party of the second part and its successors in the trust may personally, or by its attorneys or agents, sell and dispose of all and singular the above granted and described premises at public auction, in the City of Des Moines, Iowa, having first given notice of the time and place of such sale by advertisement published in some newspaper of general circulation published in the City of New York, and also in one newspaper of general circulation published in the City of Des Moines, Iowa, and which notice shall, in each of said newspapers, be so published at least once in each week for at least six weeks preceding the sale.

And the party of the second part, or its successor or successors in the trust, may make, execute and deliver to the purchaser or purchasers at such sale a good and sufficient deed of the premises so sold to him or them, and the sale so made as aforesaid shall be a perpetual bar both in law and in equity against the party of the first part and all other persons claiming said premises, or any part thereof, by, through or under it. But if deemed expedient by the party of the second part or its successors in the trust, it or they may cause such sale to be made through or under juricial proceedings of foreclosure to be instituted by it or its said successors.

Third. From the proceeds of any sale which may be made as aforesaid, after deducting the proper costs and expenses thereof, and of all other expenses, advances or liabilities which shall have been duly incurred under these presents or the powers thereof, or for taxes or other proper charges, and the reasonable compensation of the party of the second part or its successors in or for the execution of the hereby created trusts, the party of the second part or its successors shall apply the remainder of such proceeds to the payment of the principal of such of the said bonds, executed by the Des Moines Union Railway Company, as, have been duly certified and issued in the manner hereinbefore provided, shall be outstanding and unpaid, after first paying the interest which shall have then accrued upon any of said bonds and shall be in arrear and unpaid. And if, after so paying all sums payable for principal and accrued interest upon said bonds, a surplus shall remain, such surplus shall be paid to the party of the first part, its successors or assigns. But if such proceeds shall not be sufficient for payment of all the said bonds in full, then the same shall be applied ratably, and without discrimination or preference, to the payment of the principal and interest of all of them, except that payment of interest coupons shall be in the order of the date of their maturity.

Fourth. In case default shall be made in the payment of any of the interest coupons aforesaid, according to the tenor thereof, and such default shall continue for the space of six months, then, and in such case, after the lapse of said period, the principal of said bonds with all accrued unpaid interest thereon shall, at the option of the party of the second part, or its successors, become (for all the purposes of these presents), immediately due and payable, anything contained in the said bonds or in these presents notwithstanding; but a majority in interest of the holders of said bonds may in writing (and for all purposes of these presents), revoke or annul the decision of said second party, upon such option.

Provided, however, that nothing done or omitted in respect of such default shall prejudice the rights of the party of the second part or of its successors in respect of any subsequent default.

Fifth. Upon payment by the party of the first part of all sums which shall become due as principal and interest upon said bonds, and of all expenses incurred under and by virtue of these presents, then and thereupon, all estate and power of the party of the second part and its successors under or by virtue of these presents shall cease.

Sixth. If by reason of any default, as hereinbefore provided, possession of the above granted premises shall be taken, and no sale thereof shall have been had under the powers hereby created, such possession shall be surrendered upon the payment of all sums then due upon said bonds up to and at the time of such surrender, including in such payment the principal, if then due by the terms of the said bonds, or by election as above provided. But the said surrender shall be of the premises as existing at the time thereof, and shall not prejudice or impair the estate and lien of these presents in respect of any sums secured by said bonds and not theretofore paid or satisfied, nor affect or impair the rights of the party of the second part and its successors in respect of any default thereafter accruing.

Seventh. It is understood and agreed that these presents shall be a security for the due payment of all sums which shall become due and payable under or by virtue of the said bonds, notwithstanding any laws of the State of Iowa now in force or hereafter to be enacted for the extension, stay of execution, valuation or appraisement and without delay or relief from or by reason thereof, and that all operation and benefit of such laws is hereby waived, to the end that the same shall not be invoked or made effective to restrict, postpone or impair the operation of these presents or the estate and power thereby created.

Eighth. It shall be the duty of the party of the second part and its successors to proceed in and with the execution of the several powers hereby vested in it or them, in the manner and at the times or in the cases hereinbefore specified for the exercise thereof, provided that requisition in writing to so proceed shall be made upon them by or in behalf of the holders of at least one-half in amount of the said bonds then outstanding and unpaid, or of the holders of a less proportion of the said bonds, in case and to the extent that compliance with such request of the minority shall (after reasonable notice to other parties in interest) appear to them to be clearly necessary for the protection of the trust estate or security of the said bonds.

Ninth. The party of the second part or any successor to it in the trust hereby created may resign as trustee under these presents by writing, taking effect thirty days after the delivery thereof to the said party of the first part; or, upon the payment of its reasonable charges for services rendered and money expended in the performance of its duties as trustee up to that time, it may be removed, and a successor or successors appointed by writing, signed by the holders of a majority of said bonds at the time outstanding.

The said trustee shall receive a reasonable compensation for every act done by it as such trustee under this indenture; and the said trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense, unless the holders of the bonds secured thereby or some of them shall give sufficient security to indemnify the trustee from such liability or expense. And the trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that said trustee shall not be liable for any default or neglect of any agent by it appointed, when such agent shall have been selected with reasonable discretion, and said trustee shall only be required to exercise good faith and ordinary diligence in the performance of its duties under this indenture.

Tenth. The party of the first part, its successors and assigns, shall and will duly execute to the party of the second part and its successors and assigns such further deeds, conveyances and assurances, for the better assuring to the party of the second part and its successors and assigns upon and for the trusts and purposes aforesaid, and all and singular the premises above granted and described or intended to be

granted or included in these presents, as shall from time to time be reasonably required by the party of the second part or its successors.

The party of the first part shall and will from time to time hereafter, upon the demand of said trustee, grant, convey, assign, transfer and set over unto the said trustee all real estate, which may be hereafter acquired in said City of Des Moines, and all personal estate, corporate rights and franchises which it, the party of the first part, shall hereafter in any way or manner acquire as appurtenant to the property hereby granted, or for use upon or in the business of its railroad, together with all leases and grants of right of way which may hereafter be made by the said party of the first part; and shall and will also make, do, seal, execute, deliver and acknowledge or cause to be made, done sealed, delivered and acknowledged all and every such further acts, matters, things, deeds, conveyances and assurances in the law for the better assuring, conveying and confirming unto the trustee all and singular the hereditaments and premises, estates, leases, contracts and property hereby conveyed or intended so to be, or which are hereby covenanted and agreed to be hereafter conveyed to the said trustee as by such trustee shall be desired or required for the better securing and carrying out the objects and purposes of this mortgage, and securing payment of the principal and interest of the bonds intended to be hereby secured, all of which estate shall, when granted and conveyed as aforesaid, be held by the said trustee upon the several conditions of this trust, and for the uses and purposes hereby created and declared with respect to the property herein specifically described.

Eleventh. The party of the second part shall at all times have full power (to be exercised in its own discretion and not otherwise), when requested so to do in writing by the said party of the first part, to release from the lien hereof, or convey to such party or parties as may be designated in writing by said first party, any unused portion of the premises hereinbefore granted, or which may be appurtenant to said railroad, and which, in the opinion of the trustee, shall be no longer necessary for use in the business of said first party, or which the said party of the first part may deem it expedient to discuse or abandon by reason of any change in the location of its depots, tracks, shops, round houses, offices or other improvements; and the trustee may consent to any changes in the location of the tracks, station houses, depots, shops, or other buildings which the party of the first part shall desire to make, and shall deliver such instru-

ments as may be necessary and proper to carry the same into effect, but all estate in lands or property acquired for use in substitution for those so released, shall vest in the trustee upon the same trusts declared in these presents; and the proceeds of any and all lands and premises for which others shall not within a reasonable time be substituted, shall be paid over to the trustee to be by it applied to the purchase or redemption of the bonds hereby secured, which bonds shall, when so purchased or redeemed, be cancelled and surrendered to the party of the first part, and said first party may from time to time dispose of, according to its discretion, such portion of the machinery, tools, implements and material which shall be at any time acquired or held for the use of said railway, and which shall have become unfit or unnecessary for such use, and any and all new or other machinery, tools, implements and material which may be acquired in substitution for any so disposed of, shall by virtue and force hereof become and be immediately, upon the acquisition thereof, subject to the lien and operation of these presents without any new conveyance or transfer or other act or proceeding whatsoever.

Twelfth. If from any cause there shall be a vacancy in the trust created by this instrument, the same may be filled by a proper instrument of writing signed by the holders of at least one-half in amount of said bonds then outstanding; but nothing herein contained shall be so construed as to prevent the filling of such vacancy by any court of competent jurisdiction, in any proper proceeding to which the then holders of at least one-tenth of said bonds and the party of the first part are parties, and of which proceeding reasonable notice shall have been given in any manner directed by such court.

Thirteenth. The party of the first part has by resolution of its Board of Directors, approved by its stockholders, authorized the execution of these presents to the party of the second part. But nothing herein contained is to be in anywise construed as subjecting to personal liability on account hereof, the officers or stockholders of the party of the first part, or any of them, or their personal or individual estates.

In Witness Whereof, the Des Moines Union Railway Company, in pursuance of the resolution aforesaid, has caused these presents to be executed by its President, and attested by its Secretary, and has caused its corporate seal to be hereunto affixed the day and year first aforesaid; and said Central

Trust Company of New York has also executed the same as an evidence of its acceptance of the trust hereby created.

THE DES MOINES UNION RAILWAY CO.,

(Seal) By G. M. Dodge,
President.
F. M. Hubbell,
Secretary.

Attest:
F. M. Hubbell, Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,
Trustee.
By E. Francis Hyde,
Second Vice-President.

Attest:
C. H. P. Prouty, Secretary.

County of New York,
State of New York—ss.

Be it Remembered, That on this 13th day of February, A. D. 1888, before me the undersigned, a Notary Public within and for the County of New York and State of New York, came G. M. Dodge, President of the Des Moines Union Railway Company, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing, as President of said Des Moines Union Railway Company, and who acknowledged the same to be his voluntary act and deed as President of the Des Moines Union Railway Company, party thereto; that said instrument was executed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as the voluntary act and deed of said Des Moines Union Railway Company, for the uses and purposes therein mentioned.

In Testimony Whereof, I have set my hand and affixed my official seal, this 13th day of February, A. D. 1888.

(Seal) HERBERT E. DICKSON,
Notary Public, County of New York,
State of New York.

State of Iowa,
County of Polk—ss.

Be it Remembered, That on this 28th day of February, A. D. 1888, before me the undersigned, a Notary Public within and for the County of Polk and State of Iowa, came F. M. Hubbell, Secretary of the Des Moines Union Railway Com-

pany, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing, as Secretary of said Des Moines Union Railway Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as the voluntary act and deed of said Des Moines Union Railway Company, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this 28th day of February, A. D. 1888.

(Seal) C. HUTTENLOCHER,
Notary Public, County of Polk,
State of Iowa.

State of New York,
County of New York—ss.

Be it Remembered, That on this 13th day of February, A. D. 1888, before me the undersigned, a Notary Public within and for the County of New York and State of New York, came E. Francis Hyde, Second Vice-President of the Central Trust Company of New York, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing, as Second Vice-President of said Central Trust Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary Act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this 13th day of February, A. D. 1888.

(Seal) HERBERT M. HYDE,
Notary Public, County of New York,
State of New York.

Filed for record May 21st, 1888, at 5:05 P. M.

D. C. BISHARD,
Recorder.

Recorded in Book 196, Pages 525 and following:

Plaintiffs Exhibit No. 24.

Proceedings had at Annual meeting of Stockholders Des Moines and Northwestern Ry. Co., January 2nd, 1890.

A meeting of the stockholders of the Des Moines and North Western Railway Company was held at Des Moines, Iowa Jan'y 2, 1890, assembled in regular session.

Present	F. M. Hubbell	representing	shares
	G. M. Dodge	3500	"
	L. M. Martin,	1	"
	A. B. Cummins,	1	"

President F. M. Hubbell in the chair.

The president stated the first business of the Board to be the election of Seven Directors to hold their offices for one year or until their successors are qualified.

A. B. Cummins was elected as temporary Secretary and he thereupon moved that the meeting of the stockholders be adjourned until 2 o'clock this afternoon which motion was adopted and the meeting adjourned to meet again at 2 o'clock P. M.

A. N. DENMAN,
Secretary.

2 P. M. January 2, 1890—Stockholders met pursuant to adjournment.

Present	F. M. Hubbell	representing	shares
	A. B. Cummins	"	"
	H. D. Thompson	"	"
	F. C. Hubbell	"	"
	A. N. Denman	"	"

President F. M. Hubbell in the chair.

Voted: That we now proceed to the election of Seven Directors to hold office for one year or until their successors be chosen. A ballot having been taken all the votes were found cast for the following persons who were thereupon declared elected directors for the ensuing year. F. M. Hubbell, G. M. Dodge, A. N. Denman, H. D. Thompson, Fred C. Hubbell, A. B. Cummins, and L. M. Martin.

Upon motion it was unanimously Resolved:

That the Stockholders of the Des Moines & N. W. Railway Co., hereby ratify & approve the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company upon all its property and franchises to secure the

issuance of $800,000 of First Mortgage Bonds and do declare that this resolution shall have the same force and effect as though this authority had been executed prior to the execution of said mortgage.

The record of the last meeting of the stockholders was read also the minutes of the Directors meetings during the past year. Said record & minutes and all the action of the officers of the company for the past year was ratified approved and confirmed.

A. N. DENMAN,
Secretary.

Plffs. Exhibit No. 25.

Proceedings had at Meeting of Stockholders Des Moines and St. Louis Railroad Company January 3rd, 1890.

Des Moines, Iowa, January 3rd, 1890.

Pursuant to adjournment, the stockholders of the Des Moines & St. Louis Railroad Company met at the office of the Company at eleven o'clock A. M., January 3rd, 1890.

There were present:
F. M. Hubbell, representing one (1) share of stock;
J. S. Polk, representing one (1) share of stock;
C. M. Hays, representing one (1) share of stock;
James F. How, representing one (1) share of stock;

The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, represented by James F. How.

James F. How, President, presiding.

The President stated the first business of the meeting to be the election of a Board of Directors for the ensuing year, to hold their offices until their successors are elected and qualified.

Upon a ballot being taken for the election of a board of nine directions, it appeared that the votes of all the stockholders present had been cast for the following persons as Directors:

James F. How,
A. B. Cummins,
George S. Grover,
C. M. Hays,
O. D. Ashley,
W. H. Blodgett,
H. S. Priest,
J. S. Polk,
and F. M. Hubbell.

The gentlemen named having received the unanimous vote of all the stockholders present and represented, were declared

duly elected Directors for the ensuing year, or until their successors are elected and qualified.

A. B. Cummins offered the following resolution:

Resolved, That the Stockholders of the Des Moines & St. Louis Railroad Company hereby ratify and approve the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company, upon all its property and franchises to secure the issuance of Eight Hundred Thousand Dollars ($800,000.00) of first mortgage bonds, and do hereby declare that this resolution shall have the same force and effect as though this authority has been executed prior to the execution of said mortgage.

This resolution was unanimously adopted.

There being no further business before the meeting, it was upon motion of Mr. Chas. M. Hays, adjourned.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 26.

Proceedings had at Stockholders meeting of Des Moines Union Ry. Co., March 31st, 1888.

March 31st, 1888.

The Stockholders met this day pursuant to adjournment at the office of the Company in Des Moines, Iowa. There were present and represented at the meeting the following named stockholders of said Company, to-wit:

G. M. Dodge, Jefferson S. Polk, Charles M. Hays, F. M. Hubbell, James F. How, W. H. Blodgett and L. M. Martin.

On motion, G. M. Dodge was elected Chairman and F. M. Hubbell Secretary of the meeting.

The chairman then requested the reading of the minutes of the meetings of the Board of Directors, for the past year, which was done, and after consideration of the same, the action of the Board as therein indicated was approved.

On motion, the meeting proceeded to the election of a Board of Directors for the ensuing year.

James F. How on behalf of the Wabash, St. Louis & Pacific Railway Company, and of the Des Moines & St. Louis Railroad Company, and of the Wabash Western Railway Company, nominated Charles M. Hays, W. H. Blodgett, John

S. Polk and James F. How to be voted for as directors to represent said interests.

F. M. Hubbell, on behalf of the Des Moines Northwestern Railway Company nominated Jefferson S. Polk and F. M. Hubbell to be voted for as Directors to represent said Company.

G. M. Dodge, on behalf of the St. Louis, Des Moines & Northern Railway Company, nominated L. M. Martin and G. M. Dodge to be voted for as Directors to represent the interests of said Company.

A ballot was then taken for the election of said Board of Directors, and it appearing that each of the above persons so nominated received the unanimous vote of the stock present and represented for said office, were each declared Directors of this Company for the ensuing year.

Resolved, That the officers of this Company purchase for its use from Polk & Hubbell, Lots three (3) and Four (4) in Block thirty-three (33) of Keene & Poindexter's Addition to Fort Des Moines, for the sum of two thousand dollars, to be paid in the bonds of this Company, at par, which were ordered to be issued November 1st, 1887.

Resolved, That an Executive Committee of three shall be appointed (one from each Railway Company owning stock in this Company) who are to attend to its business, their acts to be ratified by the Board of Directors, and that Charles M. Hays be appointed for the Wabash Western Railway Company, F. M. Hubbell for the Des Moines Northwestern Railway Company and L. M. Martin for the St. Louis, Des Moines & Northern Railway Company.

Resolved, That the officers of this Company be directed to ascertain the amount it will cost to buy the Heath Elevator and Mill Property, and build a new passenger depot and the necessary tracks for the use of this Company's property.

Resolved, That the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company, or their successors or assigns, shall pay the operating expenses, taxes and interest on bonds that are or may be issued, after deducting any amount received from other sources for rental, pro-rated on a wheelage basis, and that said payments, including interest charges, shall be made monthly, and when for any reason, said Companies, or either of them, shall be or become in default in the making of any such payment, or any part thereof, on the day when the same shall be or become

due and payable as aforesaid, interest shall be collected upon amount so in default to the time same shall be fully paid and satisfied.

Resolved, That Col. W. H. Blodgett be requested to prepare an agreement for three years from May 1st, 1888, based on the above resolution and covering in detail the conduct and operation of the Des Moines Union Railway Company. Said agreement to be approved and executed by all the lines now holding an interest in the property.

Said agreement shall provide that if at the end of six months from date of same, either party to the contract shall feel that the terms of same are unjust to them, and give notice to that effect, it shall be a matter for readjustment.

Resolved, That the terms and conditions on which the several lines now interested, or which may hereafter become interested, shall enjoy the use of these terminals, be fully set forth in a supplemental agreement to be made and executed between the Des Moines Union Railway Company and each of the lines using the said terminals.

Resolved, That the officers of this Company are requested to immediately open negotiations with the Chicago, St. Paul & Kansas City Road for the use of terminal facilities on better terms for this Company than are now being paid by them.

Resolved, That Col. W. H. Blodgett, for his services in preparing deeds to this Company for the property acquired by it and the form of bond issued on same, as also the deed of trust securing said bond, and also for the preparation hereafter of the form of agreement to be prepared for the use of the property, in conformity with the resolution adopted above, be allowed one bond of this Company with interest coupon due May 1st, 1888, on same detached.

Whereas, It is shown that the Wabash, St. Louis & Pacific Ry. Co. or its successors, are entitled to.....$382,110.80
and G. M. Dodge is entitled to..... 74,088.01
and Messrs. Polk and Hubbell are entitled to..... 2,000.00
and the Des Moines & Northwestern Railway Company is entitled to..... 3,058.40
said separate amounts being for money expended for the property acquired for this Company.

Resolved, That in settlement of said amounts 382 bonds be issued to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway

74 bonds be issued to G. M. Dodge, and
2 bonds to Messrs. Polk & Hubbell, and
3 bonds to the Des Moines & Northwestern Railway Company,

all of said bonds having detached from same the interest coupons to May 1st, 1888.

And that the excess remaining due to parties above of the amount stated after the receipt of the said bonds, to be paid by this company, same being divided among the different stockholders in the manner provided above, for the distribution of interest.

All of the above and foregoing resolutions were passed by the unanimous vote of all of the stockholders present.

Whereupon the stockholders meeting then adjourned sine die.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 27.

Agreement made May 10", 1889, between the Des Moines Union Ry. Co. of the first part, the Des Moines & St. Louis Railroad Co., the Des Moines & Northwestern Ry. Co. and the St. Louis, Des Moines & Northern Ry. Co. of the second part, being "Exhibit P" to Amended Bill.

This Agreement, made and entered into this 10th day of May, A. D. 1889, by and between the Des Moines Union Railway Company, of Des Moines, Iowa, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part, Witnesseth that:

Whereas, the said party of the first part is the owner of valuable terminal facilities in the city of Des Moines, Iowa, as hereinafter described; and

Whereas, the respective parties of the second part have railroads in the state of Iowa which terminate at, or run into and through said city of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party; and

Whereas, said party of the first part has become incorporated and organized under the laws of the state of Iowa for the purpose of owning and operating a line of railway in the said city of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham street, in the western part thereof; and

Whereas, said party of the first part, in pursuance of said charter has acquired and now owns a railway in said city, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and

Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties, and liabilities of each in regard to the whole subject-matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined.

Now, therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows:

Section One. The party of the first part agrees to proceed with reasonable dispatch, and whenever its board of directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said city of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots, round houses, shops, water tanks, and yard appurtenances, as the board of directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase, or otherwise such additional real estate as may be necessary.

Section Two. The amount of such additional grounds and the form, character, and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement, and repairs thereof, shall in all matters not otherwise specifically provided for herein, be determined by the board of directors of said first party.

Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay to said party of the first part a sum of money to be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round houses, transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month; and it is expressly understood and agreed that in computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard gauge cars; and that the term "wheelage" as used in this contract means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

Section Five. If the amount, or any part of the amount, due from any other railroad company or companies for the use of said property, or any part thereof, shall not be paid when due, then the sum so due and unpaid shall also, on demand of

said first party, be paid to it by said second parties on a wheel
age basis as hereinbefore defined.

Section Six. The party of the first part, in consideration
of the payments to be made to it by said parties of the second
part, hereby grants to said second parties the use of its ter
minal properties as aforesaid, and said first party agrees to
keep and maintain its said terminal properties in good condi
tion and repair, and to provide and maintain all such engines
machinery, appliances, buildings and structures, and all such
servants and employes as shall be reasonably necessary for the
conduct of its business and the moving and handling of the
cars, passenger and freight, of said second parties, and the
housing and care of their engines. And said first party fur
ther agrees to switch all cars, handle all freight, house and car
for all engines of said second parties which may be delivered
to it or which may come upon its said premises, in so far as
either of said second parties may request it so to do.

Section Seven. The party of the first part shall on or be
fore the tenth day of each month, or as soon thereafter as
practicable, make up and present to each of the parties of
the second part, an account showing the amount due thereun
der for the preceding month, and payment thereof shall be
made within five days thereafter.

Section Eight. So far as relates to the rental necessary to
raise a fund for the payment of interest upon the mortgage
bonds, this contract shall be retrospective and shall cover
from and after the first day of May, 1888.

Section Nine. The costs and expenses of operating the en
gine houses and their appurtenances, and each of them, in
cluding the cost of turning and housing engines, furnishing
water and sand, and of wiping, washing and firing up, shall be
borne by each of said companies in such proportion as the num
ber of road engines of each company in and out of said engine
house shall bear to the whole number of road engines in and
out of said engine house during the period for which said costs
and expenses are made up. All repairs to engines shall be
charged for and paid by each of said companies for whom the
work is done on the basis of actual cost of labor and materials
and all services rendered, supplies and labor furnished to any
of the railroad companies, parties hereto, for their own ben
fit, and which are not properly a portion of the joint expense
shall be charged directly to said company, on such equitable
terms as may be agreed upon between the superintendent of
the party of the first part and the superintendent of the party
to whom the service is rendered.

Section Ten. It is further agreed between the party of the first part and each of the second parties hereto, that if any one of the parties of the second part shall, for any reason, fail or refuse for a period of thirty days after the same has become due, and has been demanded, to pay the several sums under this contract as aforesaid, then the party of the first part may take from any moneys in its hands belonging to the said defaulting party, or in the hands of its agents, the amount of said sums and apply a sufficient amount thereof to meet said demands. Should the sum in the hands of the party of the first part, or its agents, be insufficient to meet the amount due under this agreement and the same shall still remain unpaid, said first party shall have the right to exclude said delinquent party from said premises, and the party or parties so failing to pay shall forfeit all rights under this agreement, and the first party may thereupon, with the consent of the remaining parties of the second part, transfer and assign the rights of the party so failing to any other party or parties, for such sum as the board of directors of the first party may determine, and the same may be thereafter held and enjoyed by such assignee or assignees. But it is understood and agreed that nothing herein shall prevent the party of the first part from enforcing its claims against any delinquent lessee or lessees, parties of the second part, by any proper action either at law or in equity, to recover the amount which may be at any time due and unpaid, in case said party of the first part shall so elect.

Section Eleven. The directors of the party of the first part hereto shall appoint an executive committee, of which each party of the second part shall have one member as its representative.

Section Twelve. The management of the depot grounds and terminal facilities, including station, buildings, tracks, round houses, shops, etc., shall be in charge of a superintendent who shall be appointed by the executive committee, subject to the approval of the board of directors. Said superintendent shall, in the performance of his duties, be governed by such regulations as may from time to time be established by said executive committee, or by the board of directors.

Section Thirteen. The salary of said superintendent shall be fixed by the executive committee, subject to the approval of the board, and the compensation of other agents and employes shall not be higher than is paid by railroad companies in the vicinity for similar services.

Section Fourteen. Said terminal properties shall be used by said railroad companies, parties of the second part, for all

their passenger trains destined for or departing from said city of Des Moines, Iowa, and said second parties shall run all their trains to and from said depots and terminal properties, unless otherwise expressly permitted by said executive committee.

Section Fifteen. Said executive committee, subject to the board, shall make and publish and enforce such rules and regulations for the use, management and operation of said terminal station, depots, depot grounds, yards and tracks, by all the parties hereto, as it may from time to time consider necessary.

Section Sixteen. The said party of the first part shall at all times protect its depot buildings and improvements and furniture by adequate insurance against loss by fire, and the cost of such insurance shall be paid as herein provided for.

Section Seventeen. The party of the first part shall keep accurate books of account showing in detail all the expenditures made by it on account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance, and repairs, and other disbursements upon and about the premises, embraced in this agreement, and said books shall show the amount of work done for, and fuel or other material furnished to each party to this agreement, and the amount of fuel or other material received from each party hereto; and said books shall give such other details as will at all times enable the parties hereto to make accurate settlements of their accounts as provided in this agreement, and said books may at all reasonable and proper hours be examined and inspected by the superintendent, auditor or treasurer of said second parties, or by an authorized accountant.

Section Eighteen. The said party of the first part shall also keep an accurate record of all the engines and cars of each party hereto arriving at and departing from said terminal station, or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched on to or from said terminals for the benefit of the several parties hereto, or others; and of all the engines which have been housed at said engine houses in each month; and as hereinbefore provided, said first party shall furnish to the other parties hereto, a full, true and detailed statement of all the expenditures made, of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section Nineteen. All damages which may be received by any engine or engines, car or cars of any party hereto, while being switched by said first party at or upon any part of the

premises embraced in this agreement, shall be repaired by the party to whom such rolling stock belongs, and the cost of such repairs shall be borne and paid by each party hereto on a wheelage basis, as herein defined.

Section Twenty. All damages to property other than as above described, caused by any engine or engines, car or cars, of either party hereto, or by any imperfection in the track or tracks laid on said premises, and all injuries which may at any time be received by any person or persons in, around, about or upon said terminal station, depot grounds, yards, etc., shall (if settled at all) be adjusted and settled by said first party, and the sums thus paid in settlement or settlements shall be borne and paid by each of the parties hereto upon said wheelage basis, as herein defined; Provided, however, that each party hereto shall, at its own sole cost and expense, bear, settle and pay all damages to property belonging to itself or to third parties, and all injuries to persons, when said damages or injuries are done to or by its own trains, while said trains are being moved by its own engines and operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the servants of said first party, or by some imperfection in its track or tracks, and in case such damages or injuries are occasioned by the act, negligence or fault of the servants of said first party, or by an imperfection in its said tracks, then settlements and payments shall be made by said first party as in this section first provided.

Section Twenty-one. All persons employed and paid either permanently or temporarily by said first party in the maintenance and operation of said terminal station, depot grounds and yards, shall be deemed and taken to be the employes and servants of said first party.

Section Twenty-two. It is further agreed that the several covenants, conditions and stipulations herein contained shall be mutually binding upon the respective parties hereto, their successor, successors and assigns for the term of thirty years from May 1, 1888, unless this contract shall be sooner determined by consent of the parties hereto, or by reason of the provisions hereof.

Section Twenty-three. It is further understood and agreed that all of the aforesaid covenants and agreements on the part of said parties of the second part to be performed, are several and not joint.

Section Twenty-four. It is understood and agreed that the Des Moines & St. Louis Railroad Company, as the owner of one-half of the capital stock of the Des Moines Union Railway Company, may sell and transfer one-half of said stock, or

one-quarter of the whole to such railway company as may be acceptable to a majority of the parties of the second part; in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of the second part. Only as aforesaid, shall other railroad companies be admitted to the use of the property of said first party, without the consent of all the parties of the second part, and the compensation to be paid by any other railroad company, or person not a party hereto (or provided for as aforesaid), for the use of said depot or terminal facilities, or any part thereof, shall be determined by the board of directors of said first party.

Section Twenty-five. It is further agreed by and between said first party and the several second parties hereto, that any of said second parties may sell, assign and transfer to any other one railroad company all its rights under this agreement, of said second parties, or any of them, may mortgage to any one party all their respective interests and rights under this contract; but none of said second parties shall sub-divide, sub-let, mortgage or assign to any other company, or person, a portion of its said rights and privileges herein, and any assignment, mortgage or lease made by any one of said second parties, which may be held sufficient to admit its assignee, mortgagee, or lessee, or their assigns, to the possession of any of said property, shall be held sufficient to exclude, and shall exclude, the party making such lease, mortgage or assignment from all its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as to prevent any of said second parties from contracting to do the business, or handle with its own engines the traffic or cars of any other railroad company to and from said city on such terms as said first party may approve, provided the line of such other railroad company connects with the line of such second party not less than twenty miles from said city of Des Moines.

Section Twenty-Six. Whereas, the several parties hereto of the second part are entitled to the shares of the stock of said first party in the following amounts or proportions, to-wit: The Des Moines & St. Louis Railroad Company to one-half said shares; the Des Moines & Northwestern Railway Company to one-fourth said shares; and the St. Louis, Des Moines & Northern Railway Company to one-fourth said shares and

Whereas, no certificates for said shares have as yet been issued to said parties;

Now, therefore, it is hereby further agreed between the parties hereto, that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of one hundred dollars each, the same shall be issued and held as follows, to-wit: One certificate of ten thousand shares shall be issued and delivered to the Des Moines & St. Louis Railroad Company; one certificate for five thousand shares shall be issued and delivered to the St. Louis, Des Moines & Northern Railway company, and one certificate for five thousand shall be issued and delivered to the Des Moines & Northwestern Railway Company, and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement, except that any shares of stock issued on request of either of said companies to any person, to qualify him as a member of the board of directors shall be re-transferable to the company on whose request it shall have been issued without the consent of the other companies; but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued, unless consented to by the other parties of the second part.

Section Twenty-Seven. Whereas, the parties of the second part have herein and hereby obliged themselves to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used, or to be hereafter issued and used by said first party in purchasing, improving and equipping the terminal properties herein described;

Now, therefore, in consideration of the premises, the said first party hereby contracts and agrees to and with each of the second parties hereto, that it will not at any time hereafter issue or dispose of any of said bonds, except for the purpose of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in said city of Des Moines.

Section Twenty-Eight. In case any difference shall hereafter arise between the first and second parties hereto, concerning the management of said terminal station, depots, grounds, yards and tracks, with respect to any matter not herein provided for, or concerning any other matter or thing connected therewith, but not herein expressly provided for, such differences shall be referred to three competent men experienced in railroad managment, who shall, as soon as practicable after they are chosen, proceed to examine and determine what would be just and equitable for each of said parties to do in and

about the matter in dispute. Each party shall choose one of said arbitrators and the two thus chosen shall select the third arbitrator and the decision in writing of a majority of said arbitrators with respect to the matter submitted, shall be furnished to and be thereafter binding upon each of the said parties; Provided, however, that such differences shall have no effect on the course of business at said terminal station, depot grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, and such settlements and payments as are herein provided for shall be made as before, until the matter in dispute shall be adjusted by the said arbitrators, and thereupon such payments or restitutions shall be made as may be required by the decision of said arbitrators.

In Witness Whereof the respective parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their respective presidents, and attested by their secretaries respectively, the day and year first above written.

(Seal) THE DES MOINES UNION RAILWAY COMPANY,

Attest: F. M. Hubbell, Secretary. By G. M. Dodge, President.

(Seal) THE DES MOINES & ST. LOUIS RAILROAD COMPANY,

Attest: F. M. Hubbell, Secretary. By James F. How, President.

(Seal) THE ST. LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,

Attest: J. T. Granger, Secretary. By G. M. Dodge, President.

(Seal) THE DES MOINES & NORTHWESTERN RAILROAD COMPANY.

Attest: A. N. Denman, Secretary. By F. M. Hubbell, President.

Plffs. Exhibit No. 28.

Meeting of the Stockholders of the Des Moines Union Railway Co.

Des Moines, Iowa, April 8th, 1890.

The stockholders of the Des Moines Union Railway Company met in an adjourned meeting pursuant to adjournment,

at ten o'clock A. M. at the office of the Company, on Tuesday, the 8th day of April, 1890.

There were present in person:

J. F. How,	representing	one Share
C. M. Hays,	representing	one Share
F. M. Hubbell,	representing	one Share
L. M. Martin,	representing	one Share
F. C. Hubbell,	representing	one Share
A. B. Cummins,	representing	one Share

There were present by proxy:

G. M. Dodge, by L. M. Martin, representing one Share
W. H. Blodgett, by J. F. How, representing one Share

There were also present the Des Moines & Northwestern Railway Company, successors to the Des Moines Northwestern Railway Company, by F. M. Hubbell, President.

The Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, by A. B. Cummins, Vice-President.

The Des Moines & St. Louis Railroad Company by J. F. How, President.

J. F. How, President, presiding.

Thereupon, by an examination of the records and the books of the Company, it was determined that all the stockholders of said Company were present either in person or by proxy duly filed with the Secretary of the Company.

The minutes of the meeting of the stockholders held on the 18th day of February, 1890, were read and approved.

The presiding officer stated the first object of the meeting to be the consideration of certain proposed amendments to the Articles of Incorporation.

Thereupon, F. M. Hubbell moved that Article 1 of the Articles of Incorporation be stricken out and the following substituted in lieu thereof.

Article 1.

The name of the corporation shall be the Des Moines Union Railway Company and its principal place of transacting business shall be at Des Moines, in the County of Polk, and State of Iowa.

The motion was seconded by C. M. Hays, and was adopted by the vote of all the stockholders of the corporation.

C. M. Hays moved that Article 2 be stricken out, and the following substituted in lieu thereof.

Article 2.

The object of the corporation and the general nature of the business to be transacted shall be the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops repair shops, stock yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines, and also to lease terminal facilities to and furnish and perform terminal services for all railways whose lines reach or pass through or near the said City of Des Moines, and the corporation shall possess all the power conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

Which motion being seconded, was adopted by the unanimous vote of all the stockholders of the corporation.

L. M. Martin moved that Article 3 be stricken out, and the following substituted in lieu thereof:

Article 3.

The capital stock of the corporation shall be two million dollars ($2,000,000.00) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds theretofore issued for that purpose constituting the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught.

Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions:

Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company, and the present owner of the property known as the Des Moines & St. Louis Railroad.

One thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and

One thousand shares to the Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit: sixteen thousand shares, or any part thereof, shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven eighths of all the stock theretofore issued and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered.

The stock shall be transferable only on the books of the Company by and with the consent of three-fourths of all of the Directors except in case the transferee of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

A. B. Cummins moved that Article 4 be stricken out, and the following substituted in lieu thereof:

Article 4.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons, who shall be elected by the stockholders at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday of January of each year, and they shall hold their offices for one year and until their successors are elected and qualified, but at all future election of Directors, it shall require the votes of more than seven eighths of all the stock theretofore issued to elect any director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceed-

ings and to do all such other things as may be proper or necessary for the corporation to do, but with respect to the matters above mentioned and all other matters except the ordinary operation of the property, the Board of Directors can act only upon the unanimous vote of the eight members thereof, and in order to facilitate the transaction of business, power is expressly conferred upon each of the Directors to delegate by written authority, some other person to act or vote for him, and in his stead.

Provided that such authority shall be filed with the Secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an Executive Committee, but such selection must be made by the vote of at least seven members. The duties and powers of such Committee shall be defined in the By-Laws.

The Board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must be elected and such By-Laws enacted by the unanimous vote of the eight members of the Board. All vacancies occurring in the Board shall be filled by the stockholders at a special meeting in the manner heretofore provided for the election of Directors.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

C. M. Hays moved that Article 5 be stricken out, and the following substituted in lieu thereof.

Article 5.

The officers of the corporation shall be President, Vice President, Secretary, and Treasurer (the offices of Secretary and Treasurer may be filled by one person) to be annually elected from the persons composing the Board of Directors as hereinbefore provided; and for that purpose, among others, the newly elected Board shall convene immediately after the adjournment of the annual meeting of the stockholders. Said officers shall hold their offices for one year and until their successors are elected and qualified, and they shall exercise such power and be charged with such duties as usually pertain to their respective offices, subject, however, to the limitations herein contained.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

F. M. Hubbell moved that Article 9 be stricken out and the following substituted in lieu thereof:

Article 9.

These articles may be amended by a vote of more than seven eighths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholders at his address as disclosed by the transfer books of the Company.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

A. B. Cummins moved to add to said Articles of Incorporation Article 11 as follows:

Article 11.

Special meetings of the stockholders may be called by the President, or by four Directors; but at least ten days' notice of such meeting shall be given to each stockholder by mailing to its or his address as shown by the books of the Company, a notice stating the time and place of such meeting.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

C. M. Hays moved to add to the Articles of Incorporation Article 12, as follows:

Article 12.

At all meetings of stockholders each stockholder shall be entitled to cast one vote for each share of stock owned by him, or it as may appear from the books of the Company, such vote may be cast either in person or by proxy; but if by proxy, written authority therefor must be filed with the Secretary at or before the time the meeting convenes.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

L. M. Martin moved to add to the Articles of Incorporation Article 13, as follows:

Article 13.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized, that all its authorized capital stock be subscribed or taken.

Which motion was adopted by the unanimous vote of all of the stockholders of the corporation.

F. M. Hubbell moved to add to the Articles of Incorporation Article 14, as follows:

Article 14.

The purchase of the property heretofore conveyed to the corporation, the conveyances made in pursuance thereof, the execution of Trust Mortgage to the Central Trust Company of New York, dated February 28th, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 196 at page 525 and the issuance of bonds secured by the same are hereby approved, ratified and confirmed.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

C. M. Hays moved to add to the Articles of Incorporation Article 15, as follows:

Article 15.

The proceedings of a meeting held December 10, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

Upon motion of A. B. Cummins, it was ordered that the officers of the Company certify and acknowledge the Amendments to the Articles of Incorporation above adopted, and to cause the same to be recorded and published as required by law.

Thereupon A. B. Cummins offered the following preamble and resolution, to-wit:

Whereas, by inadvertence, there appears to be some uncertainty in the records of the Company respecting the purchase price of the terminal property originally acquired by the company, and

Whereas, it was the agreement between all the parties in interest that said property, including the franchise incident thereto, should be purchased at its fair value, payable partly in first mortgage bonds and partly in capital stock fully paid up, and

Whereas, it was and is agreed that said property was fairly worth the sum of eight hundred sixty one thousand two hundred and fifty seven and 21/100 dollars, of which purchase price the Des Moines & St. Louis Railroad Company, the Wabash, St. Louis & Pacific Railway Company or its representative, the Purchasing Committee, the said Purchasing Committee being now the real owner of the Des Moines & St. Louis Railroad, together were and are entitled to four hundred and seventy thousand one hundred and ten and 80/100 dollars ($470,110.80) of said purchase price, the Des Moines Northwestern Railway Company was entitled to two hundred and fifteen thousand and fifty eight and 40/100 dollars ($215,058.40) of said purchase price, the St. Louis, Des Moines & Northern Railway Company was entitled to one hundred thousand dollars ($100,000.00) of said purchase price. G. M. Dodge to seventy four thousand and eighty eight and 01/100 dollars ($74,088.01) of said purchase price and Polk & Hubbell to two thousand dollars ($2,000.00) of said purchase price, and

Whereas, by a settlement heretofore had and now confirmed, it appeared that of such purchase price the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, being the real owner of the railroad known as the Des Moines & St. Louis Railroad, has received two hundred and seventy (270) bonds of one thousand dollars each. G. M. Dodge seventy-four bonds; Polk & Hubbell two (2) bonds and the Des Moines & Northwestern Railway Company, successor of the Des Moines North Western Railway Company, one hundred and fifteen (115) bonds, making in all four hundred and sixty one bonds, and as a further part of such purchase price the Company has paid to the Purchasing Committee, G. M. Dodge and the Des Moines Northwestern Railway Company two hundred and fifty seven and 21/100 dollars in cash, and

Whereas, there still remains four hundred thousand dollars ($400,000.00) of the purchase price of said property yet unpaid, which sum is to be paid in capital stock, and

Whereas, by agreement between the several persons and corporations owning the said property prior to the said transfer, so much of the purchase price as was to be paid in capital stock was to be divided among three corporations, to-wit: one-half to the Des Moines & St. Louis Railroad Company, one-quarter to the St. Louis, Des Moines & Northern Railway Company and one-quarter to the Des Moines North Western Railway Company, and

Whereas, the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company is now the owner of the property of the Des Moines & St. Louis Railroad Company,

including its proportion of stock, and the Des Moines & Northern Railway Company is now the owner of the property of the St. Louis, Des Moines & Northern Railway Company, including its proportion of said stock, and the Des Moines & North Western Railway Company is now the owner of the property of the Des Moines North Western Railway Company, including its proportion of said stock, and

Whereas, the Articles of Incorporation have been amended so as to conform to the true intent of the several parties,

It is therefore now Resolved, first

1st. That the purchase price of the property originally acquired by the Company, as above stated, be fixed at said sum eight hundred sixty one thousand, two hundred fifty seven and 21/100 ($861,257.21) dollars as of the date of the conveyance thereof.

2nd. That the payment of a portion of such purchase price in first mortgage bonds, as above set forth, be confirmed and approved.

3rd. That to complete the payment of such purchase price, the President and Secretary are hereby authorized to issue certificates for thirty nine hundred and ninety two (3992) shares of stock, which shares, including eight already issued on behalf of said parties, aggregate four thousand (4000) shares, as follows:

To the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, nineteen hundred and ninety six (1996) shares.

To the Des Moines & Northern Railway Company nine hundred and ninety eight (998) shares, and to the Des Moines & Northwestern Railway Company nine hundred and ninety eight (998) shares.

4th. That the proceedings heretofore had respecting the issuance of capital stock, so far as such proceedings are inconsistent with said amendments to the Articles of Incorporation or with this resolution, are hereby modified to conform hereto.

Upon motion, said preamble and resolutions were unanimously adopted.

Thereupon the resignation of Wells H. Blodgett as a Director was presented to the meeting and upon motion it was accepted.

Upon motion of F. M. Hubbell the stockholders proceeded to the election of a director to fill the vacancy so caused. The

election was had and resulted in the choice of H. D. Thompson by the unanimous vote of all the stockholders of the Company.

Upon motion the meeting of stockholders was adjourned to meet on the 22nd day of April, 1890, at ten o'clock A. M.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 29.

Respecting Surplus Earnings of Des Moines Union Ry. Co.

Meeting of the Directors of the Des Moines Union Railway Company.

February 11th, 1891.

Upon the adjournment of the meeting of the stockholders of this Company, G. M. Dodge, Jas. F. How, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell, and A. B. Cummins, of the persons chosen as directors for the ensuing year, met at the office of this Company. H. D. Thompson being represented by written proxy given to F. M. Hubbell.

G. M. Dodge was selected as Chairman of the meeting. He stated the first business before the meeting to be the election of a President, Vice President, Secretary and Treasurer, to hold their offices for the ensuing year and until their successors are duly elected and qualified.

It was moved that G. M. Dodge be elected President, A. B. Cummins, Vice President, and F. M. Hubbell, Secretary and Treasurer, and the above named directors were elected by the unanimous vote of all of the directors, to fill the offices for which they were nominated as above.

On motion, F. M. Hubbell, C. M. Hays and L. M. Martin were elected as the Executive Committee of this Company for the ensuing year.

The report of Horace Seely, Treasurer, was read and filed.

It was ordered that the rents collected for the use of the Company's real estate, and the switching charges paid in, be credited on the bills of the different tenant companies occupying this Company's terminals, giving to each Company its share ascertained by wheelage.

* * * * * * *

Whereupon the Board adjourned until February 12th, at ten o'clock A. M.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 30.

Respecting Surplus Earnings of Des Moines Union Ry. Co.

Proceedings had at Meeting of Board of Directors of the Des Moines Union Railway Company,

Held at its office in Des Moines on the 7th day of January 1892.

Upon the adjournment of the regular annual meeting of the stockholders of the Company, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell, A. B. Cummins, H. D. Thompson and A. N. Denman, being seven of the persons chosen as directors for the ensuing year, met at the office of the Company, director G. M. Dodge being represented by written proxy to L. M. Martin, duly filed.

Upon motion, C. M. Hays was elected Chairman of the meeting.

Whereupon, he stated the first business of the meeting to be the election of a President, Vice President, Secretary and Treasurer, to hold their offices during the ensuing year, and until their successors are duly elected and qualified.

It was moved that F. C. Hubbell be elected President, A. B. Cummins, Vice President, F. M. Hubbell, Secretary, and H. D. Thompson, Treasurer.

Whereupon, these nominations being submitted to the vote of the Directors, each of the persons above named received the unanimous vote of all the Directors, and were declared duly elected as follows:

F. C. Hubbell,	President.
A. B. Cummins,	Vice President.
F. M. Hubbell,	Secretary.
H. D. Thompson,	Treasurer.

F. C. Hubbell, President, presiding.

On motion of A. B. Cummins, duly seconded, F. C. Hubbell, C. M. Hays and L. M. Martin were elected as members of the Executive Committee for the ensuing year.

On motion of L. M. Martin, duly seconded, the following preamble and resolution were adopted by the unanimous vote of all the Directors.

Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies,

Therefore, Be It Resolved: That until the further action of the Board the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purposes.

F. M. Hubbell moved that $9,000.00 of the cost of the new freight depot, less proceeds of old freight depot, be charged to operation, and the remainder of its cost to be capitalized, and that the President be authorized to withdraw sufficient bonds to pay for so much of the cost of said freight depot as is not to be charged to operation as above set forth, and that the Trustee be requested to certify and deliver such bonds to the President.

The motion was duly seconded and unanimously adopted.

Upon motion, it was ordered that the Treasurer of the Company pay to G. M. Dodge, the retiring President, $1000.00 as full compensation for his expenses, and services rendered to this Company to this date as President or otherwise, the said sum to be charged as a part of the operating expenses of the Company.

Upon motion, the Board of Directors adjourned to meet at three o'clock in the afternoon of this day.

F. M. HUBBELL,
Secy.

PLAINTIFFS' EXHIBIT No. 31.*

Stipulation of Counsel, respecting Annual Reports of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the year ending December 31st, 1888.

For the purpose of abbreviating the record as far as practicable, in the above entitled cause, it is agreed that the Annual Reports of the Des Moines Union Railway Company, for the above mentioned years, are all in substantially the same form; that each contains the name of the Company; the name of its

*NOTE.—For stipulation covering Plaintiff's Exhibits Nos. 31, 32, 33, 34, 35 and 36, see page 421 of this record.

officers; its place of business, and a description of its real and personal property.

Said real property so described includes by specific description each of the lots and parcels of ground described in the following deeds:

Deed from James F. How to Des Moines Union Railway Company, dated November 19th, 1887, identified in stipulation between the parties as Plaintiffs' Exhibit #17.

Deed from James F. How to Des Moines Union Railway Company, dated December 10th, 1887, identified in said stipulation between the parties as Plaintiffs' Exhibit #18.

Deed from James F. How to Des Moines Union Railway Company, dated April 28th, 1888, and identified in said stipulation between the parties as Plaintiffs' Exhibit #19.

Deed from G. M. Dodge to Des Moines Union Railway Company, dated November 7th, 1887, identified in said stipulation as Plaintiffs' Exhibit #20.

Deed from St. Louis, Des Moines & Northern Railway Company to Des Moines Union Railway Company, dated November 7th, 1887, identified in said stipulation as Plaintiffs' Exhibit #21.

Deed from Des Moines & St. Louis Railroad Company to Des Moines Union Railway Company, dated February 21st, 1888, identified in said stipulation as Plaintiffs' Exhibit #22.

That the names of the officers of the Company for the year ending December 31st, 1888, are therein stated to be as follows:

President,	G. M. Dodge,	No. 1 Broadway, New York.
Vice President,	James F. How,	St. Louis, Mo.
Secretary,	F. M. Hubbell,	Des Moines, Iowa,
Treasurer,	F. M. Hubbell,	" " "
General Superintendent,	J. B. Van Dyne,	" " "
Auditor,	D. V. Van Dyne,	" " "

James F. How, above named as Vice-President was during the year covered by the said report, the General Agent for the Receivers of the Wabash, St. Louis and Pacific Railway Company, and the General Agent for the Purchasing Committee of the holders of bonds issued by the said Company and in process of foreclosure.

Schedule 5 of said Report is headed:

"Gross earnings for the year ending December 31st, 188.. of road operated within this State", and is followed by a form divided into columns headed respectively:

Name of line	a
From passengers	b
From freight	c
From express service	d
From mail service	e
From telegraph service	f
From track rent	g
From car rent	h
Miscellaneous	i

The only thing stated in this schedule 5 is the following, which is written across the columns headed "c to H inclusive":

"General Remarks"

"The Des Moines Union Railway Company is simply a 'Representative Company', acting as an agency at Des Moines for the Wabash Western Railway Company, the Des Moines and Northwestern Ry. Company, and the St. Louis, Des Moines and Northern Railway Company; performing all the necessary work for them, and charging each road its due proportion of the expenses, thereby incurred, etc. (at actual cost)."

That said report was signed and verified on March 19th, 1889,

By James F. How,
Vice President of the
Des Moines Union Ry.,
and

On March 25th, 1889,

By J. B. VanDyne,
General Superintendent of the Des Moines
Union Ry.

On opposite page to Schedule 5 is page headed:

"Schedule 6, Operating Expenses (Taxes included) roads in this State for the year ending December 31st, 188—."

This schedule is divided into columns, the columns having appropriate headings as to the various items making up operating expenses. The only entry under this schedule is the following:

"See General Remarks."

"PLAINTIFFS' EXHIBIT No. 32."

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the year ending December 31st, 1889.

That the names of the officers of the Company for the year ending December 31st, 1889, are stated to be as follows:

President,	G. M. Dodge,	No. 1 Broadway, New York.
Vice President	James F. How,	St. Louis, Mo.
Secretary,	F. M. Hubbell,	Des Moines, Iowa,
Treasurer,	Horace Seely,	" " "
Gen. Supt.	Horace Seely,	" " "
Auditor,	W. S. Godfrey,	" " "

The said James F. How continued to be General Agent as aforesaid until August 1st, 1889, when he became a Vice President of the Wabash Railroad Company, and its chief executive officer in the west.

The said report for the year ending December 31st, 1889, contains schedule 5 in the form above set out, and the only return made under said schedule was the following:

"General Remarks."

"The Des Moines Union Railway Company is simply a 'Representative Company', acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines and Northwestern Ry., Co., and the Des Moines and Northern Railway Company, performing all necessary work for them and charging each road (at actual cost), its due proportion of the expense thereby incurred."

And that said report was signed and verified on February 13th, 1890,

By Horace Seely,
General Superintendent of the Des Moines Union Ry., Co.

PLAINTIFFS' EXHIBIT No. 33.

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the year ending December 31st, 1890.

That the names of the officers of the Company for the year ending December 31st, 1890, are stated to be as follows:

President,	G. M. Dodge,	No. 1 Broadway, New York.
Vice President,	A. B. Cummins,	Des Moines, Iowa,
Secretary,	F. M. Hubbell,	" " "
Treasurer,	F. M. Hubbell,	" " "
General Superintendent,	Horace Seely,	" " "
Auditor,	Horace Seely, (Acting)	" " "

This Report contained a schedule 5 similar in form to schedule 5 in the said Report of December 31st, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

"The Des Moines Union Ry. Co., is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines & Northwestern Railway Company, and the Des Moines & Northern Ry. Co., performing all necessary work for them and charging each at actual cost, its due proportion for the expense thereby incurred."

And that said report was signed and verified on February 14th, 1891,

By A. B. Cummins,
Vice President of the Des Moines Union Ry. Co., and.

Horase Seely,
General Superintendent of the Des Moines Union Ry., Co.

PLAINTIFFS' EXHIBIT NO. 34.

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the year ending January 1st, 1892.

That the names of the officers of the Company for the year ending January 1st, 1892, are stated to be as follows:

President,	F. C. Hubbell,	Des Moines, Ia.
Vice President,	A. B. Cummins,	
Secretary,	F. M. Hubbell,	
Treasurer,	H. D. Thompson,	
General Solicitor	A. B. Cummins,	
General Superintendent,	Horace Seely,	
Auditor,	Charles Seely.	

The report contained a schedule 5 similar in form to schedule 5 in the said Report of December 31st, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

"The Des Moines Union Railway Company is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company and the Des Moines, Northern and Western Railway Company, performing all necessary work for them, and charging each at actual cost, its due proportion for the expense thereby incurred."

And that said report was signed and verified on February 24th, 1892,

By F. C. Hubbell,
President of the Des Moines Union Railway Company, and,

Horace Seely,
General Superintendent of the Des Moines Union Railway Company.

PLAINTIFFS' EXHIBIT NO. 35.

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said Council, for the year ending January 1st, 1893.

That the names of the officers of the Company for the year ending January 1st, 1893, are stated to be as follows:

President,	F. C. Hubbell,	Des Moines, Iowa,
Secretary,	F. M. Hubbell,	" " "
Treasurer,	H. D. Thompson,	" " "
General Superintendent,	J. A. Wagner,	" " "
Auditor,	E. G. Mitchell,	" " "

This report contained a schedule 5 similar in form to schedule 5 in the said Report of December 31st, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

The Des Moines Union Railway Company is simply a representative company, acting as an agency for the Wabash Railroad Company, and the Des Moines, Northern & Western Railway Company, performing all necessary work for them, and charging each at actual cost, its due proportion thereof incurred."

And that said report was signed and verified on February 28th, 1893,

By A. B. Cummins,
Vice President of the Des Moines Union Ry. Co., and,

J. A. Wagner,
General Superintendent of the Des Moines Union Ry., Co.

PLAINTIFFS' EXHIBIT No. 36.

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said Council, for the year ending January 1st, 1894.

That the names of the officers of the company for the year ending January 1st, 1894, are stated to be as follows:

President,	F. C. Hubbell,	Des	Moines,	Ia.
Vice President,	A. B. Cummins,	"	"	"
Secretary,	F. M. Hubbell,	"	"	"
Treasurer,	H. D. Thompson,	"	"	"
General Superintendent,	J. A. Wagner,	"	"	"
Auditor,	E. G. Mitchell,	"	"	"

The report contained a schedule 5 similar in form to schedule 5 in the said Report of December 31st, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

"The Des Moines Union Railway Company is the owner of the property hereinbefore described, and in addition to leasing the same to the Wabash Railroad Company, the Des Moines, Northern and Western Railway Company, and the Chicago, Great Western Railway Company, performs certain services for these companies and collects from them as rental and for such services, the aggregate amount of its expenses, which expenses are paid by the several railway companies in proportion to the use of the property and services rendered, as provided by contracts existing between this company and the said Wabash Railroad Company, Des Moines, Northern & Western Railway Company, and Chicago, Great Western Railway Company."

And that said report was signed and verified on February 16th, 1894.

By A. B. Cummins,
Vice President of the Des Moines Union Ry. Co., and

J. A. Wagner,
Superintendent of the Des Moines Union Ry. Co.,

Plffs. Exhibit No. 37.

Ratification Agreement of July 31, 1897.

This Agreement of ratification and confirmation, entered into this 31st day of July, 1897, between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter called the Des Moines Company, the Wabash Railroad Company, a corporation organized and existing under the laws of the State of Missouri, and hereinafter called the Wabash Company, and the Des Moines Northern & Western Railroad Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter called the Des Moines, Northern & Western Company,

Witnesseth that:

Whereas, on the 10th day of May, 1889, the said Des Moines Union Railway Company, the Des Moines & St. Louis Rail-

road Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, entered into a certain contract, a copy of which, for complete identification, is hereto attached, marked Exhibit "A"; and,

Whereas, the said Wabash Company is not named in said contract, and now operates the Des Moines & St. Louis Railroad; and

Whereas, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company have ceased to own or operate the respective railroads which were owned and operated by them at the time the said contract was made, and the said Des Moines Northern & Western Company has become the owner of and operates the lines of railroad which were formerly owned and operated by the said Des Moines & Northwestern Railway Company and the said St. Louis, Des Moines & Northern Railway Company; and

Whereas, for a long time past both the Wabash Company and the Des Moines, Northern & Western Company have been using the terminal property described in said contract and all the parties have recognized the said contract as continuing and binding upon them; and

Whereas, it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines, Northern & Western Company;

Now Therefore, in consideration of the premises and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Wabash Company and the Des Moines, Northern & Western Company.

And the said Wabash Company for itself agrees to make the payments therein provided for at the times and in the manner prescribed for the said Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the said Des Moines &

St. Louis Company its obligation to so pay, and all the obligations herein assumed by it, shall at once determine and

be and become the obligations of whatever company operates the said railroad, it being the intention that the obligations of the said contract, so far as they pertain to the Des Moines & St. Louis Railroad Company, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property leased in the said contract, to assume all the obligations therein or hereby undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein, and as though it had been named in and was a party to the said contract when originally made, and to pay to the said Des Moines Company at the times and in the manner therein prescribed the sums of money which may become due, computed according to the terms and provisions of the said contract with respect to a tenant company; and the said Des Moines, Northern & Western Company further agrees that the obligations therein named and hereby assumed shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee, or successor of the said Des Moines, Northern & Western Company in the ownership or operation of the said Des Moines, Northern & Western Railroad, and any company succeeding the Des Moines, Northern & Western Company, in such ownership or operation shall be held by the operation of trains over the said Des Moines, Northern & Western Railroad, and upon the property leased in the said contract, to assume all the obligations therein expressed and herein undertaken by said Des Moines, Northern & Western Company.

But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:

The purchasing committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.

The Des Moines Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares.

Of the above shares belonging to said purchasing committee two shares, stand upon the books of the company as follows: Joseph Ramsey, Jr., 1 share; and H. L. Magee, 1 share.

Of the shares belonging to the Des Moines Northern & Western Railroad Company two shares stand upon the books of the company as follows: A. B. Cummins, 1 share; and F. M. Hubbell, 1 share.

Of the shares belonging to said F. M. Hubbell & Son, five shares stand upon the books of the company as follows: F. M. Hubbell, 1 share; F. C. Hubbell, 1 share; C. Huttenlocher, 1 share; H. D. Thompson, 1 share; A. N. Denman, 1 share.

In Witness Whereof, The respective parties hereto have caused these presents to be signed by their respective presidents and sealed with their corporate seals, and attested by their respective secretaries, the day and year first above written.

(Seal) THE WABASH RAILROAD COMPANY,
By O. D. Ashley,
President.

Attest:
J. C. Otteson,
Secretary.

(Seal) DES MOINES UNION RAILWAY COMPANY,
By F. C. Hubbell,
President.

Attest:
F. M. Hubbell,
Secretary.

(Seal) DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY,
By F. M. Hubbell,
President.

Attest:
A. N. Denman,
Secretary.

Plffs. Exhibit No. 38.

Mortgage.

The Des Moines and St. Louis Railroad Company
to
The Central Trust Company and James Cheney, Trustees.

This Indenture made and entered into this first day of December in the year one thousand Eight Hundred and Eighty one by and Between the Des Moines and St. Louis Railroad Company, a corporation organized and Existing under and by virtue of the laws of the State of Iowa of the first part and The Central Trust Company of New York and James Chetey Trustees of the second part Witnesseth:

Whereas by the terms of a contract of subscription made by and between the Party of the first part and certain Persons subscribers to its capital stock it was mutually stipulated and agreed that the construction and equipment of the Railroad of the Party of the first part should be in full payment of the said subscriptions to the capital stock of said Company and also that the subscribers to said capital stock should jointly receive in payment for such construction and equipment in addition to the said stock the entire amount of fifteen thousand dollars per mile in Mortgage Bonds of the Wabash, St. Louis and Pacific Railway Company secured by the General Mortgage of the last named Company.

And Whereas it has been mutually agreed by and between the said Des Moines and St. Louis Railroad Company the subscribers to its Capital Stock and the Wabash, St. Louis and Pacific Railway Company that bonds of the last named Company as aforesaid shall be executed and delivered to the said Des Moines and St. Louis Railroad Company to be used in part payment for construction and equipment as aforesaid and also that the Des Moines and St. Louis Railroad Company, Party of the first part shall execute and deliver to said Wabash, St. Louis and Pacific Railway Company a lease in perpetuity of said Railroad and that said Wabash St. Louis and Pacific Railway Company shall thereafter operate said Railroad continuously under said lease and upon the conditions and agreements to be covenanted therein providing for the operation and maintenance of said railroad the payment of all taxes and assessments thereon. The protection by the said Wabash, St. Louis and Pacific Railway Company of the interest on the mortgage bonds aforesaid and any further payment which due proportion of the earnings of said Railroad may hereafter render just the bonds aforementioned to form the principle consideration of said lease and also that the General Mortgage Bonds of the Wabash, St. Louis and Pacific Railway Company aforesaid shall be secured by a first Mortgage upon the Railroad property of the said Des Moines and St. Louis, Railroad Company to the extent of the par value of so many of said Bonds as shall be issued in part payment for construction and equipment of the railroad of the last named company as aforesaid.

And Whereas the said Des Moines and St. Louis Railroad Company has obtained its right of way and is now completing its road.

And Whereas the issue of bonds for the purpose aforesaid is provided for in the General Mortgage executed to the Trustees named herein by the Wabash St. Louis and Pacific Railway Company, bearing date June 1st, 1880, providing for the issue of fifty thousand bonds of the denomination of $1,000. payable on the first day of June, A. D. 1920, and bearing interest at the rate of six per centum per annum payable semi annually.

And Whereas the completing leasing and operating the said Railroad is deemed necessary to the Wabash, St. Louis and Pacific Railway Company for the completion of a proper extension of its railway system.

Now Therefore in consideration of the premises and the sum of one dollar to it in hand paid by the Wabash, St. Louis and Pacific Railway Company before the delivery of these presents and to further assure the holders of the bonds issued under the provisions of said General Mortgage made as aforesaid by the Wabash, St. Louis and Pacific Railway Company to the extent of fifteen thousand dollars per mile of the road of the Des Moines and St. Louis Railroad Company the said the Des Moines and St. Louis Railroad Company by this indenture doth grant, bargain, sell, convey, and transfer unto the said Central Trust Company of New York and James Cheney of Indiana as Trustees and to their successors in Trust all the right of way and railroad of the said first party extending from the eastern boundary line of the City of Des Moines in the State of Iowa, to Albia in said State running through the counties of Polk, Marion and Monroe together with all its Real Estate embankments, bridges, turn outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses depots, turn tables, engines, cars, machinery, tools and all its railroad property acquired and to be acquired and every thing appurtenant to said Railroad or used in connection therewith together with all rents issues and profits tolls and earnings, credits and choses in action, accruing to said first party from said railroads as owner and holder thereof, except the Real Estate, buildings and improvements thereon lying and being within the corporate limits of the City of Des Moines. To have and to hold the said property, real and personal, including the said Railroads, appurtenances, equipment, franchises, rights, credits and choses in action and every interest herein granted unto the said Trustees as joint tenants and not as tenants in common and the survivor of them his heirs and successors. But in trust nevertheless for the uses and purposes declared in and by the General Mortgage

made and executed by the said Wabash, St. Louis and Pacific Railway Company to the said Trustees herein as aforesaid subject to the limitations herein contained.

If the said Wabash, St. Louis and Pacific Railway Company or its successors or assigns shall well and truly pay or cause to be paid the several sums of money specified in the several bonds of the issue provided for in the General Mortgage aforesaid as well the principal as the installments of interest according to the tenor and effect of said bonds and of each and every of them and of the laws of the several States of Ohio, Indiana, Illinois and Missouri or of said bonds and the interest payable thereon become in any wise paid or satisfied then and in such case the estate, right, title, interest, and demand of the said parties of the second part, their successors in said trust and assigns shall cease determine and become void otherwise to be and remain in full force and virtue in law and for the benefit and security of the holders of said bond and each of them. Until default be made in the payment of the principal or interest of said bonds or of some or any of them the said Railway Company shall be permitted to possess operate manage and enjoy said railroad with its appurtenances and to take and use the rents incomes tolls, issues and profits thereof in the same manner and with the same effect as if this deed had not been executed.

In case default shall be made in the payment of any installment of interest accruing on said bonds or any of them and such default shall continue for a period of six months after the maturity thereof it shall be lawful for said parties of the second part or their successors in said Trust by themselves their agents or attorneys to enter upon take possession of, manage, operate and control the railroad and property hereby conveyed owned or held by lease, contract or otherwise by superintendents receivers and managers thereof making from time to time all needful repairs replacements and such alterations, additions and improvements as may seem to be judicious and proper and to collect and receive all rents, tolls, incomes, issues and profits thereof and after deducting the expenses of operating said railroad and property and lease hold interest and all costs of improvements and any taxes that may have accrued thereon as well as just and reasonable compensation for their own work and labor in and about the premises to apply the moneys arising therefrom to the payment of interest in the order in which it becomes due and ratably to the persons entitled thereto and when said interest so in default and any installment of interest subsequently maturing shall be paid up then said parties of the second part shall restore

the possession of said railroad to the said party of the first part.

If default shall occur in the payment of any installment of interest and such default continue for the space of six months after maturity and demand therefor then if a majority in value of the holders of said bonds then outstanding and secured by this mortgage shall determine and notify said trustees that they require that the principal of all of said bonds become at once due and payable, said bonds shall thereby become due and payable notwithstanding any clause contained therein to the contrary and if said principal sum shall become due and not paid by said first party according to the tenor of said bonds and upon written notice by the holders of a majority of the bonds issued and outstanding under the authority hereinbefore mentioned the said trustees shall have the power and it shall be their duty to proceed in any proper tribunal to foreclose said mortgage according to the usual and established principles of law and equity. But it is expressly understood and agreed between the parties, that in no case whatever shall the party of the first part claim any right or advantage by reason of any valuation appraisement stay or extension laws that now exist or may hereafter be enacted and said first named party hereby releases to the second parties all and every such right claim and demand and hereby further agrees that it will neither apply for an injunction nor any stay of proceedings to arrest or prevent such sale from being made or possession being taken as hereinbefore provided. It is hereby expressly declared that this instrument is made and the trust herein declared upon condition that if any sale shall be made under and by virtue of this Mortgage whether by Judicial decree or foreclosure or otherwise the holders of a majority of the said bonds then outstanding shall have the right to have said premises and all property herein embraced, purchased for the use and benefit of all the holders of said then outstanding bonds.

In case such sale shall be made then the holders of the majority of said bonds outstanding shall have the right by notice in writing in their discretion either to require the said trustees or their successors to make such purchase on such terms as they may prescribe.

And if the holders of a majority of said outstanding bonds shall elect to have said purchase made as aforesaid and shall prescribe the terms on which they desire to make the same then it shall be the duty of the said Trustees or their successors to make such purchase if the same can be made on the terms so prescribed and having so purchased said premises and

property the right and title thereto shall vest in the said trustees for the use aforesaid and no bond holder shall have any claim to the said premises or property or the proceeds thereof except his pro rata share therein as represented by a new company or corporation to be formed for the use and benefit of the holders of all said bonds then outstanding. And said trustees shall take such lawful measures as may be deemed for the interest of all said bond holders to organize a new company or corporation said company or corporation to be so organized upon such terms, conditions and limitations and in such manner as the holders of a majority of said outstanding bonds shall in writing request or direct. And thereupon the said Trustees shall convey said premises and property to the new company or corporation. And it is hereby declared that all persons who shall claim any interest benefit or advantage by virtue of this instrument or the trust hereby created shall take the same subject to all the terms herein contained and subject to all the rights and powers conferred by this instrument on the holders of a majority of the bonds hereby secured.

It is further declared that in case of any sale of the premises and property embraced herein by decree of any court or otherwise the holders of a majority of the bonds then outstanding shall have the right to determine whether said premises and property shall or shall not be sold subject to all prior encumbrances and such majority shall sufficiently manifest their determination in such respect by giving notice thereof in writing to the trustees at any time before such sale is made. In case of the resignation or incapacity of the trustees or either of them herein named to act as trustees or in case of the death, resignation or incapacity to act of any successor of said Trustees it shall be the duty of the Board of Directors of said Railway Company immediately thereafter to make application to some proper court of record at the county where the General Office of said Railway Company is located for the appointment of some suitable person, persons or corporation to become the successor of said Trustees and thereupon the person, persons or corporation so appointed shall be and are hereby vested with all the estate rights and privileges and liable to all the duties by this instrument conferred upon or to the parties of the second part to the same extent as if each person, persons or persons or corporation were herein named. It is hereby agreed and understood that for the better assurance to the parties of the second part and to the holders of the bonds secured by this instrument that the party of the first part will on demand at any and all times hereafter make execute and deliver all such other and further conveyances and assurances as said trustee of their successors by

their counsel shall reasonably advise, devise or require for the better assuring unto the said Trustee and their successors by their counsel shall reasonably advise, devise or require for the better assuring unto the said Trustees and their successors in the trust hereby created the said railroad with the appurtenances, equipment and property hereinbefore described or intended so to be and all other property belonging to said party of the first part now owned or hereafter to be acquired as above provided and set forth or any and all the franchises now held or hereafter to be acquired by the party of the first part. Whenever it shall happen from changes required to be made in said Railroad and appurtenances that any parcels of property whether real or personal have become unnecessary or useless to said Railroad Company for its business by reason of change of line or depot or other grounds or when any of the personal property shall have become worn out or inefficient and unnecessary to the operation of said railroad then and in such case it shall be lawful for the directors of said railway Company to make sales exchanges or other disposition of such parcels of real or personal property as they may deem for the best interest of said railway company and upon the sale or exchange of such property for any other and when any other property shall be acquired in the place of such property the same shall held subject to the lien of this mortgage as if it was the property of said Company at the date hereof and the parcels of property so held or disposed of by said Directors shall be exempt from the lien herein created. It is further agreed that neither of said Trustees shall be required to take any action under this Deed in the event of default until the party asking such action shall have indemnified such trustee for expenditure necessarily involved.

And the Des Moines and St. Louis Railroad Company covenants and agrees to and with the Trustees named in the said General Mortgage executed as aforesaid by the Wabash, St. Louis and Pacific Railway Company and their successors in trust that all its Railroad and property above described shall be charged with the lien of said General Mortgage and subject to its provisions as a security for the payment of the bonds therein described and provided to the extent and amount of the par value of so many of said bonds as are issued as aforesaid but not to exceed fifteen thousand dollars per mile.

In Witness Whereof the said party of the first part that is to say the Des Moines and St. Louis Railroad Company has caused these presents to be signed in its incorporate name by its President and attested by its Secretary and

has caused the corporate seal of said Company to be hereunto affixed as authorized and directed by its Board of Directors the day and year above written.

DES MOINES AND ST. LOUIS RAILROAD COMPANY.

By J. S. Clarkson, President.

Attest: F. M. Hubbell, Secretary.

Signed and Sealed in the presence of Howard M. Kellog.

State of Iowa,
Polk County of—ss.

Be it remembered that on this sixth day of March 1882 Personally came before me the undersigned a Notary Public within and for the County aforesaid, J. S. Clarkson who being by me duly sworn doth depose and say that he is the president of the Des Moines and St. Louis Railroad Company, grantor in the foregoing instrument that the name of said company is signed to said instrument by him as President of said Company by virtue of the order of the Board of Directors that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said Board of Directors. And the said J. S. Clarkson as President acknowledged the foregoing instrument to be the act and deed of the Des Moines and St. Louis Railroad Company for the uses and purposes therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 6th day of March 1882.

(Notarial Seal) FRANK H. PERRY,
Notary Public, Polk Co. Iowa.

State of Iowa,
County of Polk—ss.

Be it remembered that on this sixth day of March 1882 personally came before me the undersigned a Notary Public within and for the county aforesaid F. M. Hubbell who being by me duly sworn depose and say that he is the secretary of the Des Moines and St. L[illegible] is Railroad

Company grantor in the foregoing instrument. That he countersigned the said instrument and affixed the seal of said company thereto by order of the Board of Directors thereof.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 6th day of March 1882.

(Notarial Seal)

FRANK H. PERRY,
Notary Public, Polk Co. Iowa.

Filed April 28, 1882. at 11 ¾ A. M.

J. J. PAYNE,
Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book 104, page 446.

Dated at Des Moines, Iowa, in said County, this the second day of April A. D. 1910.

MRS. FRANK W. DODSON,
Recorder.

Plffs. Exhibit No. 39.

Release Deed.

The Central Trust Company of New York, and
James Cheney, Trustees,
to
The Des Moines and St. Louis Railroad Company.

This Deed made and entered into this Thirteenth day of November, A. D. one thousand eight hundred and ninety-five, by and between the Central Trust Company of New York, and James Cheney, Trustees, of the first part, and the Des Moines & St. Louis Railroad Company, of the second part:

Witnesseth:

That Whereas, The said Des Moines & St. Louis Railroad Company, did, on or about the first day of December, A. D.

1881, execute and deliver a certain deed of trust or mortgage wherein and whereby, in consideration of the premises therein recited and of the sum of One Dollar to it paid, it did grant, bargain, sell, convey and transfer to said Central Trust Company of New York and James Cheney, Trustees, and to their successors in said trust, all the right of way and railroad of said Des Moines & St. Louis Railroad Company, extending from the eastern boundary line of the City of Des Moines, in the State of Iowa, to Albia in said State, running through the counties of Polk, Marion and Monroe, together with all its real estate, embankments, bridges, turn-outs, side-tracks, buildings and structures, water-tanks and fixtures, shops, engines and other houses, depots, turn-tables, engines, cars and machinery, tools and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, or used in connection therewith, together with all rents, issues and profits, tolls and earnings, credits and choses in action accruing to said Des Moines and St. Louis Railroad company as owner and holder thereof, except the real estate, buildings and improvements thereon, lying and being within the corporate limits of said City of Des Moines. To Have and to Hold the said property, real and personal, including the said railroad, appurtenances, equipment, franchises, rights, credits, and choses in action, and every interest therein granted unto the said Trustees, as joint tenants, and not as tenants in common, and the survivor of them, his heirs and successors, but in trust nevertheless for the uses and purposes declared therein and in a certain other mortgage or deed of trust, executed by the Wabash, St. Louis and Pacific Railway Company to said Central Trust Company of New York, and James Cheney, on or about the first day of June, 1880, which latter mortgage is commonly known as the "General Mortgage" of the Wabash, St. Louis & Pacific Railway Company; and Whereas, The Mortgage executed as aforesaid by the Des Moines & St. Louis Railroad Company, to said Central Trust Company, and James Cheney was made to secure the bonds of said Wabash, St. Louis & Pacific Railway Company, which were mentioned and described in its General Mortgage aforesaid and Whereas, Said General Mortgage of the Wabash, St. Louis & Pacific Railway Company has been duly foreclosed and all the bonds secured thereby have been surrendered and cancelled, and a new com-

pany or corporation has been organized as provided for in said General Mortgage, which new corporation is known as the Wabash Railroad Company; and Whereas, said new corporation has succeeded to all legal and equitable rights of the holders of said General Mortgage Bonds; and Whereas, Said Wabash Railroad Company is now the equitable owner of all the Capital Stock of said Des Moines & St. Louis Railroad Company, the same having been purchased and now being held in trust for it by a Purchasing Committee composed of James F. Joy, Thomas H. Hubbard, O. D. Ashley and Edgar T. Wells, and Whereas, Said Wabash Railroad Company has by resolution of its Board of Directors requested the aforesaid Trustees to execute this deed of release, Now Therefore, In consideration of the premises, and of the sum of One Dollar, to them in hand paid by said Des Moines & St. Louis Railroad Company, the receipt whereof is hereby acknowledged, the said Central Trust Company of New York and James Cheney, Trustees, have remised, released and quit-claimed, and by these presents they do remise, release and quit-claim unto the said Des Moines & St. Louis Railroad Company, its successors and assigns, all the right, title, interest, estate, claim and demand, which they, or either of them acquired, or now hold, in or to the said Des Moines & St. Louis Railroad, as the same is, hereinbefore described, by, through or under the aforesaid deed of trust or mortgage, to them executed, as aforesaid, by said Des Moines & St. Louis Railroad Company on or about said first day of December, A. D. 1881.

To Have and to Hold, The same unto said Des Moines & St. Louis Railroad Company, its successors and assigns forever.

In Testimony Whereof, Said Central Trust Company of New York, Trustee, has caused these presents to be signed by its Second Vice President, in its name and its corporate seal to be hereto attached; and the said James Cheney, Trustee, has also hereunto set his hand and seal the day and year first above written.

(Corporate Seal) CENTRAL TRUST COMPANY OF
Attest: NEW YORK,
N. O. Tinnefell, By E. Francis Hyde, Second Vice President.
(Seal) Secretary. JAMES CHENEY,
Trustee.

State of New York,
City and County of New York—ss.

On this Twenty-first day of February, 1899, before me personally came E. Francis Hyde, Second Vice President of the Central Trust Company of New York, to me personally known, who being by me duly sworn, did depose and say that he resided in the City of New York, that he was Second Vice President of the Central Trust Company of New York, the corporation described in and which executed the foregoing instrument by him as such officer thereof that he knew the corporate seal of said corporation, and that the seal affixed to said instrument was such corporate seal; that is was so affixed by authority of the Board of Trustees of said corporation, and that he subscribed his name thereto as Second Vice President thereof by the like authority. And the said E. Francis Hyde further acknowledged to me that he executed the foregoing instrument for and in behalf of and as the act and deed of, the said Central Trust Company of New York.

(Notarial Seal) FRANK B. SMIDT,
Notary Public, N. Y. Co.

State of Indiana,
Allen County—ss.

Personally appeared before me a Notary Public in and for said County and State, James Cheney, Trustee, known to me as the party named as Trustee in the mortgage referred to in the above instrument and acknowledged the execution of the foregoing instrument for the purposes therein indicated on this 4th day of March.

(Notarial Seal) FRED E. FOLLARS, 1899,
Notary.

My commission expires October 11, 1901.

FRED E. FOLLARS,
Notary Public.

Filed for Record April 11th, 1899 at 3:58 P. M.

JOHN P. COOK, Recorder,
By F. S. Russell, Dpty.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original

record in my office, and of the whole thereof, and recorded in Book 390, page 85.

Dated at Des Moines, Iowa, in said County, this the second day of April, A. D. 1910.

MRS. FRANK W. DODSON,
Recorder.

Plaintiffs Exhibit No. 40.

Indenture of Lease.

Des Moines and St. Louis Railroad Company
To the
Wabash St. Louis and Pacific Railway Company.

This indenture made and entered into this first day of March in the year one thousand eight hundred and eighty two By and Between the Des Moines and St. Louis Railroad Company a corporation Organized and Existing under and by virtue of the laws of the State of Iowa, of the first part and the Wabash St. Louis and Pacific Railway Company a consolidated corporation of the States of Ohio Indiana Illinois and Missouri of the second part Witnesseth Whereas it has Been mutually agreed by and Between the said Des Moines and St. Louis Railroad Company the the subscribers to its Capital Stock and the Wabash St. Louis and Pacific Railway Company that Bonds of the last named company secured by its General Mortgage to the amount of fifteen thousand Dollars per mile of said Des Moines and St. Louis Railroad Company shall be executed and Delivered to the said Des Moines and St. Louis Railroad Company to be used in part payment for construction and Equipment and also that the Des Moines and St. Louis Railroad Company party of the first part shall Execute and Deliver to said Wabash St. Louis and Pacific Railway Company a lease in perpetuity of said Railroad and that said Wabash St. Louis and Pacific Railway Company shall thereafter operate said Railroad continuously under said Lease and upon the conditions and agreements to be covenanted therein providing for the Operation and Maintenance of said Railroad, the payment of all Taxes and assessments thereon, the protection by the said Wabash St. Louis and Pacific Railway Company of the interest on the Mortgage Bonds aforesaid and any further payment which due proportion of the earnings of said railroad may hereafter render Just the Bonds aforementioned to form the principle consideration of said lease and also that the General Mortgage Bonds of the Wabash St. Louis and

Pacific Railway Company aforesaid shall be secured by a first Mortgage upon the Railroad property of the said Des Moines and St. Louis Railroad Company to the extent of the par value of so many of said Bonds as shall be issued in part payment for construction and Equipment of the railroad of the last named company as aforesaid.

And Whereas the said Des Moines and St. Louis Railroad Company has obtained its right of way and is now completing its road

And Whereas The completing leasing and operating the said railroad is Deemed necessary to the Wabash St. Louis and Pacific Railway Company for the completion of a proper extension of its railway System

Now therefore in consideration of the premises and the sum of One Dollar to it in hand paid by the Wabash St. Louis and Pacific Railway Company Before the delivery of these presents the Des Moines and St. Louis Railroad Company hath this day leased and Demised and by these presents doth Lease and demise unto the said Wabash St. Louis and Pacific Railway Company from the date hereof in perpetuity all the right of way and railroad of the said first party extending from Des Moines in the State of Iowa to Albia in said State running through the counties of Polk Marion and Monroe in said State Together with all its real Estate embankments Bridges, Turnouts side Tracks Building and Structures Water Tanks and fixtures Shops Engine and other houses Depots Turn Tables Engines cars machinery Tools and all its railroad property acquired and to be acquired and everything appurtenant to said railroad or used in connection therewith together with all rents issues and profits tolls and earnings credits and choses in action accruing to said first party from said Railroad as owner and holder thereof

To have and to hold the said property real and personal including the said Railroads appurtenances equipment franchises rights credits and choses in action and every interest herein Granted unto the said party of the second part its successors and assigns from the date hereof in perpetuity And the said party of the Second part in consideration of said leasing and of the other covenants herein contained to be performed by the party of the first part hereby agrees to and with the party of the first part that it will proceed with reasonable speed and Dilligence to complete and put in full operation the said line of Railroad from Des Moines to Albia that it will provide and place upon said line of railroad sufficient rolling Stock and

other Equipment to do all the Business of said railroad in a reasonable manner that it will complete said railroad with necessary Stations Depots and other Structures in such a manner that said Railroad will Become and remain a good Substantial and well Equiped railroad of the Class to which it Belongs

And the said party of the Second part further agrees that it will save and keep harmless the party of the first part against any claim or demand of the parties or persons by whom the moneys already expended on said railroad have been advanced.

And said party of the second part further agrees that it will pay all taxes and assessments that may be lawfully imposed on said Railroad and Property or any part thereof during the continuance of this lease that it will at all times keep said railroad in good condition and repair making all necessary renewals replacements and improvements and will perpetually use and operate said railroad in a skillful and effective manner.

And the said party of the Second part further agrees that it will and Truly pay or cause to be paid all sums of Principle and interest Specified in its aforesaid Bonds agreed to be Issued to the party of Second part to be used in part payment for construction and Equipment as aforesaid as they respectively mature and according to the terms and effects thereof and of the coupons thereto attached and will save and keep harmless said party of the first part as against all such Bonds and any Mortgage or Deed of Trust Given to Secure the same said Bonds Being secured by a Mortgage or Trust Deed executed by the party of the Second part on all its railroad property and franchises. Dated on the first day of June A. D. 1880 in which the Central Trust Company of New York and James Cheney of Indiana are Trustees reference being had to said mortgage or Deed of trust for a full description of the terms conditions rate of Interest and Times when the Principle and Interest of said Bonds shall mature and the said party of the second part further agrees that when out of the earnings rents issues tolls and profits arising from the use and operation of said railroad it shall have paid or provided the funds necessary to pay all the Principle and Interest mentioned in the aforesaid Bonds issued and sold for the purposes herein mentioned and shall have also paid all costs and expenses of repairing maintaining and operating said Railroad and making all necessary

and useful replacements and improvements thereof if a surplus shall still remain in any year or years arising from such earnings rents Issues tolls or profits then at the end of each year during which such surplus shall be found to exist it will pay ten per cent of such surplus to the party of the first part for the Benefit of the Stock holders of said last named party.

And the party of the first part agrees that when the party of the second part shall have fully paid the principle and interest specified in the aforesaid bonds of the party of the second party to the extent and amount of the par value of so many of said bonds as are issued in part payment for construction and Equipment of the Railroad of the party of the first part as aforesaid then the aggregate of the sums so paid together with the obligation of the party of the second part to maintain and operate said Railroad perpetually in manner aforesaid shall subject to any limitation or qualification herein expressed constitute full payment and discharge of all rent under this case from thenceforth.

And the said part of the second part further agrees that a failure of the party of the second to keep and perform any of the matters and things to be by it kept and performed under the provisions hereof shall not work a forfeiture of this case but shall subject the party of the second part to any appropriate action for the loss and damage that may arise from such breach.

In Testimony Whereof the parties hereto have caused this instrument to be executed by their repective Presidents and to be attested by their respective corporate seals affixed thereto by their respective Secretaries this sixth day of March A. D. 1882.

DES MOINES AND ST. LOUIS RAILROAD COMPANY.

By J. S. Clarkson, President.

Attest: F. M. Hubbell,
Secretary.

(Seal D. M. & ST. L. R. R. CO.)

(Seal) THE WABASH ST. LOUIS AND PACIFIC RAILWAY COMPANY.

By A. L. Hopkins, 1 Vice President.

Attest: James F. How,
Secretary.

(Seal W. ST. L. & P. R. CO.)

State of Iowa,
County of Polk—ss.

Be it Remembered that on this Sixth day of March 1882 personally come before me the undersigned a Notary Public within and for the county aforesaid J. S. Clarkson who being by me duly sworn doth depose and says that he is the president of the Des Moines and St. Louis Railroad company lessor in the foregoing instrument that the name of said company is signed to said Instrument by him as President of said Company by virtue of the Order of the Board of Directors that the seal of the company attached thereto is the proper and Genuine seal of said company and is affixed thereto by Order of said Board of Directors. And the said J. S. Clarkson as President acknowledged the foregoing instrument to be the act and Deed of the Des Moines and St. Louis Railroad Company for the uses and purposes therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my notarial Seal of Office this 6th day of March 1882.

(Notarial Seal)

FRANK H. PERRY,
Notary Public Polk Co. Iowa.

State of Iowa,
County of Polk—ss.

Be it Remembered that on this sixth day of March 1882 personally came before me the undersigned a Notary Public within and for the County aforesaid F. M. Hubbell who being by me duly sworn doth depose and say that he is the Secretary of the Des Moines and St. Louis Railroad Company lessor in the foregoing instrument that he countersigned the said Instrument and affixed the seal of said Company thereto by order of the Board of Directors thereof.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 6th day of March 1882.

(Notarial Seal)

FRANK H. PERRY,
Notary Public Polk Co. Iowa.

State of Missouri,
City of St. Louis—ss.

Be it Remembered that on this 1st day of May 1882 personally came before me the undersigned a Notary Public within and for the County aforesaid A. L. Hopkins who

being by me duly sworn doth depose and say that he is the First Vice President of The Wabash St. Louis and Pacific Railway Company lessee in the foregoing instrument that the name of said Company is signed to said Instrument by him as President of said Company by virtue of the order of the Board of directors that the seal of the Company attached thereto is the proper and Genuine seal of said Company and is affixed thereto by order of said Board of Directors. And the A. L. Hopkins as first Vice President acknowledged the foregoing instrument to be the act and Deed of The Wabash St. Louis and Pacific Railway Company for the uses and purposes therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 1st day of May 1882, my commission expires June 29th, 1885.

(Notarial Seal)

GEO. S. GROVER,
Notary Public City of St. Louis, State of Missouri.

State of Missouri,
City of St. Louis—ss.

Be it Remembered that on this 1st day of May 1882 personally came before me the undersigned a Notary Public within and for the County aforesaid, James F. How who being by me duly sworn doth depose and say that he is the Secretary of the Wabash St. Louis and Pacific Railway company lessee in the foregoing Instrument that he countersigned the said Instrument and affixed the seal of said company thereto by order of the Board of Directors thereof.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 1st day of May 1882, my commission expires June 29th 1885.

(Notarial Seal)

GEO. S. GROVER.
Notary Public City of St. Louis, State of Missouri.

Filed May 6th 1882 at 11 50 A. M.

J. J. PAYNE,
Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original

record in my office, and of the whole thereof, and recorded in book 104, page 463.

Dated at Des Moines, Iowa, in said County, this the sixth day of April, A. D. 1910.

MRS. FRANK W. DODSON,
Recorder.

Plffs. Exhibit No. 41.

Consent of Des Moines & St. Louis Railroad Co. to Cancelation of Lease Made to Wabash, St. Louis and Pacific Ry. Co. March 1st, 1882.

Office of the Des Moines & St. Louis Railroad Co.
Des Moines, Iowa.

The following among other proceedings were had by the Board of Directors of the Des Moines & St. Louis Railroad Company at the office of the company in Des Moines, Iowa on the 3rd day of August 1886, to-wit:

"Wells H. Blodgett offered the following preamble and resolution and moved their adoption, to-wit:

Whereas on or about the first day of March, 1882, a certain contract in writing was entered into between the Des Moines & St. Louis Railroad Company of the first part and Wabash St. Louis and Pacific Railway Company of the second part, whereby this company, (the Des Moines & St. Louis Railroad Company) leased and demised unto said Wabash St. Louis & Pacific Railway Company in perpetuity, all its right of way and railroad extending from Des Moines in the State of Iowa to Albia in said State, running through the counties of Polk, Marion, and Monroe, in said state, together with all its real estate, embankments, bridges, turnouts, side tracks, buildings, and structures, water tanks, and fixtures, shops, engines and other houses, depots, turntables, engines, cars, machinery, tools, and all its railroad property acquired, and to be acquired and everything appurtenant to said railroad or used in connection therewith, together with all rents issues and profits, tolls and earnings, credits and choses in action accruing to this, the Des Moines & St. Louis Railroad Company, from said railroad as owner and lessor thereof; and

Whereas in consideration of the premises, the said Wabash St. Louis & Pacific Railway Company, in and by said con-

tract among other things agreed that it would provide and place upon said line of railroad, sufficient rolling stock and other equipment to do all the business of said railroad in a reasonable manner; that it would pay all taxes and assessments that might be lawfully imposed on said railroad and property or any part thereof during the continuance of said lease, that it the said lessee would at all times keep said railroad in good condition and repair, making all necessary renewals, replacements, and improvements; that it would perpetually use and operate said railroad in a skillful and effective manner, and that it would well and truly pay or cause to be paid the principal and interest of all the bonds secured by its general mortgage, that might be executed and delivered to this the Des Moines & St. Louis Railroad Company, to be used in part payment for construction and equipment, and

Whereas it was and is provided in said contract of lease that a failure of said Wabash St. Louis & Pacific Railway Company, to keep and perform the agreements, matters and things, to be kept and performed by it, should not work a forfeiture of said lease, but only subject said Wabash St. Louis & Pacific Railway Company to an action for such loss, or damage as might arise from such failure or breach, and

Whereas said Wabash St. Louis & Pacific Railway Company has become hopelessly insolvent, and has for a period for more than two years wholly failed to keep and perform all of the aforesaid covenants and agreements, to be kept and performed on its part, and

Whereas the leasehold interest of the Wabash St. Louis & Pacific Railway Company in said Des Moines & St. Louis Railroad, was offered for sale at public auction under a decree entered in the Circuit Court of the United States for the Eastern District of Missouri in a certain cause entitled, "The Central Trust Company of New York and others, against the Wabash St. Louis & Pacific Railway Company and others," and

Whereas at said sale there were no bidders for said interest, and for that reason the same was not sold; and

Whereas in a certain order or decree of said Court entered in said cause on or about June 15th, 1886, confirming the sale of the other railroads, and property therein described it was and is among other things provided, that before said sale of said other properties, shall stand as finally confirmed, the purchaser shall among other things procure the consent of

the Des Moines & St. Louis Railroad Company, to the surrender and cancelation of its aforesaid lease, to said Wabash St. Louis & Pacific Railway Company.

Now therefore in consideration of the premises and especially in consideration of the insolvency of said Wabash St. Louis & Pacific Railway Company, and the aforesaid order of said Court, be it

Resolved, That the Des Moines & St. Louis Railroad Company will, and it does hereby consent to the surrender and cancelation of the lease executed by it as aforesaid to said Wabash St. Louis & Pacific Railway Company on or about March 1st 1882.

Resolved that the President and Secretary, be and they are hereby authorized and instructed to cause a copy of the foregoing preamble, and resolution duly signed and certified under the seal of the corporation to be filed in said Circuit Court of the United States, for the Eastern District of Missouri in said cause, entitled, "The Central Trust Company of New York, and others against the Wabash St. Louis & Pacific Railway Company, and others."

Mr. How seconded the motion of Mr. Blodgett, and the motion being put by the President, all the members present to-wit: Messrs. Clarkson, Polk, Hubbell, How, and Blodgett voted in favor of the adoption of the preamble, and resolutions, and no votes were cast against them,"

State of Iowa,
Polk County—ss.

We, J. S. Clarkson President, and F. M. Hubbell, secretary of the Des Moines & St. Louis Railroad Company do hereby certify that the above and foregoing pages contain a full true and perfect copy of the preamble and resolutions offered at a meeting of the Board of Directors of said Railroad Company, held at the office of the company in Des Moines Iowa, August 3rd, 1886, with the action had thereon by the Board as the same now appears of record, in the "Minute Book" of said company now in possession of the Secretary of said company.

Witness our hands as President and Secretary of said company attested with the seal thereof this 4th day of August 1886.

J. S. CLARKSON, President.
(Seal) F. M. HUBBELL, Secy.

Plffs. Exhibit No. 42.

Proceedings had at Stockholders Meeting Des Moines and St. Louis Railroad Co. authorizing Conveyance of the Railroad to Wabash Railroad Co.

Des Moines, Ia., Feb. 3rd, 1899.

The stockholders of the Des Moines and St. Louis Railroad Company, met this day pursuant to adjournment at the Secretary's office in Des Moines, Iowa.

There were represented, 20,000 shares of stock being all the shares of the corporation, as follows, viz:

The following shares were represented by A. B. Cummins by writing proxies, signed by the following stockholders, viz:

O. D. Ashley .....1 share.
O. D. Ashley, Sec. Wabash Purchasing Com. 1999 1 shares.
Thomas H. Hubbard .....1 share.
C. J. Lawrence .....1 share.
Henry McHarg .....1 share.
J. C. Otteson .....1 share.
Edgar T. Welles .....1 share.

The following shares were represented by B. C. Winston, by written proxies signed by the following stockholders, viz:

Joseph Ramsey, Jr.....1 share.
Wells H. Blodgett .....1 share.
F. M. Hubbell, was represented by written proxy to
H. D. Thompson .....1 share.

To al.....20,000 shares.

The meeting having been ca' to order on motion, Mr. A. B. Cummins was elected chairman of the meeting and B. C. Winston, Sec. The minutes of the stockholders' meeting of January 25th, 1897, were read and approved.

On motion of Mr. H. D. Thompson the meeting proceeded to the election of a Board of Directors for the ensuing year, and upon the ballot being cast, it appeared that 20,000 shares of stock had been cast in favor of

Thomas H. Hubbard,
Edgar T. Welles,
O. D. Ashley,
J. C. Otteson,
C. J. Lawrence,
H. K. McHarg,
W. H. Blodgett,
Joseph Ramsey, Jr.,
F. M. Hubbell,

and they were declared unanimously elected directors for the ensuing year.

On a motion of Mr. B. C. Winston the following resolution was submitted to the meeting for its consideration, to-wit:

"Whereas the Wabash Railroad Company is the legal or equitable owner of all the capital stock of this corporation, and

Whereas, It is considered to be for the best interests of this Company and its stockholders that its road and property should be owned and controlled by said Wabashh Railroad Company a consolidated corporation, existing under the laws of the states of Missouri, Illinois, Indiana, Ohio and Michigan:

Now, Therefore, in consideration of the premises, it is by the stockholders of the Company:

Resolved: That the Board of Directors, and President and Secretary or other proper officers of this Company, be and they are hereby authorized and empowered to execute in the name and behalf of this Company, and under its corporate seal, a deed or deeds of conveyance for such consideration, and in such form as they may approve, or may be advised are appropriate and necessary to vest in and convey to said Wabash Railroad Company, all the railroad right of way, real estate, franchises and other property, real and personal, of every kind and wherever situated, that now does or may hereafter belong to the Des Moines and St. Louis Railroad Company, or in which it now has or may hereafter have any title, interest or estate."

Said resolution having been duly considered was on motion of Mr. Winston adopted by the stockholders represented by proxy voting unanimously in favor thereof.

There being no other business before the meeting, it adjourned, subject to the call of the President upon five days notice to each stockholder.

B. C. WINSTON,
Secretary.

Plffs. Exhibit No. 43.

Proceedings had at Meeting of Directors Des Moines and St. Louis Railroad Company authorizing Conveyance of the Railroad to Wabash Railroad Co.

Meeting
of the
Board of Directors.

New York, March 16, 1899.

A special meeting of the Directors of the Des Moines and St. Louis Railroad Company, was held this day at the office of the Wabash Railroad Company, No. 195 Broadway, New York, pursuant to call setting forth the object of the meeting.

Present: Messrs. O. D. Ashley, Edgar T. Welles, Cyrus J. Lawrence, Thomas H. Hubbard, and J. C. Otteson.

Upon motion, duly seconded, Resolved, that the present officers viz:

O. D. Ashley, President
F. M. Hubbell, Secretary;
J. C. Otteson, Assistant Secretary, and
F. L. O'Leary, Treasurer

be, and they hereby are, re-elected to the respective offices for the ensuing year and until their successors are chosen.

The minutes of the Directors meeting held February 7, 1897, were read and approved.

Upon Motion, duly seconded, Resolved, That the work "stockholders" in the first line of the resolution passed by the Board of Directors of the Des Moines and St. Louis Railroad Company on April 8, 1890, and the word "stockholders" in the eighth line of said resolution, recorded on page 151 of these Records, be stricken out and the word "Directors" be substituted therefor in each case.

Upon Motion, duly seconded, the following preamble and resolution were adopted:

Whereas, On or about the 8th day of April, 1890, the Board of Directors adopted resolutions authorizing the proper officers of the Company to convey all its railroad and property to the Wabash Purchasing Committee; and,

Whereas, No conveyance has ever been made to said Committee in pursuance of the authority in said resolution contained.

Now, Therefore, Resolved, That said resolution of April 8, 1890, be, and the same is hereby, for all purposes repealed and rescinded:

2nd. Resolved, That the President and Assistant Secretary be, and they are hereby authorized to execute in the name of the Company and under its corporate seal a deed conveying all the railroad, franchises, real estate, and other real and personal property of the Company, wheresoever situated to the Wabash Railroad Company. And such deed may be, in form, substantially as follows:

(Here follows Copy of Deed as Executed)

Adjourned on Motion.

J. C. OTTESON,
Assistant Secretary.

Plffs. Exhibit No. 44.

Deed of Des Moines and St. Louis Railroad Co. to Wabash Railroad Co.

This Indenture made and entered into this first day of January, A. D. One thousand eight hundred and ninety-nine between The Des Moines & St. Louis Railroad Company, a corporation of the State of Iowa, of the first part, and The Wabash Railroad Company, a consolidated railway corporation, existing under the laws of the States of Missouri, Illinois, Indiana, Ohio and Michigan of the second part,

Witnesseth: That Whereas, the Des Moines & St. Louis Railroad Company owns a line of railroad in the State of Iowa extending from Des Moines in said State through the Counties of Polk, Marion and Monroe to the town or city of Albia in said Monroe County, where its said line of road connects with the tracks of the Wabash Railroad; and,

Whereas, The Wabash Railroad Company owns and operates a line of railroad extending from St. Louis in the State of Missouri by way of Moberly and Glenwood Junction in said state, to Moulton in the County of Appanoose in the State of Iowa, and from thence to Ottumwa in the state last aforesaid; and

Whereas, the Wabash Railroad Company is engaged in the construction of a line of railroad from Moulton aforesaid, to the town or city of Albia in said County of Monroe, where its said line connects with the road and tracks of what is known as the Des Moines & St. Louis Railroad; and

Whereas, the stockholders of the Des Moines & St. Louis Railroad Company have, by their unanimous vote, authorized and directed the proper officers of said company to sell, assign and set over unto said Wabash Railroad Company all its railroad, right of way, rolling stock, leasehold interests and other property.

Now Therefore, Know All Men By These Presents, that for and in consideration of the premises, and of the sum of One Dollar paid to the Des Moines & St. Louis Railroad Company, the receipt whereof is hereby acknowledged, the Des Moines & St. Louis Railroad Company has granted, bargained, sold, assigned and set over, and by these presents it does grant, bar-

gain, sell, assign and set over unto the Wabash Railroad Company, its successors and assigns forever, all of its said line of railroad and right of way as the same now is, or may be hereafter constructed, or acquired in said State of Iowa, commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the Counties of Polk, Marion and Monroe to the town or city of Albia in Monroe County, a distance of about sixty-seven miles, together with all the real estate and embankments, bridges, turn-outs, side-tracks, yards, structures water tanks, shops, engine houses, depots turntables, engines, cars and other rolling stock, machinery, tools, lots, lands, buildings, offices, furniture and all its rights, privileges and franchises and all other things, real and personal, now owned, or used, or that may be hereafter owned or used by the party of the first part in connection with the line of railroad above described and herein and hereby granted, and especially including all the rights and leasehold and other interests of the first party under a contract dated May 10th, 1889, between the Des Moines Union Railway Company of the first part and the Des Moines and St. Louis Railroad Company, the Des Moines and Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, of the second part.

To Have And To Hold all and singular the above granted and described property with all its appurtenances and the revenues, rents, issues and profits thereof, unto said Wabash Railroad Company, its successors and assigns, forever.

In Testimony Whereof the Des Moines & St. Louis Railroad Company has caused these presents to be signed in its name by its President and attested by its corporate seal the day and year first above written.

(Seal) DES MOINES & ST. LOUIS RAILROAD COMPANY.

By O. D. Ashley, President.

Attest:

J. C. Otteson,
Assistant Secretary.

State of New York,
County of New York—ss.

Be it remembered that on this 16th day of March A. D. 1899, before me, the undersigned, a Notary Public within and for the County and State of New York came O. D. Ashley, Presi-

dent of the Des Moines and St. Louis Railroad Company, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing as President of the said The Des Moines and St. Louis Railroad Company, and who acknowledged the same to be his voluntary act and deed as President of the said The Des Moines and St. Louis Railroad Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 16th day of March A. D. 1899.

(Seal)

H. L. UTTER,
Notary Public, Kings County,
Certificate filed in New York,
County.

State of New York,
County of New York—ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, Do Hereby Certify, That H. L. Utter, has filed in the Clerk's Office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument, duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary, and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Court and County, the 18th day of March 1899.

(Seal)

WILLIAM SOHMER,
Clerk.

State of New York,
County of New York—ss.

Be it remembered that on this 18th day of March A. D. 1899, before me, the undersigned, a Notary Public within and for the County and State of New York came O. D. Ashley, President of the Des Moines and St. Louis Railroad Company, who is personally known to me to be the identical person whose

name is affixed to the within and foregoing instrument of writing as President of the said The Des Moines and St. Louis Railroad Company, and who acknowledged the same to be his voluntary act and deed as President of the said The Des Moines and St. Louis Railroad Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 18th day of March A. D. 1899.

B. R. HIGGINS,
Notary Public,
Kings County.

State of New York,
County of New York—ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, Do Hereby Certify, That B. R. Higgins, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the County of New York, dwelling in the said County, commissioned and sworn, and duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Court and County, the 18th day of March 1899.

(Seal)

WILLIAM SOHMER.
Clerk.

Plffs. Exhibit No. 45.

Deed of Wabash St. Louis & Pacific Ry. Co. to Wabash Purchasing Committee.

This Indenture, made this 25th day of April A. D. 1888, between the Wabash, St. Louis and Pacific Railway Company, party of the first part, and James F. Joy, Ossian D. Ashley, Edgar T. Welles and Thomas H. Hubbard, parties of the second part.

Witnesseth:

Whereas, on the first day of June 1880, the Wabash, St. Louis and Pacific Railway Company, by a certain indenture of mortgage or deed of trust, known as the General Mortgage, duly conveyed to the Central Trust Company of New York, and James Cheney, as Trustee, to secure the payment of an intended issue of bonds by said Railway Company named and described therein to the amount of fifty millions of dollars, the lines of railway and other property appurtenant thereto belonging to said Railway Company and hereinafter described and set forth; and

Whereas, subsequent to said first day of June, 1880, to-wit, on the first day of May, one thousand, eight hundred and eighty-three, the said Wabash, St. Louis and Pacific Railway Company entered into an agreement with the Mercantile Trust Company of New York, as party of the second part, and the St. Louis, Iron Mountain and Southern Railway Company as party of the third part, known as the collateral trust agreement; and in accordance with said agreement said first named Railway Company deposited with the said Mercantile Trust Company of New York, assignments, bills of sale and other evidences of title to certain described bonds, shares, real estate and other property particularly set forth in said agreement and also particularly described in the decrees and supplemental decrees hereinafter named, the same being to secure an intended issue by said Wabash, St. Louis & Pacific Railway Company of bonds to the amount of ten millions of dollars, known as collateral trust bonds; and

Whereas, subsequent to said first day of May, 1883, in an action duly pending in the Circuit Court of the United States for the Eastern District of Missouri, and ancillary actions thereto pending in the Circuit Courts of the United States for the Southern District of Illinois, for the District of Indiana, for the Northern District of Ohio, Western Division, for the Southern District of Iowa, Eastern Division, and for the Eastern District of Michigan, respectively, wherein the Central Trust Company of New York and James Cheney were complainants, and the Wabash, St. Louis and Pacific Railway Company, the Mercantile Trust Company of New York and others, were defendants, decrees and supplemental decrees of foreclosure and sale, of the property so as aforesaid conveyed to said Central Trust Company of New York and James Cheney, and also the property deposited with the Mercantile Trust Company of New York, were duly entered in said several Courts, as follows:

On the 6th day of January and 5th day of March 1886, in the United States Circuit Court for the Eastern District of Missouri; on the 8th day of January and 6th day of March 1886, in the United States Circuit Court for the Southern District of Illinois; on the 9th day of January and the 6th day of March, 1886, in the United States Circuit Court for the Southern District of Iowa, Eastern Division; on the 12th day of January and the 17th day of March, 1886, in the United States Circuit Court for the Northern District of Ohio, Western Division; and on the 12th day of January and the 8th day of March 1886, in the United States Circuit Court for the Eastern District of Michigan; and

Whereas, pursuant to said decrees and supplemental decrees one Edmund T. Allen, Commissioner to execute said decrees, did, in the City of St. Louis, State of Missouri, on the 26th day of April, 1886, duly offer for sale and did sell the property, franchises and appurtenances hereinafter described, to James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, constituting a purchasing committee under an agreement bearing date July 15, 1885, made between the holders of all the collateral trust bonds and a majority of the holders of the General Mortgage bonds; and

Whereas, said several Circuit Courts of the United States did thereafter, on and subsequently to the 15th day of June, 1886, duly confirm the said sale and entered orders to that effect; and in conformity to said orders said Edmund T. Allen did, as Commissioner aforesaid, duly make, execute and deliver his deed to said purchasing committee; and

Whereas, the said decrees and supplemental decrees did further provide as follows, that upon the compliance by the purchaser at said sale with the conditions thereof, then the Commissioner should execute to such purchaser deeds of conveyance of the property sold by him under the decree, and thereupon the complainants herein, to-wit, the Central Trust Company of New York and James Cheney, as trustees of said General Mortgage, and also the Mercantile Trust Company, defendant herein, as trustee of the Collateral Trust Mortgage, and the mortgagor, the Wabash, St. Louis and Pacific Railway Company, shall severally and in due form convey to said purchasers all their interest as trustees and as mortgagor in and to the property sold by said Commissioner to said purchasers or any of them;

Whereas, the said Circuit Court of the United States did, on the 30th day of March, also enter an order in the said cause ordering the Mercantile Trust Company to deliver to the said Purchasing Committee all the securities in its possession and

which had been purchased by them under said foreclosure decree, all of said securities being included in said collateral trust mortgage and hereinafter described.

Now, Therefore, In consideration of the premises, and in conformity to the provisions of said decrees and supplemental decrees, and in further consideration of one dollar in hand paid, the receipt whereof is hereby acknowledged, the Wabash, St. Louis and Pacific Railway Company has granted, bargained, sold and conveyed, and does by these presents, grant, bargain, sell and convey unto James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, the survivors or survivor of them, and their or his successors or assigns, as a purchasing committee under the aforesaid agreement of July 15, 1885, and in trust for the parties interested therein, all its right, title and interest as mortgagor in said general mortgage and collateral trust agreement in and to the following property, to-wit:

All the right of way and railroad of the said The Wabash, St. Louis and Pacific Railway Company extending from the City of Toledo, in the State of Ohio, through the State of Indiana, and thence into the State of Illinois to Meredosia, with branch to Naples and East Hannibal, and from Meredosia to Camp Point, in the State of Illinois, with branch from Clayton to the Mississippi River at Hamilton, and with branch from Decatur to East St. Louis; and also extending from St. Louis in the State of Missouri to Kansas City, Missouri, with the extension from Moberly, Missouri, to the State line of Iowa, and a branch from Salisbury, Missouri, to Glasgow, Missouri; that portion of the Clarinda and St. Louis Railway in the State of Missouri; the Peoria, Pekin and Jacksonville, Railroad, extending from Pekin, Illinois, to Jacksonville, Illinois; the Springfield and Northwestern Railroad extending from Springfield, Illinois, to Havana, Illinois; the Braidwood Branch extending from near Braidwood, Illinois, to the Chicago Branch of the Wabash Railroad; the Madison County Railroad, extending from Edwardsville, Illinois, to its junction with the Chicago and Alton Railroad; the Detroit, Butler and St. Louis Railway, extending from Butler, in the State of Indiana, to Detroit, in the State of Michigan; the Chicago and Paducah Railway, extending from Effingham and Altamont to Streator, in the State of Illinois; the Chicago and Strawn Railway, extending from Strawn to Chicago, in the State of Illinois; the Council Bluffs and St. Louis Railroad, extending from Pattonsburg, Missouri, to the Iowa State line; together with all the embankments, bridges, turnouts, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables, engines, cars, machinery, tools, ferry

and other boats, depot grounds, real estate pertaining thereto or belonging to said Company at any of the terminals thereof, franchises, rights, interests and property and every other thing appurtenant to said railroad or used in connection therewith, together with all rents, issues, profits, credits and choses in action accruing from said railroad and appurtenances not required to be used by the Receivers according to the terms of the decrees heretofore entered in this cause; and also the real estate taken in the name of James F. How, as trustee for said company, in Marion County, Iowa, in Chicago, Illinois, St. Joseph, Missouri, and St. Louis, Missouri; the right of use to the bridge over the Missouri River at Kansas City, Missouri; the right to use certain tracks and terminal facilities in Cook County, Illinois, and in Chicago, Illinois; the right to use certain tracks and terminal facilities owned by the Peoria and Pekin Union Railway Company in Illinois; the right to use certain tracks and depot facilities in the Union Depot in Kansas City, Missouri; the right to use certain tracks and depot facilities in the Union Depot at Hannibal, Missouri; the right to use certain tracks and depot facilities in the Union Depot at St. Joseph, Missouri; the right to use certain tracks and depot facilities in the Union Depot at Detroit, Michigan; the right to use certain tracks extending from Clayton to Quincy, Illinois, and certain depot and station houses in said last named city; and interest in the elevator company at Council Bluffs, Iowa; the right to use and buy 300 coal cars acquired from the National Rolling Stock Company, November 23, 1883; certain real estate with improvements thereon and terminal privileges in Burlington, Iowa, being lots 13, 13a, 14, 15, 15a, 16, 17, 18, 19, 20, 21, 22, 23, 24, in the original plat of the city of Burlington, Iowa; and also the leasehold interests of The Wabash, St. Louis and Pacific Railway Company in the following railways and properties, to-wit, Boone County and Booneville, Railway extending from Centralia to Columbia, in the State of Missouri; St. Louis, Ottumwa and Cedar Rapids Railway, extending from Coatesville, on the State line between Missouri and Iowa, to Ottumwa, in the State of Iowa; Brunswick and Chillicothe Railway, extending from Brunswick to Chillicothe, in the State of Missouri; St. Louis, Council Bluffs and Omaha Railway, extending from Chillicothe to Elm Flats, in the State of Missouri; Humeston and Shenandoah Railroad, extending from Humeston to Shenandoah in the State of Iowa; bridge over the Mississippi River at St. Louis, with tunnel and terminal rights in said city; bridge over the Mississippi River at Hannibal, Missouri; also all the property, rights, interests and choses in action acquired by said Wabash Railroad Company after June 1st, 1880, whether hereinbefore described or not, excepting the rail-

road and property of the Havana, Rantoul and Eastern Railroad Company; also certain lands and lots adjacent to the lines of railroad aforesaid in Missouri, Illinois, Ohio, Indiana, Iowa, and particularly described in the report of the Special Master, bearing date December 29, 1885, and filed in this cause, the title of which lands and lots has been acquired by the Receivers in said cause in the name of James F. How, trustee.

Also, all the following described property, the same being the property described in the collateral trust mortgage hereinbefore named, to-wit: 15 locomotives manufactured by the Rhode Island Locomotive Works; 13 passenger cars manufactured by Barney, Smith & Co., 5 baggage cars manufactured by Barney, Smith & Co., 1,210 freight cars manufactured by Barney, Smith & Co.; also all the right, title and interest of the Wabash, St. Louis and Pacific Railway Company in and to certain rolling stock mentioned and described in certain agreements between the Wabash, St. Louis and Pacific Railway Company and the New York and Pacific Car Trust Association; also steamers "Russell Sage," "John C. Gault," and "A. L. Hopkins;" also all the right, title and interest of the said Wabash, St. Louis & Pacific Railway Company in and to $46,000 Union Bridge Company bonds; $1,342,000 Humeston and Shenandoah Railroad Company first mortgage 7 per cent. bonds; $1,000,000 Wabash, St. Louis and Pacific Railway Company general mortgage 6 per cent. bonds; $400,000 Wabash Railway Company mortgage 7 per cent. bonds of 1879; $199,000 Wabash, St. Louis and Pacific Railway Company—Detroit division—6 per cent. bonds; $248,000 Quincy, Missouri and Pacific Railroad Company income bonds; $1,711,000 Toledo Peoria and Western Railroad Company first preferred income bonds; $728,000 Toledo, Peoria and Western Railroad Company second preferred income bonds; 13,404 shares Toledo, Peoria and Western Railroad Company; 10 shares St. Joseph Union Depot; 210 shares Union Depot Company of Kansas City, Missouri; 10 shares Hannibal Union Depot Company; 5,037 shares Des Moines Northwestern Railway Company; 2,214 shares Havana, Rantoul and Eastern Railroad Company; 9,996 shares Des Moines and St. Louis Railroad Company; 20,127 shares Humeston and Shenandoah Railroad Company; 21,534 96/100 shares Missouri, Iowa and Nebraska Railway Company; 9,000 shares St. Louis, Jerseyville and Springfield Railroad Company; 2,030 shares Clarinda and St. Louis Railroad Company; 14,246 shares Quincy, Missouri and Pacific Railroad Company; 5,380 shares St. Louis, Ottumwa and Cedar Rapids Railway Company; 11,089 shares Council Bluffs and St. Louis Railway Company; 7,281 shares St. Louis, Council Bluffs and Omaha Railroad Company; 4,232 shares Bruns-

wick and Chillicothe Railroad Company; 2,687 shares Centerville, Moravia and Albia Railroad Company; 750 shares Attica, Covington and Southern Railway Company; 1,665 shares American Refrigerator Transit Company of Illinois; 60 shares Union Bridge Company of Toledo, Ohio; 17 shares St. Louis County Railroad Company; 4,994 shares Peoria and Pekin Union Railway Company; 9,999 shares Chicago and Western Indiana Railroad Company; 12,500 shares St. Louis Bridge Company, common stock; and 1,160 shares St. Louis and Mississippi Valley Transportation Company.

To Have And To Hold the same, with all the appurtenances and every part thereof, unto said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles as a purchasing committee as aforesaid, their survivors or survivor and their or his successors or assigns. Subject, however, to all the terms and conditions of said orders of said several Courts confirming said sale, as aforesaid, and to all the terms, provisions, conditions, qualifications and restrictions of said decrees, in pursuance of which this deed is made as aforesaid.

In Witness Whereof, the said The Wabash St. Louis and Pacific Railway Company has caused these presents to be signed in its corporate name by its Vice President, and attested by its secretary, with the corporate seal of said company, as authorized and directed by its Board of Directors, the day and year above written.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,
By A. L. Hopkins, Vice-President.

Attest:
W. M. Beach,
Assistant Secretary.

State of New York,
County of New York—ss.

On this 26th day of April, 1888, before me personally came Amos L. Hopkins, to me known to be the Vice President of The Wabash, St. Louis and Pacific Railway Company described in and which executed the foregoing instrument, who being by me duly sworn, says that he resides in the City of New York; that he is the Vice President of The Wabash, St. Louis and Pacific Railway Company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal of said company, and was so affixed by authority of the Board of Trustees of said company, and that he signed his name thereto by like authority as Vice President of said Company:

In Witness Whereof, I have hereunto signed my name, and affixed my notarial seal at the City, County and State of New York, this 26th day of April A. D. 1888.

WILLIAM J. HARDING,
Notary Public, Kings Co., New York.

Certificate filed in New York County.

Endorsements showing recording in various counties.

Plffs. Exhibit No. 46.

Deed of General Assignment from Wabash Purchasing Committee to The Wabash Railroad Co.

This Indenture made and entered into this 18th day of August A. D. 1898, Witnesseth:

That Whereas, O. D. Ashley, Thomas H. Hubbard of New York, and Edgar T. Welles of Hartford, Connecticut, (with James F. Joy of Detroit, now deceased) were constituted a Purchasing Committee under a certain agreement entered into by them with the General Mortgage and Collateral Trust Bondholders of the Wabash, St. Louis & Pacific Railway Company, dated July 15th, 1885, and also under a certain other agreement entered into by them November 21st, 1887, with Henry K. McHarg, John T. Terry, Cyrus J. Lawrence and T. B. Atkins (called therein the Bondholders Committee), the Central Trust Company of New York and the Wabash Western Railway Company, called therein the Railway Company; and

Whereas, By the terms of said agreements it became their duty to purchase and acquire, at certain mortgage foreclosure sales and otherwise, the railroads, property and assets of the Wabash, St. Louis & Pacific Railway Company; and

Whereas, In pursuance of said agreements the undersigned, together with James F. Joy, deceased, did as such committee, on or about the 26th day of April, 1886, under a decree of foreclosure entered in the Circuit Court of the United States for the Eastern District of Missouri, on or about the 6th day of January, 1886, in a certain cause, entitled "The Central Trust Company of New York and James Cheney, complainants, against the Wabash, St. Louis and Pacific Railway Company and others, defendants, consolidated cause," purchase certain lines of railroad, real-estate, and personal property, all of which are fully described in two certain deeds of conveyance, executed by Edmund T. Allen as Special Commissioner, to the undersigned and James F. Joy, deceased, as such committee, and to the survivor or survivors of them and their or his suc-

cessors or assigns, as trustees, under the aforesaid agreement of July 15th, 1885, both of which deeds bear date on or about October 15th, 1886, and to which deeds reference is hereby made for a full and accurate description of the property therein and thereby conveyed; and

Whereas, The Central Trust Company of New York and James Cheney of Indiana, trustees in a certain mortgage dated June, 1st, 1880, known as the 'General Mortgage' of the Wabash, St. Louis & Pacific Railway Company, did, by their deed dated on or about March 9th, 1888, convey to the undersigned, as such Purchasing Committee, or the survivor or survivors of them, and their or his successors or assigns, as a Purchasing Committee, all their right, title and interest, as such trustees, in the property in their said deed described, and to which deed reference is hereby made for a full and accurate description of the property therein and thereby conveyed; and

Whereas, The Wabash, St. Louis & Pacific Railway Company did, by its deed dated on or about the 25th day of April, 1888, convey to the undersigned, as such Purchasing Committee, the survivor or survivors of them, and their or his successors or assigns, all its right title and interest as mortgagor in the property described in its said General Mortgage, and in what was known as its 'Collateral Trust Mortgage,' and also all the property, rights, interests and choses in action, acquired by said Wabash, St. Louis, & Pacific Railway Company after June 1st, 1880, whether the same was or was not therein particularly described; and

Whereas, In pursuance of said agreements the undersigned, (together with James F. Joy, deceased) did, as such Committee, on or about the 15th day of May, 1889, under a decree of foreclosure, bearing date the 23rd. day of March, 1889, and duly entered on the first day of April 1889, in the Circuit Court of the United States for the Southern District of Illinois, in a certain cause therein pending, entitled "James R. Jesup and Edward H. Dixon against the Wabash, St. Louis & Pacific Railway Company, Solon Humphreys and Thomas E. Tutt, as receivers of said Wabash, St. Louis & Pacific Railway Company, Solon Humphreys, the Farmers Loan & Trust Company, Alexander M. White, Henry H. Warden, John T. Terry, Alfred T. White, James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, Edgar T. Welles, The Central Trust Company of New York, as substituted trustees, The St. Louis, Iron Mountain & Southern Railway Company, The Missouri Pacific Railway Company, Daniel A. Lindley, The Central Trust Comany of New York, James Cheney, Jay Gould, A. Lawrence Hopkins, S. Fisher Johnson, Edward Popper, T. Harson Purdy, Edwin

Parsons, Maximilian Herschel, The Mercantile Trust Company, John McNulta, as receiver of the property formerly of the Wabash, St. Louis & Pacific Railway Company, lying east of the Mississippi River, James Compton, The Metropolitan National Bank, David G. Ligget and John N. A. Griswold, defendants (consolidated cause)," purchase certain lines of railroad, real-estate and personal property, all of which are fully described in a certain deed of conveyance executed to the undersigned and James F. Joy, deceased, as such committee, by Bluford Wilson and Augustus J. Ricks, which deed bears date on the 27th day of June, 1889, and to which deed reference is hereby made for a full and accurate description of the property therein and thereby conveyed; and

Whereas, In pursuance of said agreements the undersigned, together with James F. Joy, deceased, did, as such committee, on or about the 11th day of March, 1889, under a decree of foreclosure entered in the Circuit Court of the United States for the Southern District of Illinois on the 2nd, day of February, 1889, in a certain cause therein pending, entitled "Henry F. Spaulding and John T. Terry, complainants, against James F. Joy, et al., defendants, "purchase certain lines of railroad, real-estate and personal property, all of which are fully described in a certain deed of conveyance executed to the undersigned and James F. Joy, deceased, as such committee, bearing date on or about the 14th day of May, 1889, and to which deed reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased, did on or about the 30th day of September, 1887, convey to the Wabash Western Railway Company (a corporation organized under the laws of Missouri) certain of the railroads, real estate and properties purchased by them, as aforesaid, to which deed reference is hereby made for a full and accurate description of property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased, did on or about the 24th day of July, 1889, convey to the Wabash Eastern Railway Company of Illinois, (a corporation organized under the laws of Illinois) certain other of the railroads, real estate and properties purchased by them as aforesaid, to which deed reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased did on or about the 24th day of July, 1889, convey to the Wabash Eastern Railway Company of Indiana, (a corporation of the State of Indiana) certain other of the railroads, real estate and properties, purchased by them as aforesaid, to which deed

reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased, did on or about the 24th day of July, 1889, convey to the Toledo Western Railroad Company, (a corporation organized under the laws of Ohio) certain other of the railroads, real estate and properties purchased by them as aforesaid, to which deed reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased, did on or about the 13th day of March, 1889, convey to the Detroit State Line Wabash Railroad Company, (a corporation under the laws of Michigan) certain other of the railroads, real estate and properties purchased by them as aforesaid, to which deed reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned now have in their hands and standing in their names, as such Purchasing Committee, real estate, property and assets, all of which are fully described in the schedule hereto attached and made a part hereof, marked "Schedule A;" and

Whereas, It appears by said schedule and by the audited accounts of said Purchasing Committee, which have been stated and accepted and approved by said Wabash Railroad Company, that so much of said property and assets as are described in the Sixth Article of said Agreement of November 21st, 1887, did not exceed the requirements of the pledge as expressed in said Article:

Now Therefore, Know all Men by These Presents, That the undersigned O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, the surviving members of said Purchasing Committee, have, in consideration of the premises and of the sum of One Dollar to them in hand paid by the Wabash Railroad Company, the receipt whereof is hereby acknowledged, and in further consideration of being indemnified by said Company against all claims that exist or may at any time be asserted, against said purchasing Committee or any member thereof, and of being discharged by said Wabash Railroad Company from the duties of their trust in respect to the property hereby conveyed, granted, bargained, sold, conveyed, assigned and set over, and by these presents they do grant, bargain, sell, convey, assign and set over unto the Wabash Railroad Company, its successors and assigns forever, all the real-estate, property and assets mentioned and described in said "Schedule A" and all the railroads, real-estate, property and assets that have come to them, or in which they acquired any right, title, interest, or estate

by, through or under any of the aforesaid purchases, deeds and conveyances to them made, as such Committee, now remaining in their hands or standing in their names, whether the same are or are not described in said "Schedule A."

It being the purpose and intention of the grantors and assignors herein to transfer to said Wabash Railroad Company, its successors and assigns, all the railroads, real estate, property and assets which have come to, or are vested in them, as such Purchasing Committee from any and all sources whatsoever, and which they, as such Committee, have not in the execution of their said trusts heretofore sold or assigned to other parties. It is understood, however, that the grantors herein do not, either personally, severally or as such Purchasing Committee, undertake to warrant or defend unto said Wabash Railroad Company, or its assigns, the title to any of the railroads, real estate, property or assets hereby conveyed, against the claims of any person or persons whomsoever, and it is hereby declared and understood that the only purpose of this conveyance is to vest in said Wabash Railroad Company the same title and estate in said property and assets that have come to and are vested in the undersigned as such Purchasing Committee under said agreements of July 15th, 1885, and November 21st, 1887.

And in consideration of said conveyance, and of the accounts stated with said Committee as aforesaid, the said Wabash Railroad Company has agreed and does hereby agree to assume and does assume, the payment of every debt, claim and liability of every kind whatsoever now existing, or that may hereafter be adjudged against said Committee or any member thereof, on account of any and every act, contract or thing done, made or suffered by them or either of them, as such Committee or as a member thereof, and said Company agrees to accept and does accept the said property subject to the trusts, if any, existing in respect to the same in the possession of said grantors, and does hereby indemnify and agree to idemnify, and hold harmless the said Committee and each member thereof, their and each of their heirs, executors, administrators and assigns from and against all and every claim, or claims, that may at any time exist or be asserted against them, or either of them, in connection with or on account of any of the matters hereinbefore mentioned, or in connection with or on account of this conveyance, and does hereby discharge said Committee and each member thereof from any further accounting in respect to any of said matters.

In Testimony Whereof, We have hereunto set our hands and seals the day and year first above written.

(Seal) O. D. ASHLEY,
(Seal) THOMAS H. HUBBARD,
(Seal) EDGAR T. WELLES.

State of New York,
County of New York,
City of New York—ss.

I, Joseph B. Braman, a Commissioner for the State of Illinois, in and for the State of New York, resident in the City, County and State of New York, do hereby certify that Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, whose names are subscribed to the foregoing instrument appeared before me on the 17th day of August A. D. 1899, in person, and acknowledged that they signed, sealed and delivered the said instrument, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 17, day of August A. D. 1899.

(Seal) JOSEPH B. BRAMAN,
Commissioner for the State of Illinois, in and for the State of New York, resident in the City, County and State of New York, 120 Broadway, New York.

State of New York,
County of New York,
City of New York—ss.

On this 17, day of August, A. D. 1899, before me personally appeared Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, to me known to be the persons named in and who executed the foregoing instrument and acknowledged to me that they executed the same as their voluntary act and deed.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

(Seal) JOSEPH B. BRAMAN,
Commissioner for the State of Iowa in and for the State of New York, resident in said City of New York Offices Equitable Bldg, 120 Broadway New York City., Branch & Residence 1274.

In pursuance of the terms of a resolution of its Board of Directors, adopted on or about August 16th, 1898, The Wabash Railroad Company, does, by its President and Secre-

tary, hereby execute the above and foregoing deed of conveyance in evidence of the acceptance thereof by said Company.

In Witness Whereof, Said President and Secretary have hereunto subscribed the name of said Wabash Railroad Company and affixed its corporate seal this 24th day of October, 1899.

THE WABASH RAILROAD COMPANY,
By O. D. Ashley,
President.

Attest:
J. C. Otteson,
Secretary.

State of New York,
County of New York,
City of New York—ss.

I, Joseph B. Braman, a commissioner for the State of Illinois, in and for the State of New York, and also a Commissioner for the State of Iowa, in and for the State of New York, resident in said City, County and State of New York, de hereby certify that O. D. Ashley the President of The Wabash Railroad Company and John C. Otteson, the Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary respectively, and to me such President and Secretary respectively appeared before me on the 24th day of October, A. D. 1899, in person, and acknowledged that they signed, sealed and delivered the said instrument as the free and voluntary act of the said corporation and as their own free and voluntary act as such President, and Secretary respectively, for the uses and purposes therein set forth.

Given under my hand and official seal this 24th day of October A. D. 1899.

(Seal) JOSEPH B. BRAMAN,
Commissioner for the State of Illinois in and for the State of New York, resident in the City, County and State of New York.

(Seal) JOSEPH B. BRAMAN,
Commissioner for the State of Iowa, in and for the State of New York, resident in the City, County and State of New York 120 Broadway, New York.

"Schedule 'A'".

List of Real estate and Personal Property now in the hands, or standing in the name of the Wabash Purchasing Committee.

Real Estate.

Lots in Burlington, Iowa, Des Moines County:

All of lots No. 13, 13a, 14, 15, 15a, 16, 17, 18, 19, 20, 21, 22, 23, and 24, in the City of Burlington, according to the original plat and survey of said City, subject to mortgage for $56,000.00.

Real Estate in Pekin, Illinois, Tazewell County:

Lots 8 and 9, Block 41, and lot 9 in Block 40, in the City of Pekin, with all the side tracks and improvements situated thereon, and also, all side tracks lying west of the track formerly known as the "Main track" of the Peoria, Pekin & Jacksonville R. R. Co., and situated between Elizabeth Street and Susanah Street in said City of Pekin, County of Tazewell, and State of Illinois.

Real Estate in Quincy, Illinois, Adams County:

Blocks Nos. 4, 5 and 6 of Henry Von Phul's Subdivision of the fractional Section No. 10, and that part of the northwest quarter of fractional section 11, all in Township 2, South, Range 9 West of 4th P. M., which lies West of Front Street in the City of Quincy, Adams County, Illinois, as laid off by said Von Phul on September 10, 1852.

Also

A tract of land situated in the City of Quincy, County of Adams and State of Illinois and being a part of the south ½ northwest ¼ section 35, Township 1 South, Range 9 West, more particularly described as follows: Beginning at a point 50 rods north of the southwest corner of the Northwest ¼ section 35, Town and Range aforesaid, thence running north along the west line of said quarter section 30 rods, thence east to the west line of Third Street in the City of Quincy, produced north, thence south along the west line of said Third Street produced, 30 rods, thence west to the place of beginning, containing about 10 acres more or less. Excepting out of the above described premises so much as has heretofore been conveyed to the Northern Cross Railroad for a right of way.

Real Estate in the City of Chicago.

All of lots 1, 2, 3, 4, 5 and 6, Block 9, in Springer & Fox's Addition to Chicago.

Also

All that part of lot 32 in the Assessor's Division of the N. W. ¼ and the W. ½ of the N. E. ¼ of section 32 T. 39 N. R. 14 East of the 3rd P. M., lying east of the center of the South Branch of the Chicago River.

Also

All of lot or block 13, in the Assessors Division of N. W. ¼ and West ½ of N. E. ¼ of Section 32, T. 39 N. R. 14 East of 3rd P. M.

In Brown's Addition to Chicago, situate in N. E. ¼ section 32, T. 39 R. 14 E. All of lots 8 41 and 42 in Block 3 of said Addition.

Lots 8, 9, 32, 39, 40, 41, 43, 44, 47, and 48 in Block 4 of said Addition.

Also

In Gallaghers Subdivision of S. ½ Block 9, in Canal Trustees Subdivision of Section 33, T. 39 N. R. 14 East of 3rd P. M.

All lots 19, 20, 27 and 28 in Block 2 of said subdivision.
All of lots 23, 24, 31, and 32, in Block 1 of said subdivision.

Also

In T. J. Foster's Subdivision of part of block 10 in Canal Trustees Subdivision of section 33, T. 39 N. R. 14 East of 3rd P. M.

Lots 1 and 37 in Block 1.
Lots 1 and 37 in Block 2.

Also

In Gano Subdivision of part of Block 10, in Canal Trustees subdivision of section 33, T. 39 N. R. 14 East of 3rd P. M.

Lots 46, 47 and 48 of said Block 10.

Also

In Assessors Division of Block 11 of Canal Trustees Subdivision of section 33, T. 39 N. R. 14 East of 3rd P. M. Lots 61, 62, 99, and 100, of said Block 11.

Personal Property and Assets.

750 Shares of Stock of the Attica, Covington & Southern R. R., estimated value.....$143,800.00
995 Shares of Stock of the Champaign & South Eastern R. R. estimated value.....$116,600.00
Balance due on sale of Peoria & Pekin Union Rail-

way Stock $100,000.00
Balance due on sale of the St. Louis, Jerseyville & Springfield, R. R. not considered available.. $ 80,000.00
4,000 shares Lake Erie Transportation Co. Stock..

Exhibit 47.

St. Louis Des Moines and Northern Railway Company
to
The Mercantile Trust Company.

Indenture of Mortgage.

This Indenture, made and entered into this first day of August A. D. 1881, by and between the Saint Louis, Des Moines and Northern Railway Company, party of the first part, and the Mercantile Trust Company, as Trustee, party of the second part,

Witnesseth:

Whereas, the Saint Louis, Des Moines and Northern RailwayCompany has been duly incorporated under the laws of the State of Iowa, by the adoption of articles of incorporation on the fourth day of April A. D. 1881, which articles have been duly recorded upon the records of Polk County, Iowa, and have also been duly filed for record in the office of the Secretary of State of the State of Iowa.

And Whereas, the Saint Louis, Des Moines and Northern Railway Company has undertaken the construction of a railroad from the City of Des Moines, in Polk County, Iowa, through the City of Boone, Iowa, to the northern line of said State, with such branches as from time to time may be determined upon, and is now engaged in the construction of a portion of said railroad, extending from the City of Des Moines through the Counties of Polk, Dallas, and Boone in said State, to the City of Boone, in the last named county, Iowa.

And, Whereas, for the purpose of aiding in such construction, the said Saint Louis, Des Moines and Northern Railway Company, propose to issue its bonds to the amount of eight thousand dollars per mile of its said road, all of which bonds shall be upon an equality with respect to the security for the payment thereof by these presents, notwithstanding the same be issued at different times, and each of which shall be authenticated by a certificate signed by the party of the second part. The said bonds shall be issued only upon the delivery to the party of the second part of a certificate or certificates sworn to by the President or the Chief Engineer of the party of the first part showing the number of miles of

railway completed and ready for operation. The said bonds and certificate and the interest coupons annexed to said bonds to be substantially in the following form, to-wit:

$1,000.00
No.

$1,000.00
No.

United States of America

Saint Louis, Des Moines and Northern Railway Company.

First Mortgage bond.

Thirty years after date, for value received, the Saint Louis Des Moines and Northern Railway Company, a corporation of the State of Iowa, promise to pay, in gold coin of the United States of America, of or equal to the present standard of value to the holder of this bond, or in case this bond be registered, then to the registered owner thereof, at its financial agency in the City of New York, one thousand dollars, and also interest thereon at the rate of six per centum per annum, payable semi-annually in like gold coin, on the first days of February and August in each year, on the presentation and surrender of the respective interest coupons hereto annexed, at the financial agency aforesaid.

This bond is one of a series of bonds, each of the denomination of one thousand dollars, the payment of the principle and interest of which is secured by an indenture or mortgage of even date herewith, conveying to the trustee hereinafter named, in trust for the holders of said bonds, the entire railway, franchises, property and income of said company, and is a first lien thereon. The issue and certification of bond by the trustee is limited to $8,000.00 per mile of completed road. If default shall be made in the payment of any semi-annual installments of interest on this bond or any bond of this series when the same shall become due and be demanded, and shall remain unpaid for six months after such demand, the principal of such bond shall become due and payable in the manner provided in the said mortgage. The said company and all of its property is liable to pay this bond, but stockholders of the company are not individually liable thereon or in respect thereto.

Said company hereby waives the benefit of any extension, stay or appraisement laws now existing or that may hereafter exist. This bond is to be valid only when authenticated by a certificate endorsed thereon, signed by the Mercantile Trust Company, trustee, to the effect that it is one of the bonds secured by the said mortgage and is issued in conformity with its provisions.

In Witness Whereof, the said company has caused its corporate name to be hereto signed by its President, and its corporate seal to be hereunto affixed, attested by its secretary, and the annexed interest coupons to be executed with the engraved signature of its Treasurer, this, the first day of August, A. D. 1881.

SAINT LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY.

By ..... President

Attest

..... Secretary.

Form of Coupons.

On the first day of ..... A. D. 18.., The Saint Louis, Des Moines and Northern Railway Company will pay the bearer, at its financial agency, in the City of New York, thirty dollars, in gold coin of the United States, being interest for six months on Bond No. .....

..... Treasurer.

Form of Trustee's Certificate.

This is to certify that this bond is one of the series of bonds, of one thousand dollars each, secured by and mentioned in the mortgage within referred to, and is issued in conformity with its provisions.

THE MERCANTILE TRUST COMPANY,

Trustee.

By ..... President.

Now, Therefore, the said Saint Louis, Des Moines and Northern Railway Company, to secure the payment of said bonds and interest to the extent only of so many of said bonds as may be actually issued in the manner hereinbefore provided by this indenture, doth grant, bargain, sell, convey and transfer unto the said The Mercantile Trust Company, as trustee, and to their successor in trust, except as hereinafter provided, all its railroad extending as aforesaid, from the western boundary line of the City of Des Moines, in Polk County, Iowa, by way of Clive in said County, through the counties of Polk, Dallas and Boone, in said State, to the City of Boone, in the last named county, but not including the branch or portion of railroad extending from said Clive to Waukee, in the county of Dallas, together with the real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, engines, cars, machinery, tools, and all its railroad

property acquired and to be acquired, and everything appurtenant thereto or used in connection therewith, together with all rents, issues, tolls, and earnings accruing to said party of the first part.

This Company having heretofore sold and conveyed to the Des Moines Northwestern Railway Company an undivided half of so much of its road, and property as lies between the City of Des Moines and the Town of Clive, the same is not intended to be included in or conveyed by this Mortgage.

To Have and to Hold the above granted and described property and appurtenances unto the party of the second part, its survivors and successors and assigns, upon the trusts, nevertheless, and for the purposes hereinafter expressed or indicated, namely.

First. In case the Saint Louis, Des Moines and Northern Railway Company shall fail to pay the said interest coupons subjoined to the bonds so executed by that company, or any or either of the said coupons, or any part of the same, at the time or times and in manner so as aforesaid provided for the payment thereof, and in case such default shall continue for the space of ninety days, the party of the second part or its successors may enter upon and take possession of all or any part of the above granted premises, and itself, and by its attorneys, agents and servants may take, hold, use and operate the same, making from time to time needful repairs and alterations, and may receive the tolls, rents, issues, profits and income derivable therefrom and after deducting and paying out of such gross receipts and income the expenses of operating and managing the premises and of such needfull repairs and alterations, and any taxes and other necessary and proper charges upon or pertaining to the premises, and executing the hereby created trust, the party of the second part and its successors in trust shall apply the surplus or net receipts and income so realized by it to the payment of the said interest coupons in the order in which the same shall have become or shall be due and payable.

Second. In case default shall so as aforesaid be made in the payment of the said interest coupons, or any or either thereof, and shall continue for the period of six month, then and in such case after entry as aforesaid, or without such entry, and upon the written request of the holders of at least one-half of the aggregate amount of the bonds so executed by the Saint Louis, Des Moines and Northern Railway Company and then outstanding and unpaid, the party of the second part and its successors in the trust may personally, or by its attorneys or agents, sell and dispose of all and singular the above granted

and described premises at public auction, in the City of Des Moines, having first given notice of the time and place of such sale by advertisement published in some newspaper of general circulation published in the City of New York, and also in one newspaper of general circulation published in the City of Des Moines, and also in one newspaper published in each other county in Iowa through or into which the said railroad extends, and which notice shall in each of said newspapers be so published at least once in each week for at least six weeks immediately preceding the sale.

And the party of the second, or its successors in the trust, may make, execute and deliver to the purchaser or purchasers at such sale a good and sufficient deed of the premises so sold to him or them, and the sale so made as aforesaid shall be a perpetual bar both in law and in equity against the party of the first part and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, through, or under it. But if by it deemed expedient the party of the second part or its successors in the trust may cause such sale to be made through or under judicial proceedings of foreclosure and sale to be instituted by it or its successors.

Third. From the proceeds of any sale which may so as aforesaid be made, after deducting the proper costs and expenses thereof, and of the proceedings and all other expenses, advances or liabilities which shall have been duly incured under these presents or the powers thereby created, or for taxes or other proper charges, and the reasonable compensation of the party of the second part or its successors in or for the execution of the hereby created trusts, the party of the second part or its successors shall apply the remainder of such proceeds to the payment of the principal of such of the said bonds executed by the Saint Louis, Des Moines and Northern Railway Company as having been duly certified and issued in the manner hereinbefore provided shall then be outstanding and unpaid, and of the interest which shall then have accrued upon such principal and shall be in arrear and unpaid. And if after so paying all sums payable for principle and accrued interest upon the said bonds a surplus shall remain, such surplus shall belong and be paid to the party of the first part, its successors or assigns. But if such proceeds shall not be sufficient for payment of all the said bonds in full, the same shall be applied ratably and without discrimination or preference upon or towards payment of the principle and interest of all the same, except that such payment of or upon interest coupons shall be in the order of date of their maturity.

Fourth. In case default shall be made in the payment of any of the interest coupons aforesaid, according to the tenor thereof, and such default shall continue for the space of six months, then and in such case, after the lapse of the said six months, the sums of principle secured by all the said bonds so executed by the party of the first part, with all accrued unpaid interest thereon shall, at the option of the party of the second part, or its successors, become (for all purposes of these presents) immediately due and payable, anything contained in the said bonds or in these presents notwithstanding. But a majority in interest of the holders of the said bonds may in writing (and for all purposes of these presents) revoke or annul the decision of or upon such option, and instruct the party of the second part or its successors, to declare such principle to be so due, or to waive that right: Provided, however, that nothing done or omited in respect of such default shall prejudice the rights of the party of the second part or of its successors in respect of any subsequent default.

Fifth. Upon payment of the first part of all sums which shall become due for principle and interest under and by virtue of said bonds, and of all sums incurred or chargeable under and by virtue of these presents, then and thereupon all estate and power of the party of the second part and its successors under or by virtue of these presents shall cease.

Sixth. In case upon or by reason of any default as hereinbefore provided possession of the above granted and described premises shall be taken and no sale thereof shall have been had under the hereby created powers, such possession will be surrendered upon payment of all sums then due upon the said bonds and hereinbefore contemplated to be payable up to and at the time of such surrender, including in such payment the principle, if then due by the terms of the said bonds or by election as above provided. But the said surrender shall be of the premises as existing at the time thereof, and shall not prejudice or impair and estate and lein of these presents in respect of any sums secured by the said bonds and not theretofore paid or satisfied, nor affect or impair the rights of the party of second part and its successors in respect of any thereafter accruing default.

Seventh. It is understood and agreed that these presents shall be a security for the due payment of all sums which shall become due and payable under or by virtue of the said bonds, notwithstanding any laws of the State of Iowa now existing or to be hereafter to be enacted for the extention, stay of execution, valuation or appraisement and without de-

lay or relief from or by reason thereof, and that all operation and benefit of such laws is hereby waived to the end that the same shall not be invoked or effective to restrict, postpone or impair the operation of these presents or the estate and power thereby created.

Eighth. It shall be the duty of the party of the second part and its successors to proceed in and with the execution of the several powers so vested in them in the manner and at the times or in the cases hereinbefore specified for the exercise thereof, provided that requisition in writing to so proceed shall be made upon them by or in behalf of the holders of at least one-half in amount of the said bonds then outstanding and unpaid, or of the holders of a less proportion of the said bonds in case and to the extent that compliance with such request of the minority shall (after reasonable notice to other parties in interest) appear to them to be clearly necessary for the protiction of the trust estate or security of the said bonds.

Ninth. The said party of the second part or any successor to it in the trust hereby created may resign as Trustee under these presents by writing, taking effect thirty days after the delivery thereof to the said party of the first part; or, upon the payment of its reasonable charges for services rendered and money expended in the performance of its duties as Trustee up to that time, it may be removed and a successor or successors appointed by writing, signed by the holders of a majority of said bonds at the time outstanding.

The said Trustee shall receive a reasonable compensation for every act done by it as such Trustee under this indenture; and the said Trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense, unless the holders of the bonds secured thereby or some of them, shall give sufficient security to indemnify the Trustee from such liability or expense.

And the said Trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that the Trustee shall not be liable for any default or neglect of any co-trustee, or of any agent by it appointed, when such agent shall have been selected with reasonable discretion, and shall only be required to exercise good faith and ordinary dilligence in the performance of thier duties under this indenture. It is agreed between the parties hereto, and made part of the contract with the holders of the bonds secured hereby, that the said Trust Company, the trustee herein, shall not be required to look beyond the certificate or certificates of the President or Chief Engineer, as the case may be, as herein provided, and shall not be respon-

sible in any event for any act done in pursuance of such certificate or certificates.

Tenth. The party of the first part, its successors and assigns, shall and will duly execute to the party of the second part and its successors and assigns such further deeds, conveyances and assurances in the law, for the better assuring to the party of the second part and its successors and assigns upon and for the trusts and purposes aforesaid, all and singular the premises above granted and described, or intended to be granted and included in the lein of these presents, as shall from time to time be reasonably required by it, the party of the second part and its successors.

Eleventh. In case, by reason of resignation or otherwise, during the existence of the trusts hereby created, there shall occur or be a vacancy in the office of the trustee hereinbefore named, the same may be filled by appointment, in writing, executed by the holders of at least one-half in amount of the said bonds which shall then be unpaid and outstanding. Nothing herein contained however shall be so constructed as to prohibit or prevent the due filling of such vacancy, by authority, by a court of competent jurisdiction, in a proceeding to which the then holders of the said bonds and the party of the first part are duly made parties, or of which they have had due or reasonable notice.

Twelfth. The party of the first part, by resolution of its Board of Directors, authorized or approved at a meeting of its stockholders, hath authorized these presents to be duly executed to the parties of the second part. But nothing therein contained is to be in anywise constructed as subjecting to personal liability, in the premises, the officers or stockholders of the party of the first part, or any or either of them or their or his personal or individual estate.

In Witness Whereof, the Saint Louis, Des Moines and Northern Railway Company, in pursuance of the resolution aforesaid, has caused these presents to be executed by its President and attested by its Secretary, and has caused its corporate seal to be hereunto affixed the day and year first aforesaid; and the Mercantile Trust Company has also executed the same, to evidence its acceptance of the trust hereby created, the day and year aforesaid.

(St. Louis D. M.)
(N. W. Railway)
(Co. Seal)

THE ST. LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY,

By J. S. Clarkson, President.

Attest: J. S. Polk, Secretary. (Seal)

THE MERCANTILE TRUST CO.,
Trustee.

(Seal) Louis Fitzgerald, President.

(Mercantile Trust)
(Co. Seal)

Attest: H. C. Deming, Secretary.

State Iowa,
County Polk—ss.

Be it remembered that on this 9th day of February 1882, personaly came before me, the undersigned, a Notary Public, within and for the county aforesaid, J. S. Clarkson, who, being by me duly sworn doth depose and say that he is the President of the St. Louis, Des Moines and Northern Railway Company grantor in the foregoing instrument; that the name of said company is signed to said instrument by him, as President of said company, by virtue of the order of the Board of Directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said Board of Directors. And the said J. S. Clarkson as President, acknowledged the foregoing instrument to be the act and deed of the St. Louis Des Moines and Northern Railway Company for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office this 9th day of February 1882.

(Notary seal) FRANK H. PERRY,
Notary Public, Polk County, Iowa.

State of Iowa,
County of Polk—ss.

Be it remembered that on this 9th day of February 1882, personaly came before me, the undersigned, a Notary Public within and for the county aforesaid, J. S. Polk, who being by me duly sworn, doth depose and say that he is the Secretary of the St. Louis Des Moines and Northern Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of said company thereto by order of the Board of Directors thereof.

In Witness Whereof I have set my hand and affixed my notarial seal of office this 9th day of February 1882.

(Notary seal) FRANK H. PERRY,
Notary Public, Polk County, Iowa.

Filed Mch. 8th, 1882, at 5" o'clock P. M.

J. J. PAYNE, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy of the original record in my office, and the whole thereof, and recorded in Book 104 pages 336 to 345.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

MRS. FRANK W. DODSON, Recorder.

This Indenture, made and entered into this 2nd day of October 1889, by and between the St. Louis, Des Moines and Northern Railway Company, party of the first part, and the Mercantile Trust Company, party of the second part.

Witnesseth:

Whereas, the party of the first part did on the first day of February 1882, execute and deliver to the party of the second part a trust mortgage upon its property to secure certain bonds, and,

Whereas, there was omitted from the description of the property conveyed by said mortgage, a part of the road of the party of the first part which should have been included, and

Whereas, the Board of Directors of the party of the first part has this day authorized its president, and assistant Secretary to execute and deliver a supplement to said mortgage so that said omitted property shall be included in said mortgage.

Now therefore the St. Louis, Des Moines & Northern Railway Company, by this indenture doth grant, bargain, sell and convey unto the Mercantile Trust Company, as Trustee, and to its successor or successors in Trust, all that portion of its line of railroad lying between Farnham Street in the City of Des Moines, and the Western corporate limits of said City, being situated in the County of Polk and State of Iowa, together with all the appurtenances thereto belonging or therein included, and also all its interest of whatever kind in the obligation or stock of the Des Moines Union Railway Company, and all its property of whatever name or nature, not included and covered by said original mortgage.

This grant is intended to be supplemental to the said original mortgage so executed by the party of the first part to the party of the second part, which original mortgage was filed for record in the Recorder's office of Polk County, Iowa, on the eighth day of March 1882, and recorded in Book 104 of mortgage records at page 336, and this grant is made upon defeasances, conditions and provisions contained in said original mortgage and is to be taken and held as though the above description had been used therein.

In Witness Whereof, The St. Louis, Des Moines and Northern Railway Company in pursuance of the resolution aforesaid, has caused these presents to be executed by its President and attested by its Assistant Secretary, and has caused its corporate seal to be hereunto affixed this second day of October, 1889.

By G. M. DODGE, President.
F. M. HUBBELL, Assistant Secretary.

State of Iowa,
Polk County—ss.

Be it remembered that on this 2nd day of October, 1889, personally came before me, the undersigned, a Notary Public, within and for the County aforesaid, Grenville M. Dodge who being by me duly sworn, doth depose and say, that he is President of the St. Louis Des Moines & Northern Railway Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him, as President of said Company, by virtue of the order of the Board of Directors; that the seal of the company attached thereto is the proper and genuine seal of said company, and is affixed thereto by order of said Board of Directors.

And the said Grenville M. Dodge, as President acknowledged the foregoing instrument to be the deed and act of the St. Louis, Des Moines & Northern Railway Company, for the uses and purposes therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office, this 2nd day of October, 1889.

JAMES P. HEWITT,
Notary Public Polk County, Iowa.

State of Iowa,
Polk County—ss.

Be it remembered that on this 2nd day of October, 1889, personally came before me, the undersigned, a Notary Public within and for the County aforesaid, F. M. Hubbell, who, being by me sworn, doth depose and say: That he is the Assist-

ant Secretary of the St. Louis Des Moines & Northern Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of the said company thereto by order of the Board of Directors thereof.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office this 2nd day of October, 1889.

JAMES P. HEWITT,
Notary Public, Polk County, Iowa.

Endorsed: Filed Oct. 7, 1889. E. R. Mason, Clerk.

Exhibit 48.

In the Circuit Court of the United States, in and for the Southern District of Iowa, Central Division.

In Chancery.

To the Honorable, the Judges of the said Circuit Court of the United States, In Chancery Sitting.

The bill of complaint of the Mercantile Trust Company; a corporation organized and existing under the laws of the State of New York, against the St. Louis, Des Moines & Northern Railway Company; a corporation organized and existing under the laws of the State of Iowa.

And thereupon the complainant, the Mercantile Trust Company avers:

That it is a corporation organized under the laws of the State of New York, and is a citizen of said State; that the defendant the St. Louis Des Moines & Northern Railway Company is a corporation organized under the laws of the State of Iowa, for the purpose of constructing and operating a line of Railway, within said State, and is a citizen thereof.

That the amount in controversy in this suit exceeds two thousand dollars exclusive of costs.

That prior to the first day of February, 1882, the said St. Louis, Des Moines & Northern Railway Company, had been duly incorporated under the laws of the State of Iowa, for the purpose of constructing a railroad from the City of Des Moines in Polk County, Iowa, through the City of Boone, Iowa, to the northern line of said State. And that since the said first day of February, 1882, the defendant has constructed and is now the owner of a line of Railway extending from Farnham Street, in the City of Des Moines, through the counties of Polk, Dallas and Boone, to the City of Boone, aforesaid, together with all such right of way, all embankments, bridges, turn-outs, side

tracks, buildings and structures, water tanks, fixtures, shops, engines, depots, turn tables, engine houses, cars, machinery and tools, as are commonly appurtenant to railroad property.

Your orator further avers that on the first day of February, 1882, the said St. Louis, Des Moines & Northern Railway Company executed and delivered to this complainant, as Trustee, a certain indenture of mortgage, for the purpose of securing the payment of an issue of bonds to be executed and delivered by said Company to the extent of eight thousand dollars per mile of road, completed, and put in operation by said defendant; and for the purpose of showing the exact terms and provisions of said mortgage, a copy thereof is attached to this bill of complaint, and the original will be produced upon the hearing of this cause.

That in and by said mortgage the said defendant to secure the payment of the said bonds with interest as aforesaid, granted, bargained, sold, conveyed and transferred unto this complainant as Trustee, all its Railroad extending from the Western Boundary line of the City of Des Moines in said county of Polk, by way of Clive in said county, through the counties of Polk, Dallas & Boone, in said State, to the City of Boone in said County of Boone, together with the real estate necessary for, and used in the operation of said road, its right of way, embankments, bridges, turn outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools, and all its railroad property acquired or to be acquired and everything pertinent thereto or used in connection therewith, together with all issues, tolls, and earnings accruing to said party of the first part.

It being expressly stated that said conveyance of mortgage did not include the branch or portion of railroad, extending from Clive to Waukee in the County of Dallas, and it was further expressly stated, that the said St. Louis & Northern Railway Company, had theretofore sold and conveyed to the Des Moines Northwestern railway Company an undivided half of so much of its right of way, franchises and property as lie between the City of Des Moines and the town of Clive. The said one half interest so sold and conveyed was not included in or transferred by the said mortgage, and your orator further avers that said mortgage was duly recorded in the office of the recorders of the counties of Polk, Dallas and Boone, on or about the 8th day of March, 1882, and your orator further avers that in pursuance of and in performance of the provisions of said mortgage, and as described therein the said St. Louis, Des Moines & Northern Railway Company, for the purposes named in said mortgage issued and delivered to the

purchasers thereof, its mortgage bonds in sums of one thousand dollars each, to the extent of eight thousand dollars per mile of completed road, which bonds were duly certified by this complainant in accordance with the provisions of said mortgage. That the aggregate amount of bonds so issued and now outstanding is $303,000.00, Three hundred & three thousand dollars all of which constitute valid obligations of the said defendant and none of which have been paid. That all of said bonds were issued and begun to bear interest prior to the first day of January, 1883, and that the interest thereon at the rate of six per cent per annum was evidenced by coupons attached thereto, which coupons matured on the first days of February and August in each year.

And your orator further avers that the said defendant has never paid or caused to be paid any of said bonds or any part or any one of the interest coupons so maturing as aforesaid, and that all of said coupons, which have matured semiannually since the first day of August 1882, remain wholly due and unpaid; and your orator further avers that it was provided in and by said mortgage that if default should be made in the payment of any of the interest coupons attached to said bonds as aforesaid, and such default should continue for the space of six months, then and in such case after the lapse of the said six months the sums of principal secured by all of said bonds so executed by the party of the first part, with all accrued unpaid interest thereon, should at the option of the party of the second part or its successors become, for all the purposes of said mortgage, immediately due and payable, anything contained in the said bonds or in the said mortgage notwithstanding.

And your orator further avers that it has exercised and now exercises its option and declares each and all bonds so secured by the said mortgage to be due and payable, and that it has given notice of such option to the defendant.

Your orator further shows that by inadvertence certain property of the defendant was omitted from the description in said mortgage heretofore referred to, and that for the purpose of supplying said omission, the defendant did on the 2nd day of October, 1889, execute and deliver to this complainant a supplemental mortgage for the purpose of better securing the said bonds so issued and described in said original mortgage. That in and by said supplemental mortgage the said Railway Company did grant, bargain, sell and convey unto this complainant as Trustee all that portion of defendant's line of railroad, being a one half interest lying between Farnham street in the City of Des Moines, and the

western corporate limits of said city, and being situated in the County of Polk and State of Iowa together with all the appurtenances thereto belonging or therein included, and also all its interests of whatever kind in the obligations or stock of the Des Moines Union Railway Company, and all its property of whatever name or nature not included and covered by said original mortgage. Said supplemental grant and conveyance being made upon the defeasance, conditions and provisions contained in said original mortgage; it being expressly stated therein that it was to be held as though the description last above given had been used in said original mortgage. And your orator for the purpose of better showing the contents thereof, attaches to this its bill, a copy of said supplemental mortgage, and will upon the hearing hereof produce the original.

And for as much as your orator is remediless according to the strict terms of the common law it prays your honors to take cognizance of this its suit in equity, and that the defendant may be required to answer this bill of complaint (but not under oath, an answer under oath being hereby expressly waived).

And it further prays that the said mortgage and supplemental mortgage herein referred to and described, be foreclosed, and the equity of redemption in the property therein conveyed, be forever barred and cut off. That an account may be taken and the amount due upon said bonds so issued and secured be ascertained, and that all the property described in said mortgage and supplemental mortgage, or so much thereof as may be necessary, may be sold under the order and direction of this court to satisfy whatever amount may be found to be so due from the defendant upon said bonds and interest coupons. And at such sale, the person making the same under the direction of the Court, may be authorized to receive in payment therefore or to such extent as they may be offered the said bonds and interest coupons, being surrendered and cancelled when accepted as a part of such purchase price. And that if it shall be found after making the sale as aforesaid that any sum remains due and owing from the defendant upon said bonds and interest coupons that the complainant may have judgment therefor for the use and benefit of the holders and owners of said bonds. And that a due and proper conveyance to the purchaser of said property so sold may be made, vesting and conveying, good, complete and absolute title to the same and to every part thereof.

And your orator further prays for the writ of subpoena issued out of and under the seal of this honorable Court, direct-

ed to the defendant, commanding it to appear at a time and under a penalty to be therein named and answer this bill of complaint. To stand by, abide and perform all the orders of the court herein, and your orator further prays for such and other and further relief as to equity and good conscience may seem meet.

(sgd) THE MERCANTILE TRUST CO.

(sgd) A. B. Cummins,
Of Counsel.

By Cummins & Wright,
Its Solicitors.

United States of America,
Southern District of Iowa,
Central Division,
Polk County—ss.

A. B. Cummins, being first duly sworn, upon his oath says: that he is one of the solicitors for the complainant in the above entitled cause; that he has investigated the matters and things set forth in the above bill, and has knowledge thereof; that the said bill is true of his own knowledge with the exception of those allegations therein stated upon information and belief and as to such allegations he believes them to be true.

(sgd) A. B. CUMMINS.

Subscribed and sworn to before me this 5th day of October 1889.

(Seal)

(sgd) JAS. P. HEWITT,
Notary Public Polk, County, Iowa.

This Indenture made and entered into this first day of August A. D. 1881, by and between the Saint Louis, Des Moines & Northern Railway Company, party of the first part, and The Mercantile Trust Company, as Trustee, party of the second part.

Witnesseth:

Whereas, the Saint Louis, Des Moines and Northern Railway Company has been duly incorporated under the laws of the State of Iowa, by the adoption of articles of incorporation on the fourth day of April A. D. 1881, which articles have been duly recorded upon the records of Polk County, Iowa, and have also been duly filed for record in the office of the Secretary of the State of Iowa.

And, Whereas, the Saint Louis, Des Moines and Northern Railway Company has undertaken the construction of a railroad from the City of Des Moines in Polk County, Iowa,

through the City of Boone, Iowa, to the northern line of said State, with such branches as from time to time may be determined upon, and is now engaged in the construction of a portion of said railroad, extending from the City of Des Moines through the Counties of Polk, Dallas and Boone, in said State, to the City of Boone, in the last named county, Iowa.

And Whereas, for the purpose of aiding in such construction, the said Saint Louis, Des Moines and Northern Railway Company, proposes to issue its bonds to the amount of eight thousand dollars per mile of its said road, all of which bonds shall be upon an equality with respect to the security for the payment thereof by these presents, notwithstanding the same be issued at different times, and each of which shall be authenticated by a certificate signed by the party of the first part. The said bonds shall be issued only upon the delivery to the party of the second part of a certificate or certificates sworn to by the President or Chief Engineer of the party of the first part showing the number of miles of railway completed and ready for operation. The said bonds and certificate and the interest coupons annexed to said bonds to be substantially in the following form, to-wit:

$1,000.00 $1,000.00
No. No.

United States of America

Saint Louis, Des Moines and Northern Railway Company.

First Mortgage Bond.

Thirty years after date, for value received, the Saint Louis, Des Moines and Northern Railway Company, a corporation of the State of Iowa, promises to pay, in gold coin of the United States of America, of or equal to the present standard of value, to the holder of this bond, or in case his bond be registered, then to the registered owner thereof, at its financial agency in the City of New York, one thousand dollars, and also interest thereon at the rate of six per centum per annum, payable semi-annually in like gold coin, on the first days of February and August in each year, on the presentation and surrender of the respective interest coupons hereto annexed, at the financial agency aforesaid.

This bond is one of a series of bonds, each of the denomination of one thousand dollars, the payment of the principal and interest of which is secured by an indenture of mortgage of even date herewith, conveying to the trustee hereinafter named, in trust for the holders of said bonds, the entire railway, franchises, property and income of said company, and is

a first lien thereon. The issue and certification of bonds by the trustee is limited to $8,000.00 per mile of completed road. If default shall be made in the payment of any semi-annual installment of interest on this bond or any bond of this series when the same shall become due and be demanded, and shall remain unpaid for six months after such demand, the principal of such bond shall become due and payable in the manner provided in the said mortgage. The said company and all of its property is liable to pay this bond, but stockholders of the company are not individually liable thereon or in respect thereto.

Said company hereby waives the benefit of any extension, stay or appraisement laws now existing or that may hereafter exist. This bond is to be valid only when authenticated by a certificate endorsed thereon, signed by the Mercantile Trust Company, trustee, to the effect that it is one of the bonds secured by the said mortgage, and is issued in conformity with its provisions.

In Witness Whereof, the said company has caused its corporate name to be hereto signed by its President, and its corporate seal to be hereunto affixed, attested by its Secretary, and the annexed interest coupons to be executed with the engraved signature of its Treasurer, this, the day of August A. D. 1881.

SAINT LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY,

By ..... President.

Attest: ..... Secretary.

Form of Coupon.

On the first day of ..... A. D. 18.. The Saint Louis, Des Moines and Northern Railway Company will pay the bearer, at its financial agency in the city of New York, thirty dollars, in gold coin of the United States, being interest for six months on Bond No. .....

..... Treasurer.

Form of Certificate.

This is to certify, that this bond is one of the series of bonds, of one thousand dollars each, secured by and mentioned in the mortgage within referred to, and is issued in conformity with its provisions.

THE MERCANTILE TRUST COMPANY,
Trustee.

By ..... President.

Now, Therefore, the Saint Louis, Des Moines and Northern Railway Company, to secure the payment of said bonds and interest to the extent only of so many of said bonds as may be actually issued in the manner hereinbefore provided by this indenture, doth grant, bargain, sell, convey, and transfer unto the said The Mercantile Trust Company, as trustee, and to their successors in trust, except as hereinafter provided, all its railroad extending as aforesaid, from the western boundary line of the City of Des Moines, in Polk County, Iowa, by way of Clive in said county, through the Counties of Polk, Dallas and Boone, in said State, to the City of Boone, in the last named County, but not including the branch or portion of railroad extending from said Clive to Waukee, in the County of Dallas, together with the real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools, and all its railroad property acquired and to be acquired, and everything appurtenant thereto or used in connection therewith, together with all rents, issues, tolls, and earnings accruing to said party of the first part.

This Company having heretofore sold and conveyed to the Des Moines Northwestern Railway Company an undivided half of as much of its road, franchises and property as lies between the City of Des Moines and the Town of Clive, the same is not intended to be conveyed by this Mortgage.

To have and to hold the above granted and described property and appurtenances unto the party of the second part, its survivors and successors and assigns, upon the trusts, nevertheless, and for the purposes hereinafter expressed or indicated, namely.

First. In case the Saint Louis, Des Moines and Northern Railway Company shall fail to pay the said interest coupons subjoined to the bonds so executed by that company, or any or either of the said coupons, or any part of the same, at the time or times and in the manner so as aforesaid provided for the payment thereof, and in case such default shall continue for the space of ninety days, the party of the second part or its successor may enter upon and take possession of all or any part of the above granted premises, and itself, and by its attorneys, agents and servants, may take, hold, use and operate the same, making from time to time needful repairs and alterations, and may receive the tolls, rents, issues, profits and income derivable therefrom, and after deducting and paying out of such gross receipts and income the expenses of

operating and managing the premises and of such needful repairs and alterations and any taxes and other necessary and proper charges upon or pertaining to the premises, and executing the hereby created trust, the party of the second part and its successor in trust shall apply the surplus or net receipts and income so realized by it to the payment of the said interest coupons in the order in which the same shall have become or shall become due and payable.

Second. In case default shall so as aforesaid be made in the payment of the said interest coupons, or any or either thereof, and shall continue for the period of six months, then and in such case after entry as aforesaid, or without such entry, and upon the written request of the holders of at least one-half of the aggregate amount of the bonds so executed by the Saint Louis Des Moines and Northern Railway Company and then outstanding and unpaid, the party of the second part and its successors in the trust, may personally, or by its attorneys or agents, sell and dispose of all and singular the above granted and described premises at public auction, in the City of Des Moines, having first given notice of the time and place of such sale by advertisement published in some newspaper of general circulation published in City of New York, and also in one newspaper of general circulation published in the City of Des Moines, and also in one newspaper published in each other county in Iowa through or into which the said railroad extends, and which notice shall in each of said newspapers be so published at least once in each week for at least six weeks immediately preceeding the sale.

And the party of the second part, or its successors in trust, may make, execute and deliver to the purchasers at such sale a good and sufficient deed of the premises so sold to him or them, and the sale so made aforesaid shall be perpetual bar both in law and in equity against the party of the first part and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, through or under it. But if by it deemed expedient the party of the second part or its successors in the trust may cause such sale to be made through or under judicial proceedings of foreclosure and sale to be instituted by it or its successors.

Third. From the proceeds of any sale which may so as aforesaid be made, after deducting the proper costs and expenses thereof, and of the proceedings and all other expenses, advances or liabilities which shall have been duly incurred under these presents or the powers thereby credited, or for taxes or other proper charges, and the reasonable compensation of the party of the second part or is successors shall apply the remainder of such proceeds to the payment of the principal

of such of the said bonds executed by the Saint Louis, Des Moines and Northern Railway Company as having been duly certified and issued in the manner hereinbefore provided shall then be outstanding and unpaid, and of the interest which shall then have accrued upon such principal and shall be in arrear and unpaid. And if after so paying all sums payable for principal and accrued interest upon the said bonds a surplus shall remain, such surplus shall belong and be paid to the party of the first part, its successors or assigns. But if such proceeds shall not be sufficient for payment of all the said bonds in full, the same shall be applied ratably and without discrimination or preference upon or towards the payment of the principal and interest of all the same, except that such payment of or upon interest coupons shall be in the order of date of their maturity.

Fourth. In case default shall be made in the payment of anw of the interest coupons aforesaid, according to the tenor thereof, and such default shall continue for the space of six months, then, and in such case, after the lapse of the said six months, the sums of principal secured by all the said bonds so executed by the party of the first part, with all accrued unpaid interest thereon shall, at the option of the party of the second part, or its successors, become (for all purposes of these presents) immediately due and payable, anything contained in the said bonds or in these presents notwithstanding. But a majority in interest of the holders of the said bonds may in writing (and for all purposes of these presents) revoke or anul the decision of or upon such option, and instruct the party of the second part or its successors to declare such principal to be so due, or to waive that right; Provided, however, that nothing done or omitted in respect of such default shall prejudice the rights of the party of the second part or of its successors in respect of any subsequent default.

Fifth. Upon payment by party of the first part of all sums which shall become due for principal and interest under the by virtue of said bonds, and of all sums incurred or chargeable under and by virtue of these presents, then and thereupon all estate and power of the party of the second part and its successors under or by virtue of these presents shall cease.

Sixth. In case upo.. .or by reason of any default as hereinbefore provided possession of the above granted and described premises shall be taken and no sale thereof shall have been had under the hereby created powers, such possession will be surrendered upon payment of all sums then due upon the said bonds and hereinbefore contemplated to be payable up to and at the time of such surrender, including in such payment the

principal if then due by the terms of the said bonds or by the election as above provided. But the said surrender shall be of the premises as existing at the time thereof, and shall not prejudice or impair the estate and lien of these presents in respect of any sums secured by the said bonds and not heretofore paid or satisfied, nor affect or impair the rights of the party of the second part and its successors in respect of any thereafter accruing default.

Seventh. It is understood and agreed that these presents shall be a security for the due payment of all sums which shall become due and payable under or by virtue of the said bonds, notwithstanding any laws of the State of Iowa now existing or hereafter to be enacted for the extension, stay of execution, valuation or appraisement and without delay or relief from or by reason thereof, and that all operation and benefit of such laws is hereby waived to the end that the same shall not be invoked or effective to restrict, postpone or impair the operation of these presents or the estate and power thereby created.

Eighth. It shall be the duty of the party of the Second Part and its successors to proceed in and with the execution of the several powers so vested in them in the manner and at the times or in the cases hereinbefore specified for the exercise thereof, provided that requisition in writing to so proceed shall be made upon them by or in behalf of the holders of at least one-half in amount of the said bonds then outstanding and unpaid, or of the holders of a less proportion of the said bonds in case and to the extent that compliance with such request of the minority shall (after reasonable notice to other parties in interest) appear to them to be clearly necessary for the protection of the trust estate or security of the said bonds.

Ninth. The said party of the second part of any successor to it in the trust hereby created may resign as Trustee under these presents by writing, taking effect thirty days after the delivery thereof to the said party of the first part; or, upon the payment of its reasonable charges for services rendered and money expended in the performance of its duties as Trustee up to that time, it may be removed and a successor or successors appointed by writing, signed by the holders of a majority of said bonds at the time outstanding.

The said Trustee shall receive a reasonable compensation for every act done by it as such Trustee under this indenture; and the said Trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense, unless the holders of the bonds secured thereby, or

some of them, shall give sufficient security to indemnify the Trustee from such liability or expense.

And the said Trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that the Trustee shall not be liable for any default or neglect of any co-trustee, or of any agent by it appointed, when such agent shall have been selected with reasonable discretion, and shall only be required to exercise good faith and ordinary diligence in the performance of their duties under this indenture. It is agreed between the parties hereto, and made part of the contract with the holders of the bonds secured hereby, that the said Trust Company, the trustee herein, shall not be required to look beyond the certificate or certificates of the President or Chief Engineer, as the case may be, as herein provided, and shall not be responsible in any event for any act done in pursuance of such certificate or certificates.

Tenth. The party of the first part, its successors and assigns, shall and will duly execute to the party of the second part and its successors and assigns such further deeds, conveyances and assurances in the law, for the better assuring to the party of the second part and its successors and assigns upon and for the trusts and purposes aforesaid, all and singular the premises above granted and described, or intended to be granted and included in the lien of these presents, as shall from time to time be reasonably required by it, party of the second part and its successors.

Eleventh. In case, by reason of resignation or otherwise, during the existence of the trusts hereby created, there shall occur or be a vacancy in the office of the trustee hereinbefore named, the same may be filled by appointment, in writing, executed by the holders of at least one-half in amount of the said bonds which shall then be unpaid and outstanding. Nothing herein contained however shall be so construed as to prohibit or prevent the due filling of such vacancy, by authority, by a court of competent jurisdiction, in a proceeding to which the then holders of the said bonds and the party of the first part are duly made parties, or of which they have had due or reasonable notice.

Twelfth. The party of the first part, by resolution of its Board of Directors, authorized or approved at a meeting of its stockholders, hath authorized these presents to be duly executed to the parties of the second part. But nothing therein contained is to be in anywise construed as subjecting to personal liability, in the premises, the officers or stockholders of

the party of the first part, or any or either of them, or their or his personal or individual estate.

In Witness Whereof the Saint Louis, Des Moines and Northern Railway Company, in pursuance of the resolutions aforesaid, has caused these presents to be executed by its President and attested by its Secretary, and has caused its corporate seal to be hereunto affixed the day and year first aforesaid; and the Mercantile Trust Company has also executed the same, to evidence its acceptance of the trust hereby created, the day and year aforesaid.

(Seal) ST. LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,
By J. S. Clarkson, President.

Attest:
J. S. Polk, Secretary.

MERCANTILE TRUST COMPANY,
Trustee.
By ..... President.

Attest:
..... Secretary.

State of Iowa,
County, Polk—ss.

Be it remembered that on this first day of February, 1882, personally came before me, the undersigned, a Notary Public, within and for the county aforesaid, J. S. Clarkson, who, being by me duly sworn, doth depose and say that he is the President of the St. Louis Des Moines and Northern Railway Company grantor in the foregoing instrument; that the name of said company is signed to said instrument by him, as President of said company, by virtue of the order of the Board of Directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said Board of Directors. And the said J. S. Clarkson as President, acknowledged the foregoing instrument to be the act and deed of the St. Louis, Des Moines and Northern Railway Company, for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office, this first day of February, 1882.

(Seal) (Sgd.) C. HUTTENLOCHER,
Notary Public.

County of Polk—ss.
State of Iowa,

Be it remembered that on this first day of February, 1882, personally came before me, the undersigned, a Notary Public within and for the county aforesaid, J. S. Polk, who, being by me duly sworn, doth depose and say that he is the Secretary of the St. Louis, Des Moines and Northern Railway Company grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of the company thereto by order of the Board of Directors thereof.

In Witness Whereof, I have set my hand and affixed my notarial seal of office, this first day of February, 1882.

(Seal) (Sgd.) C. HUTTENLOCHER,
Notary Public.

This Indenture made and entered into this 2nd day of October, 1889, by and between the St. Louis, Des Moines & Northern Railway Company, party of the first part, and the Mercantile Trust Company, party of the second part, Witnesseth, that,

Whereas, the party of the first part did on the first day of February 1882, execute and deliver to the party of the second part a trust mortgage upon its property to secure certain bonds, and

Whereas there was omitted from the description of the property conveyed by said mortgage a part of the road of party of the first part which should have been included, and,

Whereas the Board of Directors of the party of the first part has this day authorized its president, and assistant Secretary to execute and deliver a supplement to said mortgage so that said omitted property shall be included in said mortgage.

Now, therefore, the St. Louis, Des Moines & Northern Railway Company, by this indenture doth grant, bargain, sell and convey unto the Mercantile Trust Company, as Trustee, and to its successor or successors in Trust, all that portion of its line of railroad lying between Farnham Street in the City of Des Moines, and the western corporate limits of said City, being situated in the County of Polk and State of Iowa, together with all the appurtenances thereto belonging or therein included, and also all its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, and all its property of whatever name or nature, not included and covered by said original mortgage.

This grant is intended to be supplemental to the said original mortgage so executed by the party of the first part to the party of the second part, which original mortgage was filed for record in the Recorder's office of Polk County, Iowa, on the eighth day of March, 1882, and recorded in book 104 of mortgage records at page 336; and this grant is made upon defeasances, conditions and provisions contained in said original mortgage and is to be taken and held as though the above description had been used therein.

In Witness Whereof The St. Louis, Des Moines & Northern Railway Company in pursuance of the resolution aforesaid, has caused these presents to be executed by its President and attested by its Assistant Secretary, and has caused its corporate seal to be hereunto affixed this second day of October 1889.

.....,
By G. M. Dodge, President,
F. M. Hubbell, Assistant Secretary.

State of Iowa,
Polk County—ss.

Be it remembered *that* on this 2nd day of October, 1889, personally came before me, the undersigned, a Notary Public, within and for the County aforesaid, Grenville M. Dodge, who being by me duly sworn, doth depose and say that he is President of the St. Louis, Des Moines & Northern Railway Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him, as President of said company, by virtue of the order of the Board of Directors; that the seal of the company attached thereto is the proper and genuine seal of said company, and is affixed thereto by order of said Board of Directors. And the said Grenville M. Dodge, as President acknowledged the foregoing instrument to be the deed and act of the St. Louis, Des Moines & Northern Railway Company, for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office, this 2nd day of October 1889.

JAMES P. HEWITT,
Notary Public, Polk County, Iowa.

State of Iowa,
Polk County—ss.

Be it remembered that on this 2nd day of October 1889, personally came before me, the undersigned, a Notary Public within and for the County aforesaid F. M. Hubbell, who,

being by me duly sworn, doth depose and say; that he is the assistant Secretary of the St. Louis, Des Moines & Northern Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of said company thereto by order of the Board of Directors thereof.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office, this 2nd day of October 1889.

JAMES P. HEWITT,
Notary Public, Polk County, Iowa.

Endorsed: Filed Oct. 7, 1889. E. R. Mason, Clerk.

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

The Mercantile Trust Company
No. .... vs.
St. Louis, Des Moines & Northern Railway Company.

Comes now the St. Louis, Des Moines & Northern Railway Company, the defendant above named and waives the service of subpoena herein & time for appearance & answer. And thereupon answering the Bill herein it admits all the allegations thereof & consents that a decree thereon may be entered at once.

(Sgd.) THE SAINT LOUIS, DES MOINES & NORTHERN RAILWAY CO.
(Seal) By F. M. Hubbell, Assistant Secretary.

Endorsed: Filed Oct. 15, 1889. Ed. R. Mason, Clerk.

EXHIBIT 49.

In the Circuit Court of the United States; in and for the Southern District of Iowa, Central Division.

The Mercantile Trust Company Complainant,
vs.
The St. Louis Des Moines & Northern Railway Company, Defendant.

October Term 1889.

Decree.

This cause coming on for hearing on this 15 day of October 1889, being one of the days of the October Term 1889 of said court; the complainant, the Mercantile Trust Company appeared by Cummins & Wright, its solicitors, and the defendant the St. Louis Des Moines & Northern Railway Com-

pany appeared by Loren W. Reynolds, its solicitor, and thereupon it appearing to the court that the said defendant has filed its answer admitting the allegations of the bill, and that its said solicitor duly authorized to appear herein has filed in this case its admission of the truth of the allegations of the bill of complaint, its consent that a decree upon said bill may be entered at once, and its approval of the terms and provisions of this decree, the court thereupon by and with the consent of said defendant upon the proof submitted, finds:

That the defendant, the St. Louis Des Moines & Northern Railway Company is a corporation organized under the laws of the State of Iowa, and is the owner of a certain line of railway extending from Farnham Street in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas and Boone, to the city of Boone in said last named County, together with certain real and personal property, appurtenant thereto, and franchises thereof; that on the first day of February 1882, the said St. Louis Des Moines & Northern Railway Company, for the purpose of securing the payment of certain bonds, to be issued by said defendant, to the extent of eight thousand dollars per mile of *completed* roadway, executed and delivered to the Complainant the Mercantile Trust Company, as Trustee, its certain trust mortgage; that in and by the said mortgage there was conveyed to the said complainant as trustee, its line of railroad, between the western boundary of the City of Des Moines, Iowa, and the City of Boone aforesaid, together with all the the real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side tracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools, and all its railroad property whether then or thereafter acquired, and everything appurtenant thereto or used in connection therewith, together with all rents, issues, tolls and earnings thereof. And it was further provided in said trust mortgage that said conveyance did not include the branch or extension of the railroad extending from Clive to Waukee in the County of Dallas, and included and undivided half interest only in the railroad and appurtenances lying between the City of Des Moines and the said town of Clive.

The court further finds and adjudges that the line of said mortgage attached to all the property hereinbefore described, that is to the line of railroad then or thereafter constructed from the said western boundaries of the City of Des Moines to said City of Boone, with all the property appurtenant thereto, hereinbefore more specifically described, and that the said

lien is now in full force and effect thereon. The court further finds that the said mortgage was duly recorded in the counties of Polk, Dallas and Boone, and that a true copy thereof is attached to the bill of complaint herein.

The court further finds that on the 2nd day of October, 1889, the defendant executed and delivered to the complainant a certain supplemental mortgage for the purpose of better securing the bonds aforesaid; that in and by said supplemental mortgage the said defendant for said purposes conveyed unto the complainant all that portion of the defendant's line of railroad (being a one-half interest therein) lying between Farnham Street in the City of Des Moines and the western corporate limits of said city, and being situated in the county of Polk and State of Iowa, together with all the appurtenances thereto belonging or therein included, and also all its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, and all its property of whatever name and nature not included and covered by said original mortgage, and that said supplemental mortgage was made and delivered upon all the conditions and provisions contained in said original mortgage, and that a true copy thereof is attached to the bill of complaint filed herein.

The court further finds that the defendant, the St. Louis Des Moines & Northern Railway Company issued bonds according to the terms and provisions of said trust mortgage to the extent in the aggregate of $303,000.00 and that the same were so issued in the year 1882. That the said bonds were sold for a valuable consideration and are now outstanding and wholly unpaid.

The court further finds that no part of the interest evidenced by certain interest coupons attached to the said bonds has been paid, and that all the interest accruing upon all of said bonds since their issuance and sale now remains unpaid. That the first installment of interest due thereon matured on the first day of February 1882, and that there is now due upon said interest coupons from defendant the sum of one hundred and eighty three thousand seven hundred seventy 08/100 dollars ($183,770.08).

The court further finds that demand for the payment of the said interest coupons was at their maturity duly made, and that prior to the filing of the bill herein the complainant by reason of the failure to pay said interest coupons and in accordance with the terms and provisions of said mortgage exercised its option to declare the entire sum secured by said mortgage due and payable and prior to the filing of said bill

gave notice to the defendant that it had so exercised said option and declared all bonds secured by said mortgage due and payable.

And now the court being fully advised in the premises, doth hereby adjudge and decree that within ten days from the date of entering this decree the said defendant the St. Louis Des Moines & Northern Railway Company shall pay to the Mercantile Trust Company, as trustee, the full sum of money hereinbefore declared to be due upon said bonds, and for said unpaid interest, to-wit: The sum of four hundred eighty-six thousand, seven hundred seventy 08/100 Dollars ($486,770.08), together with interest upon said last mentioned sum at the rate of six per cent per annum from this date, and all the costs of this suit; that if the said defendant shall fail within the period aforesaid to pay said sums of money, it is adjudged and decreed; that the said mortgages heretofore referred to, and copies of which are attached to the bill herein, be, and the same are hereby foreclosed, and that all the property, rights, franchises and interest of the defendant aforesaid, to-wit: its line of railroad extending from Farnham Street in the city of Des Moines, Polk County, Iowa, to Clive, and through the counties of Polk, Dallas and Boone, to the City of Boone in said last named county, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turnouts, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, tracks, engines, cars, machinery, tools, rents, issues, tolls and earnings, its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature (or so much thereof as may be necessary to pay and satisfy said sums), be sold to pay and satisfy the said sums of money so found to be due from the defendant to the complainant as trustee.

It is further adjudged and decreed that the sale of said property rights and interests be without redemption; and that the said sale upon due confirmation and upon the payment of the purchase price of said property shall forever bar and foreclose all right, title or interest or equity of redemption of the said St. Louis, Des Moines & Northern Railway Company, in the said property so ordered to be sold, which is conveyed by said mortgages, and in each and every part thereof; and also shall forever bar and foreclose all the right, title and interest or equity of redemption of all persons claiming through, or under the said defendant, but it is expressly provided that such sale shall be without prejudice to the liens if any, of all persons not defendants hereto, who are now, or at the date of

such sale, shall be legally or equitably entitled to a lien upon said mortgaged property or any part thereof. And also without prejudice to the rights and equities of parties holding at the date of such sale claims or demands entitled to payment in preference to said mortgage indebtedness. And this court expressly reserves full jurisdiction of this cause, of said property and the proceeds thereof, and of the parties hereto, so far as it may be necessary to protect such lien-holders and other preferred claimants.

It is further adjudged and decreed that the property aforesaid be sold at public auction to the highest bidder or bidders. Such sale shall be held at the east door on court avenue of the United States Court House in the city of Des Moines, in said county and state, between the hours of ten A. M. and four P. M., of such day as the commissioner hereinafter named shall appoint. Said commissioner shall give notice of the time, place and terms of said sale by a printed publication at least once each week for four successive weeks, the last publication to be not less than five days before said sale, in the Iowa State Register, a newspaper published in said City of Des Moines, Iowa.

It is further adjudged and decreed that the highest bidder at such sale, may pay all or any part of the purchase price of said property in the said bonds of the defendant company at their face value, with accrued interest. Such bonds so offered as a part of the purchase price being by such commissioner at the time cancelled and satisfied; provided that so much of said purchase price as is necessary to pay the costs of this suit including the sum hereafter allowed as an attorney's fee, for the complainant, under the terms of said mortgage, be paid in cash.

It is further adjudged and decreed that each bidder shall before his bid is received by the commissioner making such sale, deposit with the said commissioner the sum of five thousand dollars, either in cash or in said bonds, and the condition of such deposit shall be, that if the property is sold to any such bidder, and he fails to comply with the terms of the sale upon his part, or to pay the full purchase price which he agrees to pay, then the sum so deposited shall be forfeited, and shall be used in the payment of said bonds, and all such deposits made by unsuccessful bidders shall at once be returned to them.

It is further adjudged and decreed that the said commissioner immediately upon making the said sale shall report all his acts and doings therein to this court for confirmation, and when his report is confirmed, which may be done immediately upon its presentation, the said commissioner shall execute to such purchaser or purchasers all such deeds of conveyance and transfers as may be necessary to vest in and convey to the said

purchaser or purchasers an absolute and unqualified title in and to all the property conveyed by said mortgages and herein ordered to be sold.

It is further adjudged and decreed that the commissioner executing this decree and making such sale shall apply the proceeds thereof in the manner following:

First: To the payment of all the costs of this cause, including all expenses of making said sale and afterwards enforcing and carrying out this decree, including the solicitor's fee to the complainant for the foreclosure of said mortgages.

Second: To the payment of the bonds aforesaid so far as the same can be paid out of the proceeds of said sale, or by the application of the said bonds so offered as a part or a whole of the purchase price.

It is further ordered that George F. Henry be, and he is hereby appointed Commissioner to make the sale herein, ordered to be made, and to execute this decree to the full extent herein prescribed, and he is required to make full and immediate report of his doings to this court.

O. P. SHIRAS, Judge.

Approved LORAN W. REYNOLDS, Solr.

Filed Oct. 15, 1889. Ed. R. Mason, Clerk.

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

The Mercantile Trust Company
vs.
St. Louis Des Moines & Northern Railway Company.

Comes now the St. Louis, Des Moines & Northern Railway Company by Loran Reynolds, its duly authorized solicitor and waives the service of subpœna herein; and thereupon it admits the allegations of the bill of complaint filed in this cause, approves the decree now presented, and consents that said decree may be entered at once.

THE ST. LOUIS DES MOINES & NORTHERN RAILWAY COMPANY,
By Loran M. Reynolds,
Its Sol'r.

Filed Oct. 15, 1889. Ed. R. Mason, Clerk.

United States Circuit Court Southern District of Iowa, Central Division.

I, Edward R. Mason, Clerk of said Court for said District do hereby Certify that the foregoing is a full, true and complete copies of the Decree, Appearance and Answer of Defendant by Loran M. Reynolds and Appearance and Answer of Defendant by F. M. Hubbell in the case of The Mercantile Trust Company, Plaintiffs, vs. St. Louis, Des Moines & Northern Railway Company, Defendant, as full, true and complete as the original of the same now remains on file of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at office in the City of Des Moines in said District this 10th day of December, A. D. 1909.

(Seal) EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

EXHIBIT 50.

In the United States Circuit Court, Southern District of Iowa, Central Division.

The Mercantile Trust Company
vs. In Chancery.
The St. Louis, Des Moines & Northern Railway Co.

Report of Sale.

To the Honorable Judges of said Court in Chancery Sitting:

In pursuance of a decretal order of this Honorable Court, made in the above cause and dated Oct. 15th, 1889, I, the undersigned, as commissioner of this Court named in said decree do report:

That all and singular the Mortgaged Premises mentioned in the Complainant's Bill and in the decree in this cause, were sold by me at public auction at the East door on Court Avenue of the United States Court House in the City of Des Moines, in said District, on the 22 day of November, 1889; that previous to such sale I gave public notice of the time and place thereof, by advertisement containing a brief description of such premises, published in the Iowa State Register, a newspaper published at Des Moines, in the County of Polk, State of Iowa, and District aforesaid as directed in said decree. I, also, posted copies of said notice and caused to be served copies of the same upon the occupants of the premises so sold to-wit: the St. Louis, Des Moines & Northern R. Co. A copy of said notice with affidavit of publication, is hereto attached, marked "Exhibit A" and made a part of this report.

A copy of the notice so as above posted and served upon the said Railway Co. the owner of said premises, together with the return of service thereon, is hereto attached and made a part of this Report, marked "Exhibit B".

That at such sale the said premises were struck of as follows: Solon Humphreys and J. T. Granger offered for said property hereinafter described the sum of Four hundred and seventy-five thousand, One hundred eighty-seven & 81/100 (475,187.81) Dollars and this being the only bid made or received by me, I declared said property sold to Solon Humphreys and J. T. Granger for said sum of $475,187.81. The said parties in accordance with the terms of the decree herein delivered to me the sum of $1005.17 in cash to cover the Court costs and costs of sale herein and the balance of their bid, to-wit: the sum of $474,182.64 was paid in the bonds Nos. One (1) to two hundred & eighty-eight (288) both inclusive, of the defendant Railway Co. with the coupons belonging thereto, which bonds and coupons cancelled by me are returned with this report.

And further, that I have executed to the said Solon Humphreys and J. T. Granger a deed of the premises so sold by me and which premises as described in the said Bill of Complaint, decretal order, and in the said Deed executed by me, are as follows, to-wit:

All the property, rights, franchises and interests of the defendant railway company, to-wit: its line of railroad extending from Farnham Street in the city of Des Moines, Polk County, Iowa, to Clive, and through the counties of Polk, Dallas and Boone, to the city of Boone in said last named county, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, tracks, engines, car, machinery, tools, rents, issues, tolls and earnings, its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature (the interest of said railway company in the railroad and appurtenances lying between Farnham street in the city of Des Moines and the town of Clive, being an undivided one-half interest). Said sale did not include the corporate franchise of the defendant, the St. Louis, Des Moines & Northern Railway Company.

I submit herewith a copy of the deed executed by me to the purchasers at such sale.

Principal of Judgment	$486,770.08
Int. to day of sale	3,001.69
Attorney's fee	750.00
Costs	39.55
Costs of sale	215.62
	$490,776.94
Amt. of Bid	475,187.81
Deficiency	$ 15,589.13

All of which is respectfully submitted.

Nov. 22, 1889.

(Sgd.) GEO. F. HENRY,
Commissioner & etc.

Endorsed: Filed Nov. 28, 1889. Ed. R. Mason, Clerk.

Exhibit "A".

Affidavit of Publication.

State of Iowa,
Polk County—ss.

R. P. Clarkson, being sworn, says he is publisher of The Iowa State Register, a newspaper published in Des Moines, Polk County, Iowa, and that the notice of which the annexed is a printed copy, was published in said Iowa State Register for four consecutive weeks, the first publication being on the 26th day of October and the last on the 16th day of November, A. D. 1889.

(Sgd.) R. P. CLARKSON.

Subscribed and sworn to by the said R. P. Clarkson, before me, this 16th day of Nov. 1889.

(Seal) (Sgd.) W. W. PIERCE,
Notary Public, Polk County, Iowa.

United States Circuit Court, Southern District of Iowa,
Central Division.

The Mercantile Trust Company
No. 2251. vs. In Equity.
The St. Louis, Des Moines & Northern Railway Company.

Public notice is hereby given that in pursuance of a decree of said court, entered in said cause on the 15th day of October, A. D., 1889, I, the undersigned, the Commissioner named in said decree, will, on the 22d day of November, A. D. 1889, at 11 o'clock A. M. of the said day, at the east door on Court Avenue of the United States Court House in Des Moines, in

said district, sell at public auction to the highest and best bidder for cash, or the bonds of said railroad company, the property described in said decree, and described as follows, viz.:

All the property, rights, franchises and interests of the defendant railway company, to-wit: its line of railroad extending from Farnham street in the city of Des Moines, Polk County, Iowa, to Clive, and through the counties of Polk, Dallas and Boone, to the City of Boone in said last named county, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, tracks, engines, cars, machinery, tools, rents, issues, tolls and earnings, its interests of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature (the interest of said railway company in the railroad and appurtenances lying between Farnham street in the city of Des Moines and the town of Clive, being an undivided one-half interest) or so much thereof as may be necessary to satisfy the sum of four hundred and eighty-six thousand seven hundred seventy and 08/100 dollars, with interest at the rate of six per cent per annum, and the further sum of seven hundred seventy and fifty dollars, with interest thereon at the rate of six per cent per annum, and the costs of suit and accruing costs. Geo. F. Henry Commissioner, U. S. C. C. Southern District of Iowa. Messrs. Cummins & Wright, complainant's solicitors; residence, Des Moines."

Exhibit "B".

Service of the above notice is hereby admitted, Oct. 28, 1889.

ST. LOUIS, DES MOINES & NORTHERN RAILWAY CO.,
By A. B. Cummins, Vice-Prest.

"United States Circuit Court, Southern District of Iowa, Central Division.

The Mercantile Trust Company
No. 2251. vs. In Equity.
The St. Louis, Des Moines & Northern Railway Company.

Public notice is hereby given that in pursuance of a decree of said court, entered in said cause, on the 15th day of October, A. D. 1889, I, the undersigned, the Commissioner named in the said decree, will, on the 22d day of November, A. D. 1889, at 11 o'clock A. M. of the said day, at the east door on

Court Avenue of the United States Court House, in Des Moines in said district, sell at public auction to the highest and best bidder for cash, or the bonds of said railroad company, the property described in said decree, and described as follows, viz:

All the property, rights, franchises and interests of the defendant railway company, to-wit: Its lines of railroad extending from Farnham street in the city of Des Moines, Polk County, Iowa, to Clive, and through the counties of Polk, Dallas and Boone to the city of Boone, in said last named county, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, tracks, engines, cars, machinery, tools, rents, issues, tolls and earnings, its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature (the interest of said railway company in the railroad and appurtenances lying between Farnham street in the city of Des Moines and the town of Clive, being an undivided one-half interest) or so much thereof as may be necessary to satisfy the sum of four hundred and eighty-six thousand seven hundred seventy and 08/100 dollars, with interest at the rate of six per cent per annum, and the further sum of seven hundred and fifty dollars, with interest thereon at the rate of six per cent per annum, and the costs of suit and accruing costs. Geo. F. Henry, Commissioner U. S. C. C. Southern District of Iowa. Messrs. Cummins & Wright, complainant's solicitors; residence, Des Moines."

Copy of Deed.

N. T. G. J. C. C.

Exhibit 51.

This Indenture, made the 22nd day of November, in the year of our Lord, 1889, between Geo. F. Henry, Commissioner named in the decree of the United States Circuit Court, within and for the Southern District of Iowa, in the cause hereinafter referred to, dwelling in the City of Des Moines in said District, of the first part, and Solon Humphreys and J. T. Granger, of the second part, witnesseth.

Whereas, at a term of the United States Circuit Court for the Southern District of Iowa, begun and held at the City of Des Moines in said District, on the 15th day of October, 1889, it was among other things, ordered, adjudged and decreed, by said Court in a certain cause then pending in the said Court, between the Mercantile Trust Company, complainant and the St. Louis, Des Moines & Northern Railway Company, defendant, that the mortgage premises mentioned and set forth in complainant's Bill, and the decree of said court, and hereinafter particularly described, be sold by, or under the direction of Geo. F. Henry, as Commissioner of said Court, the said Commissioner first giving such notice of the time and place of such sale as is required by the terms of such decree.

And Whereas, the said Geo. F. Henry, Commissioner aforesaid, and party of the first part to these presents, in pursuance of the said order and decree of said Court, did, on the 22nd day of November 1889, sell at public auction, at the east door on Court Avenue, of the United tSates Court House, in Des Moines, in said Southern District of Iowa, the said mortgaged premises hereinafter particularly described, having first given due notice of the time and place of such sale, as required by the said order and decree of said court, at which sale the said mortgaged premises, hereinafter particularly described, were struck off to Solon Humphreys and J. T. Granger, for the sum of Four Hundred Seventy-five Thousand one hundred eighty-seven 81/100 Dollars, that being the highest sum bidden for the same, and

Whereas, the said sale was by the terms of said decree made without redemption,

Now, Therefore, this indenture witnesseth, that Geo. F. Henry, Commissioner as aforesaid, and the party of the first part to these presents, in order to carry into effect the said sale so made as aforesaid, in pursuance of the said decree of the said Court, and in consideration of the said sum of Four Hundred seventy-five thousand one hundred eighty-seven 81/100 Dollars, paid by the said purchasers at said sale, hath granted, bargained and sold, aliened, released, conveyed and confirm-

ed, and by these presents doth grant, bargain and sell, alien, release, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the right, title, interest, estate and property of the said St. Louis, Des Moines and Northern Railway Company, as well as the interest of all persons claiming by, through or under them since the date of the mortgage, to-wit: on the first day of February, 1882, as to the first mortgage, and the 2nd day of October, 1889, as to the second mortgage, in and to the following described premises, to-wit:

All the property, rights, franchises and interests of the defendant railway company, to-wit: its line of railroad extending from Farnham Street, in the City of Des Moines Polk County, Iowa, to Clive, and through the Counties of Polk, Dallas & Boone, to the City of Boone, in said last named County, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engines and other houses, depots, turn-tables, tracks, engines, cars, machinery, tools, rents, issues, tolls and earnings, its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature, except the franchise of the said St. Louis, Des Moines & Northern Railway Company to be a corporation, which franchise was not sold by said Commissioner, nor purchased by said Humphreys and Granger, together with all and singular the rights, members, privileges, hereditaments and appurtenances to the same belonging, or in any wise appertaining. To have and to hold all and singular the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances unto the said parties of the second part, their heirs and assigns forever.

In Witness Whereof, the said Geo. F. Henry, Commissioner as aforesaid, hath hereunto set his hand the day and year first above written.

(sgd.) GEO. F. HENRY,
Commissioner U. S. Circuit Court,
Southern District of Iowa.

State of Iowa,
County of Polk—ss.

On this 22nd day of November, 1889, before me, a Notary Public in and for Polk County, Iowa, personally appeared Geo. F. Henry, Commissioner of the United States Circuit Court, for the Southern District of Iowa, who is personally

known to me to be the identical person who signed the foregoing deed as grantor, and acknowledged the same to be his voluntary act and deed for the purposes therein specified.

Witness my hand and seal the day and year above written.

(Seal) (Sgd.) JOHN D. JORDAN,
Notary Public in and for Polk County, Iowa.

Exhibit 52.

In the Circuit Court of the United States, Southern District of Iowa, Central Division.

The Mercantile Trust Company,
No. 2251. vs. Eq.
St. Louis, Des Moines and Northern Railway Company.

This cause coming on for hearing this 23rd day of November, 1889, upon the report of the Commissioner, George F. Henry, Esq. heretofore appointed by the decree of this court to sell the railroad property, described in the decree entered herein; and it appearing to the court that upon due notice and as provided in said decree and in strict conformity with all its terms and provisions, the said commissioner did on the 22nd day of November, sell said property to Solon Humphreys and J. T. Granger, and it further appearing from the petition of the complainant and said Humphreys and Granger that all the creditors of the defendant railway company, except employes, have consented to the prayer of said petition, and it further appearing that the defendant has filed herein its consent to an immediate confirmation of said sale, and the court having accepted the bond tendered in the petition aforesaid conditioned to pay all such claims against said railway company as may be adjudged by the court to be liens upon said property, prior and paramount to the mortgages foreclosed herein or equitably entitled to payment as against the same, and the court being now fully advised in the premises doth order, adjudge and decree that the sale of the said railroad property under said decree as shown by said commissioners report, namely, to the said Solon Humphreys and J. T. Granger be and the same is hereby confirmed, approved and made absolute; and the said George F. Henry commissioner as aforesaid, is hereby authorized and directed to immediately execute to said Solon Humphreys and J. T. Granger a good, sufficient and absolute deed of conveyance of all the property so ordered to be sold and purchased by them, which conveyance shall vest in the purchasers all the right and title which in law or equity can be transferred or acquired under or by virtue of a foreclosure of said mortgages.

It is further ordered and adjudged that all persons having claims, the payment of which is secured by the aforesaid bond, shall present the same in this cause by proper petition at least thirty days before the next term of this court.

Signed in open Court. Oct. Term 1889, to-wit, on this 23rd Nov. 1889.

(Sgd.) J. M. LOVE, Judge.

Endorsed: Filed Nov. 23, 1889. Ed. R. Mason, Clerk.

Exhibit 53.

Articles of Incorporation
of the
Des Moines and Northern Railway Company.

Be it Known that we, whose names are hereto subscribed, being citizens and residents of the State of Iowa, do hereby associate ourselves together as a body corporate, in accordance with the laws of said state relating to corporations for pecuniary profit and do hereby adopt the following Articles of Incorporation:

Art. 1.

The name of the corporation shall be Des Moines and Northern Railway Company.

Art. 2.

The principal office of the corporation for the transaction of its business shall be at Des Moines, Polk County, Iowa; But it may establish such other offices and financial agencies in other counties and states as may be required for the proper and convenient management of its affairs.

Art. 3.

The objects of the corporation are as follows, to-wit: To locate, construct, purchase, lease, own, operate and maintain lines of railway, extending as follows: From Des Moines, in the County of Polk, State of Iowa, northerly through the city of Boone, County of Boone, State of Iowa, and through the Counties of Polk, Dallas, Boone, Hamilton, Wright, Hancock, and Winnebago, to the northern boundary of said state; and from Des Moines, aforesaid, southerly through the city of Albia in the county of Monroe, and through the counties of Polk, Warren, Marion, Monroe, Appanoose and Davis, to the southern boundary of said state, or to locate, construct, purchase, lease, own, operate and maintain any part of the lines so described, or through any one or more of the counties so named. To locate, construct, purchase, own, lease, operate and maintain

connecting lines of railways in other states, so far as it may be authorized by the laws thereof. To locate, construct, purchase, own, lease, operate and maintain all such branches as may be determined upon by said corporation. To locate, construct purchase, own, lease, operate and maintain all such tracks, switches, side tracks and branches as may be convenient or necessary to reach coal mines, stone quarries, gravel beds, manufactories, or other sources of freight traffic. To purchase, lease, own and operate coal mines, stone quarries, elevators and ware-houses, reasonably adjacent to its lines of railway. To locate, construct, purchase, lease, own and operate a telegraph line along all its lines of railway. And to effect these objects the said corporation shall have and enjoy all the powers granted by the laws of the said state of Iowa to railway corporations, including the power to condemn private property as provided by statute and to make all such contracts of whatever nature or description as may be convenient or necessary to enable the said corporation to accomplish the said objects or any or either of them.

Art. 4.

The capital stock of the corporation shall be Five Million Dollars ($5,000,000.00) divided into shares of One Hundred Dollars ($5,000,000.00 divided into shares of One Hundred Dollars ($100.) each; such shares shall be evidenced by certificates duly signed by the president or vice president and secretary or assistant secretary and attested by the seal of said corporation; they shall be transferrable only upon the books of the corporation and the by laws shall provide when and how said transfers shall be made.

Art. 5.

Each share of capital stock shall be fully paid when the certificate therefor is issued and the possession of a certificate shall be accepted as conclusive evidence that the shares therein named have been fully paid and are non-assessable.

Art. 6.

The board of directors hereinafter provided for shall be authorized to accept property in payment of shares of stock at such price or valuation as they by resolution, may declare, and such proceedings shall be recorded in the books of the company and shall be open for inspection by anyone interested therein.

Art. 7.

The affairs of the corporation shall be conducted by a board of directors consisting of not less than five nor more than nine persons; Such directors shall be chosen by the stockholders at

their annual meetings, and shall hold their offices for one year, or until their successors are elected and qualified. Any vacancy occurring during such year, shall be filled by the remaining members of the board.

Art. 8.

The executive officers of the corporation shall be a president, vice-president, secretary, assistant secretary and treasurer. They shall be chosen by the board of directors at its first meeting after the annual meeting of stockholders, shall hold their offices for one year, or until their successors are selected and qualified. Any vacancy occurring during such year shall be filled by the board as soon as practicable.

Art. 9.

The board of directors shall have the power and it shall be its duty to establish by laws not inconsistent with these articles, nor with the laws of the state, prescribing rules for the management of said corporation, and defining the powers and duties of its officers, and providing for the times and places of its own meetings.

Art. 10.

The executive officers of the corporation shall have such powers and perform such duties as usually pertain to their respective offices, and also such as may be provided in the by laws, but all written contracts or conveyances to be executed by the corporation must be signed by the president and secretary, or assistant secretary, and attested with the seal, unless otherwise ordered by the board of directors.

Art. 11.

The stockholders shall hold their regular annual meeting on the first Thursday of January of each year at the office of the corporation in Des Moines Iowa, beginning with the first Thursday of January 1890.

Art. 12.

Special meetings of the stockholders may be called by the secretary or assistant secretary at any time, and must be so called upon the written request of either the president, three directors or stockholders holding one-third of the capital stock then issued. Ten days notice of any such meeting must be given to each stockholder by mailing such notice to his last known place of residence.

Art. 13.

The Articles of Incorporation may be amended at any regular or special meeting of the stockholders by the vote of the

stockholders owning or holding a majority of all the stock then issued; but if an amendment is to be proposed at a special meeting, the notice of the meeting must state the substance of such amendment.

Art. 14.

At all meetings of the stockholders, votes may be cast either in person or by proxy; but if by proxy written authority therefor must be filed with the secretary or assistant secretary.

Art. 15.

Until the first meeting of the stockholders on the first Thursday of January 1890, the board of directors of the corporation shall consist of A. B. Cummins, L. M. Martin, R. L. Chase, F. M. Hubbell, and Carroll Wright. Such directors shall as soon as the corporation is authorized to begin business meet, organize and select the executive officers who shall serve until their successors are elected and qualified.

Art. 16.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized that all its authorized capital stock be subscribed or taken.

Art. 17.

The corporation shall commence on the 19th day of November 1889, and continue for a period of fifty years, unless sooner dissolved according to law.

Art. 18.

The private property of the stockholders shall be exempt from the corporate debts.

Art. 19.

The highest amount of indebtedness or liability to which the corporation shall at any one time be subject shall not exceed two-thirds of its capital stock.

In witness whereof we have hereunto set out our hands this 19th day of November 1889.

A. B. CUMMINS,
L. M. MARTIN,
R. L. CHASE,
F. M. HUBBELL,
CARROLL WRIGHT.

State of Iowa,
County of Polk—ss.

Be it remembered that on this 19th day of November 1889, before me, a notary public in and for the County of Polk, and State of Iowa, personally came A. R. Cummins, L. M. Martin, R. L. Chase, F. M. Hubbell and Carroll Wright, personally to me known to be the identical persons who signed the foregoing articles of incorporation as incorporators, and acknowledged the execution of said instrument to be their free and voluntary act and deed, for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and notarial seal the day and year last above written.

(Notarial Seal)

JAS. P. HEWITT,
Notary Public Polk County, Iowa.

Filed for record Nov. 19th A. D. 1889 at 1:55 o'clock P. M.

GEO. C. SIMS,
Recorder.

EXHIBIT 54.

Solon Humphreys and J. T. Granger
to
Des Moines and Northern Railway Co.

Deed.

Know all Men by these Presents:

That we, Solon Humphreys and Ellen Humphreys, his wife, and J. T. Granger and Carra H. Granger, his wife, of the City, County, and State of New York, for a consideration named in a certain agreement between said Solon Humphreys and J. T. Granger and the Des Moines and Northern Railway Company of even date herewith, do hereby sell and convey unto the Des Moines and Northern Railway Company, a corporation organized and existing under the laws of the State of Iowa, the following described rights and property, to-wit: The line of railway and franchises (except the franchise to be a corporation) formerly belonging to the St. Louis Des Moines & Northern Railway Company, extending from Farnham Street in the City of Des Moines, County of Polk and State of Iowa, through the town of Clive and the counties of Polk, Dallas and Boone to the city of Boone in said last named county, State of Iowa, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turnouts, side

tracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools and all the railroad property formerly belonging to said St. Louis, Des Moines & Northern Railway Company, whether acquired at the time the mortgages mentioned in said agreement were executed, or thereafter, and also all its tolls and earnings and all its interest in the stock of the Des Moines Union Railway Company (it being understood that the road between Farnham Street and Clive aforesaid is sold subject to a deed heretofore executed by the St. Louis Des Moines & Northern Railway Company to the Des Moines & Northwestern Railway Company, dated January 3rd, 1882), and also all their interest, whether as owner of, or holders of a mechanic's lien upon certain betterments made and equipments supplied in widening the gauge of said railway under a contract with said St. Louis Des Moines & Northern Railway Company, dated the 17th day of October 1889. And the said Solon Humphreys and J. T. Granger covenant and agree that said property is free and clear of all liens and incumbrances and that they have good title thereto.

In Witness whereof the said Solon Humphreys and J. T. Granger hereunto set their hands this 23rd day of November 1889. And the said Ellen Humphreys wife of Solon Humphreys, and the said Carra H. Granger, wife of J. T. Granger, hereby relinquish their right of dower in and to the premises hereby conveyed.

SOLON HUMPHREYS,
ELLEN HUMPHREYS,
J. T. GRANGER,
By Solon Humphreys, Atty. in fact &
CARRA H. GRANGER.

State of Iowa,
Polk County—ss.

Be it remembered that on this 23rd day of November, 1889, before me, a notary public, in and for said county and state, personally came Solon Humphreys, personally known to me to be one of the identical persons who signed the above instrument as grantor and acknowledged the execution thereof to be his voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 23rd day of November, 1889.

(Notarial Seal)

JAS. P. HEWITT,
Notary Public Polk County, Iowa.

State of Iowa,
Polk County—ss.

Be it remembered that on the 23rd day of November 1889, before me, a Notary Public in and for the County of Polk, and State of Iowa, personally came Solon Humphreys, personally known to me [to me] to be the identical person whose name is subscribed to the foregoing instrument as Attorney in fact for J. T. Granger, one of the grantors named therein, and acknowledged the execution of said instrument to be the voluntary act and deed of the said J. T. Granger, said grantor, by the said Solon Humphreys, his attorney thereunto appointed, all for the uses and purposes in said instrument expressed.

In Witness Whereof, I have hereunto set my hand and Notarial Seal the day and year last above written.

(Notarial Seal) JAS. P. HEWITT,
Notary Public, Polk County, Iowa.

State of New Jersey,
County of Pessaic—ss.

Be it remembered that on this fifth day of December 1889, before me a Notary Public, in and for said County, and State, personally appeared Carra H. Granger, wife of J. T. Granger, to me personally known to be the identical person who signed the foregoing instrument as one of the grantors, and acknowledged the execution thereof to be her free and voluntary act and deed for the uses and purposes therein expressed.

THOS. M. MOORE,
Notary Public, Passaic..... N. J.

Witness my hand and Notarial Seal the day and year last above written.

(Notarial Seal) THOS. M. MOORE,
Notary Public, Passaic ..... N. J.

State of New York,
County of New York—ss.

Be it remembered that on this Seventh day of December, 1889, before me a Notary Public, in and for said County and State, personally appeared Ellen Humphreys, wife of Solon Humphreys to me personally known to be the identical person who signed the foregoing instrument as one of the grantors, and acknowledged the execution thereof to be her free and voluntary act and deed for the uses and purposes therein expressed.

WM. HEARTS,
Notary Public, N. Y. City.

Witness my hand and Notarial Seal the day and year last above written.

(Notarial Seal)

WM. HEARTS,
Notary Public, for this City & County of New York.

Filed for Record, Dec. 23rd A. D. 1889. At 11:2 o'clock A. M. Geo. C. Sims, Recorder.

Exhibit 55.

Proceedings of the Board of Directors of the St. Louis, Des Moines & Northern Railway Company, as follows:

"Board meeting January 23, 1882. The board met this day pursuant to adjournment. A quorum being present the minutes of the preceding meeting were read and approved.

"On motion of J. S. Runnells it was resolved and carried that the president and secretary of this company execute in behalf of this Company a conveyance to the Des Moines Northwestern Railway Company of all its right, title and interest in and to its branch road from Clive to Waukee, and one-half of its road from the station of Clive to Farnham street in the city of Des Moines, Iowa, and an agreement with said railway company with reference to the operation and management of the joint road and the final division of the same, etc., (a copy of which, dated January 3, 1882, with the approval of the Wabash, St. Louis & Pacific Railway Company) endorsed thereon is filed with the secretary of this company); and that the same be delivered to G. M. Dodge for delivery to the Des Moines Northwestern Railway Company when the same shall be paid for by it."

Exhibit 56.

Board Meeting of the Des Moines Northwestern Railway Company as follows:

"Board meeting January 23rd, 1882. The board met pursuant to adjournment. A quorum being present, minutes of the proceeding were read and approved.

"John S. Runnells presented an agreement for the purchase from the St. Louis, Des Moines & Northern Railway Company of its road from Waukee to Clive, and one-half of its road from Clive to Farnham street in Des Moines; also an agreement for the use of the joint road, a copy of which is presented and filed with the secretary of the same being dated January

3rd, 1882, and reported that the amount of consideration for the purchase was to be settled and agreed upon as soon as the cost of construction could be ascertained. The same was upon motion ratified and agreed to by the board, and the president and secretary of this company directed to execute the same on behalf of the company. On motion the board adjourned until February 8th, 1882, to take action with reference to the contract with the Des Moines & St. Louis, St. Louis, Des Moines & Northern and others for terminal facilities in Des Moines, and for such other business as may come before the board. J. S. Polk, President, J. S. Runnells, Secretary."

EXHIBIT 57.

Land Deed Record 207—Page 167.

St. Louis Des Moines & Northern Railway with Des Moines Northwestern Railway Company.

Contract.

Whereas, the Saint Louis, Des Moines and Northern Railway Company have and are constructing a railway from Farnham Street, Des Moines, Iowa, in a northwesterly direction, through Boone County, Iowa, and has built a branch thereof from Clive, a station on said road in Polk County, Iowa to a junction with the Des Moines Northwestern Railway at or near Waukee, Dallas County, Iowa; and Whereas, the Des Moines Northwestern Railway Company desires to purchase of the Saint Louis, Des Moines and Northern Railway Company the branch of its said road from Waukee to Clive, and one half of its road from Clive to Farnham Street in the City of Des Moines including right of way road-bed, side tracks and switches, to the end that it, the Des Moines Northwestern Railway Company shall have an independent and continuous line of road from the City of Des Moines to Waukee;

Now, Therefore, In consideration of the premises, and of the sum of One Dollar, and of sundry other considerations paid to it by the Des Moines Northwestern Railway Company, the Saint Louis Des Moines and Northern Railway does hereby grant, bargain, sell and convey unto the Des Moines Northwestern Railway Company, all its right, title and interest in and to its branch-road aforesaid from Clive to Waukee, including right of way, roadbed and all rights and franchises, property pertaining thereto, and also one-half of its railway from the station of Clive aforesaid to Farnham Street in the City of Des Moines, including right of way, road-bed, side-tracks, switches and other property necessary to the use and operation of the same, with the joint and equal right to the Des Moines Northwestern Railway Company to enjoy,

use and operate said road from Clive to Des Moines and run its cars thereon. This grant is upon the following conditions, to-wit:

1st. That the railway from Clive to Des Moines shall be maintained and kept up at the joint expense of the parties hereto each contributing thereto in proportion to the amount of business passing over the same from said roads respectively.

2nd. That said joint roads from Clive to Des Moines shall be maintained and operated under the supervision of the superintendent of the said St. Louis, Des Moines & Northern Railway Company, and all trains passing over the same shall be subject to reasonable orders and police regulations of said superintendent of the said St. Louis, Des Moines & Northern Rw'y Company.

3rd. That the parties to this contract and their assigns shall have the joint and equal right to run their trains over said joint road, subject, however, to the rules and regulations provided for in the foregoing clause, and each party to this contract shall have an equal right to receive, and do business arising on said joint road and charge for the same such rate as the parties hereto may from time to time agree upon.

4th. That if the business of said companies or their assigns shall require the construction of a second track from Clive to Des Moines it shall be constructed by said roads jointly, each paying half the expense thereof and each being entitled to the use of the same in common and such additional track shall be maintained and operated in the same manner and subject to the same rules and regulations as the original track.

5th. It is further stipulated and agreed that if either of said companies or their assigns shall find it inconvenient or impracticable to operate said road from Clive to Des Moines jointly with the other company, it may build a second track from Clive to Des Moines on such joint right of way. If the Des Moines Northwestern Railway Company shall elect to build such second track it shall build it on the south half of such right of way as near as may be, and if the original track or any part thereof, shall be located on such south half of said right of way, the same shall be moved over to the north half thereof. If such election to build such second track shall be made by the Saint Louis, Des Moines and Northern Railway, then, it shall build such second track on the north half of said right of way and the original track shall be moved by the Des Moines Northwestern to the south half of said right of way. The expense of building such second track and the removal of the original track as above provided for, shall

be apportioned equitably between said parties, and if they cannot agree upon the same, the matter of difference shall be submitted to arbitration, as hereinafter provided. When such second track shall be built and the original track removed, as above provided, the right of way and property shall be divided between the parties hereto, and south half of such right of way shall be and become the sole and absolute property of the Des Moines Northwestern Railway Company, and the north half of said right of way and property shall be and become the sole and absolute property of the Saint Louis, Des Moines and Northern Railway Company. And each party shall thereafter hold, use and enjoy said property in severalty.

6th. That in case of the building of a second track at the election of either party to the contract, all stations, switches water-tanks, station-houses, cattle-guards and other like property built or constructed by the parties hereto jointly on said joint right of way shall be appraised and the company on whose half of the right of way the same shall be situated shall pay the other company one-half of such appraised value and shall become owner thereof in severalty.

7th. It is further stipulated and agreed that either party to this contract may mortgage, sell or lease the interest it may acquire in and to said joint road and property under and by virtue of this contract, and the party acquiring title thereto or possession thereof under the provisions of such mortgage, sale or lease shall be entitled to all the rights of the party under which he or they may claim title.

8th. It is further stipulated and agreed that all disagreements under this contract shall be submitted to the arbitration of three disinterested persons, one of whom shall be selected by each party to this contract and the other by the two thus selected, and their award in writing shall be final between said parties.

In Witness Whereof, the said parties hereto have caused these presents to be executed by their respective presidents under their respective corporate seals, attested by the secretaries of the said companies the twenty-third day of January, A. D. 1882.

THE ST. LOUIS, DES MOINES & NORTHERN RAILWAY CO.

(St. L. D. M. & N. Ry.) By J. S. Clarkson, President.
(Co. Seal)

Attest: J. S. Polk, Sec.

THE DES MOINES NORTHWESTERN RAILWAY COMPANY,

(D. M. N. W. R. R.) By J. S. Polk, Pres.
(Co. Seal)

Attest: J. S. Runnells, Secretary.

The Wabash Saint Louis and Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines Northwestern Railway Company.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,

(W. St. L. & P. Ry.) By John Humphrey.
(Co. Seal)

Attest: O. D. Ashley, 2nd Sec.

State of Iowa,
County of Polk—ss.

Be it remembered that on this 22nd day of January 1882, personally came before me the undersigned, a notary public within & for the county aforesaid, J. S. Clarkson, who being by me duly sworn, doth depose & say that he is the President of the St. Louis, Des Moines & Northern Railway Company, grantor in the foregoing instrument, that the name of said Company is signed to said instrument by him as president of said Company by virtue of the order of the Board of Directors, that the seal of the company attached thereto is the proper & genuine seal of said company & is affixed by order of said Board of Directors and the said J. S. Clarkson, President acknowledged the foregoing instrument to be the voluntary act and deed of the St. Louis, Des Moines & Northern Railway Company for the uses & purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal the 22nd day of January 1882.

(Notarial Seal) C. HUTTENLOCHER,
Notary Public.

State of Iowa,
Polk County—ss.

Be it remembered that on this 22nd day of January 1882, personally came before me the undersigned, a notary public within & for the county aforesaid, J. S. Polk, who being by me duly sworn doth depose & say that he is the secretary of the St. Louis Des Moines & Northern Railway Company, grantor in the foregoing instrument, that he countersigned the said

instrument & affixed the seal of said company thereto by order of the Board of Directors thereof.

In witness whereof, I have hereunto set my hand & affixed my notarial seal of office this 22nd day of January 1882.

(Notarial Seal) C. HUTTENLOCHER,
Notary Public.

State of Iowa,
Polk County—ss.

Be it remembered that on this 22" day of January 1882, personally came before me the undersigned, a notary public within & for the county aforesaid, J. S. Polk, who being by me duly sworn, doth depose & say that he is president of the Des Moines Northwestern Railway Company, grantee in the foregoing instrument, that the name of said company is signed to said instrument by him as president of said company by virtue of the order of the board of directors, that the seal of the company attached thereto is the proper & genuine seal of said company & is affixed thereto by order of said board of directors. And the said J. S. Polk as president acknowledged the foregoing instrument to be the voluntary act & deed of the Des Moines Northwestern Railway Company for the uses & purposes therein expressed.

In witness whereof, I have hereunto set my hand & affixed my notarial seal this 22" day of Janry 1882.

(Notarial Seal) C. HUTTENLOCHER,
Notary Public.

State of Iowa,
Polk County—ss.

Be it remembered that on this 22" day of January 1882, personally came before me the undersigned, a notary public within & for the county aforesaid, J. S. Runnells, who being by me duly sworn, doth depose & say that he is the secretary of the Des Moines Northwestern Railway Company, grantee in the foregoing instrument & affixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof, I have hereunto set my hand & affixed my notarial seal of office this 22" day of Janry 1882.

(Notarial Seal) C. HUTTENLOCHER,
Notary Public.

Filed for record Sep. 7th, A. D. 1889, at 10:45 o'clock A. M.

GEO. C. SIMS, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 207 page 167 &c.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

MRS. FRANK W. DODSON, Recorder.

EXHIBIT 58.

The Des Moines Northwestern Railway Co.
to
The Central Trust Co. & James Cheney, Trustee.

Mortgage.

This indenture, made and entered into this twenty-eighth day of February, A. D. 1881, by and between the Des Moines Northwestern Railway Company, party of the first part, and the Central Trust Company of New York, and James Cheney of Indiana, as Trustees, joint parties of the second part—Witnesseth:

Whereas by the terms of a contract made and entered into on the eighth day of December, A. D. 1880, by and between the Des Moines Northwestern Railway Company, of the first part, and the Narrow Gauge Railway Construction Company of the second part, and the Wabash Saint Louis and Pacific Railway Company of the third part, reference thereto being hereby made, it is, among other things mutually provided and agreed that the railroad of the said Des Moines Northwestern Railway Company shall under and in pursuance of said agreement and subject to the limitations thereof, and of a contract of the same date entered into by and between the Wabash, Saint Louis and Pacific Railway Company and the Narrow Gauge Railway Construction Company be extended northwesterly from Panora, Guthrie County, Iowa, the present terminus of its completed road to Sioux City, and Spirit Lake, or in that vicinity and from Waukee, its present southern terminus, to the city of Des Moines, Iowa. And whereas, in and by said agreement it is further provided that bonds of the Wabash Saint Louis and Pacific Railway Company, or the series secured by the general mortgage of that company dated the first day of June, A. D. 1880, may be issued and used in pursuance of said agreements to the amount of seven thousand dollars per mile of the railroad of said Des Moines Northwestern Railway Company now complete and to the further amount of seven

thousand dollars per mile for each mile of said railway which may be hereafter completed under said agreement northwesterly from Panora and to the further sum of seven thousand dollars per mile of said extension from Wauker to the city of Des Moines or so much more as may be necessary to complete such last named extension. And, whereas, in and by said agreement, it is further provided, that the said Des Moines Northwestern Railway Company shall secure the Bonds of said Wabash Saint Louis and Pacific Railway Company issued under its general mortgage above referred to by a first mortgage upon its railroad and other property to the extent of seven thousand dollars for each mile of its said railroad now complete and to the further extent of seven thousand dollars for each mile of said railroad as the same may be extended northwesterly from Panora aforesaid, and to the further sum of seven thousand dollars per mile of said extension from Wauker to the city of Des Moines and so much more as may be necessary to complete said last named extension. And whereas, the said Wabash Saint Louis and Pacific Railway Company is about to issue in pursuance of said agreements certain of its bonds secured by its said general mortgage. Now Therefore, in consideration of the foregoing, and to further secure the holders of the bonds issued under the provisions of said general mortgage made as aforesaid by the said Wabash Saint Louis and Pacific Railway Company to the extent only of so many of said bonds as may be actually issued to the party of the first part under said contract of December eighth, A. D. 1880, the Des Moines Northwestern Railway Company by this indenture, doth grant, bargain, sell, convey and transfer, unto the said Central Trust Company of New York, and James Cheney of Indiana, as Trustees, and to their successors in trust, all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools, and all its railroad property acquired and to be acquired, and everything appurtenant thereto, or used in connection therewith, together with all rents, issues tolls and earnings accruing to said party of the first part, provided that if as to any lots or lands parcel of said real estate and not within the actual right of way of said railroad (the same being one hundred feet in width except where narrowed by a street) the president for the time being of the Wabash Saint Louis and Pacific Railway Company shall unite with the first party hereto in a conveyance of the same then such conveyance shall be taken as conclusive evidence that said lots or lands are not necessary for or used in the operation of said railroad. And the Des Moines Northwestern Railway Company covenants

and agrees to and with the trustees named in said general mortgage executed by the Wabash Saint Louis and Pacific Railway Company and their successors in said trust, that all its railroad and property above described shall be charged with the lien of said general mortgage and subject to its provisions, except as hereinafter mentioned, to the extent and amount of seven thousand dollars for each mile of its railroad now constructed or to be constructed as herein provided for, and to such further extent as said bonds may be beyond seven thousand dollars per mile used in the construction of said railroad from Waukee to Des Moines as provided for in said contract of December eighth, A. D. 1880. Provided, however, that if the party of the first part shall well and truly pay or cause to be paid to the parties of the second part an amount equal to the interest on said bonds so advanced to it under said contract of December eighth, A. D. 1880, according to the tenor and effect of said bonds, and an amount equal to the principal of said bonds at the date of the maturity thereof, then this obligation shall be null and void and no foreclosure of this mortgage shall take place or be had even though in the meantime the general mortgage herein referred to may be foreclosed on other railroads and property covered by it.

In witness whereof, the said Des Moines Northwestern Railway Company, has caused this instrument to be signed in its corporate name by J. S. Polk, its president, and attested by John S. Runnells, its secretary, with the corporate seal of the company hereto as authorized and directed by its board of directors the day and year first above written.

(Company seal) DES MOINES & NORTHWESTERN RAILWAY CO.,
By J. S. Polk, President.

Attest:
John S. Runnells, Secretary.

State of Iowa,
County of Polk—ss.

Be it remembered that on this 18 day of April, 1881, personally came before me the undersigned, a notary public within and for the county aforesaid, J. S. Polk, who being by me duly sworn did depose and say that he is the president of the Des Moines Northwestern Railway Company in the foregoing instrument mentioned; that the name of said company is signed to said instrument by him as president of said company by virtue of the order of the board of directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said board of directors. And the said J. S. Polk, as president, acknowl-

edged the foregoing instrument to be the act and deed of the Des Moines Northwestern Railway Company, for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office this 18 day of Apr., 1881.

(Notarial Seal) C. HUTTENLOCHER,
Notary Public.

State of Iowa,
County of Polk—ss.

Be it remembered that on this 18 day of April, 1881, personally came before me, the undersigned, a notary public within and for the county aforesaid, John S. Runnells, who being by me duly sworn, did depose and say that he is the secretary of the Des Moines Northwestern Railway Company in the foregoing instrument mentioned: That he countersigned the said instrument and affixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office this 18th day of April 1881.

(Notarial seal) C. HUTTENLOCHER,
Notary Public.

Filed November 12th A. D. 1883 at 3:20 o'clock P. M.

J. J. PAYNE,
Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 121 page 618 to 621, inclusive.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

MRS. FRANK W. DODSON,
Recorder.

EXHIBIT 59.

United States Circuit Court Southern District of Iowa, Central Division.

October Term 1887.

Friday November 11, 1887.

The Central Trust Company of New York and James Cheney, Trustees,

No. 2186. vs. Eq.

The Des Moines Northwestern Railway Company, the Wabash St. Louis & Pacific Railway Company, Solon Humphreys and Thomas E. Tutt, Receivers of the Wabash, St. Louis & Pacific Railway Company, and the St. Louis, Iron Mountain & Southern Railway Company.

Decree.

Now on this day, come the following parties, by their solicitors, to-wit: The Central Trust Company of New York and James Cheney, complainants, and the Wabash St. Louis & Pacific Railway Company and the Des Moines Northwestern Railway Company; And it appearing to the court that all the parties defendant above named have been served with process or have entered their appearance herein; and it appearing to the court that the St. Louis Iron Mountain & Southern Railway Company, defendant herein has been duly served with process herein and has in default of an appearance, answer and demurrer for more than a month before the rendition of this decree, the bill of Central Trust Company of New York, and James Cheney, trustees, is taken as confessed against it, and this cause coming on to be heard upon the bill of the Central Trust Company of New York and James Cheney, trustees, filed December 4, 1886, the answer to the Wabash St. Louis & Pacific Railway Company filed February 7th 1887: The answer of Solon Humphreys and Thomas E. Tutt, receivers of the Wabash St. Louis & Pacific Railway Company, filed February 7th, 1887: The answer and the cross-bill of the Des Moines Northwestern Railway Company, both filed February 7th, 1887: together with all other answers appearing of record and all replications and exhibits, the court with consent of all the parties present in court finds and adjudges that on the 28th day of February A. D. 1881, the Des Moines Northwestern Railway Company was a body corporate under the laws of the State of Iowa, and that such Company then owned a certain line of railroad known as the Des Moines Northwestern Railway with all the property real and personal, appertaining thereto, and all franchises thereof. That on said 28th day of February 1881, the said Des Moines & Northwestern Railway Company for the purpose of securing the holders of the bonds issued under the provisions of the general mortgage made by the Wabash St. Louis & Pacific Railway Company under date of June 1st A. D. 1880, and issued by said Wabash St. Louis & Pacific Railway Company to the amount of seven thousand dollars per mile for the line of railway of the Des Moines Northwestern

Railway actually completed, and the further sum of seven thousand dollars per mile and as much more as might be necessary to complete the extension from Waukee to the City of Des Moines and the sum of seven thousand dollars per mile issued for the extension of said railway northwesterly from Panora, duly executed and delivered to the complainants herein, the Central Trust Company of New York and James Cheney of Indiana, as trustees, its mortgage or deed of trust, and thereby conveyed to said trustees for the purposes in said mortgage fully set forth, all the real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depot grounds, turn tables, engines, cars, machinery, tools, and all its railroad property acquired and to be acquired, and everything appurtenant thereto, or used in connection therewith, together with all rents, issues, tolls and earnings, accruing to said party of the first part, being a line of railway extending from Farnham Street, Des Moines, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, Pocahontas, Buena Vista, Clay and Dickenson, in said State, and the counties of Polk, Dallas, Guthrie, Calhoun, Pocahontas, also right of way, depot grounds and other property appurtenant thereto.

The court further finds and adjudges that the lien of said mortgage attached to the said lines of railway and property appurtenant thereto, hereinbefore described, and is now in full force and effect thereon. The court further finds and adjudges that said mortgage was duly recorded as required by law; and for all the provisions thereof, and for the terms and conditions of the bonds secured thereby, reference is hereby made to a true copy of said mortgage filed by said Central Trust Company of New York with its bill filed in this cause and marked Exhibit "C". The court further finds and adjudges that of the mortgage bonds attaching as a lien upon the said railways hereinbefore described as aforesaid, there were in fact issued and sold for value and are now outstanding and unpaid a number thereof, the principal of which amounts to eight hundred and five thousand ($805.00) Dollars, with interest thereon, and upon coupons attached thereto, the further sum of three hundred and eighty-one thousand, seven hundred and five ($381,705.00) Dollars, up to the time of entering this decree.

The court further finds that the Wabash St. Louis & Pacific Railway Company and the Des Moines Northwestern Railway Company made default on the first day of June 1884, in the payment of all the interest which became due on said bonds

on said day, and that such default has continued ever since that time, that said Companies have also made default in the payment of all installments of interest maturing on said bonds since the said first day of June 1884, and that such defaults have continued ever since.

The court further finds that demand was duly made by the holders of a large number of said bonds and coupons at the office of said Des Moines Northwestern Railway Company, and said Wabash St. Louis & Pacific Railway Company in the City of New York for the payment of the interest maturing thereon on the first day of June A. D. 1884, said demand being made on or after said date and payment was then and there refused. The court further finds that the principal sum specified in the mortgage bonds aforesaid as well as the interest thereon have now become due and payable according to the terms and conditions of said instrument.

The court being fully advised in the premises, does hereby adjudge and decree that within ten days from this date, the Des Moines Northwestern Railway Company, or some person or persons for it, shall pay to the Trustees of said mortgage the full sum of money found due as principal and interest, as aforesaid, on said bonds and coupons, together with interest from this date, at the rate of six per cent per annum, and all costs of this suit; that in default thereof the said mortgage be foreclosed and all the property rights and interests aforesaid conveyed thereby or upon which the mortgage is a lien as hereinbefore decreed, be sold. It is ordered that the sale of said property, rights and interests be without redemption, and said sale when made, and confirmed by the court, and all the conditions thereof fully performed, shall forever bar and foreclose all right, title and equity of redemption of said Des Moines Northwestern Railway Company in said railway, railroad property, interest and franchises, and each part thereof; and also all the rights, and interests of all persons claiming through or under said Company, and also all the right of redemption and all other rights and interests of all the parties to this cause, and also all the rights and interests of all other parties claiming through or under said Des Moines Northwestern Railway Company, save as herein excepted, it being expressly decreed that such sale is made subject to the laws rights and equities of all parties not made defendants hereto, who are now, or shall at the date of such sale be legally or equitably entitled to a lien upon said mortgaged property or any part thereof, or be entitled to subject said mortgage property or the proceeds thereof to the payment of their claims, before the application thereof to the payment of the mortgage debt, and this court expressly reserves full jurisdiction of this

cause, of the parties hereto, and over the property decreed to be sold, so far as may be necessary to fully protect the rights and equities herein named.

The court further orders and decrees that the property aforesaid be sold at public auction to the highest bidder or bidders at the front door of the United States Court House in the City of Des Moines, in the State of Iowa, between the hours of 10:00 A. M. and 4:00 P. M. on such day as the commissioner hereinafter named shall appoint. Due notice of the time, place and terms of said sale shall be given by publication at least once a week for four weeks before said sale, in one public newspaper in the city of Des Moines, Iowa. It is ordered that before any bid for any property sold under this decree shall be accepted by the Commissioner, executing this decree, he shall require the person or persons making such bid to deposit with him or subject to his order in some bank to be by the Commissioner selected, the sum of One Thousand Dollars.

As soon as the said sale shall have been made by the Commissioner in pursuance of this decree, he shall report the same to this court for confirmation, further certifying to the court the compliance of the purchaser or purchasers with the conditions hereinbefore prescribed. If any such bid shall be accepted by the court and the party making the same shall fail to comply with all the conditions of sale and all orders of the court made or to be made with respect thereto, then the sum so deposited shall be forfeited [and shall be forfeited] and shall be applied to the expenses of re-sale, or the cost of this cause, or the payment of the bonds aforesaid, as the court shall order. If any bid shall be rejected by the court, the deposit made by the bidder shall be returned. If any bid shall be accepted and confirmed by the court and all the conditions of sale shall be fully complied with, the Commissioner shall execute to such purchaser or purchasers, deeds of conveyance and transfer of all the property and interests referred to in this decree.

It is further ordered and decreed that after the purchaser or purchasers shall have made the cash payment hereinbefore described, said purchaser or purchasers shall have the right to discharge the remainder of their bid by the use of the bonds aforesaid. The Commissioner executing this decree shall apply the proceeds derived from said sale in the manner following: 1st. To the payment of all the costs of this cause, including all expenses of making the sale and otherwise enforcing and carrying out this decree. 2nd. To the payment of the bonds aforesaid as far as the same can be paid in whole or in part, out of the proceeds of said sale, or by the application of the bonds aforesaid in lieu of purchase money under the provisions of this decree relating thereto.

George F. Henry is hereby appointed Commissioner to execute this decree of sale and he is ordered to make full report of his doings to this court.

(Signed) J. M. LOVE, Judge.

Endorsed: Filed Nov. 11, 1887. Ed. R. Mason, Clerk.

EXHIBIT 60.

United States Circuit Court, District of Iowa.

The Central Trust Company, et al.

vs.

Des Moines, Northwestern Railway Company, et al.

Now on this 2nd day of June A. D. 1888, this cause came on to be heard on the Supplemental Report of George F. Henry, Commissioner, filed in this cause on the 28th day of May A. D. 1888, on consent of complainants and the respondents, Wabash, St. Louis & Pacific Railway Company and Thomas E. Tutt and Solon Humphries, Receivers, and the Court having examined the same, and being now fully advised, it is ordered, and adjudged that such report be, and the same is approved, and confirmed, and the deed heretofore made by said Commissioner, to Jefferson S. Polk, and F. M. Hubbell, in pursuance of the sale heretofore made, under the decree in this cause, and which deed is in words and figures following, to-wit:

"This Indenture made the 19th day of May in the year of our Lord, 1888, between George F. Henry, Commissioner of the United States Circuit Court, within, and for the Southern District of Iowa, dwelling in the city of Des Moines, in said District, of the first part, and Polk & Hubbell, a firm composed of Jefferson S. Polk, and F. M. Hubbell, of the second part,

Witnesseth:

Whereas at a term of the United States Circuit Court for the Southern District of Iowa, begun, and held at the City of Des Moines in said District on the 11th day of November 1887, it was among other things ordered, adjudged and decreed by said Court in a certain cause then pending in said Court, between the Central Trust Company, of New York, and James Cheeney, Trustees, complainants, and the Des Moines Northwestern Railway Company, and others, defendants.

That the mortgaged premises mentioned, and set forth in Complainant's Bill, and the decree of said Court, and hereinafter particularly described be sold by or under the direc-

tion of George F. Henry, a Commissioner of said Court, the said Commissioner first giving such notice of the time and place of such sale, as is required by the Statutes of Iowa, for sales on execution.

And Whereas, the said George F. Henry, Commissioner, aforesaid and the party of the first part to these presents, in pursuance of the said order, and decree of said Court, did, on the 21st day of December 1887, sell at Public Auction, at the front door of the United States Court House, at Des Moines in said Southern District of Iowa, the said mortgaged premises hereinafter particularly described, having first given due notice of the time and place of such sale, as required by the said order and decree of said Court, at which sale the said mortgaged premises, hereinafter particularly described, were struck off to Polk & Hubbell, for the sum of One Million, One Hundred and Ninety-five Thousand and Six and 20/100 Dollars, that being the highest sum bidden for the same; and Whereas, said bid has been accepted, and confirmed, by the court, and all the conditions of the sale having been complied with, said sale being by the terms of the decree made without redemption;

Now Therefore, this Indenture witnesseth, that George F. Henry Commissioner, as aforesaid, and the party of the first part to these presents, in order to carry into effect the said sale so made as aforesaid, in pursuance of the said decree of the said Court, and in consideration of the said sum of One Million One Hundred and Ninety-five Thousand, and six and 20/100 Dollars, paid at the time of the execution of this deed, hath granted, bargained, and sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, and sell, alien, release, convey, and confirm unto the said parties of the second part and to their heirs and assigns forever, all the right, title, interest, estate and property of said Des Moines Northwestern Railway Company, as well as the interest of all persons claiming by, through or under it, since the date of the mortgage, to-wit: February 28th, 1881, in and to the following described premises to-wit: All the real estate necessary for, and used in the operation of the said Des Moines Northwestern Railway, its right of way, depot grounds, embankments, bridges, turn-outs, sidetracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools and all its railroad property and appurtenances, being a line of railway extending from Farnham Street, Des Moines, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, Pocahontas, Buena Vista, Clay and Dickinson, in said State, together with all and singular the rights, members,

privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining. To have and to hold all and singular the said premises, above mentioned, and described, and hereby granted, and conveyed or intended so to be, with the appurtenances unto the said parties of the second part, their heirs and assigns forever.

In Witness Whereof the said Geo. F. Henry hath hereunto set his hand the day and year first above written.

GEO. F. HENRY,
Commissioner of U. S. Circuit Court for Southern District of Iowa.

State of Iowa,
County of Polk—ss.

On this 19th day of May 1888, before me, W. G. Harvison, a Notary Public, in and for Polk County, Iowa, personally appeared Geo. F. Henry, Commissioner of the United States Circuit Court for the Southern District of Iowa, who is personally known to me to be the identical person who signed the foregoing deed as grantor, and acknowledged the same to be his voluntary act, and deed, for the purposes therein specified.

Witness My Hand and seal the day and year above written.

(Seal)

W. G. HARVISON,
Notary Public in and for Polk County, Iowa."

be and the same is hereby approved, and the said Commissioner is directed to deliver the same to said purchasers, Jefferson S. Polk and F. M. Hubbell.

(Sgd) J. M. LOVE, Judge.

Endorsed: Filed Jun. 2, 1888. Ed. R. Mason, Clerk.

EXHIBIT 61.

Articles of Incorporation
of the
Des Moines and Northwestern Railway Company.

Know all Men by these Presents, that Jefferson S. Polk, and F. M. Hubbell and C. F. Meek, do hereby associate themselves into a body corporate under the laws of Iowa, and adopt the following

Articles of Incorporation
of
Des Moines and Northwestern Railway Company.

Article 1.

The name and style of this corporation shall be the Des Moines and Northwestern Railway Company and its principal place of business shall be at Des Moines, Iowa.

Article 2.

The general nature of the business of the Corporation shall be the purchasing, owning, extending, constructing and operating of a railway from the City of Des Moines, Iowa, to the Northern line of the State of Iowa, including all necessary terminal facilities, in Des Moines, Iowa, with a branch to Sioux City, Iowa, and such other branches as may from time to time be determined upon by the Company. The power to lease the road at any stage of its acquisition, construction or extension is hereby expressly asserted, and claimed. This corporation shall further possess all the powers, rights and immunities, conferred by law upon corporations for pecuniary profit.

Article 3.

The capital stock of this Corporation shall be Four millions of Dollars, which shall be divided into shares of One hundred dollars each, all of which shall be liable to payment at such times, and in such manner as the Board of Directors may from time to time determine. The entire capital stock or any part thereof may at the discretion of the Board of Directors be issued, and used for the purpose of carrying out the objects of this incorporation, and may be paid for in work done, or material furnished, in the construction or extension of the road, or used in the purchase, or acquisition of such road or roads that may be required in establishing or extending said line of railway, or exchanged for the stock of the road or roads so acquired for that purpose.

Article 4.

Each share of stock shall be entitled to one vote at any meeting of the stockholders, upon presentation of a certificate therefor. Provided that no transferee shall be entitled to vote unless the certificate of stock so held by him shall have been duly transferred on the books of the Company at least sixty days before the meeting at which it is sought to be voted.

Article 5.

For the payment of debts or to aid in the purchase or construction of the railroad the Directors by a two thirds vote of the entire Board in favor thereof may issue preferred stock, drawing interest at the rate of not more than seven per cent per annum.

Article 6.

The affairs of the Company shall be managed by a Board of not less than five (5) or more than nine (9) Directors, who shall be elected annually by the stockholders on the first Thursday in January of each year. They shall have the power and are hereby invested therewith to take all steps necessary to acquire, purchase or construct and operate said railroad, and its branches, or to lease the same perpetuity, or otherwise, at any stage of its progress, upon such terms and conditions as they may deem advisable, if, in their judgment the purposes of this incorporation shall be better promoted thereby. They are hereby further authorized for the purpose of purchasing, building, extending and equipping its road, and otherwise carrying out the objects of this incorporation, to execute a mortgage upon the road, franchise and other property of this company to secure the bonds of the Company or other evidence of indebtedness, issued or approved by the Board all of which bonds or other evidence of indebtedness, and stock together with all subsidies, taxes, gifts and donations which may be obtained to aid in the construction of the road, they are empowered and directed to transfer to such corporation or individual as they may elect for the purpose of purchasing, building and extending of said line of railway. And they are hereby invested with all the other powers usually possesses by directors of similar corporations. A majority of the Board shall constitute a quorum; and in the event of a death or resignation of a member, the remaining members may fill the vacancy thus occurring. Provided that a two-thirds vote of the full board shall be necessary to fill vacancy. The Directors shall elect from their number a President, Vice President, Secretary and Treasurer. Meetings of the Board may be held at any time upon the call of the President, or in his absence, of the Vice President, or two members of the Executive Committee.

The following persons, towit, G. M. Dodge, F. M. Hubbell, Jefferson S. Polk, C. F. Meek and Hoyt Sherman shall constitute the Board of Directors of this Company until the regular election in January 1888 or until their successors are duly elected.

Article 7.

The President, Vice President, Secretary and Treasurer, shall constitute an Executive Committee, who shall have power to make contracts binding on the corporation, and shall be trusted with the immediate management of its affairs. They shall be authorized to act for the Company in all matters affecting its interest when the Board is not in session and their under-

takings as such Committee shall be valid and binding to the same extent as would those of the full Board of Directors.

Article 8.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article 9.

All contracts and certificates of stock shall be signed by the President, or in his absence by the Vice President, and countersigned by the Secretary.

Article 10.

The total amount of indebtedness to which the corporation may subject itself shall never exceed two-thirds of its capital stock, except as authorized under Chapter XXII Laws of the Twentieth General Assembly of the State of Iowa.

Article 11.

The articles may be amended at any meeting of the stockholders; ten days notice of such meeting having been given by publication in some newspaper at the principal place of business of the Company. Provided that a majority of all the stock subscribed and issued shall be voted in favor of such amendment.

Article 12.

This incorporation shall commence on the 3rd day of October 1887, and continue fifty (50) years with the right of renewal.

In Testimony Whereof, we have hereunto set our hands this 3rd day of October A. D. 1887.

JEFFERSON S. POLK,
FREDERICK M. HUBBELL,
C. F. MEEK.

State of Iowa,
Polk County—ss.

On this 3rd day of October 1887, before me the undersigned Notary Public in and for the County of Polk personally appeared Jefferson S. Polk and F. M. Hubbell and C. F. Meek, to me personally known to be the identical persons whose names are affixed to the foregoing instrument as incorporators, and acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

(Notarial Seal)

CYRUS KIRK,
Notary Public Polk County, Iowa.

EXHIBIT 62.

Polk and Hubbell
to
Des Moines & Northwestern Railway Co.

Deed for Railway and Property.

Whereas, heretofore, to-wit, on the 21st day of December, A. D. 1887, Polk & Hubbell, a firm composed of Jefferson S. Polk and F. M. Hubbell, did purchase certain railway and property formerly belonging to the Des Moines Northwestern Railway Company, and hereinafter more particularly described, at a sale on said day made by George F. Henry, commissioner, acting under a decree rendered in the United States Circuit Court, in and for the Southern District of Iowa, Central Division, at the suit of the Central Trust Company et al, complainants, against the Des [—] Northwestern Railway Company, et al, defendants, and,

Whereas, they heretofore proposed to sell said property purchased at said sale to the Des Moines & Northwestern Railway Company, a corporation duly organized and existing under the laws of the State of Iowa, which proposition was duly accepted by said Company,

Now Therefore, for the purpose of carrying out such proposition, and in consideration of the premises, and the sum of One Dollar to them in hand paid, the said Jefferson S. Polk and F. M. Hubbell, who compose said firm of Polk & Hubbell, do bargain and sell, alien, release, convey and confirm unto the Des Moines & Northwestern Railway Company, and its assigns forever, all their right, title and interest, estate and property in and to the following described premises, to-wit:

A line of railway extending from Farnham Street in the city of Des Moines, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, Pocahomtas, Buena Vista, Clay and Dickinson, in the State of Iowa, together with all the real estate necessary for and used in the operation of said railway, its right of way, depot grounds, embankments, bridges, turnouts, sidetracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables and cars, machinery, tools and all other said railway property and appurtenances, together with all and singular the rights, privileges, hereditaments and appurtenances of the same belonging or in any wise appurtaining thereto.

And to Have and to Hold all and singular the premises above mentioned and described and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said party of the second part and its assigns forever.

The intention of these premises is to convey to said Des Moines & Northwestern Railway Company all the right, title and interest acquired by said Polk & Hubbell under and by virtue of a deed of George F. Henry, commissioner above mentioned, which deed bears date the 19th day of May, 1888. The said Polk & Hubbell make no warranty with reference to said property so conveyed, except as against any acts done or suffered by them; and inasmuch as it is intended that this conveyance shall be recorded simultaneously in the several counties of the state of Iowa wherein the railroad property above described, or some part thereof, is situated, the parties have executed six several counterparts hereof, each an original, and all constituting but one and the same conveyance.

Julia Polk, H., wife of Jefferson S. Polk, and Frances E. Hubbell, wife of F. M. Hubbell, hereby relinquish all their right of dower in and to the said premises so sold and conveyed.

In witness whereof, we have hereunto set our hands this 19th day of May, A. D. 1888.

JEFFERSON S. POLK,
JULIA H. POLK,
F. M. HUBBELL,
FRANCES E. HUBBELL.

State of Iowa,
Polk County—ss.

On this 19th day of May, A. D. 1888, before me Jno. S. Polk, the undersigned, a notary public within and for said county, personally came Jefferson S. Polk and Julia H. Polk, his wife, F. M. Hubbell and Frances E. Hubbell, his wife, personally to me known to be the identical persons whose names are affixed to the above instrument as grantors and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

Witness my hand and official seal on the day and date last above written.

(Notarial Seal)

JNO. S. POLK,
Notary Public, Polk County, Iowa.

Filed for record June 2, 1888, at 4:35 o'clock P. M.

D. C. BISHARD, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original

record in my office, and the whole thereof, and recorded in Book No. 147 at pages 592 and 593.

Dated at Des Moines, Iowa, in said County this 10 day of December, 1909.

MRS. FRANK W. DODSON,
Recorder.

EXHIBIT 63.

"Stockholders' Meeting, August 17, 1891.

The stockholders of the Des Moines & Northwestern Railway Company met pursuant to call at the office of the company in the city of Des Moines, Iowa, on the 17th day of August, 1891.

Upon calling the roll of stockholders it was found that all the stockholders of the company, to-wit:

F. M. Hubbell,	holding	3250	shares
G. M. Dodge	"	3500	do
L. M. Martin	"	1	
H. D. Thompson	"	1	
F. C. Hubbell	"	1	do
A. N. Denman	"	1	do
A. B. Cummins	"	1	do
F. M. Hubbell & son	"	3249	do
Total shares		10004	

were present in person or represented by written proxy duly authorized to act and vote in any matter which might come before the meeting.

Thereupon the following resolutions were offered by L. M. Martin & seconded by H. D. Thompson.

Whereas negotiations are now pending for the consolidation of the railway property of the Des Moines and Northern Railway Company extending from Farnham Street in the city of Des Moines to Boone, Iowa, and the railway properties of this company and for the merger of the two railway corporations into a single corporation under the provisions of the statutes of the state of Iowa; and

Whereas before the said consolidation & merger can take place the main and side tracks of this company's lines must be widened to the standard gauge of four feet and eight and one half inches; and

Whereas Independent of the said merger and consolidation it is desirable that such work be undertaken and the tracks

of this company be widened to the standard gauge before mentioned and this company is without funds or means to accomplish the same.

Now therefore, be it resolved by the stockholders of the Des Moines and Northwestern Railway Company at the stockholders meeting assembled all of the stock of the company being present and represented as hereinbefore set out that the Board of Directors of this Company be and they are hereby authorized to take the necessary steps to accomplish the consolidation of the said railway companies and properties (this company having first widened the gauge of said railway) upon the following terms and for the consideration hereinafter named as follows, to-wit: The said new corporation shall pay for the property of this Company by issuing to this Company or to its present stockholders, its first mortgage bonds in the sum of Sixteen Hundred Thousand Dollars said bonds to be secured by a trust mortgage upon the consolidated property of the new corporation consisting of all of the property of the two lines of railway hereinbefore mentioned except certain items of property agreed to be excepted from the said trust mortgage and the said issue of bonds not to exceed Eighteen Thousand Five Hundred Dollars ($18,500.00) per mile of main track of said consolidated railway property. And the said new corporation shall also deliver to this company or to its stockholders in part payment for its property, Three Million One Hundred and Eight Thousand Dollars of its stock the said aggregate of stock and bonds so to be delivered to this company or to its present stockholders, to be in payment in full for the said property of this Company and the property of this company so to be turned over to the new corporation to be in payment in full for the said bonds and for the said stock and the said stock shall be issued as fully paid up stock and non-assessable for any purpose whatever.

And it is further resolved that this Company assents to all of the provisions of the contract entered into between Solon Humphreys and G. M. Dodge as parties of the first part, and F. M. Hubbell as party of the second part and executed on the first day of July A. D. 1891, in so far as the said contract relates in any way to this Company and this corporation agrees to take such future action as may be necessary to enable the said F. M. Hubbell to carry out the provisions of the said contract which contract is now before this stockholders meeting, and has been inspected by the stockholders.

Second: Resolved further that the Board of of Directors this Company shall immediately contract with F. M. Hub-

bell for the widening of the main and side tracks of the line of the railway of this company to the standard gauge of four feet & eight and one half inches & the said contract shall require the said Hubbell to lay the main track of the said line of railway from Clive to the City of Jefferson, Iowa with steel rails weighing at least fifty two pounds per yard & between Jefferson and Fonda the track shall be laid with the forty pound steel rails now in use, and so much of the best thirty five pound iron rails now in use as shall be necessary to complete the said track between said points. The said contract shall also require the said Hubbell to cause all of the bonds now outstanding against this Company to be surrendered and cancelled and shall further require the said Hubbell to take up, pay and discharge all of the floating debt now outstanding against this company.

Third: Be it further resolved that when the said contract for widening the gauge of the road shall have been completed and performed & and the other provisions thereof respecting the surrender & cancellation of the bonds of this company & of its floating indebtedness shall have been fully complied with, the said Hubbell shall be entitled to receive the sum of Fifteen Hundred and Sixty-nine Thousand dollars ($1,569,000.00) together with the net earnings of the said road from March 1st to December 31, 1891, inclusive, as full price and consideration for the performance of his undertakings in said contract which sum shall be paid to him in the bonds of this company secured by trust mortgage upon all of its property and franchises or upon the consolidation of said companies as in the said contract contemplated, the said F. M. Hubbell agrees further to surrender and cancel all of the stock he now holds in this company and shall receive as full compensation for the performance of the provisions of his said contract and the surrender of his said stock of the bonds of the new corporation hereinbefore referred to and in lieu of the bonds of this company above referred to the sum of Fifteen Hundred and Sixty Nine Thousand Dollars thereof and of the stock of the new corporation the sum of Two Million and Eight Thousand Dollars thereof, together with the net earnings as hereinbefore set out.

And the said G. M. Dodge shall receive as full compensation for his interest as a bondholder & stock holder in this company of the said bonds of the new corporation the sum of Thirty one Thousand Dollars thereof and of the stock of the said new corporation the sum of Eleven Hundred Thousand Dollars thereof. The foregoing and the above named persons are the only persons interested in any manner in this company whether as stockholders, bondholder or otherwise or entitled to the

proceeds of the merger & consolidation of this railway company & its property with the Des Moines and Northern Railway Company & its property as hereinbefore contemplated.

Fourth: Resolved further that the distribution of the proceeds of the merger and consolidation of the said railway corporations and property as provided in the last preceding resolution in so far as the stockholders and bondholders of this company are entitled thereto or to any interest therein represents the entire interest of each person named therein in the property of this company as stockholders, bondholders or otherwise and the distributive share assigned to F. M. Hubbell by the terms of the said resolution represents not only his present interest in the property of this company, but also the full amount which he shall be entitled to receive in consideration of the agreement to be entered into with him for widening the gauge of the road of this company, taking up its present issue of bonds, its floating indebtedness &c., in the manner hereinbefore provided and he shall receive the said distributive share assigned to him in full compensation and satisfaction therefor.

And the said G. M. Dodge is to receive the portion of the proceeds of the said consolidation & merger assigned by the terms of the said resolution to him as full compensation for his interest in the property of this company both as stockholder, bondholder or otherwise.

Resolved further that these resolutions shall take the place of & stand in lieu of the resolutions adopted by this company on the 7th day of July, 1891.

The foregoing resolution after consideration were unanimously adopted all of the stock of the company voting in favor thereof and the same were declared to be adopted.

On motion it was ordered that the Board of Directors proceed to carry out the purpose and intent of the foregoing resolutions and to do all things needful to carry into effect the transactions therein provided for.

On motion adjourned to Aug. 18, 1891. A. N. Denman, Secretary.

EXHIBIT 64.

Articles of Consolidation and Incorporation
of the
Des Moines, Northern & Western Railway Company.

Articles of Consolidation and Incorporation entered into this fourteenth day of December in the year one thousand eight

hundred and ninety-one, by and between the Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company, corporations organized under the general laws of the state of Iowa, and owning and operating lines of railway therein in pursuance of the statute of said state relating to the merger and consolidation of the stock property franchises and liabilities of railway corporations.

The said Articles witness, that:

Whereas, a consolidation, union and merger of the capital stock, properties, franchises and liabilities of the above named corporations into a consolidated corporation, which shall own and be possessed of all the property, franchises, rights, privileges and immunities of each and both of said corporations, and such other property, rights, franchises privileges and immunities as it may hereafter acquire, will it is believed secure greater efficiency and economy in the management and operation of the lines of railway now or hereafter acquired, and thereby promote the interests of the public, of said corporate parties, and of all the shareholders and other parties in interest in each and both of them, and,

Whereas, resolutions authorizing such consolidation, union and merger, upon the terms and conditions hereinafter expressed, have been duly submitted to the stockholders of each of said corporations at meetings duly convened and held upon notice given in manner and form as required by law and the by-laws of said corporations, and said resolutions have been adopted and approved at each of said meetings by the votes of all the stock and stockholders of said respective corporations,

Be It Therefore known, that the said Des Moines & Northwestern Railway Company and the Des Moines and Northern Railway Company, by their respective officers thereunto duly authorized, in consideration of the premises and the mutual execution hereof, do adopt the Articles of Consolidation, convey, covenant and agree as follows, to-wit:

Article I.

They do hereby consolidate, unite and merge thei capital stocks, franchises, rights, privileges and property of every nature and description, and thereby create a consolidated corporation which shall be known, styled and named:

Des Moines, Northern & Western Railway Company.

Article II.

The said Des Moines & Northwestern Railway Company and the said Des Moines & Northern Railway Company do hereby

respectively and severally grant, bargain, sell, release, convey, assign, transfer, and set over unto the Des Moines, Northern & Western Railway Company, the consolidated corporation hereby created, the several and respective railroads, railroad lands, rights of way, road beds, tracks, turnouts, and switches, stations, station grounds, lands, lots, bridges, cars, locomotives, rolling stock, tools, machinery, shops, roundhouses, fuel, timber, iron, stone, materials, goods and chattels, stocks, bonds, bills, notes, accounts, demands, moneys and things in action; and all and singular their several and respective estates, property and effects, real and personal, movable and immovable, wheresoever, howsoever and by whomsoever held; and all and singular their several and respective corporate and other franchises, rights, privileges and immunities. And said parties do mutually agree and declare that the same shall, from the execution of these Articles, be henceforth held and possessed by said consolidated corporation, its successors and assigns, forever, to and for its own use, benefit and behoof, forever, to all intents and purposes. And they do hereby further agree and declare that all the debts, obligations and liabilities of whatsoever kind and nature of said corporations and of each of them save and except such as are paid or discharged prior to the issuance of the capital stock to be issued for and in consideration of said consolidation, union and merger shall henceforth be the proper debts, obligations and liabilities of said consolidated corporation and of its successors forever, to all intents and purposes. And they do hereby further agree and declare that said consolidation, union and merger, and the transfer herein made, shall not operate to impair, destroy or extinguish the force or obligation of any contract, agreement or lease heretofore entered into by and between the parties hereto, or between said parties or either of them and any other person, partnership or corporation, if the continued force of such contract, or the continued obligation of the parties, thereunder is found necessary to the protection and security of the interests and title of said consolidated corporation or either of the parties hereto; and the right is expressly reserved to said consolidated corporation, and to such other parties as may be interested in the preservation of such contracts or obligations, to enforce the same in such manner as may be necessary for such purpose.

Article III.

The general purposes and objects of the Des Moines Northern & Western Railway Company, the consolidated corporation hereby created, shall be:

(1) To own, complete, extend, improve, maintain, and operate the line of railway heretofore owned and operated by the

Des Moines & Northwestern Railway Company, extending from Farnham Street in the city of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas to Fonda, in said last named county.

(2) To own, complete, extend, improve, maintain and operate the line of railway heretofore owned and operated by the Des Moines & Northern Railway Company, extending from Farnham Street in the city of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas and Boone, to the City of Boone, in said last named county.

(3) To acquire terminal facilities in said city of Des Moines, and in other cities and towns into or through which its lines may pass either by purchase, construction or lease, and to maintain, extend, improve and operate the same.

(4) To use and enjoy all the corporate and other franchises, rights, privileges, immunities and property, of every nature, and description, which form a part of or are appurtenant or relate to either of said railway lines or corporations.

(5) To acquire, either by construction, purchase or lease, and to operate lines of railway lateral to or connected with the lines or railway hereinbefore described, or to or with either of them.

(6) To acquire, either by construction, purchase or lease, and to operate a line of railway extending from Des Moines, in the State of Iowa, eastwardly to a point upon the Mississippi River.

(7) To acquire, either by construction, purchase or lease and to operate a line of railway extending from Des Moines, aforesaid, southerly to a point upon the southern boundary of the State of Iowa.

(8) To acquire either by construction, purchase or lease, and to operate extensions of such lines of railway in other states.

(9) To acquire, either by construction, purchase or lease and to operate railway bridges over navigable rivers and waterways, when necessary to the extension or connection of any of the lines of railway hereinbefore mentioned.

(10) To purchase, own and sell capital stock of the Des Moines Union Railway Company, or any other Company owning or operating terminal grounds, tracks, or stations; also capital stock of any coal, stone or elevator company doing business upon its line of railway or either of them.

(11) To acquire, purchase own lease, sell and operate coal mines stone quarries, and elevators upon, adjacent or proximate to the said several lines of railway, or either of them.

Article IV.

The Des Moines, Northern & Western Railway Company, the consolidated corporation hereby created, shall have and possess:

(1) Each and all of the corporate and other franchises, rights, powers, privileges, immunities and property heretofore held, possessed, exercised or enjoyed by the said Des Moines & Northwestern Railway Company and the said Des Moines & Northern Railway Company, or by either of them, including all franchises, privileges and immunities secured to each by its chapter or charters, articles of incorporation, Articles of Association, and the laws of any state or of the United States.

(2) Such powers as may be necessary to the accomplishment of the purposes and objects declared in the third article hereof, and which it may legally assume and exercise as a consolidated corporation, in each of the several States in which any part of the railroads, which it will own or operate, is or may be situated; or into which any of said railroads may be lawfully extended.

(3) Power to renew or extend, in such manner as may be provided by law, its own corporate being, existence and franchises, and the existence of the corporate franchises, rights, privileges and immunities hereby consolidated, united and merged, if such extension and renewal shall, at any time, be deemed necessary to prevent the expiration of the same.

(4) Power to sue and to be sued in its corporate name, have a corporate seal and alter the same at pleasure; do any act or transact any business which a common carrier of persons and property may lawfully do; make contracts, acquire and transfer property; execute mortgages and issue mortgage bonds; establish by laws and make such rules and regulations as may be deemed necessary for the proper management of its business.

Article V.

The capital stock of the Des Moines, Northern & Western Railway Company, the consolidated corporation hereby created, shall be limited to the sum of Fifteen Million Dollars, unless the amount thereof be increased by an amendment of these articles adopted as herein provided; but in no event shall stock be issued to exceed twenty-eight thousand dollars

per mile of completed, equipped main track and branches. The said capital stock shall be divided into shares of the par value of One Hundred Dollars each.

Article VI.

The parties hereto do hereby further agree and declare that, inasmuch as all the stockholders and bond holders of the said corporations uniting herein, have mutually agreed to cancel and satisfy all the mortgage bonds and surrender all the capital stock of said corporations, and pay or discharge all the indebtedness thereof (except certain items to be assumed and paid by the consolidated company) whereby the property, franchises rights, privileges and immunities of said corporations so consolidated are free and clear of any of any incumbrance or lien, the said Des Moines Northern & Western Railway Company, shall upon said cancellation, satisfaction, surrender, payment and discharge issue and deliver for and on account of the said property, franchises, rights, privileges, and immunities of the Des Moines & Northwestern Railway Company, first mortgage bonds amounting at par value to Sixteen Hundred Thousand Dollars, and its capital stock, fully paid and non-assessable, amounting at par value to Three Million One Hundred and Eight Thousand Dollars; said bonds and capital stock to be delivered to the persons and in the proportion set forth in the resolutions adopted by the unanimous vote of all the stock and stockholders, and assented to by all the bonds holders of said Des Moines & Northwestern Railway Company, and said property shall be received by this company as payment in full for said stock and bonds; and in like manner the said Des Moines, Northern & Western Railway Company shall issue and deliver, for and on account of the said property, franchises, rights, privileges and immunities of the Des Moines & Northern Railway Company, first Mortgage bonds, amounting at par value to Six Hundred and Fifty-five Thousand Dollars, and its capital stock fully paid and non-assessable, amounting at par value to One Million and Nine-two Thousand Dollars; and said property shall be received by this Company as payment in full for said stock and bonds. Said bonds and capital stock to be delivered to the persons and in the proportion set forth in the resolutions adopted by the unanimous vote of all the stock and stockholders, and assented to by all the bondholders of said Des Moines & Northern Railway Company.

Article VII.

The affairs and business of the Des Moines Northern & Western Railway Company, the consolidated corporation hereby created, shall be under the general control of and be manag-

ed by a Board of Directors, consisting of seven persons, to be elected by the stockholders from their own number at their regular annual meeting in each year; said directors shall hold their offices for one year, or until their successors are duly elected and qualified. Vacancies in the board by removal, death, resignation, or otherwise than by the expiration of the term of office, shall be filled by the board in such manner as is provided for in the by-laws. Ceasing to be a stockholder in the corporation shall be held to be a resignation as director.

Article VIII.

The executive officers of the consolidated corporation shall consist of a President, two Vice Presidents, a Secretary and a Treasurer. Said officers shall be elected by the directors at their first meeting after the annual meeting of stockholders, and shall hold their offices for one year, and until their successors are elected and qualified; they shall have such power and perform such duties as usually pertain to their respective offices, and such as may be conferred or imposed upon them in the by-laws. All vacancies in such offices shall be filled by the board of directors.

Article IX.

The Board of Directors is specially empowered as follows, to-wit:

(1) To adopt by-laws providing for the appointment of such managers, superintendents, employes and other officers not hereinbefore named, as may be deemed necessary for the transaction of the business of the corporation, and prescribing such additional rules and regulations as may be deemed proper for the transaction of the business and protection of the interests of the corporation.

(2) To exercise all the powers of the corporation which are not by these articles or by statute reserved or designated to be exercised by the stockholders.

(3) To appoint an executive committee, which shall consist of the president and two directors, and invest it with all the powers of the board when the latter is not in session.

(4) To elect officers and fill vacancies as hereinbefore provided.

Article X.

The annual meeting of the stock holders shall be held on the first Thursday of January of each year, at the office of the corporation in Des Moines, Iowa; and the first of such meetings shall be so held on the first Thursday of January

1892, but special meetings of the stockholders shall be called by the secretary at any time upon the written request of the president, or three directors, or stockholders holding one-third of the capital stock then issued. Ten days notice of any such special meeting shall be given to each stockholder by mailing such notice to his last known place of residence.

Article XI.

Immediately after the adjournment of such annual meeting of stockholders the newly elected Board of Directors shall meet for the purpose of electing officers as aforesaid, and the transaction of other business; and it shall hold such other meetings, whether regular or special, as shall be provided in the by-laws.

Article XII.

The principal office of the corporation for the transaction of its business shall be at Des Moines, Polk County, Iowa; but the Board of Directors may establish such other offices and financial agencies in other states, places and counties as it may deem proper for the convenience and economical management of the affairs of the corporation.

Article XIII.

At all meetings of the stockholders, each stockholder shall be entitled to cast one vote for each share of stock which upon the books of the company may appear to be held and owned by him; such vote may be cast either in person or by proxy; but if by proxy, written authority therefor must be filed with the Secretary before the meeting convenes. The shares of stock are transferrable; but no transfer shall be valid, or entitle the transferee to vote in any meeting, until the same has been entered upon the proper books of the company at the time and in the manner prescribed in the by-laws.

Article XIV.

It shall not be necessary, in order to enable the corporation to carry on the business for which it is organized, that all its authorized capital stock be subscribed, taken or issued.

Article XV.

The highest amount of indebtedness or liability to which the corporation shall at any time subject itself shall not exceed two thirds of the par value of its outstanding capital stock.

Article XVI.

The private property of the stockholders shall be exempt from the debts of the corporation.

Article XVII.

The existence of the corporation shall commence on the fourteenth day of December 1891, and continue for a period of fifty years, or the longest period which it may continue under the laws of the State of Iowa; and its said existence may be renewed from time to time, as may be provided by the statutes of said State of Iowa.

Article XVIII.

Until the election of a board of directors had, at the first annual meeting of the stockholders, the board of directors shall consist of F. M. Hubbell, G. M. Dodge, F. C. Hubbell, A. B. Cummins, L. M. Martin, H. D. Thompson, and A. N. Denman. Said board shall, as soon as practicable, elect officers as hereinbefore named, and shall have all the powers herein conferred upon or vested in the board of directors of the corporation.

Article XIX.

These articles or any of them, may be amended at any annual meeting of the stockholders, or at any special meeting called for that purpose by a vote of two thirds of the shares of capital stock then issued or outstanding.

In Witness Whereof, the said Des Moines & Northwestern Railway Company by its President and the said Des Moines & Northern Railway Company by its Vice President, have hereunto set their respective corporate names and have impressed hereon their respective corporate seals, and have caused the same to be attested by their respective Secretary and assistant Secretary the day and year above written.

(Seal) DES MOINES & NORTHWESTERN RAILWAY COMPANY.
By F. M. Hubbell, President.

Attest: A. N. Denman, Secretary.

(Seal) DES MOINES & NORTHERN RAILWAY COMPANY,
By A. B. Cummins, Vice President.

Attest: L. M. Martin, Assistant Secretary.

State of Iowa,
County of Polk—ss.

Be it remembered that on this fourteenth day of December 1891, before me a notary public in and for the County of Polk and state of Iowa, personally appeared F. M. Hubbell, President, and A. N. Denman, Secretary of the Des Moines & Northwestern Railway Company, and A. B. Cummins, Vice President, and L. M. Martin Assistant Secretary, of the Des Moines & Northern Railway Company, personally to me known to be the officers aforesaid, and to be the persons who respectively signed and attested the respective signatures of said corporations to the foregoing Articles of Consolidation and Incorporation, and affixed their respective seals thereto, and severally acknowledged the execution of said instrument to be the voluntary act and deed of said respective corporations, and their own voluntary act and deed, for the uses and purposes therein expressed.

Witness my hand and notarial seal the day and year last above written.

(Seal)

JAS. P. HEWITT,
Notary Public in and for the County of Polk and State of Iowa.

Filed for Record December fourteenth, 1891, at 6.00 o'clock P. M. Geo. C. Sims, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 8, pages 276 to 285, inclusive.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

Mrs. FRANK D. DODSON, Recorder.

EXHIBIT 65.

Des Moines Northern & Western Railway Company
to
Metropolitan Trust Company of the City of New York, Trustee.

Trust Mortgage.

This Indenture made and entered into this fifteenth day of December A. D. 1891, by and between the Des Moines Northern & Western Railway Company, a corporation created under and by virtue of the laws of the state of Iowa, party of the first part, and the Metropolitan Trust Company of the City of New

York, a corporation created under and by virtue of the laws of the State of New York, as trustee, party of the second part, Witnesseth that:

Whereas, the Des Moines Northern & Western Railway Company was on the fourteenth day of December A. D. 1891, duly created and incorporated by the consolidation union and merger of the Des Moines Northwestern Railway Company and the Des Moines & Northern Railway Company, and the adoption of certain articles of consolidation and incorporation, which articles have been duly filed and recorded as required by the laws of the State of Iowa, and,

Whereas, by such consolidation and incorporation, the party of the first part has become the owner and is now in possession of those certain lines of railroad formerly owned by and possessed respectively by the said Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company, to-wit, one extending from Farnham street in the City of Des Moines, Iowa, through the counties of Polk, Dallas, Guthrie, Green, Calhoun, and Pocahontas, to Fonda in said last named County, and one extending from Farnham Street aforesaid, through the counties of Polk, Dallas and Boone, to the city of Boone in said last named County, together with all the franchises, rights, privileges and immunities and property formerly belonging to said two railway corporations, or to either of them, and is also the owner of other valuable franchises, rights and privileges, more particularly set forth in said articles of consolidation, and

Whereas, all said property is now free and clear of any lien or incumbrance whatsoever, and

Whereas, for the purpose of satisfying the consideration for the consolidation, union and merger of said lines of railway of making payment for other property heretofore purchased by party of first part, of securing further equipment, and of adding other betterments, it is necessary that there should be immediately issued by party of first part, and certified by party of second part hereunder mortgage bonds at the rate of eighteen thousand five hundred dollars per mile of standard gauge main track now owned and operated by party of first part, and,

Whereas, the present mileage of standard gauge main track is approximately one hundred and fifty miles and it is proposed and expected to increase such mileage by the construction or purchase of additions, extensions, and branches, and to issue additional mortgage bonds at the said rate of eighteen thousand five hundred dollars per mile of all such additions extensions or branches so constructed or purchased, and equipped

to be certified by party of second part upon the sworn certificate of the president of chief engineer of party of first part, showing such additions, extensions or branches to have been so acquired and equipped and the extent thereof, and,

Whereas, it is the intent that all the mortgage bonds issued and certified hereunder shall be upon an equality with respect to the security for the payment thereof by these presents, notwithstanding the same be issued and certified or authenticated at different times, and,

Whereas, for all the purposes aforesaid, the party of the first part proposes to issue its first mortgage bonds, which together with the interest coupons annexed thereto and the trustees certificate indorsed thereon shall be in the following form, to-wit:

$1,000.00 $1,000.00

United States of America

Des Moines Northern & Western Railway Company

First Mortgage Bond.

Forty years after date, for value received, the Des Moines Northern & Western Railway Company, a corporation of the State of Iowa, promises to pay to the holder of this bond, or in case it be registered, then to the registered owner thereof, at the office of the Metropolitan Trust Company, of the City of New York, One Thousand Dollars, in Gold Coin of the United States of America, of or equal to the present standard of value and also interest thereon at the rate of four per cent, per annum, payable semi-annually, in like Gold Coin on the first days of January and July in each year, on the presentation and surrender of the respective interest coupons hereto annexed, at the office aforesaid, for and during five years from and after the date hereof, and interest thereon at the rate of five per cent per annum payable semi-annually, in like Gold Coin, on the first days of January and July in each year on the presentation and surrender of the respective interest coupons hereto annexed, at the office aforesaid, for and during the remaining period of this bond.

This bond is one of a series, each of the denomination of one thousand dollars, the payment of the principal and interest of which is secured by an indenture of mortgage bearing date December fifteenth A. D. 1891, conveying to the trustee therein and hereinafter named, in trust, for the holders of said bonds, the railway franchises, property and income of said railway company, described in said mortgage, and which is a first lien thereon.

The issue and certification of bonds by the Trustee is limited to eighteen thousand five hundred dollars per mile of completed and equipped main track, and branches.

If default shall be made in the payment of any semi annual installment of interest on this bond, or any bond of this series when the same shall have become due and be demanded, and shall remain unpaid for six months after such demand, the principal of such bond shall become due and payable in the manner provided in the said mortgage. The said Company and all its property are liable for the payment of this bond, but it is expressly understood and agreed that in no event shall either the officers or stockholders be personally liable for the payment thereof weather by reason of the non-payment of capital stock or otherwise.

Said Company hereby waives the benefit of any extension stay or appraisement laws now existing or that may hereafter exist. This bond is to be valid only when authenticated by a certificate indorsed thereon, signed by the Metropolitan Trust Company, Trustee to the effect that it is one of the bonds secured by the said mortgage and is issued in conformity with its provisions.

In Witness Whereof, the said Des Moines Northern & Western Railway Company has caused its corporate name to be hereto signed by its president, and its corporate seal to be hereto annexed and attested by its secretary, and the annexed interest coupons to be executed with the engraved signature of its Treasurer, this the first day of January A. D. 1892.

Coupon.

On the first day of July A. D. 1892, the Des Moines Northern & Western Railway Company, will pay the bearer at the office of the Metropolitan Trust Company of the City of New York, ... Dollars, being interest for six months on Bond No. .....

Trustee's Certificate.

This is to certify that this bond is one of the series of bonds of one thousand dollars each secured by and mentioned in the mortgage above referred to, and that it is issued in conformity with its provisions.

Now Therefore, Know All men by these Presents: That the Des Moines Northern & Western Railway Company, party of the first part, to secure the payment equally of all the bonds issued by it and certified by the party of the second part, hereunder in the manner herein provided, doth grant, bargain, sell, convey and transfer to the Metropolitan Trust Company

of the City of New York as Trustee, and to its successor, or successors in trust, all its railroad extending from Farnham Street in the City of Des Moines, County of Polk and State of Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, Iowa, to Fonda, in said last named county, and also extending from Farnham Street aforesaid over the same line to Clive in said County of Polk, and thence through the counties of Polk, Dallas and Boone, Iowa, to the City of Boone in said last named County, together with all its real estate, necessary for and used in the operation of said lines of railway, its rights of way, road-bed, bridges, tracks, side-tracks, turnouts, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, engines, cars and machinery, also together with all its corporate and other franchises, rights, privileges and immunities, rents, issues, tolls, and earnings, also all its property of whatsoever name and nature or description that may hereafter be acquired, also a one-fourth interest in the capital stock of the Des Moines Union Railway Company; but it is expressly understood and agreed that this mortgage does not convey an additional five eighths interest in the capital stock of said Des Moines Union Railway Company, of which the party of the first part is the owner, nor one half of the capital stock of the Midland Coal Company, of which party of the first part is also the owner, it being the intent hereby to convey and mortgage all its railroad property and all things appurtenant thereto, or used in connection therewith, weather now, acquired and owned, or hereafter acquired and owned, except as hereinbefore provided. To have and to hold, the above granted and described property and its appurtenances unto the party of the second part as trustee, its successor or successors, in office, upon the trusts and conditions, and for the purposes hereinafter expressed, namely:

First. The party of the second part as trustee, shall immediately upon the acceptance of the trust and upon being furnished with the sworn certificate of the president, or chief engineer, of party of the first part, showing the existing mileage of equipped main track, or branches owned and operated by party of the first part, certify and deliver to the party of the first part, bonds at the rate of eighteen thousand five hundred dollars per mile of such existing mileage as shown by such certificate, and it or its successor or successors shall from time to time upon the sworn certificate of the president or chief engineer of the party of the first part, showing additions or extensions of equipped standard gauge main track, or

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branches, certify and deliver to party of first part additional bonds, at the rate of eighteen thousand five hundred dollars per mile, of such completed and equipped additions, extensions or branches, provided, however, that in no event shall the aggregate issue of bonds issued and certified hereunder exceed eighteen thousand five hundred dollars per mile of completed and equipped main track and branches, which the party of the first part now owns, or hereafter acquires or constructs.

Second. No bond issued by the party of the first part shall be held to be issued hereunder or secured hereby unless the same is certified by the party of the second part as shown in the preamble hereof, and wherever the word "bondholders" is hereinafter found it shall be held and construed to mean the holders of bonds so certified, and wherever the word "bonds" is hereinafter found it shall be held and construed to mean bonds so certified.

Third. It is further agreed between all parties in interest that the party of the first part and all its property are liable for the payment of all bonds issued hereunder and secured hereby, but it is also expressly understood and agreed that in no event shall either the officers or stockholders be personally liable for the payment of said bonds or the interest thereon, or any part thereof, either principal or interest, weather by reason of non-payment of capital stock or otherwise.

Fourth. If the Des Moines Northern & Western Railway Company shall fail to pay the said interest coupons subjoined to the bonds so executed by that company, or any or either of the said coupons, or any part of the same at the time or times, and in the manner so as aforesaid, for the payment thereof, and in case such default shall continue for the space of ninety days, the party of the second part, or its successors may at the request of the holders of more than one half the outstanding bonds issued hereunder, enter upon and take possession of all or any part of the above granted premises and itself and by its attorneys agents and servants may take, hold use and operate the same, making from time to time needful repairs and alterations, and may receive the tolls rents, issues, profits and income derivable therefrom, and after deducting and paying out of such gross receipts and income the expenses of operating and managing the premises and of such needful repairs and alterations, and any taxes and other necessary and proper charges upon or pertaining to the premises and executing the hereby created trust, the party of the second part, or its successors in the trust, shall apply the surplus or net receipts and income so derived by it to the payment of the

said interest coupons in the order in which the same shall have become or shall be due and payable.

Fifth. If default shall so as aforesaid be made in the payment of the said interest coupons, or any or either thereof, and shall continue for the period of six months, then and in such case after the entry as aforesaid, or without such entry, and upon written request of bondholders holding and owning more than one half of the aggregate amount of the bonds so executed by the Des Moines Northern & Western Railway Company, certified by the trustee, and then outstanding and unpaid, the party of the second part, or its successor in the trust, may personally, or by its attorneys, or agents, sell and dispose of all and singular the above granted and described premises at public auction in the City of Des Moines, Iowa, having first given notice of the time and place of such sale by advertisement published in some newspaper of general circulation published in the city of New York and also in one newspaper of general circulation published in the said city of Des Moines, and also in one newspaper published in each other county in Iowa through or into which the said railroad extends, and which notice shall in each of said newspapers be so published at least once in each week for at least six weeks immediately preceding the sale. And the party of the second part, or its successors, in the trust, may make, execute and deliver to the purchaser or purchasers at such a sale a good and sufficient deed of the premises so sold to it, him or them, and the sale so made as aforesaid, shall be perpetual bar, both in law, and in equity, against the party of the first part, and all other persons lawfully claiming or to claim the said premises, or any part thereof by, from, through or under it. But if by it deemed expedient the party of the second part or its successor or successors in the trust, may cause such sale to be made through or under judicial proceedings of foreclosure and sale, to be instituted by it or its successor or successors.

Six. From the proceeds of any sale which may so as aforesaid be made, after deducting the proper costs and expenses thereof and of the proceedings and all other expenses, advances or liabilities which shall have been duly incurred under these presents, or the powers hereby created, or for taxes, or for other proper charges, and the reasonable compensation of the party of the second part, or its successors in or for the execution of the hereby created trust, the party of the second part, or its successor or successors shall apply the remainder of such proceeds to the payment of the principal of such of said bonds so executed by the Des Moines Northern & Western Railway Company as have been duly certified and issued in the manner hereinbefore provided, and which shall then be

outstanding and unpaid, and of the interest which shall then have accrued upon such principal and shall be in arrear and unpaid. And if after so paying all sums payable for principal and accrued interest upon said bonds, a surplus shall remain, such surplus shall belong and be paid to the party of he first part is successor or successors, or assigns. But if such proceeds shall not be sufficient for payment of all the said bonds in full, the same shall be applied ratably and without discrimination or preference upon or toward the payment of the principal and interest of all the same, except that such payment of or upon interest coupons shall be in the order of the date of their maturity.

Seventh. If default shall be made in the payment of any of the interest coupons aforesaid, according to the tenor thereof, and such default shall continue for the space of six months, then and in such case, and after the lapse of the said six months, the sums of principal secured by all the said bonds so executed by the party of the first part, with all accrued unpaid interest thereon, shall at the option of the party of the second part, or its successor or successors, become (for all the purposes of these presents) immediately due and payable, anything contained in said bonds, or in these presents notwithstanding. But a majority in interest of the holders of the said bonds may in writing (and for all the purposes of these presents) revoke or annul the decision of or upon such option and instruct that party of the second part, its successors or successors, to declare such principal to be so due, or to waive that right, provided, however, that nothing done or omitted in respect to such default shall prejudice the rights of the party of the second part, its successor or successors in trust, in respect of any subsequent default.

Eighth. Upon payment by the party of the first part of all sums which shall become due for principal and interest under and by virtue of said bonds, and of all sums incurred, or chargeable under and by virtue of these presents, then and thereupon all estate and power of the party of the second part and its successor or successors under or by virtue of these presents, shall cease and determine.

Ninth. If by reason of any default, as hereinbefore provided, possession of the above granted and described premises shall be taken and no sale thereof shall have been had under the hereby created powers, such possession will be surrendered upon payment created powers, such possession will be surrendered upon payment of all sums then due upon the said bonds and hereinbefore contemplated to be payable up to and at the time of such surrender, including in such payment the

principal, if then due, by the terms of said bonds, or by election as above provided. But the said surrender shall be of the premises as existing at the time thereof, and shall not prejudice or impair the estate and lien of these presents in respect of any sums secured by the said bonds and not theretofore paid or satisfied, nor affect or impair the rights of the party of the second part, its successor or successors in respect of any thereafter accruing default.

Tenth. It is understood and agreed that these presents shall be a security for the due payment of all sums which shall become due and payable under or by virtue of the said bonds, notwithstanding any laws of the State of Iowa, now existing or hereafter to be enacted for the extension, stay of execution, valuation, or appraisement, and without delay or relief from or by reason thereof; and that all operation and benefit of such laws are hereby waived to the end that the same shall not be invoked or be made effective to restrict postpone or impair the operation of these presents, or the estate and power thereby created.

Eleventh. It shall be the duty of the second part its successor or successors, to proceed in and with the execution of the several powers so vested in them in the manner and at the time or in the cases hereinbefore specified for the exercise thereof, provided that, requisition in writing to so proceed shall be made upon them by or in behalf of the holders of more than one half in amount of the said bonds then outstanding and unpaid.

Twelfth. The said party of the second part or any successor to it in the trust hereby created may resign as trustee under these presents by writing taking effect thirty days after the delivery thereof, to the said party of the first part, and upon the payment of its reasonable charges for services rendered and money expended in the performance of its duties up to that time, it may be removed and a successor or successors appointed by writing signed by the holders of a majority of said bonds at the time outstanding.

The said trustee shall receive a reasonable compensation for every act done by it as such trustee under this indenture and the said trustee shall not be required to take any step in the execution of this trust likely to subject it to liability, or expense, unless the holders of the bonds secured thereby, or some of them, shall give sufficient security to indemify the trustee from such liability or expense.

And the said trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate.

And it is hereby further provided that the trustee shall not be liable for any default or neglect of any agent by it appointed when such agent shall have been selected with reasonable discretion and shall only be required to exercise good faith and ordinary diligence in the performance of its duties under this indenture.

It is agreed between the parties hereto and made a part of the contract with the holders of the bonds secured hereby that the said trust company the trustee herein, shall not be required to look beyond the sworn certificate or certificates of the president or chief engineer as the case may be, as herein provided, and shall not be responsible in any event for any act done in pursuance of such certificate or certificates.

Thirteenth: The party of the first part its successors and assigns, shall and will duly execute to the party of the second part, its successor or successors, such further deeds, conveyances and assurances in the law for the better assuring to the party of the second part, its successor or successors, upon and for the trusts and purposes aforesaid, all and singular the premises above granted and described, or intended to be granted and included in the lien of these presents, as shall from time to time be reasonably required of it, by the party of the second part and its successors.

Fourteenth. If by reason of resignation or otherwise during the existence of the trust hereby created there shall occur or be a vacancy in the office of the trustee hereinbefore named, the same may be filled by appointment in writing executed by the holders of at least one half in amount of the bonds which shall then be unpaid and outstanding. Nothing herein contained, however, shall be so construed as to prohibit or prevent the due filling of such vacancy by authority of a court of competent jurisdiction in a proceedings to which the then holders of the said bonds and the party of the first part are duly made parties or of which they have had due or reasonable notice.

Fifteenth. The party of the first part by resolution of its board of directors approved at a meeting of its stockholders, hath authorized these presents to be duly executed to the party of the second part, but nothing herein contained is to be in any wise construed as subjecting to personal liability in the premises the officers or stockholders of the party of the first part or any or either of them, or their or his personal or individual estate.

In witness whereof, the Des Moines & Western Railway Company, in pursuance of the resolution aforesaid, has

caused these presents to be executed by its president, and attested by its secretary, and has caused its corporate seal to be hereunto affixed the day and year first aforesaid, and the Metropolitan Trust Company, of the City of New York, has also executed the same to evidence its acceptance of the trust hereby created, the day and year aforesaid.

(Corporate seal) DES MOINES NORTHERN & WESTERN RAILWAY COMPANY,
By F. M. Hubbell, President.

Attest:
R. L. Chase.

(Corporate Seal) METROPOLITAN TRUST COMPANY OF THE CITY OF NEW YORK, TRUSTEE.
By Thos. Hillhouse, President.

Attest:
Beverly Chew, Secretary.

State of Iowa,
Polk County—ss.

Be it remembered that on this fifteenth day of December A. D. 1891, personally came before me, the undersigned, a notary public within and for the county aforesaid, F. M. Hubbell, who being personally known to me to be the identical person who affixed the name of the Des Moines Northern & Western Railway Company to the foregoing instrument, and being by me duly sworn doth depose and say that he is the president of the Des Moines Northern & Western Railway Company, grantor in the foregoing instrument, that the name of said company is signed to said instrument by him as president of said company, by virtue of the order of the board of directors, that the seal of the company attached thereto is the proper and genuine seal of said company, and is affixed thereto by order of the said board of directors.

And the said F. M. Hubbell, president as aforesaid, acknowledged the foregoing instrument to be the voluntary act and deed of the Des Moines Northern and Western Railway Company, by him done and executed and his own voluntary act and deed for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office this fifteenth day of December A. D. 1891.

(Notarial Seal) JAS. P. HEWITT,
Notary Public Polk County Iowa.

State of Iowa,
Polk County—ss.

Be it remembered that on this fifteenth day of December A. D. 1891, personally came before me the undersigned, a notary public within and for the county aforesaid, R. L. Chase, who being personally known to me to be the identical person who countersigned and attested the signature of the Des Moines Northern & Western Railway Company to the foregoing instrument, and being by me duly sworn, doth depose and say, that he is the secretary of the Des Moines Northern & Western Railway Company grantor in the foregoing instrument, that he countersigned the said instrument and affixed the seal of said company thereto by order of the board of directors thereof and he acknowledged the execution thereof to be the voluntary act and deed of said company by him done and executed and his own voluntary act and deed for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office this fifteenth day of December A. D. 1891.

(Notarial Seal) JAS. P. HEWITT,
Notary Public Polk County Iowa.

State of New York,
County of New York—ss.

Be it remembered that on this nineteenth day of December A. D. 1891, before me a notary public within and for the State, County and City of New York, personally appeared Thomas Hillhouse and Beverly Chew, respectively the president and Secretary of the Metropolitan Trust Company of the City of New York, and personally known to be to be such officers, and the persons who executed the foregoing instrument for and on behalf of the said Metropolitan Trust Company of the City of New York, and acknowledged the execution thereof to be the voluntary act and deed of said corporation by them thereunto duly authorized and their own voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal the day and year last above written.

(Notarial seal) RAYMOND J. CHATRY,
Notary Public N. Y. Co.
#236

Filed for Record Dec. 22, 1891. at 4:00 o'clock P. M.,

GEO. C. SIMS,
Recorder.

Exhibit 66.

United States Circuit Court, Southern District of Iowa, Central Division.

October Term 1894.

Saturday Nov. 10/94.

The Metropolitan Trust Company of the City of New York, Trustee, Complainant,

No. 2326. vs. Eq.

Des Moines Northern & Western Railway Company, Defendant.

Decree.

This cause came on for hearing on this 7th day of November 1894, being one of the days of the October Term 1894, of said Court, the complainant, the Metropolitan Trust Company of New York, Trustee, appearing by Thos. F. Hillhouse, and Cummins & Wright, its solicitors, and the defendant Des Moines Northern & Western Railway Company, appearing in its corporate capacity through its president and secretary, by an answer duly signed by the president of the said defendant, and attested by its secretary, with the seal of the corporation thereunto affixed.

And it appearing to the court that the defendant has filed its said answer admitting the allegations of the bill of complaint, and contending that a decree might be entered at once upon said bill and whereas it has in open court approved the terms and provisions of this decree, thereupon the court by and with the consent of the said defendant, and upon the proof submitted, finds:

That the defendant the Des Moines & Western Railway Company is a corporation organized under the laws of the State of Iowa, and is the owner of a certain line of railroad extending from Farnham Street in the city of Des Moines in Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to the town of Fonda, in said last named county, and also of a line of railroad extending from Clive in the county of Polk through the said county to the City of Boone in the county of Boone and state of Iowa, together with the real estate necessary for and used in the operation of said lines of railway, also its rights of way, road bed, bridges, tracks, side tracks, turn outs, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables, engines, cars and machinery, and also certain corporate and other franchises, rights, privileges and immunities, with the right to receive certain

rents, issues, tools and earnings; all of said property being such as is commonly appurtenant to a railway.

That on the 15th day of December 1891, the said Des Moines Northern & Western Railway Company issued and delivered to the complainant as trustee, a certain indenture of mortgage for the purpose of securing the payment of an issue of bonds to be executed and delivered by the said Railway Company to the extent of eighteen thousand five hundred dollars per mile of completed and equipped road. That in and by said mortgage there was conveyed to said complainant as trustee its said lines of railroad above described with the appurtenant property rights and franchises hereinbefore mentioned, to-wit: All its real estate, necessary for and used in the operation of said lines of railway, its rights of way, road bed, bridges, tracks, side tracks, turnouts, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars and machinery, also all its corporate and other franchises, rights, privileges and immunities, rents, issues, tolls and earnings, also all its property of whatsoever name, nature and description thereafter acquired, also a one fourth interest in the capital stock of the Des Moines Union Railway Company, it being by the said mortgage expressly understood and agreed that the said mortgage did not embrace or convey an additional five-eighths interest in the capital stock of said Des Moines Union Railway Company of which the said Des Moines Northern & Western Railway Company was the owner, nor one-half the stock of the Midland Coal Company, of which the said Railway Company was the owner. With the said exceptions, however, it was expressly declared in and by the said mortgage that it was the intent thereby to convey by mortgage all the railroad property and all things pertaining thereto or used in connection therewith, whether then owned or thereafter acquired.

The court further finds and adjudges that the lien of said mortgage attached to all the property hereinbefore described, that is, to the said lines of railroad with all the appurtenant property hereinbefore mentioned, from and after the 15th day of December 1891, and that the said lien is now in full force and effect.

The court further finds that the said mortgage was duly recorded in the offices of the Recorders of the counties of Polk, Dallas, Guthrie, Greene, Calhoun, Pocahontas and Boone, as alleged in the bill of complaint; and it further finds that a true copy of the said mortgage is attached to the bill of complaint.

The court further finds and adjudges that the said Des Moines Northern & Western Railway Company, for the purposes named in said mortgage, and in accordance with its provisions, issued and delivered to divers persons its mortgage bonds in the sum of one thousand dollars each to the aggregate amount, exclusive of interest of Two Million Seven Hundred and Seventy Thousand Dollars ($2,770,000) all of which bonds were in accordance with the provisions of said mortgage duly certified by the complainant and that there is now outstanding of such certified bonds in the aggregate, Two Million, Seven Hundred and Seventy Thousand Dollars ($2,770,000), exclusive of interest, all of which constitute valid obligations of the said defendant and none of which have been paid.

The court further finds and adjudges that the interest coupons maturing July 1st, 1893, upon the said bonds hereinbefore mentioned, the defendant failed to pay the following, to-wit:

The coupons upon bonds numbered 512 and 513; the coupons upon bonds 774 to 2447, both inclusive; the coupons upon bonds numbered 2600 to 2675, both inclusive; in all seventeen hundred and eighty two (1782) coupons of twenty dollars each, amounting in the aggregate to thirty five thousand six hundred and forty dollars ($35640) of interest so maturing July 1st 1893.

The court further finds and adjudges that the interest coupons upon the said bonds hereinbefore mentioned maturing January 1st, 1894, the defendant failure to pay the following, towit: The coupon upon bond numbered 291; the coupons upon the bonds numbered 651 to 2447, both inclusive; the coupons upon the bonds numbered 2578 to 2675, both inclusive; being eighteen hundred and ninety six (1896) coupons of twenty dollars each amounting in the aggregate to thirty seven thousand nine hundred and twenty dollars ($37,920) of interest so maturing January 1st, 1894.

The court further finds and adjudges that of the coupons maturing upon said bonds July 1st, 1894, the defendant failed to pay the following, to-wit:

The coupons upon bonds numbered 47 to 81, both inclusive; the coupons upon bonds numbered 83 to 123, both inclusive; the coupons upon bonds numbered 291; the coupon upon bond numbered 549; the coupons upon bonds numbered 651 to 739, both inclusive, the coupons upon bonds numbered 742 and 743;

the coupons upon bonds numbered 2578 to 2599, both inclusive; in all one hundred and ninety one (191) coupons of twenty dollars each; amounting in the aggregate to three thousand eight hundred and twenty dollars ($3,820) of the interest so maturing July 1st, 1894.

The court further finds and adjudges that the aggregate amount of the unpaid interest as hereinbefore set out is seventy-seven thousand three hundred and eighty dollars ($77,380) of which thirty five thousand six hundred and forty dollars ($35,640) bears interest at six per cent from July 1st 1893. Thirty seven thousand nine hundred and twenty dollars ($37,920) from January 1st, 1894, and three thousand eight hundred and twenty dollars ($3,820) from July 1st, 1894; and that the whole amount now due upon the bonds so issued and secured by said mortgage, including principal, coupons and interest upon coupons, is two million, eight hundred ninety one thousand, sixty and 98/100 dollars ($2,891,060.98), all of which now remain unpaid.

The court further finds and adjudges that demand for the payment of said interest coupons was at their maturity duly made and that prior to the filing of the bill of complaint herein, to-wit: On or about the 30th day of August 1894, the holders and owners of more than one half of the said mortgage so outstanding and unpaid made written requisition upon the complainant as such trustee to declare the whole principal sum of said bonds immediately due and payable, and to at once proceed with the foreclosure of the said mortgage as provided by law. That thereupon and on or about said 30th day of August 1894, the complainant did, in pursuance of said requisition, and in accordance with the terms of the trust created by the said mortgage, exercise the option conferred upon it therein, and declared the whole principal sum evidenced by the said several bonds issued under the said mortgage to be then due and payable, and that on or about said 30th day of August 1894, it caused to be served upon the defendant written notice of the exercise of such option, and that thereupon the whole sum of said bonds became immediately due and payable.

And now, the court having considered the premises, and being fully advised, doth hereby adjudge and decree that within ten days from the date of entering this decree the said defendant, the Des Moines Northern & Western Railway Company shall pay to the Metropolitan Trust Company of the City of New York, as Trustee, the full sum of money herein declared to be due upon said bonds, coupons and interest upon coupons, to-wit: The sum of two million eight hundred and ninety one thousand, sixty and 98/100 Dollars ($2,891,060.98) together with interest upon said last mentioned sums at the

rate of four per cent per annum, from this date, and all the costs of this suit. That if the said defendant shall fail within the aforesaid to pay said sum of money, it is hereby adjudged and decreed that the said trust mortgage heretofore referred to, and a copy of which is attached to the bill of complaint, be and the same is hereby foreclosed, and that all the property, rights, franchises and interests of the defendant aforesaid, to-wit: Its line of railroad, extending from Farnham Street in the city of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, to Fonda in the said last named county, and also extending from Clive in the County of Polk, through the said county of Boone in the county of Boone, and state of Iowa, together with all its real estate, necessary for and used in the operation of said lines of railroad, its right of way, road bed, bridges, tracks, side tracks, turnouts, switches, buildings and structures, water-tanks and fixtures, shops, engine and other houses, turn outs, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, turn tables, engines, cars and machinery; also, together with all its franchises, rights, privileges and immunities, rents, issues, tolls and earnings, owned by it, at the time of the entry of this decree; also a one fourth interest in the capital stock of the Des Moines Union Railway Company, and all its appurtenant railroad property, or so much thereof as may be necessary to pay and satisfy said sum, be sold to pay and satisfy said sums of money so found to be due from the said defendant to the complainant upon said bonds and coupons, together with interest at four per centum per annum. It is further adjudged and decreed that the sale of said property rights and interests be without redemption, and that the said sale upon confirmation and upon payment of the purchase price of said property shall forever bar and foreclose all right, title or interest, or equity of redemption of said Des Moines Northern & Western Railway Company, in the said property so ordered to be sold, and which is conveyed by said mortgage and in each and every part thereof, and shall also forever bar and foreclose all the rights, title and interest or equity of redemption of all persons claiming through, or under the said defendant, but it is expressly provided that such sale shall be without prejudice to the rights and equities of persons holding at the date of such sale claims or demands entitled to payment in preference to said mortgage indebtedness.

It is further adjudged and decreed that the property be sold at public auction to the highest bidder or bidders. Such sale shall be held at the east door on Court Avenue of the United States Court House in the city of Des Moines, Polk County, Iowa, between the hours of ten o'clock A. M. and four o'clock

P. M., of such day as the Commissioner hereinafter named shall appoint. Said Commissioner shall give notice of the time, place and terms of such sale by a printed publication at least once each week for four consecutive weeks, the last publication to be not less than five days before the sale, in the Iowa State Register, a newspaper published in the city of Des Moines Polk County, Iowa.

It is further ordered adjudged and decreed that the highest bidder at such sale may pay all or any part of the purchase price of said property in the said bonds of the defendant Company, at their face value with accrued interest, such bonds so offered as a part of the purchase price being by such Commissioner, at the time, cancelled and satisfied; provided that if such bidder shall not deposit with the clerk of this court all the bonds and coupons so issued as aforesaid, there shall be paid in cash that proportion of the purchase price to which the bond holders who do not surrender their bonds would be entitled in distribution, that is to say, their pro rata shares of the entire purchase price, less the costs of this foreclosure, and provided further, that such purchaser shall in any event pay in cash whatsoever sum is necessary to pay the costs of this suit, including the sums hereinafter allowed as an attorney's fee for the complainant under the terms of said mortgage.

It is further adjudged and decreed that each bidder shall before his bid is received by such Commissioner making such sale deposit with such Commissioner the sum of five thousand dollars either in cash or in bonds, and the condition of such deposit shall be that if the property is sold to any such bidder, and he fails to comply with the terms of the sale upon his part, or to pay the full purchase price which he agrees to pay, then the sum so deposited shall be forfeited and shall be used in the payment of said bonds, and all such deposits made by unsuccessful bidders shall at once be returned to them.

It is further adjudged and decreed that the said Commissioner immediately upon making such sale, shall file with the Clerk of this Court his report of all his acts and doings therein, for confirmation by this court, and when his report is confirmed, the said Commissioner shall execute to such purchaser all such deeds of conveyance and transfer as may be necessary to vest in and convey to the said purchaser or purchasers an absolute and unqualified title in and to all the property conveyed by said mortgage and herein ordered to be sold.

It is further adjudged and decreed that the Commissioner executing the decree and making such sale shall apply the proceeds thereof in the following manner:

First. To the payment of all the costs of this cause, including all expenses of making said sale, and of enforcing and carrying out this decree, including the solicitor's fee to the complainant for the foreclosure of said mortgage, which is hereby fixed and determined at the sum of fifteen hundred dollars ($1500.00).

Second. To the payment of the bonds aforesaid so far as the same can be paid out of the proceeds of said sale, or by the application of the said bonds so offered as a part or whole of the purchase price.

It is further ordered that Geo. F. Henry, be and he is hereby appointed Commissioner to make the sale herein ordered to be made, and to execute this decree to the full extent herein prescribed and he is to make full and immediate report of his doings to this court.

Nov. 7th, 1894.

(Sgd.) JOHN S. WOOLSON, Judge.

EXHIBIT 67.

In the United States Circuit Court, Southern District of Iowa, Central Division.

The Metropolitan Trust Company of the City of New York, Trustee,

vs. In Chancery.

Des Moines Northern and Western Railway Company.

Report of Sale.

To the Honorable Judges of said Court in Chancery Sitting:

In pursuance of a decretal order of this Honorable Court, made in the above cause and dated November 7th, 1894, I, the undersigned, Commissioner named in said decree, do report:

That all and singular the mortgaged premises mentioned in the Complainant's bill and in the decree in this cause, were offered for sale by me at public auction at the east door on Court Avenue of the United States Court House, in the City of Des Moines, in said District, on the 15th day of December 1894, at 10:30 o'clock A. M., there being no bidders I adjourned such sale to December 18, 1894, at 10 o'clock A. M.; that previous to such sale I gave public notice of the time and place thereof, by advertisement containing a brief description of such premises, published in the Iowa State Register, a newspaper published at Des Moines, in the County of Polk, State of Iowa, and District aforesaid, for four consecutive weeks, the last publication being more than five days before such sale. I also

posted copies of said notice and caused to be served copies of the same upon the defendant company. A copy of said notice, with affidavit of publication, is hereto attached, marked "Exhibit A" and made a part of this report.

A copy of the notice so as above posted and served upon the defendant company, together with the return of service thereon, is hereto attached and made a part of this report, marked "Exhibit B".

That at such adjourned sale, December 18, 1894, the said property was offered for sale and was struck off as follows: G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, having first deposited with me $5000. in the bonds of the defendant company, bid for the property described in said decree the sum of $2,840,000 (Two Million, Eight Hundred and Forty Thousand Dollars) and this being the only bid received I declared such property sold to said parties for said sum, the following being a description of the property:

All the property, rights, franchises and interests of the defendant railway company, to-wit: Its line of railroad extending from Farnham Street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, to Fonda, in the said last named county, and also extending from Clive in the County of Polk, through the said county to Boone, in the county of Boone and state of Iowa, together with all its real estate necessary for and used in the operation of said lines of railroad, its rights of way, roadbed, bridges, tracks, side-tracks, turn-outs, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, turntables engines cars and machinery; also together with all its franchises, rights, privileges and immunities, rents, issues, tolls and earnings owned by it at the time of the entry of the decree; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company and all its appurtenant railroad property,

and such parties will be entitled to a deed for such property upon approval of this report and compliance with the decree as to payment of the bid made by them.

All of which is respectfully submitted.

Des Moines, Iowa, December 18, 1894.

(Sgd.) GEO. F. HENRY,
Commissioner of said Court.

Endorsed: Filed Dec. 19, 1894. Ed. R. Mason, Clerk.

Exhibit 68.

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

The Metropolitan Trust Company of the City of New York, Complainant,

vs. In Equity.

Des Moines, Northern & Western Railway Company, Defendant.

Decree.

This cause coming on to be heard this 7th day of February 1895, being one of the days of the October Term, 1894, of said Court, upon the report of George F. Henry, Esq., a commissioner heretofore duly appointed to sell the property described in the decree of foreclosure heretofore entered herein which report was filed December 19th 1894, A. B. Cummins appearing for the Complainant, and the defendant appearing by its President, F. M. Hubbell, and the Court having examined the report of sale filed by said Commissioner, and finding that the notice of said sale was duly given as heretofore provided, and that the said sale was in all respects duly and legally had and conducted, and that no exception has been filed to said report,

It is now ordered, adjudged and decreed that the said sale of the property described in said decree of foreclosure to G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, be and the same is hereby confirmed and approved, and the said George F. Henry, Commissioner, upon the payment to him of all costs as hereinbefore provided, is authorized and directed to make and execute to said G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, a deed of conveyance, which shall convey to them all the right, title and interest of the said Des Moines, Northern & Western Railway Company in or to the said property so sold as held by said Railway Company at the time of the execution of the mortgage herein foreclosed, together with all property subsequently acquired by said Railway Company.

It is further ordered, adjudged and decreed that said Purchasing Committee now holds all the bonds, with their coupons, issued under and secured by said Trust Mortgage, and the Commissioner upon the delivery of said deed shall cancel and deposit with the clerk so many of such bonds and coupons as may be used for the purpose of satisfying the bid according to the provisions of said foreclosure decree.

The Court further finds that after said bonds shall be so cancelled there remains due upon said foreclosure decree, together with interest, seventy nine thousand nine hundred seventy one 59/100 Dollars unsatisfied by said sale, and it is thereupon ordered and adjudged that Complainant, as Trustee for all the bond-holders, do have and recover of and from the defendant, the Des Moines, Northern & Western Railway Company the said deficit, being said sum of Seventy nine Thousand Nine Hundred Seventy-one 59/100 Dollars, and that general execution issue therefor and the bonds and coupons representing said amount shall be filed with the clerk for cancellation.

It is further ordered, adjudged and decreed that the Clerk's costs in this suit be taxed at Three Hundred and Fifty Dollars.

It is further ordered that the Commissioner shall file with his further report receipts showing the payment of all the costs and expenses of this proceeding.

(Sgd) JNO. S. WOOLSON, Judge.

Feby. 7, 1895.

EXHIBIT 69.

Geo. F. Henry, Commissioner of the U. S. Circuit Court
to
G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee.

Commissioner's Deed.

This Indenture, Made the Eighth day of February in the year of our Lord, 1895, between Geo. F. Henry, Commissioner of the United States Circuit Court, within and for the Southern District of Iowa, dwelling in the City of Des Moines in said District, of the first part, and G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, of the second part,

Witnesseth:

Whereas, at a term of the United States Circuit Court for the Southern District of Iowa, held at the City of Des Moines in said District, on the 7th day of November, 1894, it was, among other things, ordered, adjudged and decreed by said Court, in a certain cause then pending in said Court, between the Metropolitan Trust Company, of the City of New York, Trustee, Complainant, and the Des Moines Northern and Western Railway Company, defendant, that the mortgaged premises

mentioned and set forth in complainant's bill, and the decree of said Court, and hereinafter particularly described, be sold by or under the direction of Geo. F. Henry as Commissioner of said Court, the said Commissioner first giving such notice of the time and place of said sale as is required by the terms of such decree; and

Whereas, the said Geo. F. Henry, Commissioner aforesaid, and party of the first part to these presents, in pursuance of the said order and decree of said Court, did, on the 18th day of December, 1894, sell at public auction at the east door on Court Avenue of the United States Court House, in Des Moines, in said Southern District of Iowa, the said mortgaged premises hereinafter particularly described, having first given due notice of the time and place of such sale, as required by the said order and decree of said Court, at which sale the said mortgaged premises, hereinafter particularly described, were struck off to G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, for the sum of Two Million, Eight Hundred and Forty Thousand (2,840,000) Dollars, that being the highest sum bidden for the same, and the said Commissioner's report of said sale having been approved by said by said Court, and this deed having been ordered to be made, by a supplemental decree of said Court made February 7, 1895;

Now Therefore, This indenture witnesseth, that Geo. F. Henry, Commissioner as aforesaid, and party of the first part to these presents, in order to carry into effect the said sale so made as aforesaid, in pursuance of the said decree of said Court, and in consideration of the said sum of Two Million Eight Hundred and Forty Thousand (2,840,000) Dollars, paid as provided in the said decree, hath granted, bargained and sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain and sell, alien, release, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the right, title, interest, estate and property of said Des Moines Northern & Western Railway Company, as well as the interest of all persons claiming by, through, or under it since the date of the mortgage, to-wit: December 15th, 1891, in and to the following described premises, to-wit:

All the property, rights, franchises and interests of the defendant railway company, to-wit: Its line of railroad extending from Farnham Street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to Fonda, in said last named county, and also extending from Clive, in the county of Polk,

through the counties of Polk, Dallas and Boone, to Boone, in the county of Boone, and State of Iowa, together with all its real estate necessary for and used in the operation of said lines of railroad, its rights of way, road bed, bridges, tracks, side tracks, turnouts, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, turn-tables, engines, cars and machinery; also together with all its franchises, rights, privileges and immunities, rents, issues, tolls and earnings owned by it at the time of the entry of the decree; and all of its appurtenant railroad property; also all of the property acquired by said Des Moines Northern & Western Railway Company after December 15, 1891; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company;

To Have and to Hold all and singular the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

In Witness Whereof the said Geo. F. Henry, Commissioner as aforesaid, hath hereunto set his hand the day and year first above written.

GEO. F. HENRY,
Commissioner of the U. S. Circuit Court
for the Southern District of Iowa.

State of Iowa,
County of Polk—ss.

On this 15th day of February A. D. 1895, before me Henry H. Griffiths, a Notary Public in and for Polk County, Iowa, personally appeared Geo. F. Henry, Commissioner of the United States Circuit Court, for the Southern District of Iowa, who is personally known to me to be the identical person who signed the foregoing deed as grantor, and acknowledged the same to be his voluntary act and deed for the purposes therein specified.

Witness my hand and seal the day and year above written.

(Notarial seal)

HENRY H. GRIFFITHS,
Notary Public in and for Polk County, Iowa.

Filed for Record March 14 1895 at 8:40 o'clock A. M.

ANNIE E. HEPBURN, Recorder.
By Geo. R Hepburn, Deputy.

EXHIBIT 70.

Articles of Incorporation of the Des Moines Northern and Western Railroad Company.

The undersigned hereby associate themselves together as a body corporate under the laws of the State of Iowa relating to corporations for pecuniary profit and for the organization of railway corporations, and do hereby adopt and publish the following Articles of Incorporation.

Article I.

The name of the corporation shall be "Des Moines Northern and Western Railroad Company".

Article II.

The general purposes and objects of the corporation hereby created shall be.

1st. To own, complete, extend, improve, maintain and operate the line of railway heretobefore owned and operated by the Des Moines Northern & Western Railway Company, extending from Farnham Street in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas to Fonda in said last named county; also extending from Clive in the county of Polk through the counties of Polk, Dallas, and Boone, to the city of Boone in said last named county.

2nd. To acquire terminal facilities in the said City of Des Moines and in other cities and towns into or through which its lines may pass, either by purchase, construction or lease and to maintain, extend, improve and operate the same.

3rd. To hold use and enjoy all the corporate and other franchises, rights, privileges, immunities and property of every nature and description which form a part of or are appurtenant or relate to said lines of railway or to the said Des Moines Northern & Western Railway Company.

4th. To acquire either by construction, purchase or lease and to operate lines of railway lateral to or connected with the lines or railway hereinbefore described or to or with either of them.

5th. To acquire either by construction purchase or lease and to operate a line of railway extending from Des Moines in the State of Iowa eastwardly to a point upon the Mississippi River.

6th. To acquire either by construction purchase or lease, and to operate a line of railway extending from Des Moines aforesaid southerly to a point upon the southern boundary of the State of Iowa.

7th. To acquire either by construction, purchase or lease, and to operate a line of railway extending from Des Moines northward to a point upon the northwestern boundary of the State of Iowa.

8th. To acquire either by construction, purchase or lease and to operate a line of railway extending from Fonda northward to a point upon the northern boundary of the State of Iowa.

9th. To acquire either by construction, purchase or lease to operate a line of railway extending from any point upon the line or lines hereinbefore described westwardly to a point upon the western boundary of the state of Iowa.

10th. To acquire either by construction, purchase or lease, and to operate extensions of such lines of railway, or either of them, in other States.

11th. To acquire either by construction, purchase or lease, and to operate railway bridges over navigable rivers and waterways, when necessary to the extension or connection with any of the lines of railway hereinbefore mentioned.

12th. To purchase, own, and sell capital stock of the Des Moines Union Railway Company, or any other company owning or operating terminal grounds, tracks or stations; Also capital stock or any coal, stone or elevator company doing business upon its lines of railway or either of them.

13th. To acquire, purchase, own, lease, sell or operate coal mines stone quarries and elevators upon adjacent or proximate to the several lines of railway or either of them.

Article III.

The corporation hereby created shall have and possess all the powers granted by the laws of the state of Iowa to railway corporations.

It shall have the power to receive, hold use and enjoy all franchises, privileges, immunities and property heretofore held possessed exercised or enjoyed by the said Des Moines, Northern & Western Railway Company, and all such other powers as may be necessary to the accomplishment of the purposes and objects declared in the second article hereof, and which it may legally assume and exercise in each of the several states in which any part of the railroads which it shall own or operate

is or may be situated or into which any of its railroads may be lawfully extended.

It shall have the power to renew or extend in such manner as may be provided by law its own corporate being, existence and franchises.

It shall have the power to sue and be sued under its corporate name; to have a corporate seal and alter the same at its pleasure; to do any act or transact any business which a common carrier of persons and property may lawfully do; to make contracts, acquire and transfer property, execute mortgages and issue mortgage bonds to establish by-laws and make such rules and regulations as it may deem necessary for the proper management of its business.

Article IV.

The capital stock of the corporation hereby created shall be Eight Million Dollars ($8,000,000.00), and shall be divided into shares of the par value of One Hundred Dollars ($100.00) each. Forty-three thousand seven hundred and twenty-five (43,725) shares of such capital stock, aggregating a par value of Four Million Three Hundred and Seventy-two Thousand Five Hundred Dollars ($4,372,500.00) may be issued in part consideration for the railway property heretofore owned by the Des Moines Northern & Western Railway Company, the remaining consideration therefore being payable in first mortgage bonds to be issued by the corporation, and when such capital stock is so issued it shall be full paid and non-assessable, it being agreed by the incorporators, and by all persons who shall deal with the corporation hereby created, that the purchase price of the said railway property is Seven Million, Two Hundred and Eighty-seven Thousand Five Hundred Dollars ($7,287,500.00) payable as follows, to-wit: Two Million Nine Hundred and Fifteen Thousand Dollars ($2,915,000.00) in the first mortgage bonds of this company and Four Million Three Hundred and Seventy-two Thousand Five Hundred Dollars ($4,372,500.00) par value of its capital stock.

All other capital stock that may be issued by the corporation shall be paid for at par either in money or property at the time certificates therefor are issued.

Article V.

The affairs and business of the corporation shall be conducted and controlled by a Board of Directors consisting of seven persons to be elected by the stockholders from their own number at their regular annual meeting in each year. Said Directors shall hold their offices for one year or until their

successors are duly elected and qualified. Vacancies in the Board by removal, resignation, death or otherwise than by the expiration of the term of office, shall be filled by the Board, and the manner thereof may be regulated in the By-laws. Ceasing to be a stockholder in the corporation shall be held to be a resignation as Director.

Article VI.

The executive officers of the corporation shall consist of a President, two Vice-Presidents, a Secretary and a Treasurer. Said officers shall be elected by the Directors at their first meeting after the annual meeting of stockholders, they shall hold their offices for one year and until their successors are elected and qualified, and they shall have such powers and perform such duties as usually pertain to their respective offices, and such as may be conferred or imposed upon them in the by-laws or by resolution of the Board of Directors. All vacancies in such offices shall be filled by the Board of Directors.

Article VII.

The Board of Directors is specially empowered as follows, to-wit:

1st. To adopt By-laws and resolutions providing for the appointment of such managers, superintendents, employes and other officers not hereinbefore named as may be deemed necessary for the transaction of the business of the corporation, and prescribing such additional rules and regulations as may be deemed proper for the transaction of the business and protection of the interest of the corporation.

2nd. To exercise all the powers of the corporation which are not in these Articles or by the statute reserved or designated to be exercised by the stockholders.

3rd. To appoint an Executive Committee, which shall consist of the President and two directors, and invest it with all the powers of the Board when the latter is not in session.

4th. To elect officers and fill vacancies as hereinbefore provided.

Article VIII.

The annual meeting of the stockholders shall be held on the first Thursday in January of each year at the office of the corporation in Des Moines, Iowa, and the first of such meetings shall be held on the first Thursday of January 1896, but special meetings of the stockholders shall be called by the Secretary at any time upon the written request of the President or three Directors or stockholders holding one-third of the cap-

ital stock then issued. Ten days' notice of any such special meeting shall be given to each stockholder by mailing such notice to him addressed to his last known place of residence.

Article IX.

Immediately after the adjournment of each annual meeting of the stockholders the newly elected Board of Directors shall meet for the purpose of electing officers as aforesaid and the transaction of other business, and it shall hold such other meetings, whether regular or special, as shall be provided in the by-laws.

Article X.

The principal office of the corporation for the transaction of its business shall be at Des Moines, Polk County, Iowa, but the Board of Directors may establish such other offices and financial agencies in other states, places and counties as it may deem proper for the convenient and economical management of the affairs of the corporation.

Article XI.

At all meeting of the stockholders each stockholder shall be entitled to cast one vote for each share of stock which upon the books of the company may appear to be held and owned by him. Such vote may be cast either in person or by proxy but if by proxy, written authority therefor, must be filed with the Secretary before the meeting convenes. The shares of capital stock shall be transferable, but no transfer shall be valid or entitle the transferee to vote in any meeting until the same has been entered upon the proper books of the company at the time and in the manner prescribed in the by-laws.

Article XII.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized that all of its authorized capital stock be subscribed, taken or issued.

Article XIII.

The highest amount of indebtedness or liability to which the corporation shall at any time subject itself shall not exceed two-thirds of the par value of its outstanding capital stock.

Article XIV.

The private property of the stockholders shall be exempt from the debts of the corporation.

Article XV.

The corporation shall commence on the 1st day of January 1895, and continue for a period of fifty years, or the longest period which it may continue under the laws of the State of Iowa, and it may be renewed from time to time as shall be provided by the statutes in said State of Iowa.

Article XVI.

These articles may be amended at any annual meeting of the stockholders or at any special meeting called for that purpose, by a vote of two-thirds of the shares of the capital stock then issued or outstanding.

Article XVII.

Until the election of a board of directors of the first annul meeting of the stockholders to be held on the first Thursday of January 1896, the Board of Directors shall consist of A. B. Cummins, H. D. Thompson, A. N. Denman, Carroll Wright, J. P. Hewitt, C. Huttenlocher & J. C. Cummins. Said board shall as soon as practicable elect the officers hereinbefore named, who shall hold their offices until their successors are elected at the first meeting of the Directors to be held after the first annual meeting of the stockholders, and the Board herein appointed shall have all the powers conferred upon or vested in the Board of Directors of this corporation

In witness whereof we have hereunto set our hands this 1st day of January 1895.

A. B. CUMMINS,
H. D. THOMPSON,
CARROLL WRIGHT,
J. P. HEWITT,
A. N. DENMAN,
J. C. CUMMINS.

State of Iowa,
Polk County—ss.

Be it remembered That on this 1st day of January 1895, before me, a notary public in and for the county of Polk and State of Iowa, personally appeared A. B. Cummins, H. D. Thompson, A. N. Denman, Carroll Wright, J. P. Hewitt, J. C. Cummins, personally to me known to be the identical persons who signed the above and foregoing Articles of Incorporation and severally acknowledged the execution of said instrument to be their voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal the day and year last above written.

(Notarial seal)

C. HUTTENLOCHER,
Notary Public, Polk County, Iowa.

Filed for Record March 4th 1895, At 2:32 o'clock P. M.

ANNIE E. HEPBURN,
Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book No. 11 page 55.

Dated at Des Moines, Iowa, in said County, this the 30th day of December 1909.

(sgd) MRS. FRANK W. DODSON,
Recorder.

EXHIBIT 71

G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee,
to
Des Moines Northern & Western Railroad Company.

Deed.

Know all Men by the Presents: That G. M. Dodge, of the city, county and state of New York, F. M. Hubbell and F. C. Hubbell, of the City of Des Moines, County of Polk, and State of Iowa, Purchasing Committee, for and in consideration of the issuance and delivery to them of Two Million, Nine-Hundred Fifteen Thousand Dollars par value of the first mortgage bonds and Four Million Three Hundred Seventy Two Thousand, Five Hundred Dollars, par value, of the capital stock of the Des Moines, Northern & Western Railroad Company, a railway corporation organized and existing under the laws of the State of Iowa, do hereby sell and convey unto the said Des Moines, Northern and Western Railroad Company the following described property, to-wit:

A certain line of railroad extending from Farnham Street in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Poca-

hontas to Fonda, in the said last named county, and also extending from Clive in the County of Polk, through the counties of Polk, Dallas, and Boone, to Boone, in the County of Boone and State of Iowa; together with all the real estate necessary for and used in the operation of said lines of railroad, the rights of way, road bed, bridges, tracks, side-tracks, turn-outs, switches, buildings and structures, water-tanks and fixtures, shops, engine and other houses, turn-tables, engines, cars and machinery; also all the franchises, rights, privileges and immunities connected with, appurtenant to, or used in the operation of the railway property hereinbefore described; also all the rents, issues, tolls and earnings now in the possession of the grantors and arising from the use and operation of said property; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company. The intent being to hereby invest the said Des Moines, Northern & Western Railroad Company with the full and absolute title of the said railroad lines as they now exist, with all their appurtenances and incidents, as received by said grantors from a deed of conveyance executed and delivered by Geo. F. Henry, Commissioner of the United States Circuit Court within and for the Southern District of Iowa on the eighth day of February A. D. 1895, to these grantors, which deed of the said Commissioner was made in pursuance of a decree of the said Circuit Court of the United States entered November 7th A. D. 1894, a foreclosure sale had under said decree on the 18th day of December A. D. 1894, and a supplemental decree of said Court entered February 7th A. D. 1895.

To have and hold all and singular the said premises above mentioned and described; and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said grantee, its successor, successors, or assigns, forever.

It is hereby expressly provided that the above and foregoing sale and conveyance is without the personal warranty of either of said grantors and that the same is intended to pass the title so acquired by them as such purchasing committee.

In Witness Whereof, the said G. M. Dodge, F. M. Hubbell and F. C. Hubbell, composing the Purchasing Committee as aforesaid, have hereunto set their hands the day and year first above written.

G. M. DODGE.....
F. M. HUBBELL.....
F. C. HUBBELL.....

State of New York,
County of New York—ss.

Be it Remembered, that on the 23rd day of February A. D. 1895, before me, a Notary Public in and for the City, County and State of New York, personally appeared G. M. Dodge, to me personally known to be one of the identical persons who signed the foregoing instrument as grantor, and acknowledged the execution thereof to be his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal the day and year last above written.

(Notarial seal)

JOHN W. JENNINGS,
Notary Public in and for the City, County and State of New York.

Notary Public Kings Co. N. Y.
Certificate filed in New York Co.

State of Iowa,
County of Polk—ss.

Be it remembered that on this 25th day of February A. D. 1895, before me a notary public in and for the county of Polk, and State of Iowa, personally appeared F. M. Hubbell and F. C. Hubbell, to me personally known to be two of the identical persons, who signed the above and foregoing instrument as grantors, and acknowledged the execution thereof to be their voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal on the day and year last above written.

(Notarial seal)

G. HUTTENLOCHER,
Notary Public, in and for Polk County, Iowa.

Filed for record March 14" 1895, at 8:44 o'clock A. M.,

ANNA E. HEPBURN,
Recorder.
By Geo. B. Hepburn, Deputy.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 263 at pages 533 to 535, inclusive.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

MRS. FRANK W. DODSON,
Recorder.

EXHIBIT 72.

"Stockholders' Meeting (D. M. N. & W. Railroad Co.)

Des Moines, Iowa, January 5, 1899.

Pursuant to Article Eight of the Articles of Incorporation of this Company, the Annual Meeting of the Stockholders was held at the office of the Company in the city of Des Moines, Iowa, at eleven o'clock A. M. of Thursday, the 5th day of January 1899.

The president of the Company acted as President of the meeting and the Secretary of the Company acted as Secretary of the meeting.

The Secretary laid before the meeting the following list of Stockholders of the Company showing the number of shares held by them and each of them, on this day, which list is as follows, towit:

Chicago, Milwaukee & St. Paul Railway Company	32,994 Shares
Collins, W. G.	1 share
Cummins, A. B.	465 shares
Earling, A. J.	1 share
Goodnow, C. A.	1 share
Manson, Burton	1 share
Hubbell, F. C.	1 shares
Hubbell, F. M.	1 share
Miller, Rosewell	2 shares
Miller, Roswell, Trustee	10,232 shares
Myers, P. M.	1 share
Thompson, H. D.	1 share
Warfield, W. R.	24 shares
Total	43,725 shares

and the roll being called it appeared that there were present in person and by proxy the holders of 43,235 shares out of a total issue of 43,725 shares of the capital stock of the Company.

On motion of Mr. Earling duly seconded, the Secretary was directed to read for the information of the stockholders, the record of the acts and doings of the Board of Directors since

the last Annual Meeting of the Stockholders, and the same having been read it was on motion duly seconded.

Resolved that all the acts and doings of the Board of Directors and of the officers of this Company had and taken since the last annual meeting of the Stockholders as set out in the minutes of the Board, and now read in our hearing, be and the same are hereby in all things ratified, approved and confirmed as the acts and doings of this corporation.

On motion duly seconded, it was Resolved to proceed by ballot to the election of seven (7) Directors to hold their offices for one year, or until their successors are elected and qualified; and that Mr. H. D. Thompson be appointed Teller to receive and count the votes.

And a ballot being taken, the Teller reported that W. G. Collins, A. J. Earling, C. A. Goodnow, Burton Hanson, F. M. Hubbell, F. C. Hubbell and P. M. Myers had each received 43,235 votes, being all the votes cast at said election, and thereupon the President declared the above named gentlemen duly elected Directors of this Company to hold office for the term of one year, or until their successors are elected and qualified.

And there being no further business to come before the meeting the stockholders adjourned sine die.

F. M. HUBBELL, President.

Attest: Cyrus Kirk, Secretary.

EXHIBIT 73.

"Special Meeting of Directors.

Chicago, Illinois, April 24th, 1899.

Pursuant to the call of the President and to notice duly given, a special meeting of the Board of Directors was held at the office of the President, in the Old Colony Building, in this city at 2:30 o'clock P. M. of this day.

And there was present Messrs. Collins, Earling, Goodnow, Hanson, and Myers .....5.

And absent Messrs. F. M. Hubbell and F. C. Hubbell....2.

The President having taken the chair, the minutes of the last meeting were read and approved.

The President stated to the Board that the Wabash Railroad Company is the holder of five hundred (500) shares of the capital stock of the Des Moines Union Railway Company

and is, together with this company, the signer of two certain contracts with said Des Moines Union Railway Company; one of which contracts is dated the tenth day of May, 1889, and the other the thirty first day of July, 1897, and both relate to the use of the facilities of said Des Moines Union Railway and to the manner of transferring the stock of said Company which may be held either by the Wabash Company or by this Company.

That the Wabash Company has requested this Company and the Des Moines Union Railway Company to sign a written consent permitting the Wabash Company to pledge its stock in and contracts with the Des Moines Union Railway Company to the Continental Trust Company, as trustee of a certain mortgage which said Wabash Company executed to it on or about the first day of January, 1899 to secure certain bonds in said mortgage particularly described.

That this consent was executed by the Des Moines Union Railway Company and by the officers of this Company; and he asked the Board to direct that the consent be entered upon the minutes, and that the act of the officers of this Company in signing it be ratified and approved.

Whereupon, on motion duly seconded, it was unanimously

Resolved, that this Board does hereby ratify and approve, and confirm the action of the President and Secretary of this Company in executing, together with the Des Moines Union Railway Company the following "Consent":—

Whereas, on or about the 10th day of May, 1889, the Des Moines Union Railway Company as party of the first part, entered into a contract with the Des Moines and St. Louis Railroad Company, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, as parties of the second part, wherein and whereby said first party granted to said second party the right to use, upon the terms and conditions therein set forth, the tracks, stations and terminal properties of said first party in and near the city of Des Moines, in the State of Iowa, and

Whereas the Des Moines & Northwestern Railway Company and the St. Louis Des Moines and Northern Railway Company have ceased to own or operate the respective railroads that were owned and operated by them at the time said contract was made, and the Des Moines, Northern and Western Railroad Company has become the owner of and now operates the lines of railroad which were formerly owned and operated by the said Des Moines and Northwestern Railway Company and

the St. Louis, Des Moines and Northern Railway Company, and

Whereas on or about the 31st day of July, 1897, said contract was by an agreement of that date, ratified, confirmed and adopted as a contract between said Des Moines Union Railway Company; the Wabash Railroad Company, and the Des Moines Northern and Western Railroad Company; and

Whereas, in a certain mortgage made by the Wabash Railroad Company to the Continental Trust Company of the City of New York dated on or about the first day of January, 1899, the Wabash Railroad Company to secure the bonds in said mortgage described, has granted and conveyed to said Trust Company the "Des Moines and St. Louis Railroad, extending from the City of Des Moines to Albia in the State of Iowa, and all its leasehold rights and privileges to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in or near said City of Des Moines, including also the rights and interest of the Wabash Railroad Company in and to said terminal contract, dated the 31st day of July, 1897, and in and to said other contract, dated the 10th day of May, 1889"; and

Whereas, it is provided in said mortgage that both said contracts shall be deposited with and assigned to the Continental Trust Company of the City of New York by the Wabash Railroad Company, and that such assignment of said contracts shall be made with consent of said Des Moines Union Railway Company, and with the consent of said Des Moines, Northern and Western Railroad Company, as the assignee or successor of the Des Moines and Northwestern Railway Company and of the St. Louis, Des Moines and Northern Railway Company; and,

Whereas the Wabash Railroad Company has also in its said mortgage granted and conveyed to said Continental Trust Company of the City of New York, five hundred shares of the capital stock of said Des Moines Union Railway Company of the par value of one hundred dollars each; and

Whereas, it is provided in said mortgage that the Wabash Railroad Company shall deposit with or cause to be delivered to and deposited with said Continental Trust Company of the City of New York duly endorsed in blank said five hundred shares of the capital stock of the said Des Moines Union Railway Company, and shall also file with said Trust Company the consent of the Des Moines Union Railway Company and the consent of the Des Moines Northern & Western Railroad Company to said assignment or mortgage to said Continental Trust

Company of said five hundred shares of the capital stock of the Des Moines Union Railway Company.

Now Therefore in consideration of the premises of the Des Moines Union Railway Company and the Des Moines Northern and Western Railroad Company, and each of them do hereby consent to any assignment that has been made or that may be hereafter made by the Wabash Railroad Company of said two contracts and of its rights under the same to the Continental Trust Company of the City of New York, as provided for in said mortgage and said Des Moines Union Railway Company and said Des Moines Northern and Western Railroad Company have consented and do hereby consent to all assignments or conveyances that have been made, or that may be hereafter made by the Wabash Purchasing Committee to the Wabash Railroad Company or that have been made or may be hereafter made by the Wabash Railroad Company to the Continental Trust Company of the City of New York of said five hundred shares of stock in accordance with the terms of said mortgage and in order to give effect to its provisions.

In testimony whereof the Des Moines Union Railway Company and the Des Moines Northern and Western Railroad Company have hereunto subscribed their corporate names by their respective Presidents and caused these presents to be attested by their corporate seal this 14th day of March, A. D., 1889.

DES MOINES UNION RAILWAY COMPANY,
By (Sgd.) H. D. Thompson, Vice President.

Attest: (Sgd.) F. M. Hubbell, Secretary.

THE DES MOINES, NORTHERN & WESTERN RAILROAD CO.,
By (Signed) A. J. Earling, President.

Attest: (Signed) P. M. Myers, Secretary.

The President laid before the Board the following preamble and resolution adopted by the Board of Directors of the Chicago, Milwaukee & St. Paul Railway Company, at their meeting held in the City of New York on the ninth day of March, 1899, which preamble and resolution are as follows:

Whereas, the Des Moines, Northern & Western Railroad Company owns and operates a line of railroad commencing in the city of Des Moines, Polk County, Iowa, and extending thence in a general northwesterly direction via Clive, in said county, to Fonda, in Pocahontas County; and also a line of railroad commencing at Clive and thence extending in a north-

erly direction to Boone in Boone County, all in the State of Iowa, the aggregate length of said lines of railroad being about 150 miles; and

Whereas, the said Des Moines, Northern & Western Railroad Company has issued and there are now outstanding 43,725 shares of One hundred dollars ($100) each of its capital stock, and its railroad and property are encumbered by a mortgage debt consisting of two thousand nine hundred and thirty three (2,933) bonds of One Thousand Dollars ($1000) each, due January 1st, 1915 and bearing interest at four per cent (4%) per annum payable semi-annually, both interest and principal payable in gold; and

Whereas, this Company is the owner of 43,724 out of the above mentioned 43,725 shares of capital stock, and of 2,932 out of the above mentioned 2,933 bonds, and has paid therefor the sum of $2,462,511.95; and

Whereas the lines of railroad of the said Des Moines, Northern & Western Railroad Company intersect and are connected with the Chicago & Council Bluffs Division of the railway of this company at Madrid and at Herndon, in said State of Iowa, and by reason of such connections form a through line reaching the principal cities and towns in said state and states adjacent; and

Whereas, it is for the interest of this Company and of the public that the said lines of the Des Moines, Northern & Western Railroad should be owned and operated by this company, and that to this end, the said Des Moines, Northern & Western Railroad Company should sell and convey and transfer by deed, to the Chicago, Milwaukee & St. Paul Railway Company all its railroad and property and every part thereof, and all its rights, franchises, licenses, privileges and immunities of every kind howsoever derived; and the said Des Moines, Northern & Western Railroad Company is authorized and empowered under the laws of the state of Iowa, to make such sale and to execute and deliver such conveyance as aforesaid;

Now therefore, be it

Resolved, that the Des Moines, Northern & Western Railroad Company be and is hereby requested to sell and convey to this Company all its railroad and property and for this purpose to make, execute and deliver through its proper officers, a good and sufficient deed of conveyance, conveying and transferring to this Company all its railroad and property of every name and nature wheresoever situated and all its rights, franchises, licenses, privileges and immunities of every kind howsoever derived in consideration of the sum of One

Dollar and of the cancellation and surrender by this Company of all the above mentioned mortgage bonds of the Des Moines, Northern & Western Railroad Company, amounting in the aggregate to the sum of $2,933,000., with interest due thereon, and of the payment of all other lawful debts of said Company; and this Company hereby agrees that, upon the delivery to it of such deed, it will cancel and surrender the said mortgage bonds and will assume and pay all other lawful debts of said Des Moines Northern & Western Railroad Company, and hold said Company free and clear and harmless therefrom; and

Resolved, That the officers of this Company be, and they are hereby authorized and directed to accept such deed for and on behalf of this Company, and to cause the same to be duly recorded, and when so recorded, to be filed with the muniments of title of this Company."

And the same having been read and duly considered, it was on motion duly seconded, unanimously.

Resolved, That the offier of the Chicago, Milwaukee & St. Paul Railway Company to purchase the railroad and property of this Company, as set out in the foregoing preamble and resolutions, be and is hereby accepted; and that the President and Secretary of this Company be, and they are hereby directed to make and execute a proper deed of conveyance, under the seal of this Company, conveying to the Chicago, Milwaukee & St. Paul Railway Company, its successors and assigns, all the railroad and property of this Company of every name and nature wheresoever situated, and all its rights, franchises, licenses, privileges and immunities of every kind howsoever derived, in consideration of the sum of One Dollar, and of the cancellation and surrender by the said Chicago, Milwaukee & St. Paul Railway Company of all the mortgage bonds of this Company now outstanding amounting in the aggregate to the sum of $2,933,000, with the interest due thereon and of the payment of all other lawful debts of this Company; and

Resolved That a meeting of the stockholders of this Company be called to be held at its office in the City of Des Moines, Iowa, at 12 o'clock noon of Monday, the 8th day of May, 1899; and that these resolutions and said deed be presented to said meeting, and if the same be approved by said Stockholders then the officers of this Company are directed to deliver the deed aforesaid to the said Chicago, Milwaukee & St. Paul Railway Company.

On motion duly seconded, it was unanimously

Resolved, that Article I of the By-Laws be and the same is hereby repealed, and that in place thereof there be inserted:

"Article I".

"At all the meetings of the stockholders, each stockholder shall, as provided in the Articles of Incorporation, be entitled to one vote for each share of stock held and owned by him, as appears by the books of the Company at the time of such meeting".

And there being no further business to come before the Board at this time, on motion, duly seconded, the Directors adjourned sine die.

Attest: P. M. MYERS, Secy."

EXHIBIT 74.

This Indenture, made this First day of May, in the year of our Lord One Thousand Eight Hundred and Ninety-Nine, by and between the Des Moines, Northern & Western Railroad Company, a corporation of the State of Iowa, party of the first part, and the Chicago, Milwaukee & St. Paul Railway Company, a corporation of the State of Wisconsin, party of the second part—Witnesseth:

Whereas, the Des Moines, Northern & Western Railroad Company now owns and operates a certain line of railroad commencing at the east line of Section Seven (7), Township Seventy-eight (78) north, Range Twenty-four (24) west, in the City of Des Moines, Polk County, Iowa, and thence extending in a general northwesterly direction, via Clive, in said county, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, to Fonda, in said last named county; and also a line of railroad extending from Clive, in said county of Polk, through said county to Boone, in the county of Boone; said lines of railroad having an aggregate length of about one hundred and fifty (150) miles, all in the State of Iowa; and

Whereas, said lines of railroad connect with the railroad of the said Chicago, Milwaukee St. Paul Railway Company at Madrid and at Herndon, in said State, and can be operated in connection with said last mentioned railroad conveniently to the public and to the common benefit of both companies, forming a through line reaching the principal cities and towns in said State of Iowa, and States adjacent; and

Whereas, the said Des Moines, Northern & Western Railroad Company, is indebted to divers parties in the amount of Two Million, Nine Hundred and Thirty-three Thousand Dollars of bonds, due January 1st, 1915, and bearing interest at four per

cent. per annum, payable semi-annually, both interest and principal payable in gold; which said bonds are secured by a mortgage of all its railroads, property, and franchises, executed by the said Des Moines, Northern & Western Railroad Company to the Metropolitan Trust Company, of the City of New York, as Trustee, bearing date the first day of January, 1895; and

Whereas, the said Chicago, Milwaukee & St. Paul Railway Company proposes to purchase said railroads, together with all the equipment, rolling stock, and franchises, and all other property of every name and nature, in anywise appertaining thereto, and in payment therefor to take up, pay, cancel and satisfy all of the above mentioned bonds, with the interest due thereon, and also all other lawful indebtedness of said Des Moines, Northern & Western Railroad Company; and

Whereas, the Des Moines, Northern & Western Railroad Company, has, by its Board of Directors, and with the authority and approval of its stockholders, given in the manner prescribed by statute, authorized the sale of all its railroads and all its property and franchises in anywise appertaining thereto, to the Chicago, Milwaukee & St. Paul Railway Company, and has directed this conveyance to be executed on its part by its President and Secretary, and its corporate seal to be affixed thereto by the officers executing the same; and

Whereas, the said Des Moines, Northern & Western Railroad Company is authorized and empowered by the laws of the State of Iowa, to make this conveyance, and the said Chicago, Milwaukee & St. Paul Railway Company, is authorized and empowered by the laws of the States of Wisconsin and Iowa to receive the same;

Now Therefore, in consideration of the premises and of the sum of One Dollar to it in hand paid, the receipt whereof is hereby acknowledged and confessed, and in further consideration of the undertaking and obligation of the said Chicago, Milwaukee & St. Paul Railway Company to take up, pay, cancel and satisfy all of the above mentioned mortgage bonds, with all the accrued interest thereon, and to pay any and all other just debts of the said Des Moines, Northern & Western Railroad Company, the said Des Moines, Northern & Western Railroad Company, party hereto of the first part, does hereby sell and convey unto the said Chicago, Milwaukee & St. Paul Railway Company, party hereto of the second part, its successors and assigns, all and singular the railroad and railway of the party of the first part, commencing at a point in the east line of Section Seven (7), Township Seventy-eight (78) north, Range Twenty-four (24) West, in the city of Des Moines, Polk County, Iowa, and thence extending in a general northwesterly

direction, via Clive, in said county, through the counties of Polk, Dallas, Guthrie, Green, Calhoun and Pocahontas, to Fonda, in said last named county; and also extending from Clive, in the county of Polk, through the counties of Polk, Dallas and Boone, to Boone, in the county of Boone, and State of Iowa, in all, a distance of about one hundred and fifty (150) miles, being the railroads and railways formerly known as the Des Moines, Northern & Western Railroad; including all the railroads, railways, ways, and rights of way; all the depot grounds, and other lands; all the tracks, bridges, viaducts, culverts, turntables, fences, and other structures; all the depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, coal-houses, elevators and other buildings; and all machine shops and other shops, held or acquired for use in connection with the said railroad, or in connection with the business thereof; including the road-bed, right of way, appurtenances, and all property of every kind and description, belonging or appertaining to the railroads hereby conveyed and heretofore belonging to the said Des Moines, Northern & Western Railroad Company; including also, all locomotives, tenders, cars, and other rolling stock and equipment; and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing or replacing of said railway or any part thereof, or any of its equipment or appurtenances; and including also all franchises of said Des Moines, Northern & Western Railroad Company connected with or relating to the said railroads, or to the construction, maintenance, use, and operation of the same; together with all and singular the tenements, hereditaments and appurtenances to said premises belonging, and the reversion and reversions, remainder and remainders, tolls, income, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said Des Moines, Northern & Western Railroad Company, of, in, and to the same, and every part thereof; and also said company's interest, whatsoever the same may be, in and to the line of telegraph extending along the route of said railway, with all the instruments, implements, machinery, furniture and materials for constructing, furnishing or operating the same; and also one-fourth interest in the capital stock of the Des Moines Union Railway Company; it *being* the intent hereof to convey all the aforesaid railroad lines, with all their appurtenances and incidents, as received by the grantor herein from a deed of conveyance executed and delivered to it by G. M. Dodge, F. M. Hubbell, and F. C. Hubbell, Purchasing Committee, on the eighth day of February, 1895; together with all property, rights, franchises, licenses and privileges of every name

and description, which the said grantor has in any manner acquired since said eighth day of February, 1895.

To Have and to Hold, all and singular, the said premises above mentioned and described and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said Chicago, Milwaukee & St. Paul Railway Company, party hereto of the second part, and to its successors and assigns forever.

And the said Des Moines, Northern & Western Railroad Company hereby warrants the title to all the above mentioned and described premises against all persons whomsoever, and hereby covenants and agrees to and with the said party of the second part hereto, that it will make, execute and deliver to it all such further deeds and instruments as may be reasonably required by it for the better assuring of the title to the premises hereby conveyed, or intended so to be.

In Witness Whereof, the said Des Moines, Northern & Western Railroad Company has caused these presents to be executed by its President, and its corporate seal to be hereto affixed and attested by its Secretary, the day and year first above written.

(Seal) DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY,
By A. J. Earling, President.

Attest:
P. M. Myers, Secretary.

State of Wisconsin,
County of Milwaukee—ss.

Be It Known, that on the fifth day of May, A. D. 1899, before me, a Commissioner residing in the State of Wisconsin, duly appointed and commissioned by the Governor of the State of Iowa to administer oaths and take acknowledgments and proofs of deeds to be used and recorded in the State of Iowa, personally came Albert J. Earling, President, and Peter M. Myers, Secretary of the Des Moines, Northern & Western Railroad Company, to me personally known, and known by me to be the identical persons who executed the foregoing instrument, and by me being duly sworn, did each depose and say: That they are respectively President and Secretary of said Company; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was affixed by authority of said company, and that they signed their respective names thereto as President and Secretary by the like authority; and they severally acknowledged the execution thereof to be their voluntary act and deed and the voluntary act

of the said Des Moines, Northern & Western Railroad Company, for the purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year last above written.

(Seal) E. W. ADAMS,
(Revenue Stamps) Commissioner for Iowa, in Wisconsin.

State of Iowa,
Polk County—ss.

Filed for record the 31st day of May, A. D. 1899, at 2:10 o'clock P. M., and recorded in deed Record 295 of Polk County Records.

JOHN P. COOK,
Recorder, Polk County, Iowa.

State of Iowa,
Dallas County—ss.

Filed for record the 31" day of May, A. D. 1899, at 4:55 o'clock P. M., and recorded in Mis Record 146 page 215 of Dallas County Records.

W. J. COLE,
Recorder, Dallas County, Iowa.

State of Iowa,
Guthrie County—ss.

Filed for record the 5th day of June, A. D. 1899, at 1 o'clock P. M., and recorded in Book 97 Page 535 of Deeds of Guthrie County Records.

J. W. BUCKMASTER,
Recorder, Guthrie County, Iowa.

State of Iowa,
Greene County—ss.

Filed for record the 1" day of June A. D. 1899, at 1:15 o'clock P. M., and recorded in Book 49 Page 108 of Greene County Land Deed Records.

GEO. P. McBURNEY,
Recorder, Green County, Iowa.

State of Iowa,
Calhoun County—ss.

Filed for record the 2 day of June, A. D. 1899, at 8:15 o'clock A. M., and recorded in Book 25 Page 1 of Calhoun County Records.

SAM A. SMITH,
Recorder, Calhoun County, Iowa.

State of Iowa,
Pocahontas County—ss.

Filed for record the 2nd day of June, A. D. 1899, at 5:10 o'clock P. M., and recorded in Book 31 page 337 of Pocahontas County Records.

L. E. HANSON,
Recorder, Pocahontas County, Iowa.

State of Iowa,
Boone County—ss.

Filed for record the 6th day of June, A. D. 1899, at 10:20 o'clock A. M., and recorded in Book 104 page 499 of Boone County Records.

C. C. OLSON,
Recorder, Boone County, Iowa.

EXHIBIT 75.

Des Moines, Northern & Western Railroad Company.

Stockholders' Meeting.

Des Moines, Iowa, June 12, 1907.

In pursuance of notice duly given, a special meeting of the stockholders of this Company was held in this city at 10 o'clock in the forenoon of this day. Mr. S. H. Vaughan was called to the chair, and the Secretary of the Company acted as Secretary of the meeting.

The Secretary laid before the meeting the written consent of all the stockholders of the Company for the holding of this special meeting.

The roll being called, it appeared there were present in person or by proxy, stockholders representing 43,725 shares, being the entire issue of the capital stock of the Company.

The Secretary laid before the meeting the following preamble and resolution, which had been adopted by the Board of Directors, and moved their adoption:

Whereas, and in the month of May, 1899, pursuant to certain contracts and agreements existing between this Company and the Chicago, Milwaukee & St. Paul Railway Company, certain resolutions were passed, both by the directors and stockholders of this Company, to transfer and convey to the said Chicago, Milwaukee & St. Paul Railway Company, its successors, etc., "all the railroad and property of this Company of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges, and immunities of

every kind, howsoever derived;" and that the proper officers of this Company be required and directed to execute a deed in due form of law to effect such conveyance; and

Whereas, it was the intent and purpose of this Company and of said resolutions to convey to the said Chicago, Milwaukee & St. Paul Railway Company its entire tracks and right of way; and

Whereas, through some oversight an error was made in the deed in the description of the track and right of way of this Company, through which error this Company conveyed to the said Chicago, Milwaukee & St. Paul Railway Company "all and singular the railroad and railway of the party of the first part (this Company) commencing at a point in the east line of Section Seven (7), Township Seventy-eight (78) North, Range Twenty-four (24) West, in the City of Des Moines, Polk County, Iowa, and thence extending" etc., when the aforesaid starting point of such description should have been "Sixteenth street" (formerly called Farnham street) in the said City of Des Moines; and

Whereas, by reason of such erroneous description there was omitted from the aforesaid conveyance that part of the tracks, right of way and fixtures of this Company beginning at said Sixteenth street (formerly called Farnham street) and extending to Twenty-eighth street, or Western Avenue, inclusive;

Now Therefore, Be It Resolved, that for the purpose of correcting such error and carrying out the purpose and intent of this Company to convey to the said Chicago, Milwaukee & St. Paul Railway Company its entire property as aforesaid, the President and Secretary of this Company be required and directed to execute and deliver to the Chicago, Milwaukee & St. Paul Railway Company, a deed in due form of law, of that part of the said tracks and right of way omitted as aforesaid, to-wit: That part of said tracks, right of way and fixtures between the said Sixteenth street (formerly called Farnham street) and the said Western Avenue or Twenty-eighth street, inclusive, in the said City of Des Moines.

The stock vote being called for on the adoption of the foregoing preamble and resolution, it appeared that the holders of 43,725 shares, being the entire issue of the capital stock of the Company, had voted in favor of their adoption, whereupon the Chairman declared the same unanimously adopted.

There being no further business to come before the meeting, on motion duly seconded the stockholders adjourned.

E. W. ADAMS,
Secretary.

S. H. Vaughan, Chairman.

EXHIBIT 76.

This Indenture, Witnesseth: That Whereas, the stockholders and directors of the Des Moines, Northern & Western Railroad Company, a railroad corporation organized and existing under and by virtue of the laws of the state of Iowa, at meetings thereof respectively and duly called and held for that purpose, empowered and directed in due form of law, a deed of conveyance to the Chicago, Milwaukee & St. Paul Railway Company, a railroad corporation organized and existing under and by virtue of the laws of the state of Wisconsin, of the right of way, tracks and premises hereinafter described;

Now Therefore, the said Des Moines, Northern & Western Railroad Company, in consideration of the sum of one dollar and other valuable considerations, does hereby convey, release and quitclaim to the said Chicago, Milwaukee & St. Paul Railway Company, its successors and assigns, all that part of its tracks, rights of way and fixtures in the City of Des Moines and State of Iowa, which lies between Sixteenth street (formerly called Farnham street) and Twenty-eighth street, both inclusive.

In Witness Whereof the said Des Moines, Northern & Western Railroad Company has caused these presents to be executed by its President and Secretary, and its corporate seal attached this 19th day of June, 1907.

DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY,
By A. J. Earling, President.
E. W. Adams, Secretary.

Witness:
Geo. R. Peck,
J. C. Cook.

State of Illinois,
County of Cook—ss.

On this 19 day of June, A. D. 1907, before me appeared Albert J. Earling and E. W. Adams, to me personally known, who being by me duly and severally sworn, did say that he, the said Earling, is the President, and he, the said Adams, is the Secretary of the Des Moines, Northern & Western Railroad

Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said Earling and the said Adams severally acknowledged said instrument to be the voluntary act and deed of said corporation.

(Notarial Seal) W. D. MILLARD,
Notary Public, Cook County, Illinois.
My commission expires May 11", 1908.

Filed for record, June 27, A. D. 1907, at 11:16 o'clock A. M.

Des Moines, Northern & Western Railroad Company to Chicago, Milwaukee & St. Paul Railway Company. Deed.

Plaintiffs Exhibit 77.

Trust Conveyance and Convention.

Frederick M. Hubbell and Frances E. Hubbell, his wife

to and with

Frederick M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, Trustees of the Frederick M. Hubbell, Estate.

Whereas, Frederick M. Hubbell, otherwise known as F. M. Hubbell, and Frances E. Hubbell, husband and wife, of the City of Des Moines, Polk County, Iowa, are the owners of considerable property, both real and personal, the title of which stands either in the name of Frederick M. Hubbell, or of F. M. Hubbell, or of Frances E. Hubbell, situated and located in said Polk County, and elsewhere, and,

Whereas, Said Frederick M. Hubbell and Frances E. Hubbell are the parents of three children, viz.: Frederick C. Hubbell and Grover C. Hubbell, now residents of said City of Des Moines, Polk County, Iowa, and Beulah C. Wachtmeister, who now resides in the City of Paris, France, and,

Whereas, Owing to the nature of their property, to their frequent absence from home, and for various other reasons, it is deemed advisable by the said Frederick M. Hubbell and Frances E. Hubbell to name and appoint trustees of a portion of their property, with certain powers and duties: Now therefore,

Know All Men By These Presents: That, for and in consideration of the sum of One (1) Dollar in hand paid, and other good considerations, the said Frederick M. Hubbell and Frances E. Hubbell, jointly and severally, agree to and do hereby sell, assign, transfer and convey unto the said Frederick

M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, as trustees of the Frederick M. Hubbell Estate, hereinafter called "trustees," and to their successors in trust, all of the property listed and described in the Schedules hereto attached, hereby referred to and made a part hereof, marked "Schedule A. Real Property; not to be sold;" "Schedule B. Real Property, which may be sold," and "Schedule C. Personal Property," and all other property which the said Frederick M. Hubbell and Frances E. Hubbell, or either of them, may hereafter sell and convey, or cause to be sold and conveyed, unto said "trustees;" together with, all and singular, the rents, issues and profits thereof, and rights of homestead, dower and statutory thirds, and all other rights, appendent and appurtenant, in and unto said property belonging.

In Trust, however, for the persons and purposes hereinafter named and appointed, and with the powers and duties hereinafter set forth, and none other.

To Have and to Hold the same unto the said Frederick M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, trustees of the Frederick M. Hubbell Estate, and to their successors in trust, for and during the whole of the period hereinafter described and designated as "the trust period."

Article I. "The trust period," above referred to, is described and designated as follows: It shall commence upon the execution of these presents, and shall continue and exist during the lives of the following named persons, who are each and all now living, viz., Frederick M. Hubbell and Frances E. Hubbell, his wife—hereinafter called "trustors"—Frederick C. Hubbell, Beulah C. Wachtmeister and Grover C. Hubbell—children of the said Frederick M. Hubbell—and Frederick W. Hubbell and James W. Hubbell—sons of the said Frederick C. Hubbell—and during the life of the survivor of said persons, and for twenty-one (21) years thereafter.

Article II. During the whole of "the trust period" aforesaid, said "trustees" shall have full power and authority to demand, sue and receipt for, take and enter into possession of and hold the property listed and described in the schedules hereto attached, under the heading "Schedule A. Real Property; not to be sold," and each and every lot, part and parcel thereof.

They shall have power to lease said property, and to demand, collect, sue and receipt for the rents, issues and profits arising and which may be had therefrom; to bring, maintain and defend actions, both at law and in equity, involving, growing out of, or in any wise affecting said property; to maintain, improve and insure, and to plat and subdivide the same, and to vacate

the plats and subdivisions thereof, as to them may seem to the best advantage of the trust estate.

They shall have power to pay all liens, encumbrances and claims upon and against said property, whether now existing or hereafter created.

They shall have power to sell and convey such portions of said property as to them may seem necessary or proper for party walls, streets, alleys, public places, rights-of-way, depot grounds and other railroad purposes, upon such terms as may seem to them reasonable and right, and to dedicate streets, alleys and public places therein.

They shall have power to contract debts on the faith and credit of said property and to secure said debts by mortgage, bond, or otherwise, for the purpose of improving said property, to the amount of One Hundred Thousand (100,000) Dollars; but they shall have no power to contract debts on the faith and credit of said property, or to secure the same, except for the purpose of improving said property, and the sum total of such indebtedness shall never, at any time, exceed said sum of One Hundred Thousand (100,000) Dollars, exclusive of interest.

They shall have no power to sell or dispose of said property, or any part of it, except for party walls, streets, alleys, public places, rights-of-way, depot grounds, or other railroad purposes, until the expiration of said trust period.

Article III. During the whole of the trust period aforesaid, said trustees shall have full power and authority to demand, collect, sue and receipt for, take and enter into possession of and hold the property listed and described in the schedules hereto attached, under the headings "Schedule B. Real Property, which may be sold," and "Schedule C. Personal Property," and each and every lot, part and parcel thereof.

They shall have power to lease said property, and to demand, collect, sue and receipt for the rents, issues and profits arising and which may be had therefrom; to bring, maintain and defend actions, both at law and in equity, involving, growing out of, or in any wise affecting said property; to maintain, improve and insure, and to plat and subdivide the same, and to vacate the plats and subdivisions thereof, as to them may seem to the best advantage of the trust estate.

They shall have power to pay all liens, encumbrances, and claims upon and against said property, whether now existing or hereafter created.

Further, said trustees shall have full power and authority to sell, assign, transfer, convey and deliver possession of said

property listed and described in said schedules, under the headings, "Schedule B. Real Property, which may be sold," and "Schedule C. Personal Property," or any lot, part or parcel of it, at such prices and upon such terms as to them may seem best, and they shall have power to invest and re-invest the rents, issues, profits and proceeds of sale thereof, in real estate situated in Polk County, Iowa, and in the improvement of said property, and in the improvement of the property listed and described in said schedules, under the heading, "Schedule A. Real Property; not to be sold."

Further, said trustees shall have power to contract debts on the faith and credit of said property listed and described in said schedules "B" and "C"; to mortgage, bond, or otherwise encumber the same, or any part thereof, should the exigencies of the trust so require, and to charge said property with all necessary, proper and reasonable expenses of maintenance, and of administation of the trust hereby created, including reasonable compensation to the trustees while actively engaged in attending to the business and management of the trust.

In short, during the whole of the trust period aforesaid, said trustees shall have full power and authority to manage and control said property in such manner as to them may seem advisable, and shall have, enjoy and exercise all powers and rights over and concerning said property, and the proceeds thereof, as fully and amply as though they were the absolute and unqualified owners of it, excepting only that the net rents, issues, profits and proceeds of sales thereof shall be invested by them only in such real estate and in such manner as is above set forth.

Article IV. In sales of the trust property aforesaid, as herein authorized, or in sales of any part or parcel of it, said trustees shall have power to make and enter into contracts, to execute bills of sale, assignments, deeds of general warranty, and any other necessary or proper form of transfer or conveyance, and to collect the purchase price thereof, and purchasers from them are hereby expressly relieved and exonerated from seeing to the application of the purchase money.

Article V. During the whole of the trust period aforesaid, the homestead of the trustors, to-wit: Lot one (1) of The Polk & Hubbell Park, now within the corporate limits of the City of Des Moines, Polk County, Iowa, locally known as "Terrace Hill," described again in said schedule "A", shall be maintained by said trustees from, with and out of the general revenues of the trust. During the lives of the trustors, they, and the survivor of them, shall have the exclusive right to use and occupy said homestead as a home, free of rent, cost or charge; after the death of the trustors, said Frederick C. Hubbell shall

have the exclusive right to so use and occupy said homestead, during his natural life; after the death of said trustors and said Frederick C. Hubbell, said Grover C. Hubbell shall have the exclusive right to so use and occupy said homestead, during his natural life, and, after the death of said trustors, said Frederick C. Hubbell and said Grover C. Hubbell, the right to so use and occupy said homestead shall vest in said Frederick W. Hubbell and James W. Hubbell, for their natural lives, in succession, and in the order named, and so on in the next oldest male lineal descendant of the trustors; the intention of the trustors being that said "Terrace Hill" shall be maintained by said trustees with and from the general revenues of the trust and shall be and remain the homestead of the Hubbell family, and in the possession of the eldest male lineal descendant of the trustors, so long as any such descendant exists, during the whole of the trust period aforesaid.

Article VI. For and during the natural life of the said Frederick M. Hubbell, the net income of and from the trust property and estate above described shall be paid by said trustees to him, the said Frederick M. Hubbell, either annually, semi-annually, quarterly or monthly, as he may desire and request.

Article VII. At and after the death of said Frederick M. Hubbell should the said Frances E. Hubbell survive him, said trustees shall pay to the said Frances E. Hubbell, out of and from the net income of the trust property and estate aforesaid, for and during her natural life, the sum of Eighteen Thousand (18,000) Dollars each year, the same to be paid her monthly, in installments of Fifteen Hundred (1,500) Dollars each.

Article VIII. At and after the death of said Frederick M. Hubbell, the net income of and from the trust property and estate aforesaid, after the payment of the annuity, above raised and provided, to the said Frances E. Hubbell, shall, during the remainder of the trust period aforesaid, be paid by said trustees, either annually, semi-annually, quarterly or monthly, as to said trustees may seem best as follows: One-third (1/3) to the said Frederick C. Hubbell, and to the heirs of his body; one-third (1/3) to the said Beulah C. Wachtmeister, and to the heirs of her body, and one-third (1/3) to the said Grover C. Hubbell, and to the heirs of his body. And, should any of said children of the trustors, viz., Frederick C. Hubbell, Beulah C. Wachtmeister or Grover C. Hubbell, die without leaving heirs of the body, him or her surviving, the one-third (1/3) share payable to such child so dying without heirs of his or her body, shall thereafter be paid by said trustees to the surviving children or child of the trustors, and to the heirs of their respective bodies; the intention of this article being that said three children of the trustors and their

lineal descendants, and no one else, shall, after the death of the said Frederick M. Hubbell, and subject to the provisions of Article VII. hereof, take, have and enjoy the net income of and from the trust property and estate aforesaid, and that such lineal descendants shall take per stirpes and not per capita.

Article IX. The trustees of the trust hereby created shall not be less than three, nor more than five, in number, and should their number at any time, as a result of death, resignation, or removal for non-feasance or misfeasance in office, be reduced below the number of three, the remaining trustees may appoint another person to fill the vacancy, by an instrument, in writing, signed and acknowledged by them, and recorded in the office of the recorder of Polk County, Iowa. In case the surviving trustees do not agree upon the appointment of a new trustee to fill such vacancy, within thirty (30) days after a vacancy occurs, any one of the trustes, or any one of their cestuis que trustent may apply to the District Court of Iowa, in and for Polk County, or to any court of competent jurisdiction, for the appointment of a new trustee hereunder to fill such vacancy. And the new trustee, so named or appointed, shall, conjointly with his co-trustees, be vested and burdened with all of the powers, rights and duties by these presents granted to and imposed upon the said Frederick M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, Trustees of the Frederick M. Hubbell Estate, without further conveyance or assurance.

Article X. So soon as said grandchildren of the trustors, viz., Frederick W. Hubbell and James W. Hubbell, respectively, reach the age of twenty-one (21) years, they, and each of them, shall be and become trustees of the trust property and estate hereby created, conjointly with the then trustees of said trust property and estate, and shall be vested and burdened with all of the powers, rights and duties granted to and imposed upon the grantees hereof, without further conveyance or assurance, and subject to all of the provisions of this Trust Conveyance and Convention.

Article XI. Should any of the cestuis que trustent herein named and appointed, at any time during the continuance of the trust period aforesaid, become dissipated, or spendthrifts, bankrupts or insolvent, or unable to pay their just debts, or should any creditors of any of said cestuis que trustent attempt to garnish, attach, levy upon or sequester, or reach, by any process, writ or judicial proceeding, the revenues and income derivable from the trust hereby created, or should any of said cestuis que trustent attempt, in any way, to pledge, mortgage, encumber, dispose of or anticipate the revenues or income coming to him hereunder, or any part thereof, said trustees may, in the exercise of their sound discretion, stop and withhold payment of the

revenues or income of such cestui que trust, so long and to such extent as to them may seem best, and the revenues and income so withheld shall go and enure to the benefit of the trust property and estate, and be and become of the corpus thereof.

Article XII. In the making of contracts and the execution of all instruments in writing, transferring, conveying, or in any wise affecting said trust property and estate; in all matters involving judgment, discretion and policy, and in the control and management of said trust, a majority of the trustees may act and shall control.

Article XIII. The official signatures of said trustees to all instruments in writing shall be

"Trustees of the Frederick M. Hubbell Estate,
By ....."

followed by the signatures of said trustees, or a majority of them, but leases for terms not exceeding five (5) years, checks, drafts, receipts and vouchers may be signed by such person or persons as may be named and designated by said trustees for this purpose.

Article XIV. In the administration of the trust aforesaid, and in the accounting for and distribution of it, said trustees shall be held only to ordinary care and faithfulness, and shall in no wise be held liable or accountable for errors in judgment.

Article XV. At the expiration of the trust period hereby created, said trustees shall account for, pay over, distribute among and convey to the lineal descendents of the said Frederick C. Hubbell, Beulah C. Wachtmeister, and Grover C. Hubbell, then living, the trust property and estate then remaining in the hands and under the control of said trustees; said lineal descendants to take per stirpes and not per capita.

Article XVI. If at any time after the death of the said Frederick M. Hubbell and Frances E. Hubbell, no lineal descendent of the trustor, Frederick M. Hubbell, should be in existence, capable of inheriting, the trust property and estate aforesaid shall go to and vest in the State of Iowa, to be used by it in the founding, erection and maintenance of a College of Learning in the City of Des Moines, Polk County, Iowa, and said trustes shall account for, pay over and convey to the said State of Iowa, for said purpose, the trust property and estate then remaining in their hands and under their control.

Article XVII. This Trust Conveyance and Convention is made to correct certain errors and omissions in and of the Trust Declaration and Conveyance made by the grantors hereof to the grantees hereof, dated September 15, A. D. 1903, and recorded

in Book 455, at pages 555 et seq., of the records of the office of the recorder of Polk County, Iowa, and wherever the two instruments conflict, or differ, and in the interpretation and enforcement of the same, this, the latter, shall control and prevail.

In Witness Whereof, the grantors above named, and each of them, have hereunto subscribed their names and affixed their seals, and the trustees above named, and each of them, to evidence their acceptance or the trust hereby created, have hereunto subscribed their names, at the City of Des Moines, Polk County, Iowa, this 31st day of December, A. D. 1903.

(Seal) FREDERICK M. HUBBELL.
(Seal) FRANCES E. HUBBELL.

FREDERICK M. HUBELL,
FREDERICK C. HUBBELL,
GROER C. HUBBELL.
Trustees of the Frederick M. Hubbell Estate.

State of Iowa,
Polk County—ss.

Be it Remembered: That on this, the 31st day of December, A. D. 1903, in the County and State aforesaid, before me, the undersigned, a Notary Public, in and for said County, personally appeared Frances E. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, each and all personally known to me; the said Frances E. Hubbell personally known to me to be the wife of Frederick M. Hubbell and to be the identical person of said name who signed the above and foregoing Trust Conveyance and Convention as one of the grantors, and the said Frederick C. Hubbell and Grover C. Hubbell personally known to me to be the identical persons of said names who signed the above and foregoing Trust Conveyance and Convention as two of the Trustees of the Frederick M. Hubbell Estate, and the said Frances E. Hubbell, Frederick C. Hubbell and Grover C. Hubbell then and there severally acknowledged the signing and execution of said instrument to be their volutary acts and deeds, for the lses and purposes therein set forth.

In Witness Whereof, I have hereunto subscribed my name and have hereto affixed my Notarial Seal, at the City of Des Moines, in the County and State aforesaid, on the day and year last above written.

(Seal) C. HUTTENLOCHER,
Notary Public.

State of Texas,
Jefferson County—ss.

Be it Remembered: That on this, the 18th day of January, A. D. 1904, in the County and State aforesaid, before me, the undersigned, a Notary Public, in and for said County, personally appeared Frederick M. Hubbell, personally known to me, and personally known to me to be the identical person of said name who signed the above and foregoing Trust Conveyance and Convention as one of the grantors and as one of the trustees of the Frederick M. Hubbell Estate, and then and there acknowledged the signing and execution of said instrument to be his voluntary act and deed, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto subscribed my name and have hereto affixed my Notarial Seal, at the City of Beaumont, in the County and State aforesaid, on the day and year last above written.

(Seal) R. E. BUMPAS,
Notary Public, Jefferson County, Texas.

"Schedule A. Real Property; Not to be Sold."

Each and all of the following described lots, parcels of land, additions, subdivisions, towns, sections and estates, parks, places, plats and re-plats situated within the corporate limits of the City of Des Moines, in Polk County, Iowa, to-wit:

Allen's Addition.

Item 1. Lot four (4) in Block one (1) of Allen's Addition to the City of Des Moines.

Item 2. Lot seven (7) in Block one (1) of Allen's Addition to the City of Des Moines.

Bird's Addition, and Thereabouts.

Item 3. Lots five (5) and six (6) in Block three (3) of Bird's Addition to the City of Des Moines.

Item 4. The South Half (½) of Lot three (3), in Block four (4) of Bird's Addition to the City of Des Moines.

Item 5. The West Half (½) of Lots one (1) and two (2), ascertained by drawing a straight line from the middle of the North line of said Lot one (1) to the middle of the South line of said lot two (2), the whole of Lot three (3), and the West forty (40) feet of Lot four (4), all in Block five (5) of Bird's Addition to the City of Des Moines.

Item 6. All that part of Lot thirteen (13) which lies North of Grand Avenue, and all of Lot four (4), excepting so much

of said Lot four (4) as lies in Grand Avenue, and excepting the South twenty-eight (28) feet of the North one hundred and eleven (111) feet thereof, of the Official Plat of the North East Quarter (¼) of the South East Quarter (¼) of Section four (4), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Campbell & McMullen's Addition, and Thereabouts.

Item 7. Lot one (1) in Block twenty-five (25) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 8. The East Half (½) of Lots one (1) and two (2) in Block twenty-six (26) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 9. Lot six (6) in Block twenty-six (26) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 10. The West Half (½) of Lots seven (7) and eight (8) in Block twenty-six (26) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 11. The East Half (½) of Lot three (3) in Block twenty-seven (27) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 12. Lot three (3) in Block thirty-seven (37) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 13. Lots two (2) and three (3) in Block fifty-six (56) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 14. Lot ten (10), except that portion thereof heretofore appropriated by the City of Des Moines as a part of Fourteenth Street, of the Official Plat of the South West Quarter (¼) of Section four (4), Township seventy (78), Range twenty-four (24), West of the 5th P. M. Iowa; also Lot one (1) and the undivided one-half (½) of Lot three (3) of the Official Plat of Lot five (5) of Block fifty-six (56) of Campbell & McMullen's Addition and of Lot nine (9) of the Official Plat of the South West Quarter (¼) of Section four (4), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Item 15. Lots one (1), two (2), three (3) and four (4) of the Official Plat of Lot three (3), in Block fifty-seven (57) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 16. Lot four (4) in Block fifty-seven (57) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 17. Lot six (6) in Block fifty-seven (57) of Campbell & McMullen's Addition to the town of Fort Des Moines, except

the following described lot or parcel of land, viz., beginning at a point on the East side of the said lot six (6) which is fifty-four and twenty-four hundreds (54.24) feet North of the South East corner thereof; thence running Westerly to the North West corner of said lot six (6); thence East on the North line of said lot six (6) to the North East corner thereof; thence South on the East side of said lot to the place of beginning, which was conveyed to the City of Des Moines, on February 2, 1882, for the purpose of an alley.

Item 18. The East Half (½) of Lot two (2) in Block fifty-eight (58) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 19. Lot four (4) in Block fifty-nine (59) in Campbell & McMullen's Addition to the town of Fort Des Moines, excepting a strip of ground five (5) feet wide off from the North end of said Lot four (4), conveyed to the City of Des Moines for the purposes of an alley.

Item 20. The West Half (½) of Lot nine (9) of the Official Plat of Lots two (2) and three (3) in Block fifty-nine (59) of Campbell & McMullen's Addition to the town of Fort Des Moines together with Lots two (2) and three (3) in Block six (6) of Holcomb's Addition to Fort Des Moines, excepting the North nine (9) feet of said Lot nine (9).

Item 21. Lot five (5) in Block sixty (60) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Holcomb's Addition.

Item 22. Lots five (5) and six (6) in Block three (3) of Holcomb's Addition to Fort Des Moines.

Item 23. Lot three (3) in Block (5) of Holcomb's Addition to Fort Des Moines.

Item 24. Lot one (1) in Block six (6) of Holcomb's Addition to Fort Des Moines.

Item 25. Lots one (1), and two (2) of the Official Plat of Lots two (2) and three (3) in Block two (2) of Holcomb's Addition to Fort Des Moines; also so much of Lot one (1) of the Official Plat of the South West Quarter (¼) of Section four (4), Township seventy-eight (78), Range twenty-four (24) West of the 5th P. M. Iowa, as lies East of the alley which runs North and South through said Block two (2).

Coliseum Place.

Item 26. Lots one (1), two (2) and three (3) in Coliseum Place.

C. Gould's Central Addition, and Thereabouts.

Item 27. Lot one (1) in Block one (1) of C. Gould's Central Addition to the City of Des Moines, and so much of Lot sixteen (16) of the Official Plat of the North East Quarter (¼) of the South East Quarter (¼) of Section four (4), Township seventy-eight (78), Range twenty-four (24) West of the 5th P. M. Iowa, as lies North of Grand Avenue.

Item 28. The West Half (½) of Lot four (4) and the East thirty-five (35) feet of Lot five (5) in Block one (1) of C. Gould's Central Addition to the City of Des Moines.

Fort Des Moines.

Item 29. The East Half (½) of Lot five (5) and all of Lot six (6) in Block three (3) of Fort Des Moines.

Item 30. Lot three (3) and the North Half (½) of Lot four (4) in Block eight (8) of Fort Des Moines.

Gatch's Subdivision.

Item 31. Lots one (1), two (2), three (3) and four (4) of Gatch's Subdivision of the North one hundred and thirty-two (132) feet (of all East of alley) of the East Half (½) of Block "H" of Grimmel's Addition to the town of Fort Des Moines.

Item 32. Lots seven (7), eight (8), nine (9) and ten (10) of Gatch's Subdivision of the North one hundred and thirty-two (132) feet (of all East of alley) of the East Half (½) of Block "H" of Grimmel's Addition to the town of Fort Des Moines.

Grimmel's Addition, and Official Plats Thereof.

Item 33. That part of Lot eight (8) in Block "H" of Grimmel's Addition to the town of Fort Des Moines described as follows: beginning at the North line of said Lot at a point sixty-six (66) feet Easterly from the North West corner thereof; running thence seventy-two (72) feet to the North East corner of said lot; thence Southerly to the South East corner of said lot; thence Westerly to the South West corner of said lot, and thence Northerly, in a straight line, to the place of beginning.

Item 34. Lots six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16) and seventeen (17) of the Official Plat of the West two hundred and fifty-six (256) feet of the North one hundred and four (104) feet of Lots ten (10), eleven (11) and twelve (12) in Block "I" of Grimmel's Addition to Fort Des Moines; also all the remainder of said lots eleven (11) and twelve (12) of said Official Plat which has not been conveyed to the City of Des Moines for public alley.

Item 35. The South nineteen (19) feet of Lot three (3), and all of Lot four (4) of the Official Plat of Lot fourteen (14) of the Official Plat of Block "I" of Grimmel's Addition to Fort Des Moines together with Lot seven (7) of C. H. Atkin's Subdivision of Lot thirteen (13) of the Official Plat of said Block "I" of Grimmel's Addition. Also the following: beginning at the South West corner of Lot six (6) in Block "I" of Grimmel's Addition to the town of Fort Des Moines, running thence Northerly, along the East line of Sixth Avenue, thirty-six (36) feet; thence Easterly, at right angles with Sixth Avenue, to the alley as now laid out, vacated and used; thence Southerly, on the West line of said alley, thirty-six (36) feet; thence Westerly to the place of beginning, said property comprising all of Lot fifteen (15) and a part of Lot sixteen (16) of the Official Plat of Block "I" of Grimmel's Addition and also a small triangular strip which was formerly a part of the alley, now included in and forming a part of the City of Des Moines.

Item 36. Lot nineteen (19) of the Official Plat of Block "I" of Grimmel's Addition to the town of Fort Des Moines.

Item 37. Lot three (3) in Block "E" of Grimmel's Addition to the town of Fort Des Moines.

Item 38. The North Half (½) of Lot twenty-five (25) in Division two (2) of Grimmel's Addition to the town of Fort Des Moines.

Item 39. The North Half (½) of Lot twenty-six (26) in Division two (2) of Grimmel's Addition to the town of Fort Des Moines.

Item 40. Lot two (2) in Division two (2) of Grimmel's Addition to the town of Fort Des Moines.

Item 41. Lot one (1) in Division three (3) of Grimmel's Addition to the town of Fort Des Moines.

Hoxie's Addition.

Item 42. Lot four (4) in Block twenty-two (22) of H. M. Hoxie's Addition to the town of Fort Des Moines.

Keene & Poindexter's Addition, and Official Plat Thereof.

Item 43. Lot four (4) in Block twenty-two (22) of Keene & Poindexter's Addition to Fort Des Moines.

Item 44. The South twenty-four (24) feet and two (2) inches of Lot three (3) and four (4) in Block twenty-three (23) of Keene & Poindexter's Addition to Fort Des Moines.

Item 45. Lot seven (7) in Block twenty-three (23) of Keene & Poindexter's Addition to Fort Des Moines, and Fractional Lot seven (7) in Block twenty-three (23) of H. M. Hoxie's Addition to the town of Fort Des Moines.

Item 46. Lot four (4) in Block twenty-four (24) of Keene & Poindexter's Addition to Fort Des Moines.

Item 47. Lots one (1) and two (2) in Block twenty-nine (29) of Keene & Poindexter's Addition to Fort Des Moines.

Item 48. The South eleven (11) feet of Lot ten (10) in Block thirty-three (33) of Keene & Poindexter's Addition to Fort Des Moines.

Item 49. Lots two (2) and four (4) of Keene & Poindexter's Official Plat, as filed for record on April 9, 1897, and recorded in Plat Book "E," Page 116, of Polk County Recorder's Office.

(Jonathan) Lyons Addition, and Thereabouts.

Item 50. The West forty-two (42) feet of Lot one (1); the East eight (8) feet of Lot two (2), and the West twenty-five (25) feet of the East Half (½) of Lot two (2) in Block thirty-seven (37) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 51. Lot four (4) in Block thirty-seven (37) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 52. Lot one (1), except the West sixty-six (66) feet, in Block thirty-eight (38) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 53. Lots one (1) and two (2) in Block thirty-nine (39) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 54. Lots seven (7), eight (8), nine (9) and ten (10), and all of Lot eleven (11) except the North thirty-three (33) feet thereof, all in Block thirty-nine (39) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 55. Lots five (5) and six (6) in Block forty-two (42) of (Jonathan) Lyons' Addition to Fort Des Moines, except the right of way over the North twelve (12) feet and over a triangle in the South West corner of said Lots five (5) and six (6) in favor of the Des Moines Union Railway Company, and granted on October 8, 1902, and recorded.

Item 56. The East fifty (50) feet of Lot one (1) and all of Lot four (4) in Block forty-seven (47) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 57. Lots one (1), two (2), three (3), four 4), five (5), (5) and six (6) of the Official Plat of Lots six (6), seven (7)

and eight (8) in Block thirty-seven (37) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 58. Lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8) and nine (9) of the Official Plat of Lots two (2) and three (3) in Block forty-four (44) of (Jonathan Lyons' Addition to Fort Des Moines.

Item 59. Lot one (1) of the Official Plat of Lots three (3) and four (4) in Block forty-six (46) of (Jonathan) Lyons' Addition to Fort Des Moines. Also Lot six (6) of the Official Plat of the South East Quarter (¼) of Section five (5), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa. Also, commencing at the South West corner of Lot one (1) of the Official Plat of Lots three (3) and four (4) in Block forty-six (46) of (Jonathan) Lyons' Addition to Fort Des Moines, running thence, in a Westerly direction, on a course which shall be the extension, in a straight line, of the South boundary line of said Lot one (1), until it intersects the East line of Seventeenth Street, as re-located on April 4, 1902; thence North twenty-seven (27) degrees and thirty (30) minutes West, to the South line of Lot one (1) in Block "D" of the Subdivision of Lot six (6) of the Pursley Estate, it being a point nine (9) feet East of the South West corner of said Lot one (1) in Block "D"; thence Easterly, along the South line of said Block "D," to the North West corner of Lot six (6) of the Official Plat of the South East Quarter (¼) of Section five (5), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa; thence Southeasterly, in a straight line, to the place of beginning.

Item 60. Lots one (1), two (2), three (3), four (4), five (5), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33) and thirty-four (34) of the Official Plat of Block thirty-six (36) of J. Lyons' Addition and Block five (5) of J. M. Griffith's Subdivision of Lot five (5) of the Pursley Estate to Fort Des Moines.

Item 61. Lot one (1) in Block "D" of the Subdivision of Lot six (6) of thirteen and six-hundredths (13.06) acres of the Pursley Estate, except the North seventy-two (72) feet, and except the South ten (10) feet and the triangle in the South West corner deeded to the City of Des Moines.

The Polk and Hubbell Park.

Item 62. Lot one (1) in the Polk & Hubbell Park, otherwise known as "Terrace Hill."

J. C. Savery's Park Addition.

Item 63. The East twenty-six (26) feet of Lot one (1) in Block one (1) in J. C. Savery's Park Addition.

Item 64. Lot seven (7) in Block one (1) of J. C. Savery's Park Addition.

Item 65. Lots two (2) and three (3) in Block two (2) of J. C. Savery's Park Addition.

West Fort Des Moines, and Thereabouts.

Item 66. Lot two (2) in Block two (2) of West Fort Des Moines, and Lot two (2), in Block twelve (12) of H. M. Hoxie's Addition to the town of Fort Des Moines.

Item 67. The West Half (½) of Lots three (3) and four (4) in Block two (2) of West Fort Des Moines.

Item 68. The West forty (40) feet of Lots seven (7) and eight (8), except the North thirty-two (32) feet of said Lot seven (7), in Block four (4) of West Fort Des Moines.

Item 69. Lot four (4) in Block five (5) of West Fort Des Moines.

Item 70. The West Half (½) of Lots five (5) and six (6) in Block five (5) of West Fort Des Moines.

Item 71. Lots five (5) and six (6) in Block six (6) of West Fort Des Moines.

Item 72. Lot forty-three (43) of York's Subdivision of Lot five (5) of the North East Quarter (¼) of Section nine (9), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Terminal Place.

Item 73. Lots one (1) and two (2) of Terminal Place.

Young's Addition.

Item 74. Lot five (5) in Block two (2) of Young's Addition to the town of Fort Des Moines.

Y. M. C. A. Official Plat, as Corrected.

Item 75. Lots three (3), five (5) and eight (8) of the Corrected Y. M. C. A. Official Plat, which was made and filed January 25, 1894, and recorded in Plat Book "E," Page 70, of the Polk County Recorder's Office.

Official Plats.

Item 76. The West fifty (50) feet of Lot eleven (11) of the Official Plat of the South West Quarter (¼) of Section four

(4), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Item 77. Lot eleven (11), of the Official Plat of a tract of ground comprising Lots five (5) and six (6) in Block twenty (20) of H. M. Hoxie's Addition, and of Lots five (5) and six (6) in Block three (3) West Fort Des Moines, and a small piece of ground in the North East corner of Keene & Poindexter's Addition, not numbered.

Item 78. Lot four (4) of the Official Plat of the South West Quarter (¼) of Section four (4), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, subject to a lease to Ewing & Jewett.

Official Plat in East ¾ of Sec. 9, Twp. 78, R. 24.

Item 79. Lots seven (7), eleven (11), seventeen (17), thirty-four (34), fifty-three (53), and all of Lot fifty-four (54) except the East one hundred and twenty-eight (128) feet of the West one hundred and thirty-eight (138) feet of the North three hundred (300) feet thereof, sold to the Schmitt & Henry Manufacturing Company on August 19, 1901, and except the West ten (10) feet thereof, heretofore deeded to the City of Des Moines for street purposes; also Lot fifty-seven (57) and a strip of ground six (6) feet in width, off the West side of the tract of ground between Elm Street and Tuttle Street, conveyed by F. M. Hubbell and wife to the City of Des Moines, by deed dated June 18, 1896, for the purpose of opening Eighth Street, said deed being recorded in Book 331, at Page 410, of the Records of the Office of the Recorder of Polk County, Iowa; also Lots fifty-eight (58), fifty-nine (59), sixty (60), and sixty-one (61), subject to rights of way in favor of the Des Moines Union Railway Company, as described in a deed, dated April 1, 1899, recorded in Book 375, at Page 430, and in a deed, dated October 1, 1895, recorded in Book 438, at page 559 of the Records of the Office of the Recorder of Polk County, Iowa, and except any streets and alleys heretofore dedicated by said F. M. Hubbell and wife, all of said lots being situated in the Official Plat of the East three-fourths (¾) of Section nine (9), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, North of Raccoon River, and South of the South line of Fort Des Moines and Hoxie's Addition including Lot four (4) in Block sixteen (16) of Hoxie's Addition.

Item 80. All of the rights, title and interests of the said F. M. Hubbell and wife in and to a strip of ground one hundred (100) feet in width, being fifty (50) feet in width on each side of the center line of the main tract of the Des Moines & Kansas City Railway (now the Keokuk & Western Railroad), as now located and constructed over Lots one (1) and two (2)

of the Official Plat of the South West Quarter (¼) and Lots seven (7) and eight (8) of the Official Plat of the North West Quarter (¼) of Section nine (9), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Town of Demoine.

Item 81. The East Half (½) of Lot three (3) and all of Lot four (4) in Block fifteen (15) in the town of Demoine.

Item 82. Lot seven (7) in Block fifteen (15), in the town of Demoine.

Item 83. Lot sixteen (16) in Block sixteen (16) in the town of Demoine.

Item 84. Lots nine (9) and ten (10) in Block fifty-five (55) in the town of Demoine.

East Fort Des Moines.

Item 85. Lot four (4) in Block three (3) of East Fort Des Moines.

Item 86. The East two-thirds (2/3) of Lot twelve (12) in Block four (4) of East Fort Des Moines.

Item 87. Lot (8) and the West three (3) feet of Lot nine (9) in Block seven (7) of East Fort Des Moines.

Item 88. Lots two (2) and three (3) in Block nine (9) of East Fort Des Moines.

Item 89. The East two-thirds (2/3) of Lot nine (9) and the West two-thirds (2/3) of Lot ten (10) in Block (9) of East Fort Des Moines.

Item 90. The West one-third (1/3) of Lot two (2) in Block nineteen (19) of East Fort Des Moines.

Item 91. The East twenty (20) feet of Lot nine (9) in Block twenty (20) of East Fort Des Moines.

Item 92. Lot five (5) in Block ten (10) of East Fort Des Moines.

Griffith's Addition, and Thereabouts.

Item 93. Lot four (4) and the West one hundred and ten (110) feet of Lots five (5) and six (6) in Block "B" of Griffith's Addition to East Fort Des Moines.

Item 94. Lots nine (9) and ten (10) in Block "C" of Griffith's Addition to East Fort Des Moines.

Item 95. The East forty (40) feet of the North one hundred and ten (110) feet of Lots one (1) and two (2) in Block "E" of Griffith's Addition to East Fort Des Moines.

Item 96. Lot one (1) of the Official Plat of Lot three (3) in Block "J" of Griffith's Addition No. two (2) and of Lot one (1) in Block nineteen (19) East Fort Des Moines. Also the West eight and one-half (8½) feet of Lot two (2) in Block "J" of Griffith's Addition No. two (2) to the town of East Fort Des Moines.

Heimer's Official Plat.

Item 97. Lots one (1), two (2), three (3) and four (4) of the Official Plat of the following described property, viz., Official Plat of Lots one (1) and two (2) in Block two (2) of Scott's Addition to East Fort Des Moines; Block two (2) of Harrison Lyons' Addition, and Lots one (1) and two (2) in Block "I" of Griffith's Addition No. two (2) to the town of East Fort Des Moines.

H. Lyons' Addition.

Item 98. The West forty-eight (48) feet of Lot one (1) in Block three (3) of H. Lyons' Addition to the town of Demoine.

Item 99. Lots one (1) and two (2) in Block four (4) of H. Lyons' Addition to the town of Demoine.

Scott & Dean's Addition, and Thereabouts.

Item 100. The East Half (½) of Lots ten (10) and eleven (11) in Block "E" of Scott & Dean's Addition to Fort Des Moines.

Item 101. Lots nine (9) and ten (10) in Block "H" of Scott and Dean's Addition to Fort Des Moines.

Item 102. Lots four (4), five (5) and six (6) in Block "F" of Scott & Dean's Addition to Fort Des Moines.

Item 103. Lot seven (7) in Block two (2) of Scott & Dean's Addition to Fort Des Moines.

Item 104. The East one hundred and sixty (160) feet of the South Half (½) of Block four (4) of Scott's Addition to the town of Demoine.

Stewart's Addition.

Item 105. Lot one (1) in Block forty-six (46) of Stewart's Addition to the City of Des Moines.

Item 106. Lot thirteen (13) in Block sixty-five (65) of Stewart's Addition to the City of Des Moines.

Item 107. Lot one (1) in Block sixty-six (66), of Stewart's Addition to the City of Des Moines.

Lands.

Item 108. The North West Quarter (¼) of the North East Quarter (¼) of Section thirty-one (31), Township seventy-nine (79), Range twenty-three (23), West of the 5th P. M. Iowa, less two (2) acres in the North East corner thereof, described as follows: commencing at a point twenty-five (25) feet West of a point twenty-five (25) feet South of the North East corner of said North West Quarter (¼) of the North East Quarter (¼) of said Section thirty-one (31); running thence South six hundred and sixty-seven and two-tenths (667.2) feet; thence West one hundred and thirty and fifty-five hundredths (130.55) feet; thence North six hundred and sixty-seven and two-tenths (667.2) feet; thence East one hundred and thirty and fifty-five hundredths (130.55) feet to place of beginning. Also Lot six (6) of the Official Plat of the following described lands, viz., the South West Quarter (¼) of the South West Quarter (¼), the North Half (½) of the South West Quarter (¼), the West Half (½) of the South East Quarter (¼), the North East Quarter (¼) of the North East Quarter (¼) and the South Half (½) of the North East Quarter (¼), all in Section thirty-one (31), Township seventy-nine (79), Range twenty-three (23), West of the 5th P. M. Iowa.

"Schedule B. Real Property, which may be Sold."

Each and all of the following described lots, parcels of land, additions, subdivisions, towns, sections and estates, parks, places, plats and re-plats, excepting the last item, are situated within the corporate limits of the City of Des Moines, in Polk County, Iowa, the lot or parcel of land described at the last item hereof being situated in Saylor Township, Polk County, Iowa, to-wit:

The Polk and Hubbell Park.

Item 1. Lots eight (8), nine (9) and ten (10) of The Polk & Hubbell Park.

Item 2. Lot twelve (12) and the East seventy (70) feet of Lot thirteen (13) of The Polk & Hubbell Park.

Item 3. Lots twenty-seven (27), twenty-eight (28) and twenty-nine (29) of The Polk & Hubbell Park, excepting the following described portion of said Lot twenty-nine (29), viz., commencing on the South line of said Lot twenty-nine (29), forty-two (42) feet West of the South East corner thereof; running thence East, on the South line, to the South East corner of said Lot; thence North to the North East corner of said Lot;

thence West, along the North line of said Lot, seventy-five (75) feet; thence South, in a straight line, two hundred (200) feet, more or less, to the place of beginning.

Item 4. Lot forty-four (44) of The Polk & Hubbell Park.

Item 5. Lots fifty-two (52) and fifty-three (53) of The Polk & Hubbell Park.

Item 6. Lots fifty-seven (57) and fifty-eight (58) and fifty-nine (59) of The Polk & Hubbell Park.

Item 7. All of Lot sixty-one (61) of The Polk & Hubbell Park, excepting the following, viz., commencing at the North West corner of said Lot sixty-one (61); running thence South, on the West line of said Lot one hundred and twenty-seven (127) feet; thence East, at right angles with the West line of said Lot, to a point thirty (30) feet distant from Forest Drive; thence Southeasterly, parallel with the North East side of said Lot, to Forest Drive; thence Northeasterly, along the line of said Lot, to the North line thereof; thence, on the North line of said Lot, to Twenty-eighth Street, being the place of beginning.

South Fort Des Moines.

Item 8. Lot eight (8) in Block one (1) of South Fort Des Moines.

Official Plat Lots.

Item 9. Lot thirteen (13) of the Official Plat of the North East Quarter (¼) of Section nine (9) and Lot one (1) of the Official Plat of the West Half (½) of Section ten (10), all in Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Item 10. Lot one (1) of the Official Plat of all that part of Official Plat Lot two (2) lying West of the Chicago, Great Western Railway in the Official Plat of the West Half (½) of Section ten (10), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, except the following: commencing at the North East corner of Lot two (2) of said Official Plat, running thence Northeasterly thirty (30) feet, on the extension of the Easterly line of said Lot two (2), heretofore sold to J. C. & E. C. Woodward; thence Northwesterly parallel to the North line of said Lot two (2), one hundred (100) feet; thence Southwesterly thirty (30) feet, to the North West corner of said Lot two (2); thence Southeasterly one hundred (100) feet, on the North line of said Lot two (2), to the place of beginning.

Item 11. Lot four (4) of the Official Plat of the South East Quarter (¼) of Section nine (9), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Item 12. All that part of Lot thirteen (13) of the Official Plat of the South West Quarter (¼) of Section five (5), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, lying North of the North line of Ingersoll Avenue in the City of Des Moines, except the West three hundred and five and one-half (305½) feet thereof.

Item 13. All that part of Lot sixteen (16) of the Official Plat of the South West Quarter (¼) of Section five (5), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, lying North of the North line of Ingersoll Avenue, in the City of Des Moines, except the West ninety (90) feet thereof.

Rollin's Addition.

Item 14. Lot eight (8) in Block one (1) of Rollin's Addition to the City of Des Moines.

J. C. Savery's Addition.

Item 15. The West thirty-three (33) feet of the East fifty-five (55) feet of Lot one (1) in Block "B" of J. C. Savery's Addition to the City of Des Moines.

Allen & Polk & Hubbell's Replatting.

Item 16. Lot four (4) in Block four (4) of B. F. Allen and J. S. Polk and F. M. Hubbell's replatting and subdivision of W. A. Scott's Addition or subdivision to the City of Des Moines.

Item 17. Lots thirteen (13) and fourteen (14) in Block five (5) of B. F. Allen and J. S. Polk and F. M. Hubbel's Replatting and Subdivision of W. A. Scott's Addition or Subdivision to the City of Des Moines.

Brooks & Co.'s Addition.

Item 18. Lot three (3) of the Official Plat of Block forty-five (45) in Brooks & Co.'s Addition to the City of Des Moines, except the North fifty (50) feet thereof.

Town of Demoine.

Item 19. Lots three (3) and four (4) in Block twenty-six (26) in the town of Demoine.

Griffith's Addition to East Fort Des Moines, and Thereabouts

Item 20. The West forty (40) feet of Lot seven (7) in Block "G" of Griffith's Addition to East Fort Des Moines.
E. B. Hunt's Subdivision.

Item 21. Lots one (1), two (2), three (3), four (4), five (5) and six (6) of E. B. Hunt's Subdivision of Lot thirty-seven (37) of Brooks & Co.'s Addition to the City of Des Moines.

Scott & Dean's Addition.

Item 22. Lots four (4) and five (5) in Block "8" of Scott & Dean's Addition to Fort Des Moines.

Stewart's Addition.

Item 23. Lot twenty-seven (27) in Block forty-eight (48) of Stewart's Addition to the City of Des Moines.

Item 24. Lot nine (9) in Block fifty-seven (57) of Stewart's Addition to the City of Des Moines.

Item 25. Lot nineteen (19) in Block sixty-eight (68) of Stewart's Addition to the City of Des Moines.

Hoffman's Addition.

Item 26. Lots twenty-three (23) and twenty-four (24) of Hoffman's Addition to Grant Park.

Item 27. Lots seventy-four (74), seventy-five (75), seventy-six (76) and seventy-seven (77) of Hoffman's Addition to Grant Park.

Lake-Side.

Item 28. Lots one hundred and twenty-eight (128) and one hundred and twenty-nine (129) in Lake-Side.

Capital Park.

Item 29. Lots twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16) in Capital Park.

Polk & Hubbell's Addition.

Item 30. Lot three hundred and thirty-five (335) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 31. Lot three hundred and forty (340) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 32. Lots three hundred and fifty-four (354) and three hundred and fifty-five (355) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 33. Lots three hundred and sixty (360), three hundred and sixty-one (361) and three hundred and sixty-two (362) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 34. Lots three hundred and sixty-five (365) and three hundred and sixty-six (366) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 35. Lots four hundred and thirty-nine (439) and four hundred and forty (440) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 36. Lots four hundred and forty-four (444) and four hundred and forty-five (445) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 37. Lots four hundred and forty-nine (449) and four hundred and fifty (450) of Polk & Hubbell's Addition to the Town of Capitol Park.

Item 38. Lot four hundred and fifty-five (455) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 39. Lot four hundred and sixty (460) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 40. The East one hundred and eight-seven (187) feet of the West three hundred and seventy-six (376) feet of Lot "A" of Polk & Hubbell's Addition to the Town of Capital Park.

Ashbrook Place, and Official Plat of a Part Thereof.

Item 41. Lots A, B and C, except the North one hundred and fifty (150) feet of said Lot C, all in Block one (1) of the Official Plat of certain lots in Ashbrook Place.

Item 42. Lots A and B in Block two (2) of the Official Plat of certain lots in Ashbrook Place.

Item 43. Lot A in Block three (3) of the Official Plat of certain lots in Ashbrook Place.

Item 44. Lots C, D, E and F in Block three (3) of the Official Plat of certain lots in Ashbrook Place.

Item 45. Lots A, B, C, D, E and F in Block four (4) of the Official Plat of certain lots in Ashbrook Place.

Item 46. Lots A, B, C, D, E, F, G and H in Block five (5) of the Official Plat of certain lots in Ashbrook Place.

Item 47. Lots A, B, C, D, E, F, G, H, I, J, K, L, M and N in Block six (6) of the Official Plat of certain lots in Ashbrook Place.

Item 48. Lots A, B, C and D in Block seven (7) of the Official Plat of certain lots in Ashbrook Place.

Item 49. Lot G in Block seven (7) of the Official Plat of certain lots in Ashbrook Place.

Item 50. Lots A, B, C and D in Block eight (8) of the Official Plat of certain lots in Ashbrook Place.

Item 51. Lots F, G and H in Block eight (8) of the Official Plat of certain lots in Ashbrook Place.

Item 52. Lot A in Block nine (9) of the Official Plat of certain lots in Ashbrook Place.

Item 53. Lots A, B, C, D, E and F in Block ten (10) of the Official Plat of certain lots in Ashbrook Place.

Item 54. Lots A, B, C, D, E, F, G, H and J in Block eleven (11) of the Official Plat of certain lots in Ashbrook Place.

Item 55. Lots A, B, C, D, E, and F in Block twelve (12) of the Official Plat of certain lots in Ashbrook Place.

Item 56. Lots A, B, C, D, E, F, G, H, J, K, L, M, N, O and P in Block thirteen (13) of the Official Plat of certain lots in Ashbrook Place.

Item 57. Lots A, B, C, D, E, F, G, H, J, K, L, M and N in Block fourteen (14) of the Official Plat of certain lots in Ashbrook Place.

Pierce's Subdivision and Thereabouts.

Item 58. Lots twenty-two (22), twenty-three (23) and the West Half (½) of Lot twenty-four (24) of the Official Plat of

all of Section seven (7), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, excepting the West Half (½) of the North West Quarter (¼), the West Half (½) of the East Half (½) of the North West Quarter (¼), the South West Quarter (¼) of the South East Quarter (¼), and Lots one (1), three (3), four (4) and five (5) of Pierce's Subdivision of the North Half (½) of the North East Quarter (¼) of said Section, Township and Range.

Lands.

Item 59. Government Lot three (3) in Section twenty-one (21), Township seventy-nine (79), Range twenty-four (24), West of the 5th P. M. Iowa, formerly known as Lots one (1) to twenty-seven (27), inclusive, of Christy's Subdivision of the North Fractional Half (½) of said Section, Township and Range.

"Schedule C. Personal Property."

Contracts of purchase and sale of real estate.

Item 1.	The J. B. Green Contract	$1,205.91
Item 2.	The Rosa B. Gillespie Contract	1,160.00
Item 3.	The Jerry Herrington Contract	754.82
Item 4.	The John C. Hutton Contract	763.36
Item 5.	The H. M. Hutton Contract	1,302.31
Item 6.	The D. S. Hutton Contract	1,146.88
Item 7.	The C. M. Hardy Contract	2,183.86
Item 8.	The O. M. Kimmen Contract	385.24
Item 9.	The I. W. Meaner Contract	535.98
Item 10.	The Thomas J. Welch Contract	1,078.02
Item 11.	The W. F. Wilcox Contract	2,215.50

Note: The transfers made in the foregoing Trust Conveyance and Convention were entered for taxation on the 21st day of January, A. D. 1904, by Fred A. Cope, Auditor of Polk County, Iowa.

Said instrument was filed for record in the office of Mrs. Frank W. Dodson, Recorder of Polk County, Iowa, on the 22nd day of January, A. D. 1904, at 3:20 o'clock P. M., was forthwith indexed in both Lot and Chattel Indexes, and was duly recorded in Book 473, at pages 58 et seq. of the records of said office.

EXHIBIT 78.

This Indenture, made this 16th day of October, in the year 1886, between The Mercantile Trust Company of New York, as

trustee of The Collateral Trust Mortgage of The Wabash, St. Louis and Pacific Railway Company, party of the first part, and James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, trustees, parties of the said part, Witnesseth:

Whereas, under and in pursuance of the several decrees and supplemental decrees of the Circuit Courts of the United States, hereinafter named, rendered in a certain cause in Chancery therein then pending, entitled "The Central Trust Company of New York and James Cheney, complainants, against The Wabash, St. Louis and Pacific Railway Company and others, defendants, Consolidated Cause," foreclosing the equity of redemption of said defendant railway company in its railway, and its appurtenances, franchises and property under a certain mortgage or deed of trust, executed by said railway company and described in said decrees as "The General Mortgage" of said railway company, and also foreclosing the equity of redemption of said railway company in certain property, described in an instrument in writing, executed by said railway company and described in said decrees as "The Collateral Trust," to-wit, the decree and suppplemental decree rendered in said cause in the Circuit Court of the United States for the Eastern District of Missouri, on the sixth day of January and fifth day of March, 1886; for the Southern District of Illinois, on the eighth day of January and the sixth day of March 1886; for the District of Indiana, on the ninth day of January and the sixth day of March, 1886; for the Southern District of Iowa, Eastern Division, on the twelfth day of January and twentieth day of March, 1886; for the Northern District of Ohio, Western Division, on the twelfth day of January and seventeenth day of March, 1886; and for the Eastern District of Michigan, on the twelfth day of January and eighth day of March, 1886, Edmund T. Allen, Commissioner, did, on the twenty-sixth day of April, A. D. 1886, in the City of St. Louis, in the State of Missouri, offer for sale, and did, among other things, sell, the property hereinafter described to James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, constituting a purchasing committee under an agreement bearing date July 15th, 1885, made between the holders of all the collateral trust bonds and a majority of the general mortgage bonds; and

Whereas, said sale was duly confirmed by the said several Circuit Courts of the United States on and subsequently to the fifteenth day of June, 1886; and

Whereas, said Edmund T. Allen, Commissioner, was ordered and directed by the said several Circuit Courts of the United States on and subsequently to the twenty-first day of September, 1886, to execute and deliver to the said Purchasing Committee deeds to the property purchased; and

Whereas, it was at the same time ordered, among other things, that The Mercantile Trust Company of New York, as trustee of the aforesaid collateral trust mortgage, should in due form convey to said purchasers all its interest as trustee and as mortgagee in and to the property sold by said Commissioner to said purchasers;

Now, Therefore, in consideration of the premises, The Mercantile Trust Company of New York, as trustee as aforesaid, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, the survivors or survivor of them, and their or his successors or assigns, as trustees under the aforesaid agreement of July 15th, 1885, and in trust for the parties interested thereunder, all its right, title and interest as trustee and as mortgagee in and to the following named property, to-wit: Lots one (1), two (2), three (3), four (4), five (5) and six (6) in Springer and Fox addition to the City of Chicago, Illinois; also that part of lot thirty-two (32) of the Assessor's division of the northwest quarter and west half of the northeast quarter of section thirty-two (32), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, lying east of the centre of the south branch of the Chicago River, in Cook County, in the State of Illinois, the title to which real estate is in Solon Humphreys, in trust for the said Wabash Railway Company; also fifteen (15) locomotives manufactured by the Rhode Island Locomotive Works; thirteen (13) passenger cars, manufactured by Barney, Smith & Co.; five (5) baggage cars, manufactured by Barney, Smith & Co.; twelve hundred and ten (1,210) freight cars, manufactured by Barney,

Smith & Co.; also all of the right, title and interest of the said The Mercantile Trust Company in and to certain rolling stock, mentioned and described in certain agreements between the Wabash, St. Louis and Pacific Railway Company and the New York and Pacific Car Trust Association; also the steamers "Russell Sage," "John C. Gault" and "A. L. Hopkins;" also all the right, title and interest of the said The Wabash, St. Louis Pacific Railway Company in and to $46,000 Union Bridge Company bonds; $1,342,000 Humeston and Shenandoah Railroad Company first mortgage 7 per cent. bonds; $1,000,000 Wabash, St. Louis and Pacific Railway Company general mortgage 6 per cent. bonds; $400,000 Wabash Railway Company mortgage 7 per cent. bonds of 1879; $199,000 Wabash, St. Louis and Pacific Railway Company—Detroit Division—6 per cent. bonds; $248,000 Quincy, Missouri and Pacific Railroad Company income bonds; $1,711,000 Toledo, Peoria and Western Railroad Company first preferred income bonds; $728,000 Toledo, Peoria and Western Railroad Company second preferred income bonds; 13,404 shares Toledo, Peoria and Western Railroad Company; 10 shares St. Joseph Union Depot; 210 shares Union Depot Company of Kansas City, Missouri; 10 shares Hannibal Union Depot Company; 5,037 shares Des Moines Northwestern Railway Company; 2,214 shares Havana, Rantoul and Eastern Railroad Company; 9,996 shares Des Moines and St. Louis Railroad Company; 20,127 shares Humeston and Shenandoah Railroad Company; 21,534 96/100 shares Missouri, Iowa and Nebraska Railway Company; 9,000 shares St. Louis, Jerseyville and Springfield Railroad Company; 2,030 shares Clarinda and St. Louis Railroad Company; 14,246 shares Quincy, Missouri and Pacific Railroad Company; 5,380 shares St. Louis, Ottumwa and Cedar Rapids Railway Company; 11,089 shares Council Bluffs and St. Louis Railway Company; 7,281 shares St. Louis, Council Bluffs and Omaha Railroad Company; 4,332 shares Brunswick and Chillicothe Railroad Company; 2,687 shares Centreville, Moravia and Albia Railroad Company; 750 shares Attica, Covington and Southern Railway Company; 1,665 shares American Refrigerator Transit Company of Illinois; 60 shares Union Bridge Company of Toledo, Ohio; 17 shares St. Louis County Railroad Company; 4,994 shares Peoria and Pekin Union Railway Company; 9,999 shares Chicago and Western Indiana Railroad Company; 12,500 shares St. Louis Bridge Company, common stock; and 1,160 shares St. Louis and Mississippi Valley Transportation Company.

To have and to hold the above-granted premises, with all the appurtenances and every part thereof, and the said rolling stock, steamers and appurtenances thereto belonging, railway bonds and railway and other stocks, unto the said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, as trustees as aforesaid, their survivors or survivor, and their or his successors or assigns; subject, however, to all the terms and conditions of said orders of said several Courts confirming said sale, as aforesaid, and to all the terms, provisions, conditions, qualifications and restrictions of said decrees, in pursuance of which this deed is made as aforesaid.

In Witness Whereof, the said The Mercantile Trust Company of New York has caused its corporate seal to be hereunto affixed and attested by its Secretary and these presents to be signed by its President, this eighteenth day of April 1888.

(Seal) THE MERCANTILE TRUST COMPANY OF NEW YORK,

By Louis Fitzgerald, President.

Attest:
H. C. Deming, Secretary.

State of New York,
City and County of New York—ss.

On this eighteenth day of April, 1888, before me personally came Louis Fitzgerald to me known, and known to me to be the President of The Mercantile Trust Company of New York, described in and which executed the foregoing instrument, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is the President of the said The Mercantile Trust Company of New York; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal of said company and was so affixed by authority of the Board of Directors of said company, and that he signed his name thereto by the like authority as president of said company.

Witness my hand and notarial seal the day and year above written.

(Seal) LEO V. TURNER,
Notary Public.

Tabu

No. Ctf.	Date.	No. of Shares.	To Whom
1.	Apr. 8, 1890.....	1	G. M. Dodge ...
2.	Do.	1	F. M. Hubbell .
3.	Do.	1	F. C. Hubbell .
4.	Do.	1	H. D. Thompson
5.	Do.	1	L. M. Martin ...
6.	Do.	1	J. F. How ....
7.	Do.	1	C. M. Hays ....
8.	Do.	1	A. B. Cummins .
9.	Do.	996	(Purchasing Com (Wabash, St. Lo (Railway Compa
10.	Do.	998	Des Moines & N Company ....
11.	Do.	998	Des Moines & N way Co. ....
12.	Do.	500	F. M. Hubbell .
14.	Do.	500	G. M. Dodge ..
15.	Aug. 28, 1890.....	498	(Purchasing Com (St. L. Pacific R
16.	Do.	250	F. M. Hubbell
17.	Do.	248	Do.
18.	Dec. 31, 1890.....	1	A. M. Denman .
19.	Jan. 15, 1892.....	500	D. M. Nor. & W (
20.	Do.	998	(D. M. Nor. & W
21.	Do.	998	(Do.
22.	Do.	998	(Do.
23.	Jan. 2, 1893	1	G. M. Dodge ..
24.	Do.	499	D. M. Nor. & W
25.	Oct. 4, 1893	494	Do.
26.	Do. 2500		F. M. Hubbell &
27.	Feb. 1, 1895	1	H. L. Magee ..
28.	Dec. 9, 1895	1	Jos. Ramsey, Jr
29.	Do.	1	C. Huttenlocher
30.	Do.	998	D. M. N. & W
31.	Dec. 9, 1895 2495		F. M. Hubbell &
32	Feb. 7, 1896	1	F. M. Hubbell .
33.	Dec. 30, 1897.....	1	Cyrus Kirk ..
34	Jan. 5, 1899	1	C. A. Goodnow

Exhibit 79.

Tabulation of Stock Certificates issued by Des Moines Union Railway Company.

Whom Issued.	Date Canc'l'd.	To Whom Re-Issued.	No. New Ctf.		Remarks.	Shares Outstand.
.....	Dec. 31, 1890	A. N. Denman	18			
ell						1
ll						1
pson						1
.....	Feb. 7, 1896	F. M. Hubbell	32			
.....	Feb. 1, 1895	H. L. Magee	27			
.....	Dec. 9, 1895	Jos. Ramsey, Jr.	28			
.....	Oct. 3, 1899	A. J. Earling	38			
nmittee of)		Purchasing Committee	15	498 shares	)	
uis & Pacific)	Aug. 28, 1890	F. M. Hubbell	16	250 "	(996	
ny)		Do.	17	248 "	)	
orthern Railway	Jan. 15, 1892	D. M. Northern & Western Railway Co.	20	998 "	998	
rthwestern Rail-	Jan. 15, 1892	Des Moines Northern & Western Ry. Co.	22	998 "		
.....	Jan. 15, 1892	Do.	21	998 "	Composed of 12, 16, 17	
.....	Jan. 15, 1892	Do.	19	500 "		
nmittee of Wab.)		Continental Trust Co. of the				
. Co.....)	Mar. 23, 1899	City of New York.....	35	498 "		
.....	Jan. 15, 1892	Des Moines Nor. & Western Ry. Co.	21	998 "	Composed of 12, 16, 17	
.....	Do.	Do.	21	998 "	Composed of 12, 16, 17	
.....	Dec. 30, 1897	Cyrus Kirk	33	1 share		
st. Ry. Co.....)	Jan. 2, 1893	G. M. Dodge 500	(23	1 share	)	
)		D. M. Nor. & W. Ry. Co.	(24	499 shares	) 500	
st. Ry. Co.....)	Oct. 4, 1893	D. M. Nor. & West. Ry. Co..	25	494	)	
.....)	Do.	F. M. Hubbell & Son	26	2500	) 2994 Shares	
.....)	Do.					
.....	Dec. 9, 1895	C. Huttenlocher	29	1 share		
st Ry. Co. .....)		D. M. Nor. & West. Ry. Co..	30	998 shares	(Composed of 24, 499	
)	Dec. 9, 1895				(25, 494	
Son .....)		F. M. Hubbell & Son.....	31	2495 shares	(Part of 26, 5	
.....	Jan. 5, 1906	E. B. Pryor	45	1 share		
.....	Do.	F. A. Delano	44	1 share		
.....	Oct. 2, 1899	A. B. Cummins	36	1 share		
ern Ry. Co. ...)	Oct. 3, 1899	Chgo. Mil. & St. P. Ry. Co..	37	998 shares		
Son.....						2495
.....	Jan. 5, 1899	C. A. Goodnow	34	1 share		
.....	Jan. 4, 1906	G. C. Hubbell..	41	1 "		
.....	Aug. 14, 1902	H. E. [redacted]	39	1 "		

FURTHER STIPULATION.*

It is also stipulated and agreed that of the three companies, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company first used the terminal property in Des Moines for general railroad purposes (as distinguished from construction purposes) and that the St. Louis, Des Moines & Northern Railway Company was the next of said companies to use said property for said general purposes, and that the Des Moines & St. Louis Railroad Company was the last of said companies to use said property for said general purposes; and that in connection with its use of said property each of said companies operated its passenger trains to the passenger depot between west Fifth and Sixth streets in the city of Des Moines.

No passenger station building at which passenger trains have regularly stopped has been maintained between said passenger station and Clive, but for some years a flag station was maintained about four miles west of the said passenger station in Des Moines and during 1892 and 1893 a building was maintained at the race track, at west Twenty-eighth street to accommodate traffic between the race track and Des Moines. This consisted of a floor and platform with roof covering it, but was not otherwise enclosed.

It is further stipulated and agreed that on or about May 1, 1899, the total amount of the outstanding capital stock of the Des Moines, Northern & Western Railroad Company was forty-three thousand seven hundred and twenty-five shares, and that of the said shares the Chicago, Milwaukee & St. Paul Railway Company was then the owner of forty three thousand seven hundred and twenty-four shares, and that it did thereafter and on or before the 8 day of May, 1899, acquire the remaining outstanding capital stock of the said Des Moines, Northern & Western Railroad Company; that on or about the said 1st day of May, 1899, the said Chicago, Milwaukee & St. Paul Railway Company was the owner of all of the outstanding bonds of the said Des Moines, Northern & Western Railroad Company. That all of the said bonds were cancelled and the trust deed was released on or about the 17th day of May, 1899, but that the said Chicago, Milwaukee & St. Paul Railway Company continued to be the owner and holder of all of the capital stock of the said Des Moines, Northern & Western Railroad until after June 19, 1907.

*NOTE:—This stipulation, with its accompanying Exhibits, is a part of stipulation signed by Counsel, ante page 159.

It is further stipulated and agreed that the report of the St. Louis, Des Moines & Northern Railway Company for the year ending June 30, 1882, shows among other things the following:

Debt.

Funded debt as follows:	
First mortgage bonds due August 1, 1921, rate of interest 6 per cent	$303,000.00
Interest paid on same during the year. None	
Bonds are $4,000 per mile from west city limits to Clive station, and $8,000. per mile from Clive station north.	
Total amount of funded debt	$303,000.00
Total amount of floating debt. None	
Total amount of debt liabilities	$303,000.00
Amount of debt per mile of road	$ 8,000.00
Total amount of stock and debt	1,025,750.00
Amount of stock and debt per mile of road. When the road is completed, the amount will be $28,000 per mile.	

Cost of Road and Equipment.

Total expended for construction	$1,025,750.00
Average cost of construction per mile of road (42,365 miles)	$ 28,000.00

The equipment is included in the cost of road.

General Exhibit.

Total earnings	$2,932.00
Total expenses, including taxes	1,998.07
Net earnings	$ 934.30
Interest accruing during the year	$9,000.00
Interest on funded debt	9,000.00

Analysis of Earnings.

Earnings, passenger:		
From local passengers	$1,205.18	
From all passengers		$1,205.18
Total earnings passenger department		$1,205.18
Earnings, freight:		
From local	$1,727.19	
Total earnings, freight department		$1,727.19
Total transportation earnings		2,932.37
Proportion of earnings for Iowa		2,932.37
Total income from all sources		$2,932.37

Expenses of Operating the Road for the Year.

Class 1—Maintenance of way and buildings (charged to operating expenses).

Repairs of road-bed and track	$1,177.75
Total	$1,177.75

Class 2—Maintenance of motive power and cars.

Repairs of locomotives	$ 5.00
Total	$ 5.00

Class 3—Conducting Transportation.

Passenger train service	$ 1.25
Damage and loss of freight and baggage	1.04
Agents and station service	426.03
Station supplies	77.40
Total	$ 505.72

Class 4—General Expenses.

Salaries of general officers and clerks	$ 224.00
Stationery and printing	85.00
Total	$ 309.60

Recapitulation of Expenses.

Maintenance of way and buildings	$1,177.73
Maintenance of motive power and cars	5.00
Conducting transportation	505.72
General expenses, including taxes	309.69
Total operating expenses and taxes	$1,998.07

General Recapitulation.

Total income	$2,932.37
Total operating expenses and taxes	1,998.07
Net income above operating expenses, taxes, interest and rental	934.30

General Balance Sheet at the Closing of Accounts. June 30, 1882.

Debit.

F. M. Hubbell, treasurer	$ 907.10
Des Moines station	27.60
Clive station	.60
General office	224.00
Agents and clerks	418.53
United States Mail expense	7.50
Stationery	85.00
Engine repairs	5.00
Track repairs	1,177.73
Train and station supplies	77.60
Conductors, baggagemen and brakemen	1.25
Lost and damages freight	.60
Drawbacks and overcharged freight	.30
Total	$2,932.37

Credit.

Gross earnings	$2,932.37
Total	$2,932.37

717

Description of Road.

Length main line of road from Des Moines to Boone, miles	42.365
Total length of road belonging to this company, miles	42.365
Aggregate length of sidings and other tracks not above enumerated, feet	6,038
Same in Iowa, feet	6,038
Aggregate length of track computed as single track exclusive of sidings, miles	42.365
Same in Iowa	42.365
Total length of iron rails in tracks in Iowa, exclusive of sidings	42.365
Gauge of track	3 feet.
If any part of the road was first opened for operation during the past year, state the date	May 1, 1882.
Total miles of road operated by this company	42.365
Total miles of road operated by this company in Iowa	42.365

* * * * * * *

Speed of Trains in Iowa.

Rate of speed of passenger trains, including stops, miles	15
Rate of speed of freight trains, including stops, miles	10

* * * * * * *

Telegraph.

How many miles of telegraph are owned by your company	42.365
What other company, if any, owns a line of telegraph on your right of way, and how many miles does each own? D. M. N. W. R'y. from Des Moines to Clive, 7.18 miles.	

* * * * * * *

That the said railroad had only been partially built when the said report was made and that the part of it that was then in operation had been operated but a short time.

It is further stipulated and agreed that in the building of the railroad aforesaid operated by the St. Louis, Des Moines & Northern Railway Company, the right of way over the pieces of land hereinafter described was acquired by condemnation against the respective persons who are named as the owners thereof, to-wit:

Description	Sec.	Twp.	Owner.
N. W. ¼	21	70	Babcock
N. E. ¼	5	79	Saunders
N. W. ¼	17	79	Murphy
S. E. ¼	7	78	Knotts
Lot M. Sub. Div. Estate			Wheeler
S. W. ¼	2	78	School District
S. W. ¼	30	80	Cummins
S. W. ¼	21	79	Guard
S. E. ¼	30	79	Brection
N. W. ¼	2	78	Goodhue
N. W. ¼	21	79	Ganzer
S. W. ¼	21	79	Babcock
S. E. ¼	7	78	Welker

Description	Sec.	Twp.	Owner
N. E. ¼	24	70	Young
S. W. ¼	5	79	Bushnell
N. E. ¼	31	80	Manchester
N. E. ¼	31	79	Morris
N. E. ¼	34	79	White
N. W. ¼	34	79	White
S. E. ¼	34	78	Wright heirs
N. E. ¼	34	79	Young
N. E. ¼	34	79	Young
Lot 8	Blk 28	Madrid	Stanfield
Lot 2	Blk 20	Madrid	Binbaker
Lot 1	Blk 20	Madrid	Delander

Description	Sec.	Twp.	Owner
Lot 7	Blk 28	Madrid	Stanfield
Lot 2	Blk 3	Madrid	School District
Lot 8	Blk 2	Madrid	Gaston
Lot 8	Blk 1	Madrid	Palmer
S. W. ¼	28	84	Phelan
S. E. ¼	24	82	Frey
S. E. ¼	12	82	Walt Webb
N. W. ¼	13	83	Gildea
N. E. ¼	24	83	Hoffman
S. E. ¼	26	83	Bennett

That each of the said condemnation proceedings was instituted in the name of the St. Louis, Des Moines & Northern Railway Company, but in each instance the money paid under the condemnation proceedings to the owner of the property for the right of way so acquired was paid by Gen. G. M. Dodge.

In the Circuit Court of the United States.

For the Southern District of Iowa, Central Division.

The Chicago, Milwaukee and St. Paul Railway Company, and The Wabash Railroad Company, Plaintiffs,

vs.

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, F. M. Hubbell and Son, Defendants.

Stipulation of Counsel, respecting Annual Reports of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the years ending December 31st, 1888, December 31st, 1889, December 31st, 1890, January 1st, 1892, January 1st, 1893, and January 1st, 1894.

For the purpose of abbreviating the record as far as practicable, in the above entitled cause, it is agreed that the Annual Reports of the Des Moines Union Railway Company, for the above mentioned years, are all in substantially the same form; that each contains the name of the Company; the name of its officers; its place of business, and a description of its real and personal property.

Said real property so described includes by specific description each of the lots and parcels of ground described in the following deeds:

Deed from James F. How to Des Moines Union Railway Company, dated November 19, 1887, identified in stipulation between the parties as plaintiff's exhibit #17.

Deed from James F. How to Des Moines Union Railway Company, dated December 10, 1887, identified in said stipulation between the parties as plaintiff's exhibit #18.

Deed from James F. How to Des Moines Union Railway Company, dated April 28th 1888, and identified in said stipulation between the parties as Plaintiff's "Exhibit #19."

Deed from G. M. Dodge to Des Moines Union Railway Company, dated Nov. 7, 1887, identified in said stipulation as plaintiff's exhibit #20.

Deed from St. Louis, Des Moines & Northern Railway Company to Des Moines Union Railway Company, dated November 7, 1887, identified in said stipulation as plaintiff's exhibit #21.

Deed from Des Moines & St. Louis Railroad Company to Des Moines Union Railway Company, dated February 21, 1888, identified in said stipulation as plaintiff's exhibit #22.

That the names of the officers of the Company for the year ending December 31st, 1888, are therein stated to be as follows:

President,	G. M. Dodge,	No. 1 Broadway, New York.
Vice President,	James F. How,	St. Louis, Mo.
Secretary,	F. M. Hubbell,	Des Moines, Iowa.
Treasurer,	F. M. Hubbell,	" " "
General Superintendent,	J. B. Van Dyne,	" " "
Auditor,	D. Y. Van Dyne,	" " "

James F. How, above named as vice-president was during the year covered by the said report the general agent for the receivers of the Wabash, St. Louis and Pacific Railway Company, and the general agent for the purchasing committee of the holders of bonds issued by the said company and in process of foreclosure.

Schedule 5 of said report is headed:

"Gross earnings for the year ending, December 31, 188..of road operated within this state", and is followed by a form divided into columns headed respectively:

Name of line .....a
From passengers .....b
From freight c
From express service .....d
From mail service .....e
From telegraph service .....f
From track rent .....g
From car rent .....h
Miscellaneous i

The only thing stated in this schedule 5 is the following which is written across the columns headed "c to h inclusive":

"General Remarks."

"The Des Moines Union Railway Company is simply a "Representative Company", acting as an agency at Des Moines for the Wabash Western Railway Company, the Des Moines and Northwestern Ry., Company, and the St. Louis Des Moines and Northern Railway Company; performing all the necessary work for them, and charging each road its due pro-

portion of the expenses, thereby incurred, etc. (at actual cost.).

That said report was signed and verified on March 19, 1889,

By James F. How,
Vice President of the Des Moines Union Ry. and

On March 25th, 1889,
By J. B. VanDyne,
General Superintendent of the Des Moines Union Ry.

On opposite page to Schedule 5 is page headed:

"Schedule 6, Operating Expenses (Taxes excluded), roads in this state for the year ending December 31, 188..."

This schedule is divided into columns, the columns having appropriate headings as to the various items making up operating expenses. The only entry under this schedule is the following:—

"See general remarks".

That the names of the officers of the company for the year ending December 31, 1889, are stated to be as follows:—

President,	G. M. Dodge,	No. 1 Broadway	New	York
Vice President,	James F. How,	St. Louis,	Mo.	
Secretary	F. M. Hubbell,	Des Moines,	Iowa.	
Treasurer,	Horace Seely,	"	"	"
Gen. Supt.	Horace Seely,	"	"	"
Auditor,	W. S. Godfrey,	"	"	"

The said James F. How continued to be general agent as aforesaid until August 1, 1889, when he became a vice-president of the Wabash Railroad Company, and its chief executive officer in the west.

The said report for the year ending December 31, 1889 contain schedule 5 in the form above set out, and the only return made under said schedule was the following:

"General Remarks".

"The Des Moines Union Railway Company is simply a 'Representative Company', acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines and Northwestern Ry. Co. and the Des Moines and Northern Railway Company, performing all necessary work for them and charging each road at actual cost, its due proportion of the expense thereby incurred."

And that said report was signed and verified on February 13, 1890.

By Horace Seely,
General Superintendent of the
Des Moines Union Ry. Co.

That the names of the officers of the company for the year ending December 31, 1890, are stated to be as follows:

President	G. M. Dodge	No. 1 Broadway, New
Vice President	A. B. Cummins,	Des Moines, Iowa.
Secretary	F. M. Hubbell,	"
Treasurer,	F. M. Hubbell	"
General Superintendent,	Horace Seely	"
Auditor,	Horace Seely (Acting)	"

This report contained a schedule 5 similar in form to schedule 5 in the said report of Dec. 31, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

"The Des Moines Union Ry. Co. is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines & Northwestern Railway Company, and the Des Moines & Northern Ry. Co., performing all necessary work for them and charging each at actual cost, its due proportion for the expense thereby incurred."

And that said report was signed and verified on Feb. 14, 1891.

By A. B. Cummins, Vice Pres. of the Des Moines Union Ry. Co. & Horace Seely, General Superintendent of the Des Moines Union Ry. Co.

That the names of the officers of the company for the year ending January 1, 1892 are stated to be as follows:

President	F. C. Hubbell,
Vice-President,	A. B. Cummins,
Secretary,	F. M. Hubbell,
Treasurer,	H. D. Thompson, Des Moines, Ia.
General Solicitor,	A. B. Cummins,
General Superintendent	Horace Seely,
Auditor,	Charles Seely.

This report contained a schedule 5 similar in form to schedule 5 in the said report of Dec. 31, 1888, and contained no report under schedule 5 except the following:—

"General Remarks."

"The Des Moines Union Railway Company is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company and the Des Moines, Northern and Western Railway Company, performing all necessary work for them, and charging each at actual cost, its due proportion for the expense thereby incurred."

And that said report was signed and verified on February 24, 1892.

By F. C. Hubbell, President of the Des Moines Union Railway Co.
and Horace Seely, General Superintendent of the Des Moines Union Railway Company.

That the names of the officers of the Company for the year ending January 1, 1893 are stated to be as follows:

President,	F. C. Hubbell,	Des Moines, Iowa
Secretary,	F. M. Hubbell	"
Treasurer,	H. D. Thompson	"
General Superintendent,	J. A. Wagner,	"
Auditor,	E. G. Mitchell,	"

This report contained a schedule 5 similar in form to schedule 5 in the said report of December 31, 1888, and contained no report under schedule 5 except the following:

"General Remarks".

"The Des Moines Union Railway Company is simply a representative company, acting as an agency for the Wabash R. R. Co., and the Des Moines, Northern & Western R. R. Co., performing all necessary work for them, and charging each at actual cost, its due proportion thereof incurred."

And that said report was signed and verified on February 28, 1893.

By A. B. Cummins, Vice-President of the Des Moines Union Ry. Co.
and J. A. Wagner, General Superintendent of the Des Moines Union Ry. Co.

That the names of the officers of the Company for the year ending January 1, 1894, are stated to be as follows:

President,	F. C. Hubbell,	Des Moines, Ia.
Vice-President,	A. B. Cummins,	"
Secretary,	F. M. Hubbell,	"
Treasurer,	H. D. Thompson,	"
General Superintendent	J. A. Wagner,	"
Auditor,	E. G. Mitchell,	"

This report contained a schedule 5 similar in form to schedule 5 in the said report of December 31, 1888, and contained no report under schedule 5 except the following:

"General Remarks"

"The Des Moines Union Railway Company is the owner of the property hereinbefore described, and in addition to leasing the same to the Wabash Railroad Company, the Des Moines, Northern & Western Railway Company, and the Chicago Great Western Railway Company, performs certain services for these companies and collects from them as rental and for such services, the aggregate amount of its expenses, which expenses are paid by the several railway companies in proportion to the use of the property and services rendered, as provided by contracts existing between this company and the said Wabash Railroad Company, Des Moines, Northern & Western Railway Company, and Chicago, Great Western Railway Company."

And that said report was signed and verified on February 16, 1894.

By A. B. Cummins, Vice-President of the Des Moines Union Ry. Co.
and J. A. Wagner, Superintendent of the Des Moines Union Ry. Co.

It is also agreed that the foregoing abstracts of said annual reports shall be copied into the record in said cause, in lieu of the original certified copies of said reports, which certified copies are referred to in another stipulation of counsel herein, as plaintiff's exhibits, numbered 31, 32, 33, 34, 35 and 36. Either party shall have the right, at any time prior to the final hearing to make such objections to the foregoing extracts from said reports as might have been made to the original reports.

WELLS H. BLODGETT,
JOHN C. COOK,
Solicitors for Complainant.

GUERNSEY, PARKER & MILLER,
Solicitors for Defendant.

In the Circuit Court of the United States Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company, Complainants,
vs. In Equity.
Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, Defendants.

Appearances:
Cook, Hughes & Sutherland, E. R. Mason, J. L. Minnis, Wells H. Blodgett, Attorneys for Complainants.

Guernsey, Parker & Miller, Solicitors for Defendant.

Testimony on the part of Complainants, taken before me, J. P. Blaise, one of the Examiners herein, pursuant to the Stipulation and agreement hereto attached, at the office of Guernsey, Parker & Miller, in the City of Des Moines, Polk County, Iowa, January 10, 1911, in a certain cause, pending in the Circuit Court of the United States, Southern District of Iowa, Central Division, wherein Chicago, Milwaukee & St. Paul Railway Company, and Wabash Railroad Company are Complainants, and the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, are defendants, on the part of Complainants.

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Complainants' Testimony.

Amended and Substituted Articles of Incorporation of the Des Moines Northwestern Railway Company.

Mr. Cook: Complainants offer and introduce in evidence the Amended and Substituted Articles of Incorporation of the Des Moines Northern Railway Company, which are in words and figures following:

"Amended and Substituted Articles of Incorporation of the Des Moines Northwestern Railway Company.

Article 1.

The name and style of this corporation shall be The Des Moines Northwestern Railway Company and its principal place of business shall be Des Moines, Iowa. Provided that

any meeting of stockholders or directors may be held in the City of New York upon call of the Executive Committee.

Article 2.

The general nature of the business of the corporation shall be the owning, extending, constructing and operating or constructing and leasing of a railway from the City of Des Moines, Iowa, to the northern line of the state of Iowa with a branch to Sioux City, Iowa, and such other branches as may from time to time be determined upon by the Company.

The power to lease the road at any stage of its construction is hereby expressly asserted and claimed.

This corporation shall further possess all the powers rights and immunities conferred by law upon corporations for pecuniary profit.

Article 3.

The capital stock of this corporations shall be Four Millions of Dollars which shall be divided into shares of one hundred dollars each all of which shall be liable to payment at such times and in such manner as the Board of Directors may from time to time determine. The entire capital stock or any part thereof may at the discretion of the Board of Directors be issued for the purposes of carrying out the objects of this incorporation and may be paid for in work done or material furnished in the construction of the road, Provided that the amount of Capital Stock issued shall never at any time exceed Twelve Thousand Dollars, for each mile of completed road.

Article 4.

Each share of stock shall be entitled to one vote at any meeting of the stockholders upon presentation of a certificate therefor, Provided that no transferee shall be entitled to vote unless the certificate of stock so held by him shall have been duly transferred on the Books of the Company at least sixty days before the meeting at which it is sought to be voted.

Article 5.

For the payment of debts or to aid in the construction of the Railroad the directors by a two-thirds vote of the entire board in favor thereof may issue preferred stock drawing interest at the rate of not more than seven per cent per annum.

Article 6.

The affairs of the Company shall be managed by a Board of not less than five (5) nor more than nine (9) directors who shall be annually by the stockholders on the first Thursday in January of each year.

The shall have the power and are hereby invested therewith, to take all steps necessary to construct and operate said railroad, and its branches or to lease the same in perpetuity or otherwise, at any stage of its progress upon such terms and conditions as they may deem advisable if in their judgment the purposes of this incorporation shall be better promoted thereby.

They are hereby further authorized, for the purpose of enabling them to fund the bonded debt of the Company at a lower rate of interest and on longer time and pay off its floating debt and to extend and equip its road and otherwise carry out the objects of this incorporation to execute a mortgage upon the road, franchises and other property of this Company to the amount of not less than seven thousand ($7000) dollars a mile to secure the bonds of the Company or other evidences of indebtedness of a like amount approved by the board and to issue full paid stock to the amount of not less than Ten Thousand Five Hundred ($10,500.) Dollars a mile all of which bonds or other evidences of indebtedness and stock together with all subsidies, taxes, gifts and donations which may be obtained to aid in the construction of the road they are empowered and directed to transfer to such corporation or individual as they may elect for the purposes aforesaid.

And they are hereby invested with all the other powers usually possessed by directors of similar corporations.

A majority of the board shall constitute a quorum and in the event of the death or resignation of a member the remaining members may fill the vacancy thus occurring. Provided that a two-thirds vote of the full board shall be necessary to fill a vacancy.

The directors shall elect from their number a President, Vice-President, Secretary and Treasurer. The present officers are hereby continued in office until their successors are duly elected.

Meetings of the Board may be held at any time upon the call of the President or in his absence, of the Vice-President, or two members of the Executive Committee.

Article 7.

The President, Vice-President, Secretary and Treasurer shall constitute an Executive Committee who shall have power to make contracts binding upon the corporation and shall be entrusted with the immediate management of the affairs.

They shall be authorized to act for the Company in all matters affecting its interests and their undertakings as such Committee shall be valid and binding to the same extent as would those of the full board of directors.

Article 8.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article 9.

All contracts and certificates of stock shall be signed by the President and countersigned by the Secretary.

Article 10.

The total amount of indebtedness to which the corporation may subject itself shall never exceed eight thousand dollars per mile of the road or two-thirds of the capital stock.

Article 11.

These articles may be amended at any meeting of the stockholders ten days notice of such meeting having been given by publication in some newspaper at the principal place of business of the Company, provided that a majority of all the stock subscribed and issued shall be voted in favor of such amendment.

Amendments of the same may also be made without publication of notice by the unanimous vote of the board of directors.

Article 12.

This incorporation shall commence on the 11th day of April, 1878, and continue for fifty (50) years, with the right of renewal.

State of Iowa,
Polk County.

We, J. S. Polk, president & John S. Runnells, secretary, of the Des Moines Northwestern Railway Company, do hereby certify that the above & foregoing amended & substituted articles of incorporation were adopted by the directors of said Company on the 20th day of December, 1880, at a meeting of said Board of Directors duly called and held at the office of Company in Des Moines, Iowa, by a unanimous vote of said Board of Directors, all of said board of Directors being present and voting for the same.

Witness our hands & the seal of said company hereto affixed this 23rd day of December, A. D. 1880.

J. S. POLK, Prest.

Attest:
J. S. Runnells, Secretary.

(Company seal)

Filed Dec. 27, 1880, 11 1/4 o'clock A. M. Geo. H. Gardner, Recorder. By A. Jones, Deputy.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 2 at page 599 to 603 inclusive.

Dated at Des Moines, Iowa, this 10" day of December, 1909.

MRS. FRANK W. DODSON, Recorder.

Admission:

It is admitted, that on December 23, 1880, the date of said Amended and Substituted Articles of Incorporation of The Des Moines Northwestern Railway Company, the said Des Moines Northwestern Railway Company owned and was operating a narrow gauge railroad, extending from Waukee in Dallas County, Iowa, to Panora, in Guthrie County, Iowa.

Articles of Incorporation of the St. Louis Des Moines & Northern Railway Company.

Mr. Cook: The Complainants now offer and introduce in evidence the Articles of Incorporation of the St. Louis Des Moines & Northern Railway Company, in words and figures following, to-wit:

"Articles of Incorporation of the St. Louis Des Moines & Northern Railway Company.

Art. 1. The undersigned, their successors and assigns, hereby associate themselves together into a corporation to be known as the St. Louis Des Moines & Northern Railway Company, for the purpose of constructing, owning and operating, or constructing and leasing a railway from the City of Des Moines in Polk, County, Iowa, or a connection therewith, through the County of Boone, or County of Story, toward the north line of the state of Iowa, upon such route as may be

deemed advisable for the best interests of the company, and such corporation shall possess all the powers conferred by law upon corporations for pecuniary profit. It shall be further authorized to make a contract for the construction of said railway with the Narrow Gauge Railway Construction Company, a corporation organized under the laws of the state of Iowa, and as a consideration for such contract is authorized to execute and deliver to said Narrow Gauge Railway Construction Company its bonds to the amount of Eight Thousand Dollars ($8000.00) per mile or less, and its capital stock to the amount of Twenty Thousand Dollars ($20,000) per mile or less together with all subsidies and taxes voted in aid thereof as may be deemed necessary for the prosecution of the work herein provided for.

Art. 2. The capital stock of this corporation shall consist of Three Million Dollars ($3,000,000) to be divided into shares of One Hundred Dollars ($100) each, each share shall be entitled to one vote at all meetings of the corporation.

Art. 3. The principal place of business shall be at Des Moines, Iowa.

Art. 4. The affairs of the Company shall be managed by a board of five directors, who shall be elected annually by the stockholders on the first Thursday in January.

The provisional board of directors who shall hold office until the first Thursday in January, A. D. 1882, shall consist of J. S. Polk, J. S. Clarkson, F. M. Hubbell, J. S. Runnells, and Frank S. Pusey. The directors shall have all the powers usually possessed by directors of similar corporations. A majority of the board shall constitute a quorum, and in the event of the death or resignation of a member of the remaining members may fill the vacancy thus occurring.

The directors are hereby further authorized to execute a lease of the road in perpetuity or otherwise, when it shall have been constructed.

The directors shall elect from their number a president, vice-president, secretary and treasurer.

Meetings of the board may be held at any time upon call of the president, or in his absence of the vice-president, or any two members of the board.

Art. 5. The president, secretary and one member of the board of directors shall constitute an executive committee, who shall be entrusted with the immediate management of the affairs of the company, and shall be authorized and empowered

to make contracts binding upon the company to the same extent as the full board of directors.

Art. 6. The private property of the stockholders shall be exempt from liability for corporate debts and undertakings.

Art. 7. The highest amount of indebtedness to which the corporation may at any time subject itself shall never exceed Eight Thousand Dollars ($8000) per mile of its road.

Art. 8. All contracts and certificates of stock shall be signed by the president and countersigned by the secretary.

Art. 9. These articles may be amended by a vote of two-thirds of all shares of stock subscribed in favor of the proposed amendment upon publication of notice of meeting at which such amendment shall be proposed, at least thirty days before the date thereof in some paper published at Des Moines. Amendments may also be made without publication of notice by the unanimous vote of the board of directors whenever they shall convene on the call of the president or vice-president.

Art. 10. This corporation shall commence on the .... day of April, A. D. 1881, and continue fifty years with the right of renewal.

In witness whereof we have hereunto set our names this .... day of April A. D. 1881.

J. S. POLK,
J. S. CLARKSON,
F. M. HUBBELL,
J. S. RUNNELLS.

State of Iowa,
Polk County—ss

Before me a notary public in and for the county and state aforesaid, on this 4th day of April, A. D. 1881, personally appeared J. S. Polk, J. S. Clarkson, J. S. Runnells and F. M. Hubbell, to me personally known to be the identical persons who executed the foregoing articles of incorporation, and acknowledged the execution thereof to be their voluntary act and deed, for the purposes therein expressed.

Witness my hand and Notarial Seal the day and year last above mentioned.

(Notarial Seal) C. HUTTENLOCHER,
Notary Public.

Filed April 6th 1881 at 4½ o'clock P. M.

J. J. PAYNE,
Recorder.

Charles F. Loeth.

Mr. Cook: Complainants offer and introduce in evidence the the direct examination of Charles F. Loeth, as appears in the transcript of the evidence on file in the office of the Clerk of the District Court of Iowa in and for Polk County, in the case of Chicago, Milwaukee & St. Paul Railway Company vs. Des Moines Union Railway Company, beginning on page 92 of said transcript and ending at page 97, as follows:

"CHARLES F. LOETH called and sworn on the part of plaintiff and examined in chief by Mr. Charles E. Vroman, testified as follows:

Q. Your residence? A. Chicago.
Q. And your occupation? A. Civil engineer.
Q. How long have you been in that occupation?
A. About thirty years.
Q. Are you connected with the Chicago, Milwaukee & St. Paul Railway Company? A. Yes, sir.
Q. In what capacity?
A. As engineer and superintendent of bridges and buildings.
Q. How long have you been superintendent of the bridge and building Department?
A. Nearly nine years.
Q. Were you in Des Moines employed here at the time of the construction of the St. Louis, Des Moines & Northern Company's line? A. I was.
Q. Do you remember when you came? A. In May 1881.
Q. And for what purpose?
A. As an engineer to assist Mr. E. C. Kinney in the construction of the road.
Q. What condition did you find when you arrived here as to the construction work?
A. I do not remember that any work had been done at that time further than the making of surveys.
Q. Do you remember when that work commenced? About how long after you got here?
A. You refer to actual construction work?
Q. Yes?
A. No, I do not remember definitely. It must have been two or three months.
Q. As long as that you think?
A. Well, perhaps not as long as that, but some little time.
Q. Do you remember what the first construction work was and where it began? A. No, I do not.
Q. Well do you remember approximately where the construction work began?
A. You mean the first work that was done?

Q. Yes, actual work either clearing the right of way or whatever was done?

A. No, I couldn't say what work was done first.

Q. Where was the construction? From what point in the City of Des Moines?

A. It was say, from the vicinity of the present Union Depot extending westward.

Q. Well, it is conceded that is Fifth Street, is it not?

Mr. Guernsey: Yes; here is Fifth Street.

Mr. Vroman: And extended from there west?

A. Yes, sir.

Q. What was the character of the construction at that time? Narrow or standard gauge?

A. A narrow gauge road was being built.

Q. How long were you here engaged in work on that line?

A. About ten months.

Q. You may state what progress was made in the construction of the line from the time you begun?

A. When I came here the work of making survey and acquiring right of way was in progress and it was some time after that, I do not remember just how long the construction work began. I do not remember at what point the construction began first, but construction work in the way of grading, clearing of the right of way, building of bridges and laying of tracks and building of buildings was more or less under construction and I would say more or less completed at the time I left.

Q. Where was the bridge built at the east part of the line?

A. At the water works in the western part of the city.

Q. A little stream? A. A little creek.

Q. Up to what point was the road constructed when you left, ten months later?

A. It was completed to Waukee and the line to Boone was completed up to the vicinity of the High Bridge. I think the High Bridge was complete but I am not sure about that. But the track was laid up to about that point and the bridge was approaching completion if not fully completed.

Q. And where was High Bridge located?

A. Across the Des Moines River between here and Boone.

Q. You say completed, you mean the main line track was laid?

A. Between here and the bridge, yes, sir.

Q. And between here and Waukee? A. Yes, sir.

Q. Was the line in operation?

A. Yes, it was in operation. It was to the extent it was being used, I do not know that it was regularly operated for traffic purposes, but my impression is it was.

Q. Do you remember the bridge that was built down at this little dry run? Do you remember any circumstances connected with it? A. Yes, sir.

Q. You may state them?

A. I remember that that was the first work that was done by our bridge contractors, Raymond & Campbell, Council Bluffs. We had laid the track over that stream by temporary construction in order that we might get out construction trains as far out on the completed grade as possible and lay out tracks and the construction of that permanent bridge was a part of the contract of Raymond & Campbell and I remember going out on the ground with Mr. Raymond with his men in order to do what I could to insure the putting in of a permanent bridge as quickly as possible with just as little interference with the traffic over the track as possible.

Q. At the time you began your work here was there any broad gauge line running in from the east at that time?

A. Yes; the Rock Island and Burlington I think.

Mr. Guernsey:

Q. Des Moines Valley? A. I don't remember.

Mr. Vroman: Do you know of a railroad company called the Des Moines & St. Louis?

A. Yes, sir.

Q. Do you know where it was building a line and between what points?

A. Between Albia and Des Moines.

Q. Now when—at what time were they building this line with reference to the time the line of the St. Louis, Des Moines & Northern was under construction?

A. About the same time.

Q. Where did that line commence the work of building?

A. I couldn't say.

Q. Did it commence in Des Moines or in Albia or in what direction?

A. I couldn't say, except it was not in Des Moines.

Q. Was that line in Des Moines when you came here and commenced the constructing of the line of the St. Louis, Des Moines & Northern?

A. No, sir.

Q. Was there any board gauge track on the right of way from Fifth Street down say to Farnham street at the time the narrow gauge tracks were laid?

A. There was before I left.

Q. Do you know whether the narrow gauge was put down there first or the broad gauge?

A. The narrow gauge.

Q. The narrow gauge was put down first?
A. Yes.
Q. Was this broad gauge construction which was put down before you left a part of the Des Moines St. Louis line?
A. I think it was. It was done by the—I did not understand that question. I thought you said the other company.
Q. Was the broad gauge construction that was put in before you left a part of the Des Moines & St. Louis line?
A. I don't know about that. It was put in in anticipation of that line being completed into the City of Des Moines and connected with the St. Louis, Des Moines & Northern.
Q. Was the main line at the time this broad gauge construction was put in on the narrow guage right of way then into Des Moines? Built into Des Moines?
A. No, sir.
Q. Was this—how was this broad gauge construction built whether it was built upon the same ties on the right of way or how?
A. It was built upon the same embankment and the same ties, three rails being laid on the same ties.
Q. How far down did that broad gauge construction go going west?
A. I cannot say definitely, but not as far as the water works.
Q. Do you remember a round house being constructed while you were here?
A. Yes, sir.
Q. Did the broad gauge extend to the round house?
A. That is my remembrance.

Cross-Examination.

Mr. Guernsey: In connection with that offer, the defendants offer in evidence the cross-examination of this witness, commencing at page 97, and continuing to the middle of page 102, including in the offer such exhibits, if any, as were identified in connection with said cross-examination, as follows:

Q. Mr. Loweth you were here about ten months you say?
A. Yes, sir.
Q. And you left about March, 1882?
A. Yes, sir.
Q. And how long have you been employed by the Milwaukee Company plaintiff?
A. Nine years next month.
Q. Now you came here you say in May. Did Mr. Kinney bring you here?
A. Mr. Kinney sent for me and I came at his request.

Q. And while you were here you were employed by the Narrow Gauge Railway Construction Company?

A. I was employed by the St. Louis, Des Moines & Northern Railway and there was an intimate connection that I perhaps I never fully understood or have forgotten between that and the Narrow Gauge Construction Company.

Q. Who paid you your wages?

A. The St. Louis, Des Moines & Northern Railway.

Q. You remember you signed vouchers for that?

A. Yes, sir.

Q. Suppose it should develop these vouchers run to the Narrow Gauge Construction Company, do you still say it was somebody else that paid you?

A. No, sir.

Q. You would say you were mistaken?

A. Yes, sir.

Q. They were paid at Polk & Hubbell's office, were they not? A. As a rule yes I think they were.

Q. Where were they paid when they were not paid there?

A. Well, I don't remember about that. You refer to the vouchers in payment of my own services?

Q. You used to make out vouchers that covered your services and also expenses of your work. You used to have some board bills naturally and things like that?

A. Yes, sir.

Q. And you had some men under you?

A. Yes, sir.

Q. And you made out vouchers once a month, did you not?

A. I presume I did.

Q. And you were paid by whoever was employing you?

A. Yes, sir.

Q. And these vouchers were made out at and paid at the office of Polk & Hubbell were they not?

A. Generally they were.

Q. You say generally. Where else were they paid?

A. I remember distinctly of my taking pay rolls out into the country and paying the men that were employed on the work at various times so that all the payments of vouchers which I certified to were not paid in Polk & Hubbell's office.

Q. I was asking about your vouchers. When you took out pay rolls, where did you get those pay rolls?

A. At the office of the Company.

Q. Whose office was it? Polk & Hubbell's office?

A. Polk & Hubbell, as I remember it had an office for their own business and St. Louis Des Moines & Northern. I do not know who paid the office rent.

Q. It was Polk & Hubbell's office where you got these things as a matter of fact?

A. Yes, sir.

Q. And when you got a pay roll to take out over the road you got it from Polk & Hubbell's office.

A. I presume I did.

Q. And you got the money to pay it from Polk & Hubbell or from their office?

A. I presume so.

Q. This broad gauge line, the Des Moines & St. Louis, had not been built in here when you left, is that right?

A. I don't remember about that.

Q. Then you have no recollection of it being built in here before you left, is that correct?

A. That is correct.

Q. But you do remember a third rail being laid?

A. Yes, sir.

Q. In anticipation of their coming in?

A. Yes, sir.

Q. You also remember this little bridge west of the water works? A. Yes, sir.

Q. Do you remember afterwards when you were employed by the—while you were in the employ of the Milwaukee of condemning that bridge and requiring the Des Moines Union to build another one there? A. I do not.

Q. You do not remember anything about that?

A. No, sir.

Q. Do not remember of writing any letters about it?

A. In my office there are about ten or twelve persons who write letters over my signature, and it is not to be surprised at if there are some letters I do not have any remembrance of. I do not remember any instance of that kind.

Q. Has the bridge been rebuilt?

A. I couldn't say.

Q. You do not know about that? A. No, sir.

Q. You do not know whether the bridge there now is the bridge we are talking about or not?

A. The bridge that was built originally was 29 years ago and a timber bridge.

Q. In the natural course of events that would have been rebuilt? A. Yes, sir.

Q. That is an inference however? A. Yes, sir.

Q. When you go out look for it and you will see there is a concrete bridge there. Now what part of the work did you have charge of or did you do? Location or construction or both?

A. When I came first I made some surveys to determine the land lines. The points where the located lines intercepted with property lines. Made some maps and later made plans for various structures, bridges and other structures of that

kind. Principally my duties were in the office though. I was frequently out along the line at these places where the work was being constructed.

Q. Your work was principally office work during the entire time you were here? A. Perhaps half the time.

Q. Do you remember this. Do you remember you used to get your material from the Rock Island, four or five blocks west from where the passenger station was and where the Union station is now? A. Yes, sir.

Q. And is it not that where you began laying your rails? Where you got this material. The rails came in over the Rock Island? A. I think so.

Q. And as a matter of convenience did you not begin laying your rails there? A. I presume we did.

Q. And where was your office at that time. Was it in this building just north of the Post office here?

A. At first, yes, sir.

Q. That was the same building in which Polk & Hubbell had their office? A. Yes, sir.

Q. And they owned the building?

A. I do not know about that.

Q. Who was the president of the St. Louis Des Moines & Northern at this time?

A. I do not remember. I think it was either Mr. Clarkson or Mr. Polk.

Q. And did it have any superintendent?

A. Well no not when I came here.

Q. Did it before you came—did it before it began to operate? A. I do not think so.

Q. Any manager?

A. No, I think Mr. Kinney was the executive man in charge of not only the construction, but the laying of the track from 1881 to about the first part of 1882, I do not remember. I am not certain about that.

Redirect Examination.

Mr. Cook: Complainants also offer and introduce in evidence the Redirect Examination of said witness, on page 102, as follows:

Q. Do you remember when the line was finished into Waukee? A. As to the time of year in which it was done?

Q. Yes, and month?

A. I cannot remember the month but it was the latter part of the summer or early fall.

Q. Your office at that time—I mean the office of Polk & Hubbell at that time and of the Narrow Gauge Railway Construction Company and of the St. Louis, Des Moines & Northern were all the same? A. Yes, sir.

Recross Examination.

Mr. Guernsey: The defendants offer in evidence the recross examination of this witness, commencing on page 102, and ending on page 105, and such exhibits, if any, as were identified in connection with said recross examination, as follows:

Q. Where was Mr. Clarkson's office?

A. I do not remember whether Mr. Clarkson had an office other than in the State Register or not I think he was connected with the State Register at that time.

Q. Now then he was the president of the St. Louis, Des Moines & Northern was he not?

A. I am not sure about that I think he was.

Q. Now then why do you say that the office of the St. Louis, Des Moines & Northern was the same as Polk & Hubbell's office? How do you know the St. Louis Des Moines & Northern had any office?

A. Because the larger part as I remember it of all the stationery, rolls and vouchers we used had the St. Louis, Des Moines & Northern Railway on it.

Q. Did you ever see any of those vouchers that had Narrow Gauge Railway Construction Company on it?

A. Yes, sir; I did.

Q. And where was the Narrow Gauge Railway Construction Company's office?

A. What office do you mean? The engineer's office?

Q. Just take it in the same sense you take the question of where the office of the St. Louis, Des Moines & Northern was. You had no trouble with that. Where was the Narrow Gauge Railway Construction Company's office?

A. With the St. Louis, Des Moines & Northern Railway.

Q. And that is with Polk & Hubbell? A. Yes, sir.

Q. Now all you know about that as a matter of fact is that you went to Polk & Hubbell's office to transact this business is it not?

A. No, sir; I didn't Polk & Hubbell's office or Polk & Hubbell. I went to the office of the St. Louis, Des Moines & Northern or the Narrow Gauge Construction Company. I had never—I do not remember of ever having any business with Polk & Hubbell.

Q. You mean as a firm? A. As a firm yes, sir.

Q. You went to the office of the people that paid you?

A. Yes, sir.

Q. And your inference that it was the office of the St. Louis Des Moines & Northern is based on the idea that the St. Louis Des Moines & Northern paid you is it not?

A. Yes, sir.

Q. If you are wrong about that then you are wrong about the office too are you not?

A. No, not necessarily.

Q. What was there about this thing if it was the Narrow Gauge Railway Construction Company that was doing all this work and if I am right about that and if Mr. Clarkson was president and chief executive of the St. Louis, Des Moines & Northern and did not have his office in this one you refer to what was there that refers to your inference that this office where Polk & Hubbell kept that it was the office of the St. Louis, Des Moines & Northern Railway Company?

A. Because right of way was acquired in the name of the St. Louis, Des Moines & Northern Railway Company. Because it was my business to make maps and I made them and the title on them was the St. Louis, Des Moines & Northern Railway.

Q. It was because of what you saw on the maps?

A. Because of what I was instructed to put on the maps.

Q. What name was on the door of this office? Polk & Hubbell? A. I do not remember.

Q. There was not the name of the St. Louis, Des Moines & Northern Railway Company?

A. There was in the office we had on the present depot site.

Q. I am not asking you about that.

A. That was as much the office as the building across from the post office.

Q. Was this place at the station where you were paid? Where you got your money?

A. I don't know about that. We may at times have got money there.

Q. That was a little proposition that developed after you had got pretty well along with your work was it not?

A. No, sir; that was a proposition that developed as soon as we got so far into the construction we had to have larger quarters.

Mr. Guernsey: The defendant also offers in evidence the additional cross-examination of said witness Loweth, commencing on page 106 of the said transcript and ending on page 107 thereof, and also offers in that connection "Exhibit B" to the Deposition of Mr. E. C. Kinney referred to on said cross-examination, as follows:

"Charles F. Loweth recalled for further cross-examination by defendant and examined by Mr. N. T. Guernsey, testified as follows:

Q. Here is a duplicate voucher which is headed St. Louis, Des Moines & Northern Railway Company, the Narrow Gauge

Railway Construction Company contractors. Is that the way your vouchers are made out? I see your name appears on that and it is for the month of July, 1881?

A. Yes, sir; this is my remembrance of it and I think this is what I stated that the rolls and vouchers and other stationery had the name of the St. Louis, Des Moines & Northern Railway and invariably I think that was more prominent than the Narrow Gauge Railway Construction Company. The general impression--

Q. I do not ask for any impression. Was it your impression then and do you wish to testify now you were being paid, not by the contractors who were doing the work, but by the people for whom they were doing it?

A. Well I don't know that I ever went into that very fully. All that I had to go by was what is right here in print. It answers for itself.

Q. (Question read to witness) A. I do not know.

Q. You wish to leave the record standing here you don't know whether you were working for the Narrow Gauge Railway Construction Company that were building the road or whether you were working for the railroad company. Is that right? A. That is right sir.

Mr. Guernsey: I would like to identify this voucher. This voucher I call to your voucher is attached to the deposition of Mr. Kinney and is marked by the reporter, Exhibit "B". That is right is it?

A. Yes, sir.

Witness Excused."

(Exhibit "B" offered in connection with the cross-examination of the above witness is attached to the deposition of E. C. Kinney, which Complainant's Counsel asked the examiner not to copy, as the same was on file in this cause and a part of the record)

Mr. Cook: Complainants offer and introduce in evidence the deposition of E. C. Kinney, taken and on file in the said cause in the state court.

Mr. Guernsey: The defendants offer in evidence the cross-examination of the witness Kinney, and the exhibits identified in connection with said cross-examination.

The defendants also offer the following in that connection, from page 107 of the said transcript in said cause of the Chicago, Milwaukee & St. Paul Railway Company vs. the Des Moines Union Railway Company:

"The copy that was shown in connection with Mr. Kinney's deposition in response to question as follows: 'Do you remember ever going over accounts and certifying them' that immediately follows the statement 'accounts was it not Mr. Kinney' and the answer 'I do not remember it might be so, if that is my signature I will admit it'. 'At that time Mr. Lehman who appeared in the taking of this deposition for the defendant handed Mr. Kinney a copy of what purported to be a certificate signed by Mr. Kinney in typewriting and the name C. E. Kinney was in typewriting."

A. H. Loudermilk.

Complainants offer and introduce in evidence the examination in chief of A. H. Loudermilk, commencing at page 109 of the said transcript, and ending near the bottom of page 121 thereof, as follows:

"A. H. LOUDERMILK, called and sworn on the part of the plaintiff and examined in chief by Hon. J. C. Cook, testified as follows:

Q. Give your age, name present place of residence and occupation? A. 62.

Q. First the name.

A. A. H. Loudermilk, 62; 1511 School Street.

Q. Des Moines? A. Des Moines, Iowa.

Q. What is your occupation? A. Bridge Builder.

Q. How long have you lived in the City of Des Moines?

A. About thirty years.

Q. Did you do any work in connection with the building of the Narrow Gauge Railroad from Des Moines to Boone?

A. I did?

Q. When did you begin working on that line?

A. Well, I can't give the date exactly, but it was when we commenced cleaning out the alley south of Cherry Street here up to—well I can't say from 5th street on up to the pumping station. Perhaps not quite that far up, but up as far as 12th street at that time we had more or less cleaning.

Q. About what time of the year did you begin?

A. I don't remember whether it was in the spring or early in the summer.

Q. What company or corporation were you employed for?

A. The St. Louis, Des Moines & Northern.

Q. Was that the company that built the narrow gauge railroad from Des Moines to Boone?

A. That was the way I understood it.

Defendant moves to strike the answer as a conclusion and incompetent.

Q. Is that the name that the Company went by, St. Louis Des Moines & Northern?

Same objections.

A. Yes, sir.

Q. You say you began the work of clearing away along the alley beginning at 5th street in Des Moines and extending eastward through the city?

A. Yes, sir. That is the work commenced there. I do not know just where I commenced. In fact I did not work but a few days cleaning out the alley. At that time I was under Jim Martin and I was always called a pretty good mechanic and I was taken off of that work and put into the shop in a very few days.

Q. Where was the shop located.

A. It was then in an old frame building up on 11th street. It was just a building that had been pulled out of the way and we went in there for a temporary matter.

Q. What year was that you began to work in?

A. I think that was in 1880 if I am not mistaken.

Q. 1881?

A. I think it was the spring of 1880. I am not certain about that.

Q. Do you remember when that company began to receive material for the building of the road? Its iron and bridge timbers?

A. No, I couldn't tell you when they did commence.

Q. How soon after you began to work?

A. Oh, it wasn't but a short while. I want to state further. I didn't work for the St. Louis, Des Moines & Northern but a little while. Jim Martin and I didn't get along very well.

Q. Then who did you go to work for after you quit working for the railroad company?

A. I also had an offer of more money and I expect I was a little bit contrary myself and Jim was a little bit jealous and I all I had to do was to simply go and ask Mr. Raymond's foreman for a job and got more pay and he had asked me a dozen times to quit and possibly made me a little bit independent and I quit and went to work for Mr. Raymond.

Q. Was Mr. Raymond a member of the firm?

A. He was one of the contractors on the road that had the bridge building.

Q. What was the name of the firm?

A. Raymond & Campbell.

Q. They had the contract for building the bridges?

A. Yes, sir.

Q. About what time of the year did you begin working for them?

A. It was shortly after I commenced—I don't think I worked more than two or three weeks, maybe a month for the railroad company. I probably commenced in June for Raymond & Campbell would be the best of my judgment. I am not giving that as an exact date. It has been too long ago.

Q. When you went to work for Raymond & Campbell had any iron been laid at all? A. I don't think there had.

Q. For the Boone line?

A. No iron been laid at all I don't think.

Q. Do you remember what work you first did for Raymond & Campbell?

A. I think the first work I done was dressing some timbers. Some large timbers that went into the High Bridge road on the ground where the round house now stands.

Q. The High Bridge you mean the bridge between here and Boone across the Des Moines river? A. Yes.

Q. Do you remember anything of a little bridge at the water works? A. I do sir.

Q. Did you help construct that bridge?

A. I helped construct the bridge. now there was a temporary work put in there built up of ties that I didn't help do to the best of my knowledge and there was a bridge put in there of railroad ties and some timbers laid on that and the engine went over on that and it was there a little while and there came a heavy rain and the result was the high water took them all out and stopped the work west of there. Well, when that was the case Mr. Loweth came down there and got after all of us as the old saying is, right hot, to put in that bridge immediately and I had to collect all the force in then and went to that bridge and we got the driver in there and drove those pilings and put the bridge in the next time by driving piling, didn't rebuild the tie bridge at all.

Q. Was that while you was working for Raymond & Campbell? A. Yes, sir.

Q. About how far west of Farnham street in the city of Des Moines is that bridge?

A. I don't know exactly where Farnham street is.

Court: Sixteenth street.

Judge Cook: 15th street; or I will change that. How far from the city water works was that bridge?

A. It is right by the pumping station. It is the bridge that lets the waste water out from the pumping station that runs through under all the railroads there and down into what—into that pasture and Coon river.

Q. You mean the pumping plant of the water works, that pumping station? A. Yes, sir.

Q. What we ordinarily call the water works?

A. Yes, sir.

Q. What time of the year was that bridge put in?

A. That must have been put in early in the summer. That was after we cleared out. Some time in the summer.

Q. At the time that bridge was washed out and rebuilt by permanent work how far west of the bridge had the Narrow gauge track been laid?

A. I couldn't tell you.

Q. Had it gone some distance west of there?

A. Oh it was out a little ways west for I know it laid off the track gang entirely, because they couldn't get an engine over it. That was why Mr. Loweth came out and hurried things up so they was there but how far west—

Q. That laid off the track gang?

A. That stopped the track laying until we could get an engine over it. How far west I couldn't say but it couldn't have been a great way.

Q. Now when track laying began where did they begin the work of laying the track of the St. Louis, Des Moines & Northern Railroad Company. The narrow gauge track for the Boone line?

A. I don't know. Now whether they commenced down about Eleventh street or whether they commenced here I couldn't say.

Q. That is whether they commenced here at fifth street?

A. Yes, sir; I couldn't say.

Q. Are you certain it was as far east at least as Eleventh street in the city of Des Moines?

A. Yes, it was either there or here, I don't know which.

Q. It was either Eleventh street or here at Fifth street?

A. Yes.

Q. Do you remember a side track put in by the Rock Island a standard gauge track out about Eleventh or Tenth street?

A. I do sir.

Q. Whereabouts was that?

A. That came off of the Rock Island running north of the Rock Island and right down parallel with the Rock Island for the purpose of unloading stuff for this road.

Q. That is for this narrow gauge road?

A. Yes, sir. It was also used of the railroad company—by the St. Louis, Des Moines & Northern and also by Raymond & Campbell. I transferred the irons and timbers and piling and such as that that came in there for Raymond & Campbell. There was another man in charge of the company's stuff there.

Q. How far east of Eleventh Street was the narrow gauge track laid and the road built of the Boone line?

A. How far east was the narrow gauge track laid?

Q. Yes. That was 1881 the first work was done and in 1880.

A. I could not tell you exactly how far east it was laid, but the depot of the narrow gauge track was here on the corner of Fifth and Cherry street. That brick building on the corner was used for a depot. E. C. Kinney and Mr. Loweth's office was in the front room of that building and when I went out on the road and also shipped men out—it was part of my business—I invariably went there and out of the back end of that building to get on the train. There was a narrow gauge track laid further east than that even and that was, if I remember right and I think I am clear on that it did that only temporary for the railroad. Place of leaving empty cars and disposing of cars we didn't wish to use. My idea is that virtually the end of the track was at Fifth street. Now that is virtually the end of the track still. I think there was a narrow guage track further than that, but as I state just what we call waste rails put in.

Q. But the construction trains of the Boone line came here to the depot building at Fifth Street and Cherry?

A. Yes, sir.

Q. And started from there out on the road for their work?

A. Yes, sir. Now I remember an instance of bringing in a man with a leg broke from the High Bridge. I happened to be up there when it occurred and Raymond & Campbell give me charge of that man and asked me to care for him and I was then boarding on 8th and Cherry with Miss Tomley and I got the train to stop right opposite that house on 8th and Cherry for the purpose of taking this man with the broken leg off and the train afterwards came on down here to Fifth Street and they wouldn't let any other passenger off there except two or three men that got off to help me take Mr. Oninn off. They did that as an accommodation.

Q. About what time of the year was that?

A. That was in the spring perhaps of 1881 I expect. The river when he fell was full of floating ice I know and we thought he was very fortunate, he went into the water and didn't hit the ice.

Q. So you may not be in error on dates, there is no question the road was begun in 1881 and was completed in 1882.

A. Yes, sir, it was not completed the same year it was begun.

Q. Now do you remember when the High Bridge across the Des Moines river on the Boone line was completed? When it was begun and when it was finished?

A. Well it was commenced I think in 1881 and finished in 1882, perhaps.

Q. Do you remember what the state of the work was—or whether the work on that bridge or on the railroad was stopped some time in the winter of 1881 and 1882? A. It was.

Q. About what time in the winter with reference to the holidays?

A. I think it was stopped just before the holidays and the work I don't think was opened up again until well towards spring.

Q. What was the state of the work on High Bridge at the time the work was stopped in the winter?

A. Well it is pretty hard to describe it.

Q. In a general way simply.

A. There was some framing done. The cylinders perhaps were some sunk and some not and probably there was some piling drove, I don't remember.

Q. By cylinders you mean the iron piers in the river?

A. Yes, sir.

Q. Do you remember when that bridge was completed?

A. That was completed in 1882, but just what time I couldn't say. It was in the fall though for I was out on the west end when it was completed and I know it was in the fall when I got home.

Q. How far had the track been laid towards Boone from Clive towards Boone when the work was stopped for the winter? A. I don't know.

Q. Was it close to the Des Moines river?

A. I couldn't say.

Q. Was your work that fall or that winter before the work was stopped, did you work on the bridge or work here?

A. I worked here. But we was hauling lumber from Polk City out, but whether that lumber had been shipped to Polk City before the track was laid or not I don't know. It looked like we would have shipped it from here had the track been laid, but perhaps lumber had been shipped to Polk City first so I couldn't say.

Q. At any rate the track was laid some distance north of Clive? A. On that there is no doubt about that.

Q. Now going to another branch. Do you remember when the bridge across the Des Moines River in Des Moines was built by the Des Moines St. Louis Company or the road running from here to Albia?

A. That was in 1882. Finished in 1882.

Q. Now this road from here to Boone was a narrow gauge road? A. Yes, sir.

Q. The road from Des Moines to Albia was a standard gauge road? A. Correct.

Q. When did the standard gauge road first do any work in Des Moines? I mean west of the river?

A. It came over in 1882 first. It must have been in the fall of 1882.

Q. Do you remember of anything such as a third rail being laid to some extent or for some distance on the west side of the river? A. I do.

Q. By the Des Moines & St. Louis Railroad?

A. It was laid from the east side or from where the end where this narrow gauge commenced down to a transfer on Eleventh street. There was a transfer put in there for the purpose of transferring cars off of the standard gauge on to a narrow gauge and vice versa. It was a patent for the purpose of raising the body of cars up direct and running the truck out and running the standard truck or narrow gauge truck whatever the case might be, under the cars, and letting it down and taking the device out and going on.

Q. Simply a device for changing trucks under cars?

A. Yes.

Q. That third rail you say was laid from about Eleventh street east to as far as the narrow gauge track had been laid before? A. Yes, sir.

Q. And this track, when was that laid, tell the court how you know? The time of year that third rail was laid?

A. Well, that rail might have been laid sometime before it was used. I couldn't say. But it wasn't used until in the fall of 1882.

Q. But do you remember when it was laid by the men who came here to lay it. That is by the ground being frozen or anything of that kind?

A. I remember when the transfer was put in or something near it, but I don't remember when the rail was laid.

Q. When was that transfer put in?

A. In the fall after it had commenced freezing—

Q. What year? 1882 did you say? A. Yes, sir.

Q. Did the road that was built from Albia to Des Moines have any track laid west of the Des Moines River until after —until in the year 1882?

A. It never had because the bridge wasn't in.

Defendant moves to strike that as a conclusion of the witness.

Q. Which bridge was first completed, the Boone line bridge across the Des Moines river up near Madrid or the Albia and Des Moines line bridge across the Des Moines line bridge in the City of Des Moines?

A. Well just to say it was completed was to say it was completed first I couldn't say, but the bridge across the Des Moines river west for the St. Louis, Des Moines & Northern

was used first. Sometimes a bridge may be used a good while before it is completed, but that bridge was first used first.

Q. Can you relate any circumstances that causes you to remember which bridge was built so that it could be used?

A. Why, yes, I think I can.

Q. All right.

A. They wanted some long ties up at that bridge and we was expecting them here and they telegraphed me to send them ties up. Well I went and hunted the yard over for the ties and failed to find them and they wanted—I don't remember how many now, but they give me the number and the invoicing I failed to find those ties.

Q. In what yard did you look for that?

A. In our yard on Eleventh street where the Rock Island put them.

Q. That is where the Boone line narrow gauge had its yard?

A. Yes; and I informed them they were not in the yard and they wired me at once to get them somewhere or other. I went over to this bridge here—the Wabash bridge.

Q. Here in Des Moines?

A. Yes, sir; and borrowed the ties from that company there and sent them up there and went and got a team and hauled them over here and loaded them on a car on Eleventh street.

Q. On which side of the river were those ties?

A. East side.

Q. How did you get them to the west side?

A. I just said I hired a team and hauled them over.

Q. Teamed over the wagon bridge?

A. Yes. And what makes me remember that distinctly when the ties came and I went and returned them I had went to J. D. Seeberger's over here on the corner of Sixth and Court Avenue and bought a new tape line. I measured those ties with that tape line and cut them off according to the length of that tape line.

Q. That was ties you were returning to the Albia line company for those you had borrowed?

A. That was the ties I was returning. And when I took the ties there I hauled them back and took them over and threw them down and they didn't pay no attention to them. When they went to use them those ties were eighteen inches too short. There was about fifty dollars worth of ties still there. The man that was in charge on the work on the Wabash was quite cranky and I don't know whether I was any better or not. I am not going to say about that. He came on to me right hot. He wanted the ties and he said I hadn't sent ties long enough. I said they are long enough. He said they are not. I said they are what your ticket called for and he had the tickets and showed me. He said they are not that long; I said they are and I said

I will show you they are that long and I took the tape line out of my pocket and measured the ties and they measured what I asked for, and he said that darn tape line isn't right. He took a steel tape out of his pocket and he measured my tape, it was a brand new line and God my tape line was eighteen inches too short.

Mr. Guernsey: Did you sue Seeberger for the $50.00?
A. No.

Judge Cook: That was for the ties—

(Question withdrawn).

Q. When you say the Wabash, you mean the Des Moines & St. Louis Railway Company. The company that built the standard gauge between Albia and Des Moines?
A. Yes.
Q. At the time you returned these ties to that company, that Wabash Company had the ties been laid up on High Bridge?
A. They evidently had. I wasn't up there every day but every few days.
Q. These ties were to be used by this Wabash Company in its Des Moines Bridge in the city of Des Moines?
A. Yes, sir.
Q. What time of the year 1882 was that if you can remember from the state of the weather?
A. I couldn't say for the weather had been pretty warm to me that day. I was hot under the collar that day and that gentleman in charge of the bridge when he found the tape line was too sort said go throw that damn tape line into the river.
Q. That showed the ice was out anyhow? A. Yes.
Q. I would like if you could fix some time in the year when that occurred?
A. Well I don't think of anything that would enable me to give any idea of what time of the year that was.
Q. It was in 1882 you are sure?
A. It was evidently in 1882, yes, sir.
Q. Was it after work had been resumed on the Boone line?
A. Yes, sir. For at the time I was short of help here and I know I had been sending men up there as fast as I could get them and I was short of help here is why I know the work was going on up there.
Q. Do you remember when the permanent bridge at the water works was put in by the contractors, Raymond & Campbell? I believe you did say that?
A. It was probably in—might have been early in the summer and might have been late in the summer.

Q. Of 1881? A. Yes, sir.

Q. And Raymond & Campbell were bridge contractors on the Boone line? A. Yes, sir.

Q. So that there may be no misunderstanding about it. How long was the Narrow Gauge Railway built into Des Moines and down as far as Fifth street before the standard gauge road came into Des Moines from the east? That is in years or months?

A. Well I don't know. I think that it was—well there was one winter intervened between the two.

Q. And which was done first?

A. This was built first.

Q. That is the narrow gauge to Boone?

A. There was a house on the east side of the right of way that held up the work on that road for quite a while.

Q. That is held up the work on the Albia line?

A. Yes, sir; they had a great deal of trouble about a house and it was said they had a cannon planted over there to defend the house and the devil knows what all, I don't know and I know the men went over there. Jim Martin took his crew and went over there several times to pull that house out of the way.

Q. Was that trouble over there about getting the house out of the way for the railroad, was that long after this narrow gauge had been built from Fifth street to Clive?

A. Yes, sir; that was after this had been built.

Q. So that the narrow gauge was built west of the river about a year before the standard gauge from Albia came to this side of the river at all?

A. It must have been somewhere near a year because there was a winter intervened between the two.

Q. Do you remember whether a third rail was laid on the narrow gauge line west of the Des Moines river before the standard gauge road came across the river at all?

A. It was laid, yes, sir.

Q. About how long before the bridge across the Des Moines river was finished so that engines and cars could get over to the west side was it this third rail had ben laid out some distance on the narrow gauge tracks?

A. I don't know how long it was but that third rail was laid before they put in that transfer and that transfer was put in—it was ready when the cars came over.

Q. How far west of Fifth street in Des Moines was that third rail laid?

A. It was laid to Eleventh or Twelfth up there somewhere. Might have been a little bit beyond. I think that transfer was between Eleventh and Twelfth perhaps. Possibly about Twelfth street.

Q. Do you remember the round house or building for storing engines? Housing engines was built? A. Yes.

Q. For what company was that built and what year?

A. I don't know. I had nothing to do with it.

Q. Was that built in 1881 or 1882?

A. I think that was built in 1882. The first winter we was here they had no house for the engines. They was out of doors.

Q. Did this third rail extend as far west as that round house? A. It might have done it.

Q. Did that round house accommodate the engines both of the Boone line—the narrow gauge engines and the engines of the standard gauge? The Albia line?

A. I couldn't say. That was out of my line of business at that time.

Q. Do you remember whether the ground was frozen when the third rail was laid so they had to borrow a crow bar from you?

A. It was froze when they put in that transfer.

Q. How do you know it was froze. What causes you to remember that?

A. The men that was here putting in that transfer was bothering me all the time for crow bars to break the frost and I wanted to use them.

Q. Can you remember about what time of the year the narrow gauge track was laid between—from Fifth street west? The state of the weather?

A. No, I couldn't say, but it was some time in the summer.

Q. Summer of 1881?

A. Yes. Possibly it might have been early in the fall, but I don't think so.

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said Loudermilk, as shown by the said transcript, commencing at the botton of page 124 thereof and ending near the bottom of page 129 thereof, as follows:

Q. Now Mr. Loudermilk this was some time ago?

A. Indeed it was.

Q. And you were not fortunate enough to have something that kept you irritated all the time so as to impress all of these things on your mind?

A. A man that builds a railroad and don't have something is a dandy.

Q. Now so far as remembering which year it was, your impression was it was 1880? You took 1881 because Judge Cook tells you that?

A. I have this diary—that is the work and everything of the dates of the work and so on yet, but at the same time

there is nothing in that I thought was necessary to bring down here and it was only the dates, that would be all.

Q. You have not an independent recollection of these dates. You have to have somebody refresh your recollection just the way we do about that?

A. When this thing first came up to me I would have told the man I didn't know anything about, it, but studying it over a great many of these things come back to me.

Q. Did you ever hear of the Narrow Gauge Railway Construction Company? A. No, sir.

Q. Never heard of it.

A. I don't remember ever hearing of that.

Q. And it did not have anything to do with this work?

A. Not as far as I knew it didn't.

Q. Now the record here shows and the other witnesses have said that the Narrow Gauge Railway Construction Company built this road and not the St. Louis, Des Moines & Northern. Do you know which built it?

A. Nothing only just what I understood I was working for.

Q. Most of the time you were working for Raymond & Campbell?

A. Pretty near all the time, not quite.

Q. And they were independent contractors?

A. Yes, sir.

Q. Do you know whether they had their contract with the Narrow Gauge Railway Construction Company or with the St. Louis, Des Moines & Northern Railway Company?

A. I don't know anything about it only as we understood it.

Q. Just common rumor?

A. Yes. As foreman—I was one of their foreman employed for to do a certain class of work.

Q. You would not say these people whom profess to know about it who say the Narrow Gauge Railway Construction Company were the people who employed Raymond & Campbell, were wrong would you?

Objected to as calling for a conclusion of the witness and incompetent.

A. Why I would have no means of knowing anything about it.

Q. You do not know anything about it?

A. I don't know anything about that part of it.

Q. During the two weeks or month you worked prior to that time do you know whether you were paid by the Narrow Gauge Railway Construction Company or by the St. Louis, Des Moines & Northern?

A. I was paid by Mr. Litten out of F. C. Kinney's office the train dispatcher and my recollection would be, which I couldn't be positive just to say point blank that I was correct that it was by the St. Louis, Des Moines & Northern. I remember where it was and what I was doing, but what that bill head read I can't say.

Q. I did not ask you about that. I do not care anything about it except it is not material and makes a lot of record for us. Were you working under Mr. Kinney first?

A. Yes, sir.

Q. Did you know that Mr. Kinney at that time was working for the Narrow Gauge Railway Construction Company?

A. I did not.

Q. Now I have a voucher here which has been marked Exhibit "B" for the month of July, 1881 which shows apparently —or a duplicate voucher—that at that time Mr. W. O. Litten was a clerk for the Narrow Gauge Railway Construction Company, contractors, under the pay roll made out for Charles F. Loweth and others. Is that the Litten you refer to?

A. Yes, sir.

Q. He was the man you got your pay from? A. Yes, sir.

Q. Were you under him? A. Well not—

Q. Who was your immediate superior?

A. Jim Martin was the man I was under direct and we was all under Mr. Kinney, he was the head man.

Q. Now if it turned out that Mr. Kinney was working for the Narrow Gauge Railway Construction Company, who would you say you were working for?

Objected to as calling for a conclusion of the witness and argumentative and immaterial.

A. I should then have to say that I was working for Mr. Kinney and wherever he was employed.

Q. Now you said that the St. Louis, Des Moines & Northern was building this road. If it turned out that the contract with Raymond & Campbell was with the Narrow Gauge Railway Construction Company would you still think the St. Louis Des Moines & Northern was still building this railroad or would you say that the Narrow Gauge Railway Construction Company was building it?

Objected to as calling for an opinion and conclusion of the witness and being immaterial and incompetent.

A. Well I would have to acknowledge that I was working for the Narrow Gauge Construction Company. But at the same time I would say we was misled.

Q. Your understanding was, or you thought you were working for the Railway company?

A. Yes, sir; that was the understanding at the time that we was working for the St. Louis, Des Moines & Northern.

Q. Not that you were working for the St. Louis, Des Moines & Northern but Raymond & Campbell were building bridges for the St. Louis Des Moines & Northern?

A. Yes, that is it.

Q. You do not know anything about their contract or who it was with?

A. We are not supposed to know anything about the contractor's contract.

Q. That is what I thought when you were asked to tell who was doing it.

A. If I had a man working for me and he wanted to know about the contract I would get rid of him in a short while.

Q. Can you tell us just how far west the track was laid during the year 1881?

A. No, sir. Let's see, hold on. It was finished in 1882. It must have been laid to the High Bridge.

Q. And the bridge was incomplete and they stopped during the winter? A. Yes, sir.

Q. And went on next spring and finshed the bridge and laid the track into Boone during the early summer? A. Yes, sir.

Q. Now your statements there was not any broad gauge track west of the river prior to 1882 was based on your inference was it not that they would not build the broad gauge track over here before that Des Moines river bridge was completed in Des Moines?

A. I think this third rail was laid here if you call that before that. My remembrance is that rail was laid some time before it was used.

Q. And do you remember also—

Judge Cook: Let him finish.

Mr. Guernsey: Haven't you finished?

A. Yes, sir.

Q. The broad gauge engines used the same round house as the narrow gauge engines did?

A. I don't know about that I couldn't say. I presume they did, but that was out of my line of business then, and at that time I was working for Raymond & Campbell and wasn't looking after the engines.

Q. You do not remember what, if any broad gauge track or third rail was laid to get them into the round house?

A. I don't remember whether there was any way to get down to the round house or not. I don't remember about that.

M. A. Hills.

Judge Cook: Complainant offers and introduces in evidence the direct examination of M. A. Hills from the aforesaid transcript, commencing at page 131 thereof and ending near the bottom of page 141 thereof, as follows:

"M. A. HILLS, called and sworn on the part of plaintiff and examined in chief by Mr. J. C. Cook, testified as follows:

Q. Where do you live at this time? A. 569 Clark street.
Q. Des Moines. What is your present occupation?
A. Taking life easy. I do a little bit of fire insurance.
Q. What is your age?
A. I will be 73 years old the 27th of April.
Q. Did you have anything to do with the building of the narrow gauge railroad from Des Moines to Boone?
A. Yes, sir.
Q. What was your—where were you living at that time?
A. I was living in Boone.
Q. What was your occupation in Boone at that time?
A. I had been a machinist.
Q. What was the first work that you did for the railroad company that built that Des Moines-Boone line. The narrow gauge?
A. I circulated a petition among the fre holders to get a tax for them up there for the building of the St. Louis, Des Moines & Northern Railroad.
Q. That was at Boone? A. At Boone.
Q. Who employed you to do that?
A. J. S. Clarkson and J. S. Runnells.
Q. Did they go to Boone to employ you? A. They did.
Q. After you had done that work and the tax had been voted were you employed to do anything for that company, the St. Louis, Des Moines & Northern Railway Company?
A. I received a telegram to come here and take a position in charge of the machinery department as master mechanic.
Q. Who did you receive that telegram from?
A. My impression is J. S. Clarkson.
Q. Do you know whether J. S. Clarkson at that time was the president of the St. Louis, Des Moines & Northern Railway Company? Or one of the principal officers?
A. I understood he was.
Q. What year was that in? A. 1881.
Q. And what time of the year 1881 was it that you came from Boone to Des Moines to engage in the service of that railroad company?
A. The last of May or first of June. The exact date I do not remember.

Q. What was the first work you did when you came here?

A. I was assigned to take charge of a gang of men straightening up an alley from the river front through the city here.

Q. Yes, sir. Yes, sir. Was that along an alley?

A. Yes, sir.

Q. And do you remember Heath's Oat Meal mill?

A. Yes, sir.

Q. Where was that situated?

A. On the corner of Fifth and the alley here.

Q. That is east of the present Union station? Union depot?

A. It is on this corner right over here.

Q. And east of the court house?

A. On the southeast side of the alley and east side of Fifth street.

Q. And east of the court house? A. Yes, sir.

Q. That is the county court house where we are now?

A. Yes, sir.

Q. Do you remember whether Mr Loudermilk helped you in that work of clearing away the alley?

A. Why yes sir; I remember that he worked with me and for me.

Q. Worked in your gang for a while? A. Yes, sir.

Q. Do you remember of his then leaving that work and going into the bridge building?

A. No, I don't know that I do that particularly.

Q. Now after that work was done of clearing the alley what next did you do?

A. I took a gang of laboring men and went to work and opened up the right of way all along down through here on down through away over to—well to where the Coon river bends around and the railroad runs east a mile and a half or two miles. Acted as section boss.

Q. That work of clearing began here at the east meal mill as I understand you?

A. Yes, sir. Well east of the oat meal mill.

Q. And extended through the city as far as there was any buildings or lots abutting on the alley?

A. We tore the fences down and graded the ground and made fills where it needed it.

Q. On which side of the alley did you tear away fences?

A. My memory is on the—

Q. North side?

A. North side of the alley. I can give an instance if the court wants it.

Q. No, that will not be necessary. After you had cleared away the right of way—or the ground for laying the track,

did you also—or as that was going along did you also level the ground for the ties and iron?

A. Yes, sir; brought it down to a practical grade.

Q. Had grade stakes been set by the engineers at that time?

A. I think they had, yes, sir.

Q. And you went as far west as there was any building or buildings or lots abutting upon the alley?

A. We went beyond that.

Q. And how far west of the water works did you go in that work of clearing?

A. From a mile to a mile and a half before we got engines here or anything for me to do in the machine department.

Q. How far then west—then would you say that the right of way was cleared and grading done upon it as far as a mile and a half west of the water works when you quit that work and went into the machinery department?

A. Well I will say a good mile.

Q. What time of the year was it you went into the machinery department? A. That is pretty hard to answer.

Q. Yes. A. It is so long ago, but—

Q. Can you tell by the state of the weather?

A. I would say sometime in July or August. It is pretty hard to tell.

Q. When you went into the machinery department had there been any grading down out towards Clive beyond this place you say you worked?

A. The grading gang continued right along all the time.

Q. They were still farther out? A. Yes, sir.

Q. When did you notice that the work of track laying began in Des Moines for the narrow gauge? The Boone line?

A. It is a hard question to answer definitely when they did.

Q. But about what time of that summer of 1881?

A. Well during the summer some time and perhaps the latter part of July or August.

Q. Of 1881? A. Yes, sir.

Q. How near to the Des Moines River was that narrow gauge track laid during that summer of 1881 according to your recollection?

A. My recollection is about west Fifth street.

Q. About the first street on the west side of the Des Moines river? A. Yes, sir; running west.

Q. Did it extend from that point on through westward?

A. Right on through west.

Q. Was that a narrow gauge track laid there?

A. It was.

Q. About what time of that year do you think they—did they bring an engine here and cars to put on that narrow gauge track in the work of construction?

A. It is pretty hard for be to answer definitely, but some time during the summer, say during August or first of summer somewhere.

Q. When the work of track laying was going on with engines and cars at what point in the city of Des Moines did that work train start in going west?

A. Out about the old round house ground or 12th street or down about that section.

Q. And when did they begin to—or when did they commence coming down here to where the Union station now is to the old brick building?

A. They came to an old brick building. The passenger trains—or the trains run up as far as the old brick building located—to my memory—well it was anyway on the alley, an old church building.

Q. That was the one that was afterwards used as a passenger station until the Union station was built? A. Yes.

Q. And it was on the ground about where the Union depot now is? A. Yes, sir.

Q. What I would like to get at is if you can remember—

(Question withdrawn)

Q. Did you go with the work train after the engine came here? The machinery came here so you went into the machinery department?

A. No, sir. After the engine came here and the machinery department got established I stayed and took charge of the St. Louis Des Moines Northern engines and machinery department. Blacksmiths and everything of that kind.

Q. Did you go out on the construction trains occasionally to where they were laying the track?

A. Sometimes, yes, sir.

Q. How far had the track been laid on the Boone line when the work was stopped for the winter if you know?

A. My memory is at fault on that really, but it seems to me that it was—I couldn't answer that definitely. Some distance out.

Q. Beyond Clive you mean?

A. I would think so.

Q. Do you know what time of the year the road from Clive to —from here to Clive and on the Waukee was completed or was built so cars could run on it?

A. No, I do not on the Waukee branch? I wasn't connected with that I was on the St. Louis Des Moines and Northern, strictly.

Q. The Boone line? A. Yes, sir.

Q. When this narrow gauge track was laid down here to the oat meal mill on east of that, was there any standard gauge rails laid at that time?

A. No, sir; not until afterwards.

Q. Do you remember what time the bridge across the Des Moines river in the city here was built by the Des Moines and Albia line?

A. I don't remember the date.

Q. But about what time of year?

A. Really I couldn't answer intelligently just about what time it was. I know after it was built there was a third rail laid.

Q. To go out to the round house?

A. Yes, sir.

Q. Did the standard gauge engines go into that round house at all until 1882?

A. Well there was standard gauge engines on the track that they could enter over a switch the Rock Island put in, for hauling in ties and material about Eleventh street.

Q. I mean were there any of the Albia line engines?

A. No, sir.

Q. They did not come to the west side until the bridge was built I suppose?

A. No, sir. If they did they came over the Rock Island track to bring freight.

Q. Now when the Albia line was completed to Des Moines or the engines of that line—the standard engines from that line—the Wabash engines then coming and the use—

A. They put in a third rail and same over this line?

Q. How long had that round house been built and used by the St. Louis Des Moines & Northern Railway Company before the Wabash railway came there?

A. The first winter we had no round house. I had men and stayed with the engines all night and took care of them.

Q. That is the narrow gauge engines?

A. Yes, sir. We had but two as I remember right. An old mogul and what we called a dinky engine. And a gentleman who was watching for the Rock Island and two other young men took care of them that winter.

Q. The round house then was built after the first winter?

A. Yes, sir; that is my memory.

Q. About what time the next year 1882 was that round house built?

A. I couldn't answer definitely, I don't remember.

Q. Was it built some time before the Wabash came in from the east at all?

A. Really I don't know.

Q. Whereabouts was the place in the city here where the material was delivered by the Rock Island to the St. Louis, Des Moines & Northern Railroad Company or the contractors of that company. I mean the Rock Island?

A. Well I should state practically from Eleventh street east and west and on the south side of the track.

Q. South side of which track?

A. Narrow Gauge, St. Louis Des Moines & Northern.

Q. Was that the place the St. Louis, Des Moines & Northern or the contractors received the material for the building of the road and bridges?

A. I think it was, yes, sir.

Q. Do you remember which direction from Eleventh Street the narrow gauge track was first laid, whether it was laid eastward from there down to the oatmeal mill or whether it was laid westward first?

A. I think it was laid from the river on down west.

Q. That is from the Des Moines river westward?

A. Yes sir.

Q. Now do you know whether—or did you use stationary? Printed letter heads and printed heads for bills and reports?

A. No, sir. I acted also purchasing agent for them here.

Q. In the purchasing of what?

A. Materials for the shops and blacksmiths and buying everything necessary.

Q. You had charge of the mechanical and motive department?

A. Yes, and tie inspecting and trains and boarding houses on the line.

Q. How were the engines and cars of the narrow gauge road marked? What lettering?

A. St. Louis, Des Moines & Northern.

Q. And was that the marking of them when they came here to the city?

A. I think not. I think they were marked afterwards.

Q. Marked here? A. Yes, sir.

Q. Do you know whether they were second hand cars or new? A. They were.

Q. Second hand cars? A. Yes, sir.

Q. So the first engine and cars that narrow gauge company had were second hand cars?

A. Yes, sir.

Q. And they were painted and marked after they came here? A. Yes, sir.

Q. St. Louis, Des Moines & Northern Railway Company?

A. Yes, sir.

Q. And what railroad company operated the line of railroad then from the passenger station here at Fifth street westward to Clive and on north towards Boone?

Objected to as calling for a conclusion and not for facts.

A. St. Louis Des Moines & Northern.

Q. When did they begin operating it in the way of taking passengers or freight?

A. Sometime in the early 1882 and I forget just when, I couldn't recall.

Q. Did they do anything of that kind in 1881 as far as Clive?

A. I think not. Might have, but I think not.

Q. Did the St. Louis, Des Moines & Northern Railroad Company operate the road from in the vicinity of Fifth street in the City of Des Moines westward to Clive and on towards Boone before the Wabash bridge was built in Des Moines across the Des Moines river?

Same objection.

A. They operated so far as the construction was concerned.

Q. You say they began taking freight and passengers at least as early as 1881. Did they do that before the bridge across the Des Moines river in the city here was built?

Objected to because the witness did not say 1881. He said 1882.

Q. I mean 1882. Just change that.

A. I think not.

Q. They operated it for construction purposes then?

A. Yes, sir.

Q. And you had nothing to do with the freight or traffic department I suppose in any way of that company?

A. No, sir.

Q. So they might have taken freight and passengers even as far as Clive and Waukee even in 1881 and you not be aware of it?

A. *I wouldn't have known it.* Not necessarily.

Q. Can you tell me when the first—when the third rail was first laid you spoke of, the third rail having been laid on the narrow gauge track to the round house?

A. I couldn't give you the exact date.

Q. About what time of the year?

A. Well my memory would be some time in the next spring, 1882, somewhere along there.

Q. Was that done before or after the bridge in Des Moines here was built? A. I think so.

Q. You think it was laid before that?

A. Yes, sir.

Q. So you think it was laid some time before the Wabash engines used it?

A. Yes, sir. Preparatory for their use.

Q. Yes it was prepared for their use. I guess that is all.

Cross Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said witness from the said transcript, commencing near the bottom of page 141 and continuing to the bottom of page 150, and offer such exhibits, if any, as were identified in connection with said cross-examination.

"Q. I understood your name was Hillis? A. Hills.

Q. Now Mr. Hills why did you take the fence away from the north side of the alley and not from the south side?

A. Because the south side didn't need grading and the north side did and in fact I do not think there was any fence on the south side.

Q. Now you think they began this track laying down by the river? A. I do sir, yes, sir.

Q. They got the material up at Eleventh street?

A. The Rock Island delivered it.

Q. How did they get it down to the river, haul it down in wagons?

A. I could not enumerate that. They might have laid tracks there and shoved it up here.

Q. Is not that what they did?

A. I couldn't tell you. I think not. I think the track laying began up here and run on down.

Q. They took the material at Eleventh street and hauled it to the river and built the track to Eleventh street instead of beginning at Eleventh street and building east?

A. Yes, sir; my memory of it, yes sir.

Q. That would have been an inconvenient way to do it would it not?

A. Possibly they had to do things inconvenient then.

Q. Was there any reason you had to begin at the river instead of Eleventh street?

A. Had to begin somewhere.

Q. I didn't ask you that. I asked you whether there was any reason. You ventured the statement you had to do things in an inconvenient way at that time. I want to know whether there was any reason why you had to begin building that track down by the river and haul the material say eleven blocks instead of beginning it right where the material was?

A. I don't know just how to answer that question intelligently.

[QA.] I want an intelligent answer or none.

Q. Then you mean to say by that you do not know of any reason that required you to begin building this track in an inconvenient way? Is that right?

A. I mean to say to the best of my knowledge and belief they did do that.

Q. I did not ask you that, I asked you whether you knew of any reason that would require them to begin building this track in an inconvenient way? A. No, sir.

Q. Who had charge of that track building?

Q. You will have to ask a man with better memory than me, I can't tell you.

Q. Did you have charge of it? A. No, sir.

Q. Did you have anything to do with it? With laying the track? A. No, sir.

Q. Where were you working when they laid the track?

A. Down below 12th street in what would be the shops.

Q. It was after you got through with all your work as a section foreman as you call it they began to lay track?

A. It was after I got through with them. Yes, sir.

Q. Now who else besides Mr. Loudermilk was working with you in this gang?

A. G3 bless your heart I can't remember.

Q. You can remember him?

A. He is a neighbor and I saw him here. The truth is four-fifth of the men I never knew at the time and never knew them since. Some Americans, some Irish and some foreigners.

Q. I see you have the right distinction. You do not class the Irish as foreigners? A. Yes, I do.

Q. You said some were Irish and some were foreigners?

A. Well what I mean by that some were American born and some Irish and some foreigners. They were laboring men I picked up from day to day as I could get them.

Q. All of this work was being done by the St. Louis, Des Moines & Northern Railway Company?

A. I so understood it.

Q. I do not want your understanding. I want to know what you know.

A. Yes, sir. The material I purchased of Seeberger was charged to the St. Louis, Des Moines & Northern.

Q. You never hear of the Narrow Gauge Railway Construction Company did you?

A. Well, I might have, but I don't remember.

Q. It did not have anything to do with this work?

A. With the construction company?

Q. With what I am talking about?

A. I want to understand thoroughly.

Q. The Narrow Gauge Railway Construction Company had nothing to do with this work did it?

A. Not with the work that I done.
Q. I mean with building this line of railroad?
A. I don't know anything about it.
Q. You do not know whether the Narrow Gauge Railway Construction built or whether the railroad built it?
A. I understood the—
Q. I do not want what you understood, I want what you know.
A. I think I know the St. Louis, Des Moines & Northern built it.
Q. Then you know that the Narrow Gauge Railway Construction Company had nothing to do with it do you not?
A. No, I didn't say that at all.
Q. What did the Narrow Gauge Railway Construction Company have to do with it?
A. I don't know anything about that.
Q. You never heard of that company?
A. If I had I have forgotten.
Q. Yes. Now what relation did Mr. Clarkson sustain to that company? The Narrow Gauge Railway Construction Company?
A. I understood he was one of the men in charge of the building of the St. Louis, Des Moines & Northern Railway.
Q. That is not my question? What relation did he sustain to the Narrow Gauge Railway Construction Company?
A. I don't know anything about the construction company at all.
Q. Never heard of it?
A. I wouldn't say I didn't. I might have at the time.
Q. Now did Mr. Kinney have anything to do with this work you were engaged in? A. E. C. Kinney?
Q. Yes. A. I think he did.
Q. What did he have to do with it?
A. Well I couldn't tell you what position he held. Really I couldn't but he was apparently at the head of the department.
Q. You do not remember that very well.
Q. Who was there that was at work there besides Mr. Loudermilk during the time you worked here? That was in charge of things or did work?
A. There was Mr. Martin.
Q. Who else?
A. And I forgot the section man's name and others.
Q. Who were the people that were above the section men?
A. There was the train master his name was Litten, I believe.
Q. Who else was there?
A. I will never tell you for I forget them. Those in close connection with me I remember. The others I do not.

Q. Was that W. O. Litten?

A. I forgot his initials even, but he was trainmaster.

Q. How were these narrow gauge engines marked when they came to you?

A. My memory is they were marked from a road down at Cairo.

Q. What was the mark on them?

A. I couldn't tell you. I don't remember the line they were bought from Cairo, Illinois.

Q. When you acted as purchasing agent from where did you get your money?

A. The bills were paid from this headquarters up here. I don't know who paid them.

Q. That was Mr. Kinney's office?

A. I think he had an office there, yes, sir.

Q. And that was the office where Mr. Litten was?

A. The telegraph office was there. I had an operator also down at the round house.

Q. Where did you get your pay? From this same office?

A. Yes, sir. From the headquarters of the St. Louis, Des Moines & Northern.

Q. Yes, sir, that is—

A. That is my understanding.

Q. You have told us that several times. And that was true from the very first of it, was it not. When you were working on this section. The Narrow Gauge Railway Construction Company had nothing to do with it as far as you know? A. I don't know anything about it.

Q. What was the name of the road that built in from the east?

A. From the east? I don't believe I can refresh my memory and tell you what it was.

Q. What was the name of the road that run to Waukee?

A. That was called the Des Moines & Northwestern, if I remember right.

Q. And then there was this other road that run to Boone, you remember that?

A. The St. Louis, Des Moines & Northern.

Q. This narrow gauge track was laid in the alley here you say. What alley was that, the alley where the bridge across the Des Moines river in Des Moines was located?

A. It is the same alley that the road runs over now.

Q. So the bridge that was built—I am not talking about now. I am talking about then. So the bridge that was built then located at the end of this alley where this alley reached the river? A. Why I would think so.

Q. You do not know?

A. Oh thirty years is a good while.

Q. I know but you remember where this track was and when this bridge was finished and all that, now do you not remember where the bridge was?

A. There was no bridge there when the track was laid.

Q. Do you not remember where the bridge was?

A. Where it was?

Q. Where it was?

A. There was no bridge there when the track was laid.

Q. Was there a bridge ever built there? A. Yes, sir.

Q. Where was it built?

A. Right east of where the track was laid.

Q. That is what I asked you.

A. I didn't understand it that way.

Q. As soon as this bridge was built this narrow gauge track was extended on east as I understood you?

Objected to as assuming something the witness has not stated.

A. Well I didn't say it was.

Q. Well was it ever extended on east across this bridge?

A. It might have been in the yard, but I don't think there was a general track laid.

Q. I do not know what you mean by that, but what I want to know is whether this narrow gauge track was ever extended east across this bridge that you have referred to?

A. I would say no.

Q. Never was? Were narrow gauge cars ever operated east across that bridge and narrow gauge engines?

A. Can I qualify that a little bit and tell them how far it might have been used?

Q. Tell what you know.

A. I say my impression is after thirty years they had a yard and run cars over into the yard. What we call the railroad yard.

Judge Cook: That is on the east side of the river?

A. Yes.

Mr. Guernsey: Then your impression is they did have a narrow gauge track across the bridge?

A. They might have had. I wouldn't swear they did have, but they might have had. It is a long time to remember, thirty years.

Q. I agree with you on that. A. Yes, sir.

Q. Now then what trains was it that they—that started at this station on Fifth street here? A. On Fifth street?

Q. Yes. A. The St. Louis, Des Moines & Northern.

Q. I know, but did all of the work trains start there?

A. At the time I speak of they did.
Q. Where did they get their material to load them with?
A. The rails and ties?
Q. Yes.
A. They were delivered in the yard below here by the Rock Island.
Q. They started the trains here did they at the station?
A. Naturally they would get their orders here and pull down and load up and go on out.
Q. I am not asking about naturally, I am asking you what they did?
A. They got their orders here and stopped down to the pile of ties or rails or whatever they wanted and loaded and went on out, but they had to come to the depot to get orders of Mr. Litten.
Q. So what you mean is they went to the station to get their orders and then went out? A. That is it.
Q. These trains got these orders from the same Mr. Litten we have been talking about? A. I think so.
Q. And all of the trains you have been talking about got their orders from him?
A. I don't know about that. All the trains on the St. Louis, Des Moines, & Northern so far as I know did.
Q. When did you leave the company?
A. I forget whether it was 1887 or 1888, but I will say 1887.
Q. While you were with the company how far west did the narrow gauge track go?
A. You mean the St. Louis, Des Moines & Northern?
Q. No, I mean the broad gauge track. While you were with the company how far west was the third rail laid?
A. I couldn't tell you.
Q. Have you no recollection of it at all?
A. Something I never thought of.
Q. Can you tell us how far west it was laid in 1882?
A. The standard gauge?
Q. Yes. A. No, sir.
Q. Or how far west it was laid in 1881?
A. No, sir; I won't try to answer it.
Q. Or how far west it was laid in 1883?
A. I don't remember when they changed from narrow gauge to a standard gauge.
Q. The whole thing had become broad gauge before you left there, had it not?
A. I couldn't answer it. I don't remember anything about the gauge part of it.

Witness excused."

C. W. Gooch.

Judge Cook: Complainants offer and introduce from said transcript the testimony in chief of C. W. Gooch, beginning on page 151 thereof, and ending on page 158 thereof, as follows:

"C. W. GOOCH, called and sworn on the part of plaintiff and examined in chief by Mr. J. C. Cook, testified as follows:

Q. Where do you live? A. 1325 West Ninth street.
Q. In the City of Des Moines? A. City of Des Moines.
Q. How long have you lived here in the city?
A. Since I first came here?
Q. Yes. A. Since July, 1878.
Q. Did you ever work for the St. Louis, Des Moines & Northern Railroad Company? A. Yes, sir.
Q. On the building of this narrow gauge road between Des Moines and Boone? A. Yes, sir.
Q. Do you know whether in your employment you worked for the railroad company direct or for a construction company that was building the road for the railroad company?
A. Well the department I was under was under the engineering department.
Q. Who was the head of the engineering department?
A. E. C. Kinney.
Q. In what year did you begin working on that narrow gauge road? A. In September, 1881.
Q. Now, at that time were you living in Des Moines?
A. Yes, sir.
Q. At that time had the narrow gauge track here been laid here in the city? A. Here in the city?
Q. Yes. A. Yes, sir; at September it was.
Q. When you began to work then to what point here in the city had the narrow gauge road been built and track laid?
A. At what point?
Q. Yes, here in the city.
A. Well I couldn't state positively other than we took a train down out of—out about the water works. Fourteenth street.
Q. Where did you live then with reference to the water works?
A. I boarded at 12th street just along the Rock Island track.
Q. Twelfth street on this side? A. Yes, sir.
Q. Whereabouts was the place where the material, the construction material, ties, iron and bridge material was piled up at this end of the line? A. At what point?
Q. Yes. A. It was about from 12th to 16th street.
Q. In through there?
A. Somewhere in the locality, I wouldn't state exactly the location.

Q. Did the trains come down here to the old depot building that was afterwards used as a depot?

A. At that time?

Q. Yes. A. No.

Q. You got on then there about where the material was piled? A. Yes, sir.

Q. Was the track laid for some distance east of that at that time? A. East of where?

Q. East of Eleventh street this way?

A. If there was any track it was track that was used for storage purposes for cars and material, etc.

Q. The track did extend this way from Eleventh street as I understand it?

Objected to as leading.

A. I couldn't state.

Q. You lived out there and your work was beyond that?

A. The other side; yes.

Q. What work did you do?

A. I was employed in the bridge and building department.

Q. When you began work how far west of the city or north of the city had the tracks been laid?

A. About three miles north of Clive. Somewhere about that.

Q. And at what place did you first work on the bridge?

A. At the water works, help place a guard rail on there.

Q. That is a little bridge that is there at the water works here in the city?

A. Yes, sir.

Q. About how far west of Farnham street here in this city was that little bridge, if you remember?

A. About—somewhere about 200 feet more or less. I wouldn't state the distance.

Mr. Guernsey: Does not the plat show where it is?

Mr. Cook: Yes. Well it is the little bridge or culvert that is right close to the water works that you helped to build?

A. Just west of the old building.

Q. How is it with reference to the present water works building? A. *Well I haven't been there.*

Q. Step down here and look at this map.

A. There has been some improvements made there as to what they are I don't know.

Q. Will you look at the plat here, "Exhibit 41" and point out—there is the city water works beyond. Now point to the little bridge. This is east, here is Farnham street. Point on this map where that bridge is located?

A. Somewhere in here. The stream, runs down around this way past the building.

Q. Is that the culvert through which the waste water from the water works—the pumping station runs?

A. I couldn't say. I haven't been on the ground since the culvert was placed in there.

Mr. Guernsey: For your benefit I will tell you my information is there is no water from the pumping station. That witness that talked about that made a mistake.

Judge Cook: You mean the little bridge at the city water works?

A. Yes, sir.

Q. Des Moines City water works?

A. Yes.

Q. Did you help to put in that tile bridge?

A. No, sir.

Q. What did you help do on it?

A. Helped put the guard rail on and ties.

Q. So that the tiling had been driven and stringers laid before you began work? A. Yes, sir.

Q. Was that the first work you began at?

A. Yes, sir.

Q. That was when? In the year 1881, what time?

A. In September.

Q. Do you remember what week in September you began to work for them? A. No, sir.

Q. Sometime in the month of September?

A. Somewhere from the 5th to the 7th.

Q. At the time you began working on that bridge could the cars cross over it? Was the rail laid?

A. Yes, sir.

Q. And you helped simply to finish the bridge?

A. Yes, sir.

Q. Who were you working for?

A. J. A. Martin.

Q. That was that foreman?

A. He was superintendent of the work.

Q. And were you working for the railroad company or for the construction company or for the bridge company, Raymond & Campbell?

A. I was working for the railroad company, I was not working for Raymond & Campbell.

Q. Who paid you?

A. Who paid? As I remember we drew out checks down here at the Polk & Hubbell building on Fifth street. I do not remember who they were signed by.

Q. Were the officers of the railroad company and people engaged in the construction of the road at that time in the Polk & Hubbell building here in the city, the officers?

A. No, they were up stairs in the building where the present railway station is.

Q. Was that in a brick building? A. Yes, sir.

Q. Down here by Fifth street? A. Yes, sir.

Q. Did you go to that office occasionally?

A. Sometimes, not often.

Q. I will ask you whether at that time the track—the narrow gauge track was not laid clear down past that office and to the Heath Oat Meal Mill?

Objected to as leading.

A. I don't think it was.

(Question withdrawn)

Q. How long in the year 1881 did you work for the railroad company? The St. Louis Des Moines & Northern?

A. I don't just remember the exact time. I was with the system for a number of years.

Q. You continued then? A. Yes, sir.

Q. Did you help complete the bridge across the Des Moines river? High Bridge?

A. High Bridge?

Q. Yes, sir. A. Yes, sir.

Q. That is a little ways this side of Madrid?

A. Yes, sir.

Q. When was that completed so that cars could run over it?

A. That was in the spring of the following year after I started in here.

Q. That would be in the spring of 1882?

A. Yes, sir.

Q. When did you quit work for that winter? The winter of 1881 and 1882? A. Where?

Q. When? About what time of the winter of 1881 and 1882 did you quit work for the winter?

A. I wouldn't state positive but I think it was in December some time.

Q. At that time how far—how near to the Des Moines river at High Bridge was the Boone line track laid? The narrow gauge?

A. About the time I quit? I couldn't say.

Q. Did you go out and—go out and come in over the train? Work train? A. Yes, sir.

Q. Think a moment and see how far did you have to walk from the end of the track to the bridge or did you go to the bridge? A. Where at, High Bridge?

Q. High Bridge. Or had you begun working on the high bridge?

A. I begin working on the high bridge I think it was in March.

Q. The track was laid to the station there they called Kelsey?

Q. About how far was that from the Des Moines River at High Bridge? A. Kelsey?

Q. Yes.

A. About two miles or a mile and three quarters.

Q. Did you work at the Des Moines river at any time before the spring of 1882? A. No, sir.

Q. Was that before you—during 1882 you worked this side of the Des Moines river? A. Yes, sir.

Q. How far from Clive was the last work you did the fall or winter or 1881 before you began work the next spring?

A. I couldn't state.

Q. But you do remember helping to build this little bridge here by the water works? A. Yes, sir.

Q. And that was the first work you did? A. Yes, sir.

Q. At the time you worked on that bridge was there anything more there tha the two rails of the narrow gauge track?

A. That was all.

Q. Was there any third rail laid across that bridge at that time? A. Not at that time.

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said Gooch, commencing on page 158 of said transcript and ending at the bottom of said page, as follows:

"Q. Did you ever hear of the Narrow Gauge Railway Construction Company?

A. Of what Narrow Gauge?

Q. Of any Narrow Gauge Railway Construction Company?

A. I have heard of a number of them different times.

Q. Did you ever hear of one in connection with the building of this road you have been talking about?

A. St. Louis, Des Moines & Northern?

Q. Yes.

A. There was another one built about that time, yes.

Q. Did you ever hear of a Narrow Gauge Railway Construction Company that was concerned with the building of the St. Louis, Des Moines and Northern Railway?

A. No, sir; I don't remember of any construction company.

Q. Then so far as you know there was no construction company that had anything to do with the building of that road?

A. Not that I know of.

Q. You were working under Mr. Kinney?

A. He was the head. The man who I worked under. Reported to and received orders from Mr. Kinney.

Witness excused."

E. W. Raymond.

Judge Cook: Complainants offer and introduce from said transcript the examination in chief of E. W. Raymond, beginning on page 159 thereof and ending near the bottom of page 165, as follows:

"E. W. RAYMOND, called and sworn on the part of the plaintiff and examined in chief by Mr. C. E. Vroman, testified as follows:

Q. What is your residence?
A. At present at Toronto, Canada.
Q. What is your occupation?
A. I am connected with the manufacture of an ointment. I attend to the manufacturing of that up at Toronto.
Q. You have been in the court room during this trial. A portion of it, have you?
A. Yes, sir; part of it.
Q. You have heard the witnesses testifying about the construction of the road, the St. Louis, Des Moines & Northern?
A. Yes, sir.
Q. Were you connected with the construction in any way at the time it was progressing?
A. I was one of the contractors. Raymond, of the firm of Raymond & Campbell.
Q. What contract did you have?
A. We had the contract for the construction of the bridges between Des Moines and Boone, including—Des Moines and Boone.
Q. Do you know who the contract was with?
A. No, I do not. That is so far as positive memory is concerned. But I have always and never had any other impression than it was the St. Louis, Des Moines & Northern Company.
Q. When did you come here? A. To do the work?
Q. Yes.
A. I remember of coming over here to Sheldahl with Mr. Kinney.
Q. What time was that?
A. It was about the time on the date I think that the cyclone that destroyed Grinnell.
Q. Can you give us any idea of the time?
A. I think it was in June.
Q. What were you doing there? Working or inspecting?

A. Went up to view the High Bridge I think, to start the work.

Q. Had the work been started at that time?

A. I think not. Not our work.

Q. Do you know what work was being done here in the city at that time?

A. I suppose not because I naturally wouldn't, not having been here.

Q. When you came here did you see what was going on here at that time?

A. I do not remember that. I do not remember what was done here.

Q. You say you had a contract to construct bridges. Did that include culverts, small bridges and large bridges?

Objected to as not the best evidence.

Mr. Guernsey: The contract was in writing was it not?

A. Yes, sir.

Mr. Vroman: You may say then whether or not you built culverts and bridges as part of your work on the line?

A. Yes, trestle bridges and we may have built all the culverts. I do not remember about that. The culverts are not the same as the pile bridge.

Q. Did you build all the pile bridges? A. Yes, sir.

Q. Do you remember a bridge at the water works which had been spoken of in the testimony?

A. I do not remember that definitely. I do have an impression, that I saw our pile driver standing up right at that site. That is my impression to drive the piles for that bridge.

Q. Were you here constantly during the time this work was going on? A. I was here a portion of every week.

Q. Where were you living at that time?

A. Council Bluffs, Iowa.

Q. So you were not on the line all the time?

A. No, sir. There may have been times that I did not come out here at all, but went to Sheldahl and over the Northwestern and out to High Bridge.

Q. This little bridge you spoke of at the water works, was that a culvert or pile bridge?

A. As I told you, my impression is I can see our pile driver now standing up there driving those piles. That is all I can say about that.

Q. When was that? A. That I cannot tell you.

Q. How long after you took this ride with Mr. Kinney would you say it was?

A. I couldn't tell you that. I couldn't give you the date of the construction of that bridge.

Q. Could you give the season of the year, or the month?

A. It would be indefinite whatever I might tell you about that.

Q. Can you say whether it was in the year 1881 or not?

A. I think it was. As I say I am very positive it was.

Q. Do you remember whether or not it was cold or warm weather at the time?

A. I think it was along in the spring time.

Q. Who was working on that bridge? Who had the supervision of the construction?

A. A man named Milo Adams, was foreman of the pile driver and this man Loudermilk was one of the workmen. He says he worked on the bridge, of course I do not remember about his working on the bridge but he was one of the workmen.

Q. You remember him. A. Yes, sir.

Q. What other workmen did you have that you now remember that had some supervision? I don't mean the ordinary laborers?

A. A man named George Wise, who came soon after that bridge was built and kind of looked after the work between here and High Bridge, and some beyond it, but he was not here when the piles were driven, but he tells me he remembers—

Q. Never mind. You cannot testify to what he said. Who else if you remember?

A. Well there was a man named Rick who was here and spent his time in Des Moines most of the time looking after the construction of the work, framing, etc., out on the line. J. W. Rick.

Q. Do you remember a man named James Sagin?

A. Yes, he was our Superintendent on High Bridge.

Q. When did you commence the construction High Bridge?

A. I went out with Mr. Kinney to Sheldahl and went to High Bridge and looked it over and the material had been ordered—if I recollect right the company had started in to do the work before they contracted with us and some material was ordered and we took some of that same material and it was soon after we took the work we commenced hauling from Sheldahl.

Q. Do you know when that was?

A. It was after June. After I came out with Mr. Kinney. I do not remember what time.

Q. Can you give us approximately the time? A. I cannot.

Q. Can you give us the month?

A. I cannot do that, no, sir; because I remember we had—remember we had the trestle all built—the approach to the

bridge before winter. We built the bridge mostly—High Bridge in the winter time.

Q. Was there any railroad line to the bridge at that time? Had the road been constructed to the bridge when you commenced building it?

A. No there was no track out—I do not remember about the track out here, I think the track was laid before we commenced to work here over some ties laid down at the opening.

Q. What do you mean by that?

A. Right here in town. Near the town the track was on openings with ties cribbed up instead of a bridge. I do not know what the extent of that was.

Q. Was that the condition before you commenced the construction of High Bridge?

A. I do not know whether that was before or afterwards.

Q. Or whether it was done while you were constructing High Bridge?

A. It might have been done while we were organizing our crew to go to work at it. It takes a little time to get the plant together to do the work.

Q. You did not get the material for the High Bridge from this line of road that was being constructed?

A. Not all of it.

Q. Did you part of it? A. I think we did.

Q. That must have been when you were finishing the bridge?

A. Yes, sir. If I recollect right the track was laid up to the bridge, during the winter so that the iron and timber for the spans were conveyed over the track: It was laid from here to High Bridge.

Q. Do you remember when that high bridge was finished?

A. No. It was finished in the spring of 1882, but I do not remember just what time.

Q. When did you finish your contract with the company?

A. That is another period I cannot fix in my mind positively.

Q. Approximately. A. Well along in the summer of 1882.

Q. Were you up and over the line more or less?

A. I used to leave Council Bluffs ever Sunday night or Monday morning and come out here and remain during the week. A greater portion.

Q. What I mean is whether you were over the line of this new road when it was built up and across the bridge. High Bridge you speak of?

A. Yes, I was back and forth. Of course with me in looking after work of that kind I saw a crew here a minute and go on to another crew.

Q. In going over the line of the new road how far down in Des Moines did you come?

A. Well after they commenced running trains out of here we came into this depot here or I believe about Seventh street is it not, somewhere along there.

Mr. Guernsey: Fifth Street.

A. Yes, Fifth street. Yes the track was laid in there or just this side of there. Not quite to Fourth Street if I remember right.

Mr. Vroman: You used to ride on that line before you had finished your work entirely?

A. Yes, as soon as the track was laid to High Bridge I used to ride up that way. I used to keep a team at Sheldahl to go from there over before that line was constructed.

Q. And after the line was built up to the bridge you used the new line to go over? A. Yes.

Q. Where would you take the car to go? Fifth street here?

A. Yes, Fifth street.

Q. Do you know anything about the Des Moines St. Louis Railway Company—railroad company?

A. I think not more than there was such a line being built into Des Moines.

Q. Did you see anything of its construction?

A. Well, I don't remember.

Q. Do you remember if this was built into Des Moines during 1881, the time you were working on the High Bridge?

A. I do not remember about that. My recollection is though when I was out this way, of course I was rambling around quite a little I remember seeing work done between here and Albia when I was doing this work here.

Q. That work on that road was going which way, toward Albia or toward Des Moines? A. I don't know.

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said witness Raymond, commencing near the bottom of page 165 of said transcript and ending on page 167 thereof, as follows:

"Q. Who was your man that was in charge of this work, Mr. Raymond?

A. I was in charge of it myself. That is general supervision.

Q. You had somebody on the job?

A. A man named Sagin who looked after the High Bridge work and had a man named Rick who looked after the other

work down here. Mr. Sagin and Rick—Mr. Rick was here in Des Moines while Sagin lived at High Bridge.

Q. You came down once a week and looked the thing over?

A. I came down Monday morning and usually stayed until Saturday night, but often I had to stay over there because I looked after our whole business. We had work going on elsewhere and I was business manager of the concern and there was some days I had to remain there but usually I came out here every week and spent all I could get part of the week here.

Q. And at this time was General Dodge living in Council Bluffs? A. No, sir; he was living in New York, I suppose.

Q. Were you acquainted with him at this time?

A. I was slightly acquainted with General Dodge. He knew of me. His brother was a personal friend of mine and I knew General Dodge was interested in this, but not in detail at all.

Q. And was it through him that you got this contract?

A. I don't know. I don't know whether he had any influence in the matter or not.

Q. Who did you negotiate with to get this contract?

A. Well that I am not positive about as to who it was. I know our—the contract was drawn up with Mr. Hubbell I think. Mr. Kinney might have done it.

Q. I was going to ask you whether Mr. Kinney was connected with these negotiations or not?

A. I do not remember.

Q. Is not this the way it happened? See if this refreshes your recollection any. Did not Mr. Kinney go over the matter with you and make a tentative agreement and arrange the details and was it not closed with Mr. Hubbell?

A. I do not remember that. I do not remember in whose presence I signed the contract but I know we were paid by Mr. Hubbell.

Q. You cannot say positively whether that contract was with the railroad company or whether a construction company was building the railroad?

A. No, I cannot say positive, but I do know I didn't know of anything else but the St. Louis, Des Moines & Northern.

Q. You say you never knew of anything else?

A. Yes. I say now I do not recollect. It may have been —I might have signed the contract with the Narrow Gauge Construction Company, but I do not remember anything of that kind."

Redirect Examination.

Mr. Cook: The Complainants now offer and read in evidence the redirect examination of said witness Raymond, beginning on page 167 and ending on page 167, as follows:

"Q. What you remember is the St. Louis, Des Moines & Northern? A. Yes.

Q. You have spoken of Mr. Rick? Where is Mr. Rick?

A. Mr. Rick was at Kansas City. He was a bridge constructor.

Q. Have you heard later where he had gone?

A. No. Somebody told me he was going to Honduras and that he could not get—could not be had here now.

Q. Mr. Adams you spoke of?

A. Mr. Wise can tell about Mr. Adams. You will see him this afternoon.

Witness Excused".

G. C. Wise.

Mr. Cook: The Complainants now offer and introduce in evidence from said transcript the testimony in chief of G. C. Wise, commencing at page 180 and ending on page 183, as follows:

"G. C. WISE, called and sworn on the part of the plaintiff and examined in chief by Mr. C. E. Vroman, testified as follows:

Q. What is your residence? A. Council Bluffs.

Q. Iowa. Were you in Des Moines in the year 1881 during the time of the construction of the line of the St. Louis, Des Moines & Northern Railway Company?

A. A portion of the time.

Q. When did you arrive here?

A. About the first of September, or early part of September.

Q. Were you connected with that construction work in any way? A. Yes, sir.

Q. In what way?

A. I was superintending the bridge work—the line bridge work.

Q. Under whom? A. Raymond & Campbell.

Q. Raymond & Campbell I understand were the contractors doing the work? A. Yes, sir.

Q. What was the condition of the line when you came here and first saw it?

A. The line was built—the bridges were built about to the junction or Clive I believe it is called, and operated about that far. I took charge of the bridge work at the Junction or very close to there. From that north on the Boone line.

Q. How far into the city did that construction extend? Rail construction?

A. It came to the street that runs in front of this court house.

Q. Fifth Street? A. Yes.

Q. Do you remember whether it extended further east or not?

A. There was a track laid I think that swung around the elevator or mill of some kind. A large building that stood there. The track turned around that but I never noticed particularly how far it went. It was a kind of a temporary track laid around there.

Q. Was it all narrow gauge construction? A. Yes, sir.

Q. When you came here did you see any broad gauge construction on that line? A. No, sir.

Q. Where was the depot or station?

A. Right here practically on Fifth street or I presume between Fifth and Sixth.

Q. When you went out to Clive and on about your work where did you take the train to go out?

A. Sometimes right here and sometimes up at the yard this side of the water station.

Q. Where is that?

A. A few blocks west of here.

Q. Do you remember the street?

A. I don't remember the name of the street.

Q. Would you remember if I suggested it? Eleventh or Twelfth street?

A. That is probably near where it is. It was five or, six blocks from here.

Q. Do you remember a small bridge near the water works?

A. Yes, sir.

Q. What was the character of that construction when you came here?

A. It was a pile bridge.

Q. You may state whether or not that bridge was within your jurisdiction?

A. It was built when I came here.

Q. Had you any occasion to examine that bridge as part of the work of Raymond & Campbell?

A. Not particularly, no, sir; more than notice it in going over it back and forth.

Q. Did you have any occasion to check up the material?

A. Not particularly in that bridge. I had a list of all bridges on the line in a little book I carried in my pocket that I would bill out from such as we needed, and the bills for every bridge were in that book.

Q. Was that little bridge at the water works in that list of bridges?

A. It is my recollection that it is.

Q. How long did you remain here?

A. Until it froze up when we quit work for the winter I think just about the holidays. I remained in the city here—I stopped in the city at night until sometime in December when I moved from here to Madrid. After I crossed the river and was doing work on the other side of the river I moved to Madrid and stayed there.

Q. When was that?

A. Sometime in the month of December.

Q. How far had the line been constructed toward Waukee or Boone when you quit?

A. The track was laid on the Boone line to the High Bridge. We had the bridges built though on the other side up to Madrid almost. Perhaps there was one or two bridges this side of Madrid to put in yet.

Q. How far was the line built towards Waukee?

A. I never was out over that line.

Q. Do you know whether the railroad bridge across the Des Moines river in the city over which the Des Moines & St. Louis road came in was constructed or built when you were here?

A. It was not built then yet, no, sir.

Q. Not yet built? A. No, sir.

Q. Was it built when you left the work?

A. I don't think so. It might have been a portion of the foundation in possibly but the bridge was not completed.

Q. Do you remember or were you here when they put in the third rail for broad gauge or standard gauge construction?

A. I don't remember it.

Q. You do not remember while you were here of seeing a broad gauge or standard gauge construction upon the ties of the St. Louis, Des Moines & Northern line?

A. No, sir; I am not sure there was one, not while I was here in the city."

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said above witness, commencing at page 183, and including page 184, as follows:

"Q. You were employed by Raymond & Campbell?

A. Yes, sir.

Q. And they were the only people by whom you were employed on this work? A. Yes, sir.

Q. You have not any definite recollection of track east of the old station aside from this temporary track about the oat meal mill there? A. That is all.

Q. You had nothing to do with this pile bridge near the water works yourself?

A. No, sir; I had nothing to do with the building of it.
Q. How long did you stay at Madrid?
A. I think about three weeks.
Q. And then you left permanently?
A. I left for good and went home.
Q. You went up there in December, 1881? A. Yes, sir.
Q. Do you know when the bridge across the Des Moines river in Des Moines here was built or completed?
A. No, I do not.

Witness excused."

James Saguin.

Mr. Cook: The Complainants now offer and introduce in evidence from said transcript the testimony in chief of James Saguin, commencing at page 185 and ending near the top of page 188, as follows:

"JAMES SAGUIN called and sworn on the part of the plaintiff and examined in chief by Mr. C. E. Vroman, testified as follows:

Q. Where do you live?
A. Council Bluffs, Iowa.
Q. What is your business?
A. Railroad bridge contractor.
Q. Were you in the city of Des Moines in 1881 while the line—railway line of the St. Louis, Des Moines & Northern was under construction? A. Yes, sir.
Q. What time did you come?
A. Along the forepart of August, 1881. Some time in August, I don't know the exact date.
Q. What connection did you have with the building of that line?
A. I came here from St. Louis to take charge of the building the Des Moines river bridge above Polk City.
Q. Is that the bridge known here as the High Bridge?
A. Yes, sir.
Q. Did you note the conditions of the line in the city of Des Moines when you came here?
A. I was down there with the men that had charge of the work several times and rode out with them along the line five or six miles.
Q. At that time how far up into the city was the line?
A. Well I couldn't say. I know it run this side of the water works four or five blocks and there was a narrow gauge track laid in there and broad gauge track right beside of it. The narrow gauge track was laid in kind of a depression and they rolled the timbers down there and loaded it.

Q. Where was that broad gauge? Down by Eleventh street?
A. I do not remember the streets it was this side of the water works.
Q. Was that where the material was unloaded from the trains? A. Yes.
Q. Do you know whether that broad gauge track was the Rock Island line?
A. I do not remember. I think the material came in on the Rock Island road.
Q. Was it a switch track or side track?
A. It was a side track where they would run five or six cars.
Q. Broad gauge cars?
A. Yes, with iron and stuff and unload it.
Q. Did you see any broad gauge construction anywhere else along the line of the narrow gauge construction?
A. Not when I was there. There was other tracks further out towards the river I think.
Q. Was there any third rail put on if you remember in the narrow gauge right of way?
A. I do not remember that no.
Q. When you came into the city and went out where did you leave or take the train?
A. I took the train on Northwestern and went to Polk City.
Q. You did not use the narrow gauge line?
A. No the track was only laid about four or five miles if I remember right when I came here.
Q. How long did you remain here?
A. From the latter part of August till the next April till the High Bridge was done. Finished complete.
Q. Worked on the High Bridge during the winter?
A. Yes, when it was not too cold so we could work.
Q. Do you remember whether the narrow gauge construction had reached the bridge before it was built? Constructed? Completed? A. Yes.
Q. Do you remember when they got there?
A. I think about the holidays. I know they brought up the spans and iron from the spans across the river on the narrow gauge road. The intention first was to ship the stuff up on the Northwestern to Polk City and haul them up and that material came in slow and they got the track up there and shipped the material from here up on the bluffs to High Bridge.
Q. Did you, when you were here, observe whether a railway bridge had been constructed across the Des Moines river in Des Moines?
A. No they had started one I think about that time. The Wabash bridge if I recollect right.
Q. What do you mean by that time?

A. In the fall of 1881 or 1882. I know they were talking about building a bridge here.

Q. For what line?

A. I think they called it the Wabash bridge.

Q. Did you hear anything about the Des Moines & St. Louis Company from Albia?

A. Yes, there was such a line talked of.

Q. Was that the line the bridge was to be constructed for if you remember?

A. I can't say. I know there was a bridge to be built here but I can't remember whether it was the Wabash.

Q. That bridge was not built when you came here?

A. No. They were talking about starting it and a fellow wanted me to apply there for a job. I said no I did not care for it.

Q. When did you complete High Bridge?

A. I think April 1882, and I was there till they laid the track over the bridge and got to laying track towards Madrid."

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said witness, which is set out on page 188 of said transcript, as follows:

"Q. You say you remained here from August until April. Do you mean in the City of Des Moines?

A. No up to High Bridge. I was only here about a week and then I went up there and I wasn't back until after they got the track laid and I rode down from the bridge to Des Moines on the Narrow Gauge.

Q. That is what I thought. Your work was on that bridge up there entirely?

A. Yes, sir.

Q. You did not have any work here in Des Moines?

A. No, I was around here a week and the foreman that had charge of the work he and I used to work together and he had a team and was hauling timber out on the line and I went out with him three or four times.

Q. You had not any special interest in the things here?

A. No, I had not.

Q. You spoke about the fact they were talking about starting this Wabash bridge and somebody suggested you apply for a job. That was when you came here in August, 1881?

A. No, it was the next spring. I had got through at High Bridge.

Q. You think then that bridge had not been started in April, 1882?

A. I do not think it had. They were about to start it, I think. I know there was some talk about the bridge.

Witness Excused".

Ed Mellin.

Mr. Cook: Complainants offer and introduce in evidence from said transcript the testimony in chief of Ed Mellin, beginning on page 189, and ending on page 192 of said transcript, as follows:

"Ed MELLIN called and sworn on the part of the plaintiff and examined in chief by Mr. C. E. Vroman, testified as follows:

Q. Where do you reside?

A. Des Moines, Iowa.

Q. I infer from your uniform that you are on the police force in the city of Des Moines? A. Yes, sir.

Q. How long have you lived in Des Moines?

A. I have been here the majority of my time since 1869.

Q. You were here then in 1881? A. Yes, sir.

Q. And you were here when the line of the St. Louis, Des Moines & Northern was commenced and built? A. Yes, sir.

Q. Were you connected in any way with the construction of that line? A. I worked awhile on the bridges.

Q. When did you begin?

A. As near as I can recollect along about the second week in July of 1881.

Q. What bridge did you work on first?

A. It seems to me the first bridge I done any work on was to help deck a little bridge at the water works.

Q. What do you mean by decking?

A. Putting on the ties and lining it up and putting on the guard rail.

Q. What kind of bridge was it when you did that work on it?

A. My best recollection it was either two or three spans.

Q. A pile bridge? A. Yes, sir.

Q. Do you know what kind of bridge had been there prior to the putting in of the pile bridge? A. Only from hearsay.

Q. Had you observed the commencement and construction of this road before you went to work for it?

A. Well some yes sir. I had been over there looking around like a great many other visitors as a narrow gauge road was something the people looked at here a little bit. Went over maybe Sundays and looked around a little bit.

Q. It was a curiosity at the time?

A. I had been over there once or twice before I went to work to get a position there.

Q. In June or July what was the condition as to its construction? What had been done as far as you then observed and now remember?

A. My recollection is the rails were laid at that time down about as far as West Fifth street and then I couldn't say how far west for I did not go out over the line for possibly about possibly two months.

Q. As far west as you went?

A. I didn't go out over the line for possibly two months any farther than the water works. I think that was my first work. I was working here in the yard on framing ties. We framed a whole lot of them and shipped them out and went out and decked bridges out on the line.

Q. When you went out two months later where was the—to what point had the line reached if you remember?

A. It went out as far as Clive.

Q. All narrow gauge construction? A. Yes.

Q. Was there any other line on that same right of way at that time? A. No, sir.

Q. Do you know if the railroad bridge across the Des Moines river in the City of Des Moines subsequently used by the Des Moines and St. Louis Railway Company was built in the summer of 1882?

A. They had commenced with it late in the fall on the east side.

Q. How do you know about the bridge?

A. Well I know from—in the first place from being called over there to tear down some buildings that were on the right of way on the east side of the river and we were secreted around the tules and piles and timbers that was piled up on the east side of the river for the purpose of building that bridge across the river.

Q. You were not there for the purpose of building the bridge? A. No.

Q. The timbers? A. The timbers were there.

Q. There was some trouble about the right of way over there? A. Yes, sir.

Q. Some buildings in the way of the construction and the owners were opposed to moving them? A. Yes, sir.

Q. When was that?

A. My recollection is that was along in the latter part of September or October I wouldn't say positive about that. Either the latter part of September or October.

Q. Do you know of any third rail making a broad gauge line on the right of way of the St. Louis, Des Moines & Northern at that time?

A. There was one laid towards the fall of the year. It was getting along pretty late in the fall. I wouldn't say—it was

possibly along about the first of November the first I recollect of a third rail and I didn't observe just how far it was laid east, but it was laid west through the yards as far as the round house and at that time it was laid for the purpose of changing the bodies of narrow gauge cars and wide gauge cars from the narrow gauge truck to the wide gauge truck.

Q. Was there some device used for that purpose?

A. Yes, sir; we built an incline right west of Eleventh street if my memory serves me right where we run the narrow gauge trucks out one end and let the broad gauge trucks at the other end to catch the body as it came under and on each side of the incline was a rail and roller under it that catched the body of the car as it came out of the other end and picked up the other truck and transferred it first one way and then the other. Narrow gauge and then the broad gauge for the purpose of not having to load and unload cars.

Witness excused."

The parties here dictated into the record the following stipulation:

It is hereby stipulated that either party may object to any part of the foregoing testimony offered from the transcript in the case of the Chicago, Milwaukee & St. Paul Railway Company vs. the Des Moines Union Railway Company, in the District Court of the State of Iowa in and for Polk County, as either irrelevant or immaterial, provided, that such objection shall be made and filed, with the reasons for the same, prior to the hearing of this case upon the merits.

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company, Plaintiffs,
No. 2449. vs. In Equity.
The Des Moines Union Railway Company, and others, Defendants.

Stipulation.

To obviate the need of formal proof thereon, and to shorten the record, the following facts are stipulated and agreed to in reference to local aid taxes in Boone County, Iowa, for the purposes of the trial of this cause, and as between the parties to the above cause:

Des Moines Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trus-

tees, and in all respects as provided by law in Des Moines Township, Boone County, Iowa, in the following form:

"Trustees of Des Moines Township

To

Whom It May Concern.

Election Notice.

To the qualified Electors of Des Moines Township, Boone County, Iowa:

Notice is hereby given that there will be a special election holden at the City Council room in Boone, Iowa, and also at the office of the Township Clerk of Des Moines Twp. Boonesboro, Iowa, in Des Moines Township Boone County, Iowa, on Wednesday the 11th day of May 1881, at which election there will be submitted to the electors of said Township the following question to-wit:

Shall a tax of five per cent be levied in the year 1881 on the assessment of that year upon the Real and Personal property of said Des Moines Tp. subject to taxation in pursuance of the provisions of Chapter 123 Laws of the Sixteenth General Assembly as amended, for the purpose of aiding the St. Louis, Des Moines & Northern Railway Company in constructing its Railway from Boone, Boone County, Iowa, to a connection with a line owned or operated by the Wabash St. Louis & Pacific Railway Company. The said tax to be due and payable when said road shall have been constructed to Boone through said Township and the cars running from said connection with the Wabash St. Louis & Pacific Railroad Company to Boone Iowa. Provided, that in no case shall such tax or any part thereof become due, collectable or payable until said road is completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectable and the other half shall be due and collectable the next year. The foregoing tax is voted to the St. Louis, Des Moines and Northern Railway Company upon the following express conditions:

1st. Said Rail Road shall never pass under the control of any of the lines constituting what is known as the Chicago Pool or of the Chicago Milwaukee & St. Paul R. R. Company.

2nd. There shall be no charges under any form or guise at the Southern terminus of the St. Louis, Des Moines & Northern Railway for loading or unloading cars made by reason of a difference of gauge of any connecting road.

3rd. Said St. Louis, Des Moines & Northern Railway Company shall not discriminate against Boone and in favor of Des Moines.

4. The Depot of said Road is to be located in the 4th addition to the City of Boone between 4th and 8th Streets and on or west of Harrison Street.

5. The said St. Louis Des Moines & Northern Railway Company shall complete their said road to Boone on or before July 1, 1882, time being the essence of the contract and in default of said road being so completed by said time the Board of Supervisors of Boone County shall cancel said 5 per cent tax upon the Books of the Treasurer of Boone County.

6th. Said St. Louis, Des Moines & Northern Railway Company shall begin work in good faith between Boone and Des Moines on said Railway within ninety days after the said 5 per cent tax is voted, and shall also file its written acceptance of the terms and conditions contained in this petition with the Trustees of this Township and the Board of Supervisors of Boone County, Iowa, within said 90 days or said tax so voted shall be null and void.

If the above conditions, or either of them, are violated by the St. Louis, Des Moines & Northern Railway, its successors or assigns then any and all taxes paid in aid of its construction by this Township shall be refunded to the parties who may have paid the same, or to their representatives or assigns on demand.

The polls will be opened at 9 o'clock A. M. of said day and will be kept open until 6 o'clock P. M. thereof for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation" and those wishing to vote against said proposition will have written or printed on their ballots "Against Taxation."

JOHN M. WANE,
L. H. HULL,
THOS. BOWMAN,
Township Trustee.

Attest: C. T. Brewer,
Township Clerk.

Return.

State of Iowa,
Boone County,
Des Moines Township—ss.

I Charles T. Brewer, do on oath state that I am Township Clerk of Des Moines Township, Boone County, Iowa. That

in pursuance of the order of the Board of Trustees of said Township made on the 29th day of April 1881, I caused the within notice of Special Election to be published in the Boone Standard a Newspaper published in the City of Boone County of Boone, State of Iowa, on the 30th day of April 1881, as will more fully appear from the annexed affidavit of John M. Brainard publisher hereunto attached, and that on the 30th day of April 1881 I posted the same in 5 public places in said Township, to-wit:

1st. One at the Post Office in the City of Boone, Iowa.

2nd. One at the North Door of the City Council building in Boone, Iowa.

3rd. One at the Post Office in the Town of Booneboro Iowa.

4th. One at the East Door of the Court House in Boonsboro Iowa.

5th. One at the Guide post at the forks of Pilchers Land & Road to Logansport from Boonsboro as required by law.

C. T. BREWER.

Subscribed and sworn to before me by Charles T. Brewer this 30 day of April 1881. As witness my hand and seal.

LORAN W. REYNOLDS,
Notary Public Boone Co. Ia.

(Copy of Notarial Seal)

I, John M. Brainard solemnly swear that I am the publisher of the Boone Standard, a weekly newspaper printed and published at Boone and State of Iowa, and that the advertisement hereunto attached was published in said newspaper for one week to-wit, on the 30th day of April A. D. 1881.

Signed this 30th day of April A. D. 1881.

JOHN M. BRAINARD, Publisher.

State of Iowa,
Boone County—ss.

Sworn to before me and subscribed in my presence by the said Jno. M. Brainard Publisher this 30th day of April A. D. 1881.

L. W. REYNOLDS,
Notary Public in and for Boone County, Iowa."

(Copy of Notarial Seal)

That pursuant to the said notice an election was legally held on or about May 11th 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: by 819 votes for and 29 votes against said tax aid.

That pursuant to law the Township Trustees certified the result of said election to the Auditor of said County by the following certificate, and said tax was duly levied:

"Certificate.

Des Moines Township, Boone County—ss.

To T. S. Boyd the Auditor of Boone County Iowa:

In pursuance to Chapter 123 of the Laws of the Sixteenth General Assembly of the State of Iowa as amended, I Charles T. Brewer, Township Clerk of said Des Moines Township in said Township on Wednesday the eleventh day of May 1881 do verify to you that at such election there was submitted to the electors of said Township the following question, to-wit:

Shall a tax of 5 per cent be levied in the year 1881 on the assessment of that year upon the Real and Personal property in said Des Moines Township subject to Taxation, in pursuance of the provisions of Chapter 123 Laws of the Sixteenth General Assembly, as amended for the purpose of aiding the St. Louis, Des Moines & Northern Railway Company in constructing its railway from Boone, Boone County Iowa, to a connection with a line owned or operated by the Wabash, St. Louis & Pacific Railway Company. The said Tax to be due and payable when said Road shall have been constructed to Boone through said Township and the cars running from said connection with the Wabash St. Louis & Pacific Railway Company to Boone Iowa. Provided, that in no case shall such tax or any part thereof become due, collectable or payable until said road is completed between the points last above mentioned, and when so completed one half of the percentum of tax levied shall be due and collectable and the other half shall be due and collectable the next year. The foregoing tax is voted to the St. Louis, Des Moines & Northern Railway Company upon the following express conditions:

1. Said Railroad shall never pass under the control of any of the lines constituting what is known as the "Chicago Pool" or of the Chicago Milwaukee & St. Paul R. R. Company.

2. There shall be no charges under any form or guise at the Southern terminus of the St. Louis, Des Moines & Northern Railway for loading or unloading cars made necessary by reason of a difference of gauge of any connecting road.

3. Said St. Louis Des Moines & Northern Railway Company shall not discriminate against Boone and in favor of Des Moines.

4. The Depot of said Railway is to be located in the 4 addition to the City of Boone between 4th and 8th Streets and on or west of Harrison Street.

5. The said St. Louis Des Moines & Northern Railway Company shall complete their said road to Boone on or before July 1, 1882, time being the essence of the contract and in default of said Road being so completed by said time the Board of Supervisors of Boone County shall cancel said 5 per cent tax upon the Books of the Treasurer of Boone County.

6. Said Saint Louis Des Moines & Northern Railway Company shall begin work in good faith between Boone & Des Moines on said Railway within ninety days after the said five per cent tax is voted and shall also file its written acceptance of the terms and conditions contained in this Petition with the Trustees of this Township and the Board of Supervisors of Boone County, Iowa, within said ninety days or said tax so voted shall be null and void.

If the above conditions or either of them are violated by the St. Louis Des Moines & Northern Railway, its successors or assigns, then any and all taxes paid in aid of its construction by this Township shall be refunded to the parties who may have paid the same, or their representatives or assigns on demand. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate which notice was duly published as required by law. That at such election there were cast in Boone precinct 538 & one blank, and in Boonesboro precinct 310 & 5 blanks Ballots of which 819 ballots were cast for such proposition and tax and 29 ballots were cast against said proposition and tax. That a majority of the ballots cast at such election was cast in favor of such proposition and tax, and that the judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted, and in pursuance of an order of said judges of election, then and there made and the requirements of the Law, we do further certify to you:

1. That the rate per centum of tax thus voted in aid of the St. Louis, Des Moines & Northern Railway Company at such special election was 5 per cent.

2. That said tax is to be levied in the year 1881 and on the valuation of that year. One half of the per centum of tax so levied is to be collected in 1882 and the other half thereof in 1883 Provided, that in no case shall such tax or any part

thereof become due, collectible or payable until said Road is completed through said Des Moines Township and the cars running thereon from a connection with the Wabash, St. Louis & Pacific Railway Company to Boone, Boone County, Iowa, and when so completed one half of the per centum of the said tax shall be due and collectable and the other half shall be due and collectable the next year.

The foregoing tax is voted to the St. Louis Des Moines & Northern Railway Company upon the following express conditions:

1. Said Railroad shall never pass under the control of any of the lines constituting what is known as the "Chicago Pool" or of the Chicago, Milwaukee & St. Paul R. R. Company.

2. There shall be no charges under any form or guise at the Southern terminus of the St. Louis Des Moines & Northern Railway for loading or unloading cars made necessary by reason of a difference of gauge of any connecting road.

3. Said St. Louis Des Moines & Northern Railway Company shall not discriminate against Boone and in favor of Des Moines.

4. The Depot of said Railway is to be located in the 4th addition to the City of Boone between 4th and 8th Streets and on or West of Harrison Street.

5. The said St. Louis Des Moines & Northern Railway Company shall complete their said road to Boone on or before July 1, 1882, time being the essence of the contract, and in default of said road being so completed by said time the Board of Supervisors of Boone County shall cancel said five per cent tax upon the Books of the Treasurer of Boone County.

6. Said St. Louis, Des Moines & Northern Railway Company shall begin work in good faith between Boone and Des Moines on said Railway within ninety days after the said five per cent tax is voted and shall also file its written acceptance of the terms and conditions contained in this petition with the Trustees of this township and the Board of Supervisors of Boone County, Iowa, within said ninety days or said tax so voted shall be null and void.

If the above conditions or either of them are violated by the St. Louis, Des Moines & Northern Railway its successors or assigns, then any and all taxes paid in aid of its construction by

this Township shall be refunded to the parties who may have paid the same, or to their representatives or assigns on demand.

L. H. HULL,
THOS. BOWMAN,
JOHN M. WANE,
Township Trustees.

Attest: C. T. Brewer, Township Clerk.

Filed for Record May 12th A. D. 1881 at 5:5 P. M. C. A. Ebersole, Recorder."

Worth Township.

That on May 12th, 1881, another special election was held in Worth Township in Boone County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881 in said township should be voted in aid of the St. Louis, Des Moines & Northern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Des Moines Township in said Boone County, except only that the name of the township was changed to Worth Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the auditor of Boone County, Iowa, by a certificate identical in all respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers with the certificate of election in the said Des Moines Township, as hereinbefore set out.

Douglas Township.

That on May 18th, 1881, another special election was held in Douglas Township in Boone County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township should be voted in aid of the St. Louis, Des Moines & Northern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Des Moines Township in said Boone County, except only that the name of the township was changed to Douglas Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the Auditor of Boone County, Iowa, by a certificate identical in all respects, except as to the name

of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as Township Officers, with the certificate of election in the said Des Moines Township, as hereinbefore set out.

Acceptance.

That afterwards, on the 8th day of August, 1881, there was filed with the proper authorities of Boone County, Iowa, three writings in the words and figures following, to-wit:

"The Saint Louis Des Moines & Northern Ry. Co.
to
The Board of Supervisors of Boone County, Iowa.

Acceptance of Tax.

To the Board of Supervisors of Boone County, Iowa.

The Saint Louis, Des Moines & Northern Railway Company hereby accepts the Tax heretofore voted in Des Moines Township to aid in the construction of said Railway upon the terms and conditions upon which said Tax was voted, and agrees in the acceptance of said Tax to observe and carry out the said terms and conditions.

THE SAINT LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,
By J. S. Runnells, Vice President.

(Company Seal)

Attest:
J. S. Polk, Secretary.

Filed for Record August 8th, 1881, at 11½ A. M.

C. A. EBERSOLE, Recorder."

"St. Louis, Des Moines and Northern Ry. Co.
to
The Board of Supervisors of Boone County, Iowa.

Acceptance of Tax.

To the Board of Supervisors of Boone County, Iowa.

The Saint Louis, Des Moines & Northern Railway Company hereby accepts the Tax heretofore voted in Worth Township to aid in the construction of said Railway upon the terms and conditions upon which said Tax was voted, and agrees

in the acceptance of said Tax to observe and carry out the said terms and conditions.

THE SAINT LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,
By J. S. Runnells, Vice President.

(Company Seal)

Attest:
J. S. Polk, Secretary.

Filed for Record August 8th, 1881, at 10½ A. M.

C. A. EBERSOLE, Recorder."

"St. Louis, Des Moines and Northern Ry. Co.
to
The Board of Supervisors of Boone County, Iowa.

Acceptance of Tax.

To the Board of Supervisors of Boone County, Iowa.

The Saint Louis, Des Moines & Northern Railway Company hereby accepts the Tax heretofore voted in Douglas Township to aid in the construction of said Railway upon the terms and conditions upon which said Tax was voted, and agrees in the acceptance of said Tax to observe and carry out the said terms and conditions.

THE SAINT LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,
By J. S. Runnells, Vice President.

(Company Seal)

Attest:
J. S. Polk, Secretary.

Filed for Record August 8th, 1881, at 10½ A. M.

C. A. EBERSOLE, Recorder."

That in due time the taxes so voted were duly levied in each of said Townships, and the amount of such levy, to-wit, a five per cent tax upon the assessment of 1881, was in Worth Township ..... $ 9,929.00
in Douglas Township 7,189.25
and in Des Moines Township, which included the Town of Boonsboro and the City of Boone, the amount was 47,420.40

and that the tax so levied in aid of the said St. Louis, Des Moines & Northern Railway Company in

said three townships in Boone County, Iowa, amounted to an aggregate of $64,538.65

That in due time the said taxes were collected by the County Treasurer of Boone County, and were paid over upon the receipt of the Treasurer of said St. Louis, Des Moines & Northern Railway Company to an amount in the aggregate of $61,637.72.

To obviate the need of formal proof thereon, and to shorten the record, the following facts are stipulated and agreed to in reference to local aid taxes in Greene County, Iowa, for the purpose of the trial of this Cause, and as between the parties to the above cause:

Jefferson Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trustees, and in all respects as provided by law, in Jefferson Township, Greene County, Iowa, in the following form:

"Election Notice.

To the qualified electors of Jefferson Township Greene County, Iowa.

Notice is hereby given that there will be a special election holden at the Court House in Jefferson Township Greene County holden at the Court House in Jefferson Township Greene Count Iowa, on Wednesday the ninth day of March A. D. 1881, at which election there will be submitted to the electors of said Township the following question, to-wit: Shall a tax of five per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Jefferson Township which shall be subject to taxation in pursuance of the provision of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson Iowa and from the town of Waukee Iowa to the City of Des Moines Ia. one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882, which tax when collected is to be paid over to said Railway Company or its assigns, when it shall do the work and construct its Railway from Panora in Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson Ia and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of December 1881, and provided further that in

no case shall such tax or any part thereof become due collectible or payable until said road is fully completed and in operation between the points last above mentioned and when so completed and in operation one half of the per centum of tax levied shall be due and collectible. Provided further that said Des Moines Northwestern Railway shall extend its present line of road by building a new and independent road bed and track from the town of Waukee in Dallas County Iowa to the city of Des Moines Iowa and have the same in continued operation on or before the first day of December 1882, and that the remaining half of said tax shall in no case be due and payable until such road shall be so built and operated from the town of Waukee Iowa to the city of Des Moines Iowa. Provided further that the said Des Moines Northwestern Rail-Road Company shall build locate and maintain a depot on its line of road within one half mile of the Court House in the town of Jefferson Iowa. The polls will be opened at 9 o'clock A. M. of said day and will be kept open until 6 o'clock P. M. thereof for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For taxation" and those wishing to vote against said proposition will have written or printed on their ballots Against taxation.

ALPHEUS KING,
A. H. MILLS,
J. M. CLINE.

Attest: J. W. Cline,
Township Clerk.

Return Showing Publication of Notice.

State of Iowa Greene County ss. I, James E. Cline do state on oath that I am Township Clerk of Jefferson Township, Greene County Iowa, that in pursuance of the order of the Board of Township Trustees of said Township made on the 24th day of February 1881 I caused the within notice of special election to be published in the Jefferson Bee and Greene County Gazette, newspapers published in Jefferson Greene County Iowa on the 24th day of February and on the 3rd day of March 1881 as will more fully appear from the annexed affidavit of the publishers hereunto attached and that on the 24th day of February 1881 I posted the same in five public places in said Township, to wit: One at the office of Harrington and Moorhouse at the depot, one at the Post Office, one at the Court House, one at the American Express Office, one at the Revere house, as required by law.

JAMES E. CLINE,
Clerk of Jefferson Township.

Subscribed and sworn to before me by James E. Cline this 8th day of March 1881, as witness my hand and seal.

A. KING,
Justice of the Peace.

Filed March 31st 1881 at 3 o'clock P. M."

That pursuant to the said notice an election was legally held in said Township on the ninth day of March 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: By 222 votes for, and 45 votes against said tax aid.

That pursuant to law the Township officers certified the result of said election to the Auditor of said County by the following Certificate, and said tax was duly levied:

Certificate.

Jefferson Township,
Greene County—ss.

To Andrew Watts the Auditor of Greene County Iowa.

In pursuance of Chapter 123 of the laws of the Sixth General Assembly of the of Iowa as amended we J. E. Cline Township Clerk of Jefferson of Jefferson Township and F. M. Cline duly appointed as one of the Clerks of a special election held at the Court House in said Township on Wednesday the ninth day of March 1881 do certify to you, that at such election there was submitted to the electors of said township the following questions to-wit: Shall a tax of five per cent be levied in the year 1881 and on the assessment of that year, on the real and personal property in said Jefferson Township which shall be subject to taxation in pursuance of the provision of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to the Chicago and Northwestern Railroad in Jefferson Greene County Iowa, and from Waukee in Dallas County Iowa to the city of Des Moines Iowa, one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882 which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora in Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson Iowa and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of December 1881; and provided further that in no case shall such tax or any part

thereof become due, collectible or payable until said road is fully completed and in operation between the points last above mentioned and when so completed and in operation one half of the per centum of tax levied shall be due and collectible, provided further that said Des Moines Northwestern Railway shall extend its present line of road by building a new and independent road bed and track from the town of Waukee in Dallas County Iowa to the city of Des Moines Iowa and have the same in continued operation on or before the first day of December 1882 and that the remaining half of said tax shall in no case be due and payable until such road shall be so built and operated from the town of Waukee Iowa to the city of Des Moines Provided further that the said Des Moines Northwestern Railroad Company shall build locate and maintain a depot on its line of road within one half mile of the Court House in the Town of Jefferson Greene County Iowa. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate, which notice was duly published as required by law. That at such election there were cast two hundred and sixty seven ballots of which two hundred and twenty two ballots were cast for such proposition and tax, and forty five ballots were cast against said proposition and tax. That a majority of the ballots cast at such election were cast in favor of such proposition and tax, and that the Judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted and in pursuance of an order of said Judges of election then and there made and the requirements of the law we do further certify to you: 1. That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such special election was five per cent, 2. That said tax is to be levied in the year 1881 and on the valuation of that year, One half of the per centum of tax so levied is to be collected in 1881 and the other half thereof in 1882. Provided however that in no case shall such tax or and part thereof become due collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora in Guthrie County Iowa to the Chicago and Northwestern Railroad in Jefferson Greene County Iowa and when so completed one half of the per centum of tax levied shall be due and collectible. 3. That the remaining half of said tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from the town of Waukee in Dallas County Iowa to the City of Des Moines and run its cars thereon. Provided such work shall be done along the line of said road and the

cars run thereon between the points above mentioned before the first day of December 1882, as herein before provided.

In witness whereof we have hereunto set our hands this tenth day of March 1881.

J. E. CLINE,
Township Clerk.

FRANK M. CLINE,
Clerk of Election.

Filed Mch. 31, 1881 at 3 o'clock P. M."

Franklin Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trustees, and in all respects as provided by law, in Franklin Township, Greene County, Iowa, in the following form:

Election Notice.

To the qualified electors of Franklin Township Greene County Iowa: Notice is hereby given that there will be a special election holden at the Centre School House in Franklin Township Greene County Iowa on Monday the 9th day of May 1881 at which election there will be submitted to the electors of said township the following question to-wit: Shall a tax of three per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Franklin Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to Jefferson Greene County Iowa one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882 which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to Jefferson Greene County Iowa and run its cars thereon; provided such work shal be done along the line of said road and the cars run thereon between the points above mentioned before the first day of November 1881 and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. Provided further that a depot shall be located built and maintained within one mile of the centre of Franklin Township before December 1st 1881. Pro-

vided further that said Des Moines Northwestern Railway Company shall run their cars to the city of Des Moines on or before the first day of December, 1882, and in no case shall the last half of said tax be due until the cars run to Des Moines, Iowa. The polls will be opened at 9 o'clock A. M. of said day and will be kept open until 6 o'clock P. M. thereof for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation", and those wishing to vote against said proposition will have written or printed on their ballots" Against taxation.

R. W. MILLER,
O. L. THORP,
ALEX ZELLER,
Township Trustees.

Attest:
G. W. Gilroy,
Township Clerk.

Dated April 27, 1881.

Return Showing Publication of Notice.

State of Iowa,
Greene County—ss.

I, G. W. Gilroy do state on oath that I am township clerk of Franklin Township Greene County, Iowa, that in pursuance of the order of the Board of Township Trustees of said Township made on the 27" day of April 1881, I caused the within notice of special election to be published in the Jefferson Bee a newspaper published in Greene County Iowa on the 28" days of April 1881 as will more fully appear from the annexed affidavit of O. R. Gray hereto attached and that on the 27th and 28th days of May 1881, I posted the same in five public places in said township to-wit: One at the Center School House; One at Holmes blacksmith shop, one at the cross roads near A. Hoyts. One at cross roads near R. Allens, one at Union School House all in Franklin Township as required by law.

G. W. GILROY,
Clerk.

Subscribed and sworn to before me by G. W. Gilroy this ninth day of May 1881 as witness my hand and seal.

(Notarial Seal)

A. M. HEAD,
Notary Public.

I C. R. Gray, one of the publishers of the Bee a newspaper of general circulation published at Jefferson the County Seat

of Greene County do hereby certify that the within and foregoing notice was published in said paper two consecutive times to-wit: in the issues bearing date April 28th and May 5th 1881, as directed.

Witness my hand this 9th day of May 1881.

O. R. GRAY.

Printers fee $5.00.

Subscribed in my presence and sworn to before me by the said O. R. Gray this 9th day of May 1881.

(Notarial Seal)

A. M. HEAD,
Notary Public."

That pursuant to the said notice an election was legally held in said Township on the 9th day of May 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: By 73 votes for and 15 votes against said tax aid.

That pursuant to law the Township Officers certified the result of said election to the Auditor of said County by the following certificate, and said tax was duly levied:

"Certificate.

Franklin Township,
Greene County—ss.

To Andrew Watts the Auditor of Greene County Iowa:

In pursuance of Chapter 123 of the laws of the Sixteenth General Assembly of the state of Iowa as amended we G. W. Gilroy Township Clerk of Franklin Township and R. Allen duly appointed as one of the Clerks of a special election held at the Centre School House in said Township on Monday the ninth day of May 1881, do certify to you: That at such election there was submitted to the electors of said Township the following question to-wit: Shall a tax of three per cent be levied in the year 1881, and on the assessment of that year on the real and personal property in said Franklin Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to Jefferson Greene County Iowa one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882 which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County, Iowa to Jefferson Greene County Iowa and run its cars thereof provided such

work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of November 1881 and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully completed between the points last above mentioned and when so completed one-half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. Provided further that a depot shall be located built and maintained within one mile of the centre of Franklin Township before December 1st 1881. Provided further that said Des Moines Northwestern Railway Company shall run their cars to the city of Des Moines on or before the first day of December 1882, and in no case shall the last half of said tax be due until the cars run to Des Moines Iowa. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate which notice was duly published as required by law. That at such election there were cast eighty eight ballots of which seventy three ballots were cast for such proposition and tax and fifteen ballots were cast against said proposition and tax 2 votes "for taxation" voted together thrown out. That a majority of the ballots cast at such election were cast in favor of such proposition and tax and that the Judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted and in pursuance of an order of said Judges of election then and there made and the requirements of the law we do further certify to you: 1. That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such special election was three per cent. 2. That said tax is to be levied in the year 1881 and on the valuation of that year one half of the per centum of tax so levied is to be collected in 1881 and the other half thereof in 1882. Provided however that in no case shall such tax or any part thereof become due collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora Guthrie County Iowa to Jefferson Greene County Iowa and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. 3. That said tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to Jefferson Greene County Iowa and run its cars thereon. Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of

November 1881. Provided further that a depot shall be located built and maintained within one mile of the centre of Franklin Township before December 1st 1881. Provided further that said Des Moines Northwestern Railway Company shall run their cars to the city of Des Moines on or before the first day of December 1882 and in no case shall the last half of said tax be due until the cars run to Des Moines Iowa.

In witness whereof we have hereunto set our hands this ninth day of May 1881.

G. W. GILROY,
Township Clerk.
R. ALLEN,
Clerks of Election.

Filed May 12th, 1881, at 8 o'clock A. M.

Highland Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trustees, and in all respects as provided by law, in Highland Township, Greene County, Iowa, in the following form:

"Notice.

To the qualified electors of Highland Township, Greene County, Iowa. Notice is hereby given that there will be a special election holden at the section school house in Highland Township, Greene County, Iowa, on the fourteenth day of April 1881 at which election there will be submitted to the electors of said Township the following question to-wit: Shall a tax of five per cent be levied in the year 1881, and on the assessment of that year on the real and personal property in said Highland Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora, Guthrie County, Iowa to the North line of Greene County Iowa in Highland or Cedar Townships one half of the per centum of tax so levied to be collected in 1881, and the other half thereof in 1882, which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora, Guthrie County, Iowa to the north line of Greene County, Iowa in Highland or Cedar Townships and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the fourth day of July 1882, and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully com-

pleted between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. Provided further that a depot shall be located, built and maintained within one and one-half miles of east south or west of the center of Highyand Township before July 4th, 1882. The polls will be opened at 9 o'clock A. M. of said day and will be kept open until 6 o'clock P. M. thereof for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation" and those wishing to vote against said proposition will have written or printed on their ballots "Against taxation".

JOSEPH CHURDAN ST.
J. M. FITZ,
W. R. GROVES,
Township Trustees.

Attest: Joseph Churdan, Jr., Township Clerk.
Dated Mar. 28, 1881.

Return Showing Publication of Notice.

State of Iowa,
Greene County—ss.

I, Joseph Churdan, Jr. do state on oath that I am Township Clerk of Highland Township, Greene County, Iowa, that in pursuance of the order of the Board of Township Trustees of said Township made on the 28 day of March 1881 I caused the within notice of special election to be published in the Jefferson Bee, a newspaper published in Greene County, Iowa, on the 31 day of March, 1881, as will more fully appear from the annexed affidavit of Emmet W. Bates, J. P. hereto attached and that on the 31 day of March, 1881, I posted the same in five public places in said township, to-wit: One at the Prairie Creek Bridge, One at the James Towers Bridge, One at the John Casgriff Bridge, one at the Section School House, one at the Southeast corner of H. W. Kogers fence.

JOSEPH CHURDAN, Jr., T. P. Clerk.

Subscribed and sworn to before me by Joseph Churdan, Jr., on this Fourth day of April, 1881, as witness my hand and seal.

(Seal) EMMET W. BATES, J. P.

That pursuant to the said notice an election was legally held in said Township on the 14th day of April, 1881, and said prop-

osition was adopted and carried by a majority of the votes cast at said election, to-wit: By 17 votes for and 8 votes against said tax aid.

That pursuant to law the Township Officers certified the result of said election to the Auditor of said County by the following Certificates, and said tax was duly levied:

"Certificate.

Highland Township,
Greene County—ss.

To Andrew Watts, the Auditor of Greene County, Iowa:

In pursuance of Chapter 123 of the laws of the Sixteenth General Assembly of the state of Iowa as amended, we, Joseph Churslen, Jr., Township Clerk of Highland Township, and Emmet W. Bates duly appointed as one of the Clerks of a special election held at Section School House in said Township on Thursday the fourteenth day of April, 1881, do certify to you: That at such election there was submitted to the electors of said Township the following questions, to-wit: shall a tax of five (5) per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Highland Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the Town of Panora, Guthrie County, Iowa, to the North line of Greene County in Highland or Cedar Townships, one half of the per centum of tax so levied to be collected in 1881, and the other half thereof in 1882, which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora, Guthrie County, Iowa, to the north line of Greene County, Iowa, in Highland or Cedar Townships and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the fourth day of July 1882, and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. Provided farther that a depot shall be located, built and maintained within one and one half miles east, south or west of the center of Highland Township, before July 4th, 1882. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part

of this certificate which notice was duly published as required by law. That at such election there were cast (26) twenty-six ballots of which (17) seventeen ballots were cast for such proposition and tax, and (8) eight ballots were cast against said proposition and tax and one ballot being blank. That a majority of the ballots cast at such election were cast in favor of such proposition and tax and that the judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted and in pursuance of an order of said Judges of election then and there made and the requirements of the law we do further certify to you: 1. That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such special election was five per cent. 2. That said tax is to be levied in the year 1881 and on the valuation of that year, one half of the per centum of tax so levied is to be collected in 1881 and the other half thereof in 1882. Provided, however, that in no case shall such tax or any part thereof become due collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora, Guthrie County, Iowa, to the North line of Greene County in Highland or Cedar Townships and run its cars thereon. Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the fourth day of July, 1882. Provided further that a depot shall be located, built and maintained within one and one half miles of the center of Highland Township, before July 4th, 1882.

In witness whereof we have hereunto set our hands this fourteenth day of April, 1881.

JOSEPH CHURDAN, JR.,
Township Clerk.

EMMET W. BATES,
Asst. Clerk.

Clerk of Election.

Filed April 16th, 1881, at 11:30 o'clock A. M.

Grant Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the Township Trustees, and in all respects as provided by law, in Grant Township, Greene County, Iowa, in the following form:

"Election Notice.

To the qualified electors of Grant Township, Greene County, Iowa:

Notice is hereby given that there will be a special election holden at the Mill school house in Grant Township Greene County Iowa on Monday the 9th day of May 1881 at which election there will be submitted to the electors of said township the following question to-wit: Shall a tax of two per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Grant Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson, one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882, which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson Greene County Iowa and run its cars thereon between the points above mentioned before the first day of December 1881, and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. The polls will be opened at 9 o'clock A. M. of said day, and will be kept open until 6 o'clock P. M. thereof for the purposes of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation" and those wishing to vote against said proposition will have written or printed on their ballots "Against taxation".

HENRY W. KELLOGG,
JOS. W. ANDERSON,
M. W. SMITH,
Township trustees.

Attest:
G. G. Eagleson,
Township Clerk. April 27, 1881.

Return Showing Publication of Notice.

State of Iowa,
Greene County—ss.

I G. G. Eagleson do state on oath that I am Town. Clerk of Grant Township Greene County Iowa that in pursuance of the order of the Board of Township Trustees of said Town-

ship made on the 27th day of April 1881 I caused the within notice of special election to be published in the Jefferson Bee a newspaper published in Jefferson Greene County Iowa on the 28th day of April 1881 as will more fully appear from the annexed affidavit of J. M. Rhoads hereto attached and that on the 27th day of April 1881 I posted the same in five public places in said township, to-wit: One at Bridge on Panora Road, One at on Bridge on Hardin Crick at Wm. Andersons, One at one on Bridge Hill Bridge on Hardin crick, One at one on at Mill School House One at Bridge on Hardin Creek on the King Road.

G. G. EAGLESON.

Subscribed and sworn to before me by G. G. Eagleson this 28th day of April 1881 as witness my hand and seal.

(Notarial Seal)

J. F. HEAD,
Notary Public.

I J. M. Rhoads one of the publishers of the Bee a newspaper of general circulation published at Jefferson the County Seat of Greene County Iowa do hereby certify that the within and foregoing notice was published in said paper two consecutive times to-wit in the issues bearing date April 28th and May 5th 1881 as directed.

Witness my hand this 9th day of May 1881.

J. M. RHOADS.

Printers fee $.....

Subscribed in my presence and sworn to before me by the said J. M. Rhoads this 9th day of May 1881.

(Notarial Seal)

A. M. HEAD,
Notary Public.

That pursuant to the said notice an election was legally held in said Township on the 9th day of May 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: By 90 ballots for and 34 ballots against said tax aid.

That pursuant to law the Township Officers certified the result of said election to the Auditor of said County by the following Certificate, and said tax was duly levied:

"Certificate.

Grant Township,
Greene County—ss.

To Andrew Watts, the Auditor of Greene County, Iowa.

In pursuance of Chapter 123 of the laws of the 16th General Assembly of the state of Iowa as amended we G. G. Eagleson Township Clerk of Grant Township and A. C. Taggart duly appointed as one of the clerks of a special election held at the Mill School House in said Township on Monday the ninth day of May 1881, do certify to you: That at such election there was submitted to the electors of said township the following question, to-wit: Shall a tax of two per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Grant Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to the Chicago & Northwestern Rail Road at Jefferson one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882. Which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to the Chicago & Northwestern Railroad at Jefferson Greene County Iowa and run its cars thereon provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of December 1881 and provided further that in no case shall such tax or any part thereof become due, collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate which notice was duly published as required by law. That at such election there were cast one hundred and twenty four ballots of which ninety ballots were cast for such proposition and tax and thirty-four ballots were cast against said proposition and tax. That a majority of the ballots cast at such election were cast in favor of such proposition and tax and that the Judges of election after canvassing said ballots declared said proportion and tax to have been duly carried and adopted and in pursuance of an order of said Judges of election then and there made and the requirements of the law we do further certify to you: 1 That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such special election was two per cent. 2 That said tax is to be levied in the year 1881 and on the valuation of that year one half of the per centum of tax so levied is to be collected in 1881 and the other half thereof

in 1882. Provided however that in no case shall such tax or any part thereof become due collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora Guthrie County, Iowa to the Chicago & Northwestern Railroad at Jefferson Greene County Iowa and when so completed one half of the per centum of the tax levied shall be due and collectible and the other half shall be due and collectible the next year. 3. That said tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to the Chicago & Northwestern Rail Road at Jefferson Greene County Iowa and run its cars thereon Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of December 1881. In witness whereof we have hereto set our hands this ninth day of May 1881.

G. G. EAGLESON,
Township Clerk.
A. C. TAGGART,
Clerks of Election.

Filed May 12th 1881 at 9 o'clock A. M.

That upon the assessment in each of the said four Townships in Greene County, on the rate called for in the election proceedings, to-wit: five per cent in Jefferson and Highland Townships, three per cent in Franklin Township, and two per cent in Grant Township, the levy on account of and for said tax aid amounted in

Jefferson Township to	$12,424.99
Highland Township	6,355.88
Franklin Township	4,699.74
Grant Township	4,713.08

That of said taxes so voted and collected in said four Townships in Greene County, the sum of $27,732.49 was paid over by the County Treasurer of said Green County upon the receipts given by F. M. Hubbell, Treasurer of said Des Moines Northwestern Railway Company, in the years 1881 to 1887 inclusive.

To obviate the need of formal proof thereon, and to shorten the record, the following facts are stipulated and agreed to in reference to local aid taxes in Calhoun County, Iowa, for the purposes of the trial of this cause, and as between the parties to the above cause:

Logan Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trustees, and in all respects as provided by law, in Logan Township, Calhoun County, Iowa, in the following form:

"Election Notice.

To the Qualified Electors of Logan Township, Calhoun County, Iowa:

Notice is hereby given that a special election will be held at the Bowers School House in Logan Township, Calhoun County, Iowa, on Wednesday, the First day of June, 1881, at which election there will be submitted to the electors of said Township the following question, to-wit:

"Shall a tax of five per cent be levied in the year 1881 and on the assessment of that year, on the real and personal property in said Logan Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended, for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora, Guthrie County, Iowa to the North line of Calhoun County, Iowa. One half of the per centum of tax so levied to be collected in 0881, and the other half thereof in 1882. Which tax when collected is to be paid over to the said Rail Way Company or its assigns, when it shall do the work and construct its railway from Panora, Guthrie County, Iowa, to the north line of Calhoun County, Iowa, and run its cars thereon; Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of September 1882; and provided further that in no case shall such tax or any part thereof, become due, collectible or payable until said road is fully completed between the points last above mentioned, and where so completed one-half of the per centum of tax levied shall be due and collectible, and the other half shall be due and collectible the next year. Provided further that a depot shall be located and built within one mile of the center of Logan Township before September 1st, 1882.

The polls will be opened at 9 o'clock A. M. of said day, and will be kept open until 6 o'clock P. M., thereof, for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation", and those wishing to vote

against said proposition will have written or printed on their ballots "Against Taxation".

A. T. BOWERS,
E. W. POWERS,
Township Trustees.

Attest:
Rollin Burch, Township Clerk.

Return Showing Publication of Notice.

State of Iowa,
Calhoun County—ss.

I, A. T. Bowers, do state on oath that I am one of the Trustees duly qualified of Logan Township, Calhoun County, Iowa, that in pursuance of the order of the Board of Township Trustees of said Township made on the 18th day of May 1881, I caused the within notice of Special Election to be published in the Calhoun County Republican a newspaper published in Calhoun County, Iowa, on the 20th day of May 1881, as will more fully appear from the annexed affidavit of H. W. Dudley hereto attached, and that on the 19th day of May 1881, I posted the same in five public places in said township to-wit:

One at the door of the Bowers School House,
One at Wetter's bridge over Purgatory Creek,
One at the door of the Wetter School House,
One at Burch's corner, and
One at the Bowers Bridge over Lake Creek, as required by law.

A. T. BOWERS.

Subscribed and sworn to before me by A. T. Bowers this 1st day of June 1881 as witness my hand and seal.

(Seal)
O. J. JOLLEY,
Notary Public in & for Calhoun County, Iowa.

Affidavit of Publication:

State of Iowa,
Calhoun County—ss.

I H. W. Dudley, being duly sworn, do depose and say that I am the proprietor of the Calhoun County Republican a weekly newspaper published at Rockwell City, in said County of Calhoun; that the notice hereto attached in said county of Calhoun; that the notice hereto attached was published in said paper on the 20th day of May 1881.

H. W. DUDLEY.

Sworn and subscribed to by H. W. Dudley before me this 21st day of May A. D. 1881.

(L. S.) O. J. JOLLEY,
Notary Public.

That pursuant to the said notice an election was legally held in said Township on or about the first day of June 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: By 26 votes for and 24 votes against said tax aid:

That pursuant to law the Township Officers certified the result of said election to the Auditor of said County by the following certificate, and said tax was duly levied:

"Certificate:

Logan Township,
Calhoun County—ss.

To A. N. Jack, the Auditor of Calhoun County, Iowa:

In pursuance of Chapter 123 of the Laws of the Sixteenth General Assembly of the State of Iowa, as amended, we Rollin Burch Township Clerk of Logan Township, and L. J. Owen, duly appointed as one of the Clerks of a special Election held at the Bowers School House in said Township, on Wednesday the first day of June 1881, do certify to you:

That at such election there was submitted to the electors of said Township the following questions to-wit:

Shall a tax of five per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Logan Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended, for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora, Guthrie County, Iowa, to the north line of Calhoun County, Iowa. One half of the per centum of tax so levied to be collected in 1881, and the other half thereof in 1882. Which tax, when collected is to be paid over to said Railway Company or its assigns, when it shall do the work and construct its railway from Panora, Guthrie County, Iowa, to the north line of Calhoun County, and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of September 1882 and provided further, that in no case shall such tax or any part thereof become due and collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per

centum of tax levied shall be due and collectible, and the other half shall be due and collectible the next year.

Provided further that a Depot shall be located and built within a mile of the Center of Logan Township before September first 1882. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate, which notice was duly published as required by law.

That at such election there were cast fifty ballots of which twenty-six ballots were for such proposition and tax, and twenty-four ballots were cast against said proposition and tax. That a majority of the ballots cast at such election were cast in favor of such proposition and tax, and that the judges of election after canvassing said ballots, declared said proposition and tax to have been duly carried and adopted, and in pursuance of an order of said judges of election then and there made and the requirements of the law, we do further certify to you:

1. That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such election was five per cent.

2. That said tax is to be levied in the year 1881, and on the valuation of that year. One half of the per-centum of tax so levied is to be collected in 1881, and the other half thereof in 1882. Provided, however, that in no case shall such tax or any part thereof become due, collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora, Guthrie County, Iowa, to the North line of Calhoun County, Iowa, and when so completed one half of the per centum of tax levied shall be due and collectible, and the other half shall be due and collectible the next year.

3. That said tax, when collected is to be paid over to said railway Company or its assigns, when it shall do the work and construct its railway from Panora, Guthrie County, Iowa, to the north line of Calhoun County, Iowa, and run its cars thereon. Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of September 1882. Provided further that a Depot shall be located and built within a mile of the Center of Logan Township before September first 1882.

In Witness whereof we have hereto set out hands this first day of June 1881.

ROLLIN BURCH,
Township Clerk.
L. J. OWEN,
Clerks of Election.

Twin Lakes Township.

That on the 17th day of November 1880, another special election was held in Twin Lakes Township, Calhoun County Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township should be voted in aid of the Des Moines Northwestern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Logan Township in said Calhoun County, except that the name of the township yas changed to Twin Lakes Township, and the place for the holding of the election was in said Twin Lakes Township.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the Auditors respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers, as the certificate of election in the said Logan Township, as hereinbefore set out.

Williams Township.

That on the 23rd day of June 1881, another special election was held in Williams Township, Calhoun County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township, should be voted in aid of the Des Moines Northwestern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Logan Township in said Calhoun County, except that the name of the township was changed to Twin Lakes Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the Auditor of Calhoun County, Iowa, by a certificate identical in all respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers, as the certificate of election in the said Logan Township, as hereinbefore set out.

Butler Township.

That on the 22nd day of June 1881, another special election was held in Butler Township Calhoun County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township, should be voted in aid of the Des Moines Northwestern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Logan Township in said Calhoun County, except that the name of the township was changed to Butler Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was duly certified to the Auditor of Calhoun County, Iowa, by a certificate identical in all respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers, as the certificate of election in the said Logan Township, as hereinbefore set out.

Garfield Township.

That on the 22nd day of June 1881, another special election was held in Garfield Township Calhoun County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township, should be voted in aid of the Des Moines Northwestern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Logan Township in said Calhoun County, except that the name of the township was changed to Butler Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the Auditor of Calhoun County, Iowa, by a certificate identical in all respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers, as the certificate of election in the said Logan Township, as hereinbefore set out.

That upon the rate or percentage of levy provided by said election proceedings in each of the said Townships of Calhoun County the amount of taxes levied upon the assessment were as follows:

In Logan Township	$ 5,443.71
In Twin Lakes Township	5,541.50
In Williams Township	4,112.46
In Garfield Township	4,489.61
Total	$19,587.28

That of said taxes so voted in said several Townships of Calhoun County there was collected by the County Treasurer and paid over upon the receipt of F. M. Hubbell, the treasurer of the Des Moines Northwestern Railway Company the sum of $19,587.28.

N. T. GUERNSEY,
Solr. for Defts.

J. C. COOK,
E. R. MASON,
W. H. BLODGETT,
Sols. of Ptff.

In the United States Circuit Court in and for the Southern District of Iowa, Central Division.

Chicago Milwaukee & St. Paul Railway Company and Wabash Railroad Company, Plaintiffs,
2449. vs. Equity.
Des Moines Union Railway Company, F. M. Hubbell, F. C. Hubbell and F. M. Hubbell & Son, Defendants.

Stipulation.

It Is Hereby Stipulated between the parties to the above entitled action that the deposition of E. C. Kinney, of Bozeman, in the County of Gallatin and State of Montana, shall be taken upon oral interrogatories and cross interrogatories before H. A. Bolinger, a Notary Public in and for the County of Gallatin, in said State, on this, the 8th day of January, A. D. 1910, the parties hereto hereby waiving all formalities respecting the service of notice to take the deposition, the time for taking the same and other requirements to make the same admissible in evidence in the above entitled court.

C. S. AUSTIN, JR.,
Attorney for Plaintiffs.

GUERNSEY, PARKER & MILLER,
Attorney for Defendants.

In the United States Circuit Court in and for the Southern District of Iowa, Central Division.

Chicago Milwaukee & St. Paul Railway Company and Wabash Railroad Company, Plaintiffs,

2449. vs. Equity.

Des Moines Union Railway Company, F. M. Hubbell, F. C. Hubbell and F. M. Hubbell & Son, Defendants.

Be It Remembered that pursuant to the stipulation hereto annexed, and on this 8th day of January, 1910, at the home of E. C. Kinney, in Bozeman, in the County of Gallatin and State of Montana, before me H. A. Bolinger, a Notary Public in and for said Gallatin County, duly appointed and commissioned to administer oaths, etc., personally appeared E. C. Kinney, a witness produced on behalf of the plaintiffs in the above entitled action, now pending in the said court, who being first by me duly sworn, was then and there examined and interrogated by C. G. Austin, Jr., of counsel for the said plaintiffs, and by F. W. Lehmann, Jr., of counsel for said defendants, and testified as follows:

EDWARD C. KINNEY being first duly sworn testified as follows:

Direct Examination

By Mr. Austin:

Q. State your name and age.

A. E. C. Kinney, 65 years old in February.

Q. Where do you reside? A. Here in Bozeman, Montana.

Q. State whether or not you were engaged as a construction engineer in the years of 1881 and 1882 by the St. Louis Des Moines & Northern Railway Company?

A. I was.

Q. And do you know who were the officers of that company?

A. Clarkson, Runnels, Polk and Hubbell. I don't remember which man held which office.

Q. Now as part of your duties as construction engineer what did you do Mr. Kinney?

A. I let contracts for the laying out of lines, directed all of the construction, where to do work, and when, and all about it.

Q. Then as I understand you, you were the man in charge of the construction of the St. Louis Des Moines and Northern Railway Company. A. Yes, sir.

Q. Where did that line of railway begin in Des Moines?

A. The east end of it was on the east edge of Fourth Street right by where is the old depot now, or was, south end of the court house, in the first alley south of the court house.

Q. Where did that line extend west and north to?

A. It extended through the city to the west, winding round to Clive, and from Clive to Boone. Northwesterly, pretty near northerly.

Q. Did that line when you originally constructed it extend to Waukee? A. Yes.

Q. When did you finish constructing that line from the city of Des Moines west to Waukee, if you can remember?

A. Well, as near as I can say the latter part of September, sometime along there in the fall.

Q. In the fall of 1881? A. Yes.

Q. And when did you finish constructing the line of railway from Clive to Boone?

A. Well we worked all the next year until August 1882.

Q. What was the character of this road, a narrow gauge or broad gauge road? A. Narrow gauge.

Q. And did this narrow gauge extend from the east line of Fourth Street, as you have testified to Waukee and Boone?

A. Yes, sir.

Q. Did you originally have charge of the laying of the narrow gauge track between the points I have indicated?

A. Yes, sir.

Q. Was there any other track between those points at the time that you constructed the same?

A. No, sir.

Q. Did you build a round house in the city of Des Moines during these years?

A. Yes sir, east of the water plant.

Q. Who did you build that for?

A. St. Louis Des Moines & Northern.

Q. Were there narrow gauge tracks running into this round house? A. Yes, sir.

Q. Do you remember whether or not during the latter part of 1882 a line of track was extended from the Wabash that connected at the depot up to the round house?

A. That is something I do not remember, that might be so.

Q. Now, I call to your attention that portion of the ground just opposite the water works. In constructing your line of track that you have testified about, were you obliged to draw dirt and fill the same in?

A. Yes, sir.

Q. Where did you get the trains to transport this dirt?

A. We had gathered in cars, bought two locomotives, and 20 or 30 more cars.

Q. Where did you get the dirt from?

A. From the south side of the hill, north of the track, about R. F. Allen's house, where Jeff Polk lives.

Q. In the city of Des Moines?

A. Two or three miles west.

Q. Now were there supplies shipped in for the construction of this road? A. Yes.

Q. Who accepted those supplies, who were they billed to.
A. The St. Louis Des Moines & Northern.
Q. Did you have to make out bills during the time that you were working there?
A. I had to make a list of things we needed, so many ties, so many spikes, yes, sir, I made out all of them.
Q. What kind of stationery did you use to make those out?
A. I had some printed right there in town, St. Louis Des Moines & Northern Railway Company heading.
Q. Now in the year 1882 while you were constructing that branch of the road from Clive to Boone, state whether or not you were obliged to rush your work for any reason.
A. We were the latter part because of a bonus of $75,000 voted by Boone, or the townships, and we had been delayed in getting that big bridge across, so that as soon as we could get across the bridge we had to hurry, and did.
Q. You were obliged to complete the road in order to take advantage of the aid that was voted by the townships in Boone County? A. Yes, sir.
Q. And state whether or not this road connected with the Wabash at East Fourth Street.
A. Yes, sir.
Q. After you completed this line of railway, was the same operated by cars of the St. Louis Des Moines & Northern Railway Company?
A. Yes, sir. We had some few foreign cars. We used our own mostly.
Q. And you left the city of Des Moines in October, 1882?
A. I believe that was the year. I went from there to Texas.
Q. And state whether or not you had knowledge of that line of railroad that you built being operated before you left?
A. It was operated all the time.
Q. And operated by whom?
A. St. Louis Des Moines & Northern.
Q. You were in the engineering business before that?
A. Yes, sir.

Cross-Examination

By Mr. Lehmann:

Q. Whom did you work for?
A. Nickel Plate, Cleveland & Loraine.
Q. When you went to Des Moines what salary did you get?
A. I got $250 a month.
Q. How was that paid, by check or cash?
A. By check, I guess.

Q. Can you remember what name would be signed to those checks?

Mr. Austin: We object to that question as being incompetent and immaterial.

A. I can't remember.

Q. Who paid you? A. The company.

Q. You don't remember the signature on the check?

A. No, I know it came out of their office.

Q. Was Hubbell's name signed to the checks?

A. I disremember. It was one of them that was treasurer.

Q. Could those checks be signed by Polk and Hubbell?

A. I don't know, I don't think so, they did their business in the form of a company.

Q. Did you ever hear of the Narrow Gauge Railway Construction Company. A. No.

Q. Did you ever work for such a company?

A. No, sir.

Q. Did you ever see that name on a voucher or bill head at or about the time you were working in Des Moines?

A. I don't think I did.

Q. Did you ever hear of the St. Louis Des Moines & Northern Narrow Gauge Railway Construction Company?

A. No, sir.

Q. Nor anything like that? A. No, sir.

Q. Never had anything to do with them?

A. No, sir.

Q. Did you ever work for the Des Moines Northwestern Railway Company? A. Yes.

Q. Where was that?

A. That extended from Penora, a line had been built from Waukee to Penora I connected up with that line.

Q. Mr. Kinney, you run the engineering end of this business, and not the financial end? A. No.

Q. As to the matters of accounts you are not familiar, and never were? A. No.

Q. And what arrangements your employers had you do not know? A. No, sir.

Q. Is that your signature?

A. Yes, sir.

Q. Now, Mr. Kinney, I want you to look at this carefully. It states here, St. Louis Des Moines & Northern Railway Company. The Narrow Gauge Railway Construction Company, contractors, debtor to E. C. Kinney, July 31, 1881, salary for July, $250, then follows a list of expenses, and this is your signature, and receipt. Received from the Narrow Gauge Railway Construction Company, $340.83, in full for above account? A. Yes, sir.

Q. You were an engineer, and not an officer in the office?
A. Yes, sir.
Q. You have no idea of the difference between the St. Louis Des Moines & Northern Railway Company, and The Narrow Gauge Construction Company, have you?
A. No.
Q. And yet since you signed this voucher for pay for July, 1881, from the Narrow Gauge Construction Company, you think you must have been working for them then?
A. Yes, I suppose I was.
Q. You do not know whether F. M. Hubbell was president of the Narrow Gauge Construction Company, or not?
A. I do not know.
Q. Mr. Kinney, do you remember making a settlement between G. M. Dodge and the Wabash railway?
A. I don't remember about that.
Q. Do you remember going over the books and lists of expenses that had been incurred in building this road, and finding out what should be charged to Dodge?
A. I don't know, I can't remember.

(Accounts shown Mr. Kinney.)

Q. Do you remember ever going over accounts and certifying them?
A. I don't remember, it might be so, if that is my signature I will have to admit it.
Q. Mr. Kinney, this is all so long ago, and you were not interested in the financial end of the business, but was the engineer, and if you wanted to know anything about this, would you go to the books or trust your memory?

Mr. Austin: We object to that question, it is incompetent and immaterial.

A. I would have to go to the books.
Q. The narrow gauge was built to connect with the Wabash at Fourth Street under an arrangement with the Wabash?

Mr. Austin: We object to that question as being incompetent and immaterial.

A. I don't know.
Q. Have you no idea under what arrangements they did that?
A. I don't think there was any arrangement.
Q. You don't know whether the Wabash had any arrangement with General Dodge, and whether General Dodge had any arrangement with the Narrow Gauge Construction Company?

A. I suppose he had, as he was the man furnishing the money.

Q. You think General Dodge furnished the money to build that road? A. I do.

Q. But General Dodge was not an officer of the St. Louis Des Moines & Northern Railway Company?

A. No, sir.

Q. Did he own stock in it?

A. I don't know.

Q. Did he own stock in the Narrow Gauge Railway Construction Company? A. I don't know.

Q. You think he furnished the money.

A. Yes, sir.

Redirect Examination

By Mr. Austin:

Q. Was Mr. Loweth connected with you in your office at that time?

A. He was in the office, I had him hired.

Recross Examination

By Mr. Lehmann:

I offer into evidence paper marked Exhibit "A", which is a voucher, No. 16, for $1,191.49, dated August 1, 1881, and especially call attention to that paper attached thereto, which is a voucher from the Narrow Gauge Construction Company to E. C. Kinney for his salary and expenses for July, 1881.

Mr. Austin: We object to the offer made because it is incompetent, immaterial, and not proper foundation having been laid for the same.

Q. Now, Mr. Kinney, you say the signature to that attached voucher is your signature? A. Yes, sir.

State of Montana,
County of Gallatin—ss.

I, H. A. Bolinger, a Notary Public in and for the State of Montana, residing at Bozeman, Montana, do hereby certify that in company with C. G. Austin, Jr., of counsel for the plaintiffs, and F. W. Lehmann, Jr., of counsel for the defendants, in the foregoing entitled cause, I caused the witness E. C. Kinney to come before me, at the residence of said E. C. Kinney, in the city of Bozeman, in said County and State, on the 8th day of January A. D. 1910, between the hours of nine o'clock A. M., and twelve o'clock M., of said day, and after I had administered to said witness an oath in due and proper form to testify to the truth, the whole truth and nothing but the truth, the questions propounded by the said attorneys and the answers of the witness thereto were by Ivah

B. Andrews, an expert stenographer and shorthand writer, taken down in shorthand, and said questions and answers and the testimony of the witness was by said Ivah B. Andrews extended into typewriting, and that after being so extended, the above named counsel for the plaintiffs and defendants, respectively, examined and read said questions and answers, in my presence, and agreed that all of the questions propounded to said witness and the testimony of said witness was as hereinbefore set out, and that said questions and answers as hereinbefore contained are true full and complete, and the signing of said deposition by said witness was waived by the said counsel for said plaintiffs and defendants, respectively.

I further certify that each and all of the exhibits offered or referred to in the testimony of the witness are attached hereto, and returned with this deposition. I hereto attach the affidavit of Ivah B. Andrews as to the correctness of said notes and that the extension thereof is full, true and correct translation of said shorthand notes.

Witness my Hand and Notarial Seal hereto affixed this 17th day of January A. D. 1910.

(Seal)

H. A. BOLINGER,
Notary Public for the State of Montana, Residing at Bozeman, Montana.

My commission expires September 14th, 1912.

State of Montana,
County of Gallatin—ss.

I hereby certify that the costs of taking the foregoing deposition have been paid to me by plaintiff in the above entitled case, as follows:

Reducing deposition to writing	
Original 30 f at 20 cents	$6.00
Copy 30 f at 10 cents	3.00
Swearing witness	.25
Certificate	1.00
Hack fare	1.50
Total	$11.75

(Seal)

H. A. BOLINGER,
Notary Public for the State of Montana, Residing at Bozeman, Montana.

My commission expires September 14th, 1912.

State of Montana,
County of Gallatin—ss.

I, Ivah B. Andrews, of Bozeman, Gallatin County, Montana, being duly sworn, on oath say:

That I am an expert stenographer and shorthand writer that I correctly took down in shorthand and have correctly transcribed the testimony of the witness E. C. Kinney, whose deposition is hereinbefore contained, and I further state that the translation of said notes taken in shorthand as appears in the foregoing deposition is full, true and complete, and that after said notes were translated and the testimony of said witness written, as the same appears in the foregoing deposition, C. G. Austin, Jr., of counsel for the plaintiffs herein, and F. W. Lehmann, Jr., of counsel for the defendants herein, read the testimony of said witness, E. C. Kinney, and both of said counsel agreed that the testimony of said witness taken herein, as hereinbefore contained, was full, true and complete, and was the testimony as said witness gave it.

IVAH B. ANDREWS.

Subscribed in my presence and sworn to before me by the above named Ivah B. Andrews this 17th day of January 1910.

(Seal)

H. A. BOLINGER,
Notary Public for the State of Montana, Residing at Bozeman, Montana.

My commission expires Sept. 14th, 1912.

ST LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY

The Narrow Gauge Railway Construction Company - - Contractors.

Dr. To Stephen Adams, Sheriff Dallas County, Ia.

1881	Items	Amount
July 28	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation by said railway company of right of way over S. E. ¼ S. W. ¼ Sec. 27-79-26 Dallas Co. Ia., owned by Eliz. Kurtz	$ 250.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation by said railway Co. of right of way over S. W. ¼ S. E. ¼ 27-79-26, owned by L. O. Reinig	150.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation of right of way by said railway Co over S. ½ S. W. ¼ Sec. 26-79-26, owned by Geo. & E. E. Wright	1200.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation of right of way for said railway Co over S. W. ¼ S. E. ¼ Sec. 26-79-26, owned by D. Morrison	150.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation of right of way by said railway Co. over S. E. ¼ S. E. ¼ Sec. 27-79-26, owned by Edwin Carpenter	150.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by appropriation of right of way by said railway Co. over S. W. ¼ S. W. ¼ Sec. 25 and S. E. ¼ S. E. ¼ Sec. 26, both in 79-26, owned by H. J. Carter.	320.00
" "	To amount of finding of Commissioners in matter of appraisement of damages to S. E. ¼ S. W. ¼ Sec. 25-79-26, caused by appropriation by said Railway Co of right of way over same, owned by Joseph Carter	180.00
	Total	$2400.00

$2400.00

Received July 28, 1881
From the Narrow Gauge Railway Construction Company

Received July 28, 1881

From the Narrow Gauge Railway Construction Company the sum of Twenty four Hundred Dollars in full for the above account.

Approved for payment

Stephen Adams,
Sheriff Dallas County, Iowa.

Duplicate

ST LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY

The Narrow Gauge Railway Construction Company - - Contractors.

Dr. To Stephen Adams, Sheriff Dallas Co. Iowa

1881	Items	Amount
July 28	To serving notices for appraisement for July 27, 87	$12.00
	To Summoning jury	5.00
	To 2 days service with jury	3.00
	To fees & mileage of 6 commissioners 2 days	36.00
		$56.00

$56.00 Received July 28, 1881

From the Narrow Gauge Railway Construction Company the sum of Fifty six dollars in full for the above account.

Stephen Adams,
Sheriff Dalls Co., Iowa.

(copy)

ST LOUIS DES MOINES & NORTHERN RAILWAY COMPANY

The Narrow Gauge Railway Construction Company - - Contractors

Dr. To E. C. Kinney

1881	Items	Amount
July 31	Salary for July	$250.00
	Railway fare	6.08
	Hotel and team expense	12.00
	Livery	36.75
	Telegrams	21.00
	Books, stationery, Pencils &c	10.05
	Express	1.75
	Postage	3.20
		$340.83

Duplicate

$340.83 Received August 1st, 1881

From the Narrow Gauge Railway Construction Company the sum of Three Hundred and Forty and 83/100 Dollars in full for the above account.

E. C. Kinney.

Approved
E. C. Kinney,
Chief Engineer.

ST LOUIS DES MOINES & NORTHERN RAILWAY COMPANY

The Narrow Gauge Railway Construction Company—Contractor

Pay Roll For Chas. F. Loweth and others

For the Month of July 1881

No	Name	Occupation	Time Month	Time days	Rate Per Mo.	Amount	Balance Due	Check No	No	Received of the Narrow Gauge Railway Construction Company the sum set opposite our names, in full for services as specified	Witness
1	Chas F. Loweth	Asst Engr	1		$130.00	$130.00	$130.00		1	Chas F. Loweth	W. O. Litten
2	Oscar Orrman	Draughtsman	1		100.00	100.00	100.00		2	O. A. Orrman	W. O. Litten
3	W. O. Littem	Clerk		25	100.00	80.63	80.63		3	W. O. Litten	Fred Lyons
4	Nathan Calvert	Rod Man	1		47.50		47.50		4	Nathan Calvert	W. O. Litten
					$358.13	$358.13	$358.13				

I hereby certify that the persons named above were engaged in the service of this Company during the period for which time is returned, and that the rate of Compensation is correct.

Approved .....Gen'l Sup't .....Division

..... Approved.....General Manager.

ST LOUIS DES MOINES & NORTHERN RAILWAY COMPANY
The Narrow Gauge Railway Construction Company—Contractor.
Pay Roll for M. E. Nutting's Engr. Corps
For the month of July 1881

No	Name	Occupation	Time Month	Time Days	Rate Per Month	Rate Per Day	Amount	Balance Due	Check No.	No.	Received of the Narrow Gauge Railway Construction Company, the sum set opposite our names, in full for services as specified.	Witness
1	M. E. Nutting	Transit Man	1		$125.00		$125.00	125.00		1	M. E. Nutting	E. C. Kinney
2	J. Goldman	Level Man	1		60.00		60.00	60.00		2	J. Goldman	E. C. Kinney
3	J. M. Rodgers	Head Chainman	1		40.00		40.00	40.00		3	J. M. Rogers	E. C. Kinney
4	Fred Lyons	Rod Man		25	30.00		24.25	24.25		4	Fred Lyons	E. C. Kinney
5	John Horn	Rod man	1		45.00		45.00	45.00		5	John W. Horn	E. C. Kinney
6	Isac Williams	Axeman	1		30.00		30.00	30.00		6	Isaac Williams	E. C. Kinney
7	R. A. Breakfield	"	1		30.00		30.00	30.00		7	R. A. Brakefield	E. C. Kinney
8	Chas Frey	"		7	25.00		6.72	6.72		8	Check attached	
9	Geo. Zimbleman	"		1½		1.50	2.25	2.25		9	Check attached	
10	Ward G. Case	rear Flagman	1		20.00		20.00	20.00		10	Ward G. Case	E. C. Kinney
11	Geo Githens & team		1			4.00	124.00	124.00		11	G. Githens	E. C. Kinney
							$507.22					

I Hereby certify that the persons named above were engaged in the service of this Company during the period for which time is returned and that the rate of Compensation is correct.

.....Approved, E. C. Kinney, Chf. Engr. ..... Division
.....Approved ..... President.

ST. LOUIS DES MOINES & NORTHERN RAILWAY COMPANY.

The Narrow Guage Railway Construction Co. Contractors.

Dr. M. E. Nuttings, Expense.

Date 1881		Items.	Amount.
July	1,	1 axe, $1.10, 9 Dinner & horse feed, $2.70	3.80
"	2,	6 over night and horse feed at Dyars	3.50
		12 Lumber and dinner for self	.50
"	"	2″ to 4″ for self	2.25
		Dinner for party and horse feed	1.75
"	8,	2″ to 8″ bill for seven, St. James	32.00
		" " " horses at C. Halls	6.65
		" " " bill for three, Murphy's	14.75
		Lumber for stakes	1.25
		Dinner for party Swede Point	1.75
		" " One, blankbooks and stationery	1.65
		Lumber for stakes	1.50
		" " One, blankbooks and stationery	1.65
"	9	Dinner for seven, and lumber for stakes	1.50
"	11,	Dinner for seven	1.75
"	13,	12″ to 13″ Dinner and horse feed	1.80
		Over night Ren & Ike, Swede Point	1.50
"	15,	8″ to 15″ 76 meals at partmeriters	19.00
		" " " three horses	7.00
		15 meals at Parmeuters, and horse feed	4.75
		8″ to 15″ 78 meals at Brakefields	19.70
"	16,	Dinner for nine at G. Browns, & horses	2.50
"	20,	16″ to 20″ bill for horses at C. Halls	4.75
		four men at Murphy's 16″ to 20″	16.00
		16″ to 20″ Four men at St. James	16.50
		16″ to 20″ H. Chapman on board	2.00
		Dinner and horse feed, Swede Point	.70
		Overnight & horse feed at Polk City	1.50
		Eight railroad tickets Boon to Des Moines	12.32
"	21,	One railroad ticket Des Moines to Boon	1.54
		One axe, crossection rods, two tape measures	3.40
		Five papers tacks	.25
		Dinner and horse feed for self	.60
"	22,	Supper self and horse feed	.75
		Breakfast, Dinner & Horse feed	1.00
		Joe Rogers Dinner, Supper Des Moines	1.00
		Breadfast, Dinner & Lodging, Rogers & Ed	2.00
		Dinner & Breakfast for two	1.00
		Board at Des Moines for two days	2.00
"	23,	Two meals at Des Moines	.50
		Supper & Horse feed	.60
		Carried forward	196.76

ST LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY.

The Narrow Gauge Railway Construction Company—Contractors

} Dr. To M. E. Nutting's Expense a/c

1881	Items	Amount.
	Brot ford	$196.76
July 24	B. D. & S. & horses	1.65
25	Lumber for stakes	7.62
26	4 meals at Neffs	1.00
26	23′ to 26′ 19 meals	6.50
	2 for dinner	50
	Lumber for stakes	1.50
	23′ to 26′ 26 meals	6.50
	Bedding & horses	2.50
	2 over night at Babcocks	1.00
	3 for supper at Orins	1.15
	3 tickets Des Moines to Boone	4.62
27	Dinner & horses at Grangers	50
	Supper & horse feed	50
	Over night at Stones	1.25
	Dinner & horse feed at Holcombs	50
	Self & team over night	1.00
	25′ to 27 at Milligans 20 meals	5.00
28	Livery at Boone	4.00
	Dinner for self & team	50
29	Repair of chain	50
	Bill at St James, Boone, for 3¾ days ′ 3	8.25
	Telegram	.25
	4 tickets, Boone to Des Moines	6.16
	Horses	1.50
	Over night with team at Dennys	75
	Dinner for 3 at Davis	75
	" " 1 " "	25
	5 meals at Dennys	1.25
	6 " " Grangers	1.50
	3 " " Stewarts	60
	21st to 22d Ed Hull's bill for board	3.75
30	Dinner for 4 & horses at Stones	1.30
31	30′ to 31′ Hull & Roghers	2.00
	Chapman to board at home & 1 meal	1.00
	Per bill paid	5.75
	30′ to 31′ 1 man & team	2.00
	20′ to 31′ International	8.50
	1 supper	30
	Carried For'd	$290.91

ST LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY

The Narrow Gauge Railway Construction Company—Contractors

Dr. To M. E. Nutting Expense a/c

1881	Items	Amount
	Brot ford	290.91
July 31	Expense Frank Lyons for month July	20.25
	R. R. Fare Nathan Calvert	90
	Expense J. Goldman 22nd to 31st	8.25
		$320.31

Duplicate

$320.31. Received August 1st 1881.

From the Narrow Gauge Railway Construction Company, the sum of Three hundred twenty and 31/100 Dollars in full for the above account.

M. E. Nutting.

ST. LOUIS DES MOINES & NORTHERN RAILWAY COMPANY.

The Narrow Gauge Railway Construction Co.—Contractors.

Dr. To Henry P. Thompson,

Date 1881	Items.	Amount.
July 1,	To all damages caused to me as Lessee of L. O. Runigs farm being West One-half, Southeast One-fourth, 27, 79, 26, by the taking of right of way through same for above Railway Company	12.50

Correct .....

Approved: .....

$12.50, RECEIVED, July 19, 1881, From the Narrow Guage Railway Construction Company, the sum of Twelve & 50/100 Dollars, in full for the above account.

H. P. Thompson.

DUPLICATE.

ST. LOUIS DES MOINES & NORTHERN RAILWAY COMPANY,

The Narrow Guage Railway Construction Co. Contractors.

Dr. To Iowa State Register

Date 1881.	Items	Amount.
May 27,	To Printing and Advertising to date as per itemized bill herewith	199.50

COPY.

Correct:

Approved:

$199.50, Received, Des Moines, July 1881, From the Narrow Guage Railway Construction Company, the sum of One Hundred Ninety Nine & 50/100 Dollars, in full for the above account.

Clarkson Brothers,

Props. Iowa State Register.

R. P. CLARKSON.
J. S. CLARKSON.

Register Building, Corner 4th St. and Court Ave.

Des Moines, May 27, 1881.

St. Des. M. & N. R. R.

DUPLICATE.

TO THE IOWA STATE REGISTER, Dr.

Date 1881		Items	Amount.
April	4,	To 500 Dailies, April 3rd	15.00
"	8,	" 100 "	3.00
"	9,	" 25 "	.75
		" 30 Petitions, Boon	2.50
		" 500 Letter Hds	3.00
		" 250 Envs	1.75
"	11,	" 500 Dailies	15.00
"	15,	" 100 "	3.00
"	21,	" 500 "	15.00
"	28,	" 500 Dailies	15.00
May	3,	" 300 "	9.00
"	6,	" 10 Certificates Des M. Tp	2.00
"	10	" 10 Certificates, Worth	2.00
"	10	" 10 Form & Order	2.00
		" 10 " "	2.00
		" 5 Poll Books Boone	3.00
		" 5 " " Worth Tp	3.00
		" 500.00 Letter Hds. Engineers	3.00
"	11,	" 500 Dailies	15.00
"	12,	" 80 "	2.40
		" 1000 Vouchers	7.00
"	14,	" Adv. Corporation 6 sqs. D. 4 Sat	15.60
		" 500 checks 10 books	3.25
		" 1000 pay rolls 2 K	11.00
"	17,	" 200 Dailies	6.00
		" 10 certificates Douglass	2.50
		" 10 Form and Order	2.50
		" 5 Poll Books	3.00
May	24,	" 50 Petitions	2.50
		" 500 Envs	2.25
		" 500 Letter Hds	2.50
May	27,	" 500 Contracts & Spec	15.00
		" 300 Dailies	9.00
			199.50

ST. LOUIS DES MOINES & NORTHERN
Narrow Guage Railway Construction Company. } Dr. To the Iowa State Register.

Date 1881	Items.	Amount.
May 27,	To Printing and advertising to date, as per itemized bill herewith	199.50

DUPLICATE:

Correct:

.....

Approved:

.....

$199.50 Received Des Moines July 30 1881 From the St. Louis Des Moines & Northern Narrow Guage Railway Construction Company the sum of One Hundred Ninety Nine & 50/100 Dollars in full for the above account.

CLARKSON BROTHERS,

Props. Iowa State Register.

ST. LOUIS DES MOINES & NORTHERN RAILWAY COMPANY.
The Narrow Guage Railway Construction Co. Contractors. } Dr. To G. M. Dodge.

STATEMENT.

Date 1881	Items.	Amount.
July 30.	Commissioners award Dallas Co. Pd. Stephen Adams, Sheriff	2,400.00
	Stephen Adams, Sheriff, fees & expenses July 27th	56.00
	H. P. Thompson, Damage to crop on W. 2, S. E. 27, 79, 26.	12.50
August 1,	E. C. Kinney, July salary & expenses	340.83
	Chas. F. Loweth & party for July	358.13
	M. E. Nutting, expenses of party, July	507.22
	M. E Nutting " " " "	320.31
	State Register printing & advertising to May 27th	199.50
	Total, see vouchers attached	4,194.49

Complainant's Exhibit No. 80.

Exhibit "Q".

This Indenture, made this Fifteenth day of March, A. D. 1894, by and between Frederick M. Hubbell, individually, and Frederick M. Hubbell & Son, co-partners, all of Des Moines, Iowa, parties of the first part, hereinafter called "The Associates;" the Chicago, Milwaukee & St. Paul Railway Company, a corporation of the State of Wisconsin, authorized to own and operate Railroads in the State of Iowa, party of the second part, hereinafter called "The St. Paul Company," and Roswell Miller, of the City of Chicago, County of Cook and State of Illinois, party of the third part, hereinafter called "The Trustee,"—Witnesseth:

1. That the Des Moines, Northern & Western Railway Company, hereinafter called "the Des Moines Company", owns and operates certain lines of Railroad, aggregating about 150 miles in length, extending, respectively, from Des Moines to Boone, and from Clive to Fonda, all in the State of Iowa; and the St. Paul Company owns and operates an extensive system of Railroads, aggregating about 6,150 miles in length, in Illinois, Iowa and other States, and its Line from Chicago to Council Bluffs intersects and connects with the Lines of the Des Moines Company at Madrid and at Herndon, respectively, and by means of such connections it is able to give to the Des Moines Company a large amount of traffic not otherwise obtainable, and thereby greatly increases the prosperity of said Company.

2. That the Association own Thirty Thousand Shares, out of a total issue of Forty-two Thousand Shares of One Hundred Dollars each, of the Capital Stock of the Des Moines Company, and Two Million and Five Thousand Dollars out of a total issue of Two Million, Seven Hunder and Seventy Thousand Dollars of its First Mortgage Bonds—which Bonds bear interest at the rate of Four per cent per annum up to January 1st, 1897, and thereafter at the rate of Five per cent per annum—and desire that the St. Paul Company shall acquire an interest in said Capital Stock, and enter into close traffic relations with said Des Moines Company, and that the St. Paul Company is willing to acquire such interest and to enter into such traffic relations, on the terms hereinafter set forth; and

3. That in consideration of the premises, and of their mutual and dependent covenants hereinafter contained, the parties hereto have agreed and do hereby agree each with the other, and each with all the others, as follows, to-wit:

First. In consideration of the execution by the St. Paul Company of a certain Traffic Agreement with the Des Moines Company (a copy of which agreement is hereto attached and hereby referred to), the Associates hereby jointly and severally agreed that until any termination of the Traffic Agreement aforesaid, or until the expiration of the option given in Section Three hereof, the Capital Stock of the Des Moines Company shall not, without the written consent of the St. Paul Company, be increased beyond Forty-two Thousand Shares of One Hundred Dollars each, except by the issue of Stock at par in payment for the actual cost of property hereafter to be acquired, and that all said Shares, issued or to be issued, shall have equal rights and preferences.

Second. As a further and additional consideration for the execution by the St. Paul Company of the Traffic Agreement aforesaid, and in consideration of the sum of One Dollar to them in hand paid by said Company, the receipt whereof is hereby acknowledged, the Associates do hereby sell, assign, transfer and set over to the St. Paul Company Sixteen Thousand, Eight Hundred Shares of the Capital Stock of the Des Moines Company, and agree to deposit said Shares at the time, in the manner and for the purposes set forth in Section 7 hereof.

Third. As a further and additional consideration for the execution by the St. Paul Company of the aforesaid Traffic Agreement, and in consideration of the sum of One Dollar to them in hand paid by said Company, the receipt whereof is hereby acknowledged, the said Associates do hereby give and grant unto the St. Paul Company the right and privilege of purchasing from them—and they hereby agree to sell to it, if it elects so to purchase—Six Thousand Four Hundred and Sixty-eight Shares, additional to the Sixteen Thousand, Eight Hundred Shares above mentioned, of the Capital Stock of the Des Moines Company at and for the sum of Forty-six Thousand, Two Hundred Dollars; provided that such right and privilege be exercised by the St. Paul Company on any day after the 1st day of January, 1897, and not later than 12 o'clock noon of the 1st Monday in April in the year 1899, and in the manner hereinafter set forth.

Fourth. And for the consideration first aforesaid, the Associates further agree that the principal of the present Mortgage indebtedness of the Des Moines Company shall not, without the written consent of the St. Paul Company first obtained, be increased, by the issue of additional Bonds, beyond the said Two Million, Seven Hundred and Seventy Thousand Dollars in Bonds now outstanding, except by the issue of bonds at par in payment for the actual cost of property hereafter

acquired, and that none of the bonds so to be issued shall bear interest at a higher rate than four per cent per annum; and that no other or further Mortgage shall, without like consent as aforesaid, be placed on the railway or property of the Des Moines Company. And the Associates also agree to use all lawful and proper means to procure a reduction in the rate of interest on said outstanding bonds, so that said bonds shall, from and after the first day of April, 1897, bear interest at not exceeding four per cent per annum. Provided however, that this Section shall not be construed so as to prevent the Des Moines Company from making a new Mortgage and issuing new bonds thereunder for the purpose of renewing or extending its present Mortgage indebtedness; but provided also, that the new bonds so to be issued shall bear interest at not exceeding Four per cent per annum, and shall not exceed in amount the aggregate of the principal sum of the present outstanding bonds of said Company and the interest thereon which shall have accrued and be unpaid at the time of the issuing of new bonds therefor; and provided further, that said new bonds, or their proceeds, shall be used only for the purposes aforesaid, and that the present outstanding bonds and coupons, exchanged therefor or redeemed therefor, shall be cancelled when and as so exchanged or redeemed.

Fifth. The Associates further agree that if they shall be unable to procure the reduction in interest on said Bonds, as provided in the next preceding Section, then and in such case they will cause proceedings to be instituted to foreclose the Mortgage securing said Bonds, and will use all lawful and proper means to accomplish such foreclosure and sale of the property covered by said Mortgage, and a new Company shall be organized to take over said property, which new Company shall possess and own all the property, rights, privileges and franchise, of every name and description, now belonging to or enjoyed by the Des Moines Company, and shall have a Capital Stock, which shall not exceed the Mortgage indebtedness of said Company more than fifty per cent, divided into shares of One Hundred Dollars each, and a Mortgage debt, bearing not more than Four per cent interest per annum, and not exceeding in amount the principal sum of the present outstanding Bonds of the Des Moines Company, with all just and lawful interest thereon to the date of the organization of said new Company, and all costs and expenses of foreclosure, including costs and expenses incurred by a Receiver or Receivers, if such shall be appointed; and that Fifty-five and Four-tenths (55.4) per cent of said new Stock shall be deposited with the Trustee, as hereinafter provided.

Sixth. And for the consideration first aforesaid, the Associates further agree that the Board of Directors of the

Des Moines Company shall consist of not more than seven members, and at the next Annual meeting of the Stockholders for the election of Directors the St. Paul Company shall be represented in said Board by three persons nominated by it; and in case a new Company is organized to take the place of the Des Moines Company, as contemplated in the next preceding Section hereof, then its Board of Directors shall consist of seven members, and the St. Paul Company shall have the right to nominate three of said members.

Seventh. The Associates further agree that, simultaneously with the execution hereof, they will deposit with the Trustee Twenty-three Thousand, Two Hundred and Sixty-eight Shares of the present outstanding Capital Stock of the Des Moines Company; and if a new Company shall be formed to take the place of said Des Moines Company, then and in such case they will deposit with the said Trustee Fifty-five and Four-tenths per cent of the Shares of the Capital Stock of such new Company, in exchange and substitution for the 23,268 Shares first mentioned; and all of said shares, whether of the Des Moines Company or of the new Company, shall be held by the said Trustee for the following purposes and on the following conditions and trusts, to-wit:

1. That the said Trustee may and shall, at each Annual or other meeting of the Stockholders of the Des Moines Company (or of such new Company, if one be formed) held for the election of Directors, vote for the four persons by the said Associates nominated to him in writing as Directors, and for the three persons who may be by the St. Paul Company nominated to him in like manner and for the like purpose. But in case the Associates shall at any time fail to nominate, then the Trustee may and shall, for and on their behalf, choose as such Directors four suitable persons, not Officers of or connected with the St. Paul Company; and in case the St. Paul Company shall fail so to nominate, then the Trustee shall, for and on its behalf, choose as such Directors the persons who may at that time be the President, Third Vice President and General Manager, respectively, of the St. Paul Company.

2. That said Trustee may and shall, at any Annual or Special meeting of the Stockholders of the Des Moines Company (or of such new Company, if one be formed) vote for such measures as may lawfully be required to be adopted thereat, in order to carry out the provisions of this agreement and of the Traffic Agreement hereto attached; and for such other purposes, not inconsistent with the terms of said agreements, or either of them, as said Associates may from time to time request.

3. That the said Trustee may and shall, on the 15th day of March, 1895, and thereafter on the like day of each year during the continuance of the Traffic Agreement aforesaid (but not exceeding in all five years) transfer and deliver to the St. Paul Company Three Thousand, Three Hundred and Sixty Shares of the Capital Stock of the Des Moines Company; or in lieu thereof, eight per cent of the Shares of the Capital Stock of such new Company, if one be formed—being one-fifth part for each year of the 16,800 Shares of the Stock of the Des Moines Company (or their equivalent in the Stock of the new Company) which the Associates have in and by the Second Section hereof agreed to convey to the St. Paul Company.

4. That the said Trustee may and shall, at any time after the 1st day of January, 1897, and prior to 12 o'clock noon of the first Monday of April, in the year 1899, on the payment of or deposit with him by the St. Paul Company of the sum of Forty-six Thousand, Two Hundred Dollars, for the use and benefit of the Associates, assign, transfer and deliver to said Company all the Shares of the Capital Stock of the Des Moines Company (or of the new Company, if one be formed) then remaining in his hands, anything in the next preceding paragraph hereof to the contrary notwithstanding.

5. That the said Trustee may and shall, at any determination of this agreement, and upon notice thereof signed by the parties hereto, deliver up or pay over any shares of Stock or any money, as the case may be, then in its hands, to the owners thereof, upon receiving proper receipts for the same; and thereupon this Trust shall be discharged.

Eighth. The Associates further agree that they will pay to the Trustee such just and proper compensation for his service, in any matter growing out of this undertaking, as may be agreed upon between themselves and the said Trustee, and that they will hold and save the St. Paul Company free and clear from all claims of the said Trustee for such compensation; and they also agree that if and whenever the said sum of $46,200 shall be paid to or deposited with the said Trustee by the St. Paul Company, and written notice thereof shall have been served upon Frederick M. Hubbell—one of the said Associates—by depositing the same in the United States Postoffice, addressed to him at Des Moines, Iowa, then and thereafter the said Company shall be in no wise liable for the misapplication or non-application of the money so by it paid or deposited, and all the rights and interests of said paid or deposited, and that all the rights and interests of said Associates, to and in any and all of the Capital Stock deposited with the Trustee as aforesaid, shall wholly cease and deter-

mine when such payment or deposit is made; and thereupon they will, when thereto requested by the St. Paul Company, cause a meeting of the Board of Directors of the Des Moines Company, or of the new Company, as the case may be, to convene, and their representatives in said Board to resign, one by one, and to elect in their places such persons as may be thereto nominated by the St. Paul Company.

Ninth. In consideration of the agreement of the Associates, to pay him a just and proper compensation for his services therein, the Trustee hereby accepts the trust aforesaid, and agrees to faithfully perform all the acts and discharge all the duties mentioned and set out in the Seventh Section of this Indenture, when and as the same may be required of it.

Tenth. In consideration of the performance by the parties thereto of their respective covenants hereinabove set forth, faithfully and within the time and times limited therefor, the St. Paul Company hereby agrees that it will enter into and execute the aforesaid Traffic Agreement with the Des Moines Company, and that in case a new Company is formed to take the place of the Des Moinest Company, within the time and upon the terms for that purpose hereinabove mentioned and set forth, it will make a Traffic Agreement with said new Company for the then unexpired term of the Traffic Contract aforesaid, and upon the terms and conditions therein contained; but the St. Paul Company expressly reserves to itself the right to terminate this Indenture and the aforesaid Traffic Agreement with the Des Moines Company, without notice, on the second day of April, 1897, if at that time the Associates have failed to perform their covenants hereinbefore contained, or if the Mortgage Bonds of the Des Moines Company then bear interest at a higher rate than Four per cent per annum, or if the property of said Company has not then been acquired by a new Company formed as hereinabove contemplated.

Eleventh: The St. Paul Company further agrees that if and whenever it shall in any manner acquire the absolute ownership of Fifty-one per cent in amount of the Capital Stock of the Des Moines Company, or of the new Company, if one be formed as aforesaid, then the Traffic Contract hereinabove mentioned and referred to shall remain in full force until the 15th day of March, A. D. 1904, anything herein contained to the contrary nothwithstanding.

Twelfth. It is mutually understood and agreed by and between the Associates and the St. Paul Company, that if

the Associates shall faithfully endeavor to perform the obligations by them assumed, in the Fifth Article hereof, but nevertheless fail to perform the same, they shall not be liable in damages to the St. Paul Company by reason of such failure; Provided however, that nothing in this 12th Section contained shall be construed so as to limit or abridge in any manner the rights and privileges reserved to itself by the St. Paul Company in the 10th Section hereof.

Thirteenth. It is further mutually understood and agreed by and between the Associates and the St. Paul Company that if at any time a difference of opinion shall arise between them in respect to the rights and duties of either of them under this Indenture, the question in dispute shall be referred to a Board of Arbitrators, consisting of three competent, disinterested persons, one to be chosen by the Associates, one by the St. Paul Company, and the two so chosen to choose a third. The party desiring such arbitration shall give written notice of the same to the other party, setting forth therein definitely the points in dispute, and naming the person selected by such party to act as arbitrator. If the party on whom such notice is served shall for fifteen days thereafter neglect to name a person to act as arbitrator, then the party giving such notice shall name a second arbitrator, and the two so chosen shall choose a third. The Board of Arbitrators so chosen shall immediately proceed to hear and determine all matters submitted to them, after giving to each party not less than five days notice of the time and place of meeting, and at the time and place appointed shall proceed summarily to hear and dispose of the matter in dispute, unless, in their judgment, the hearing should be postponed to a later day or days, of which adjourned meeting like notice shall be given, unless such notice shall be waived by both parties, in which case the hearing may proceed at an earlier date. The determination of such Board of Arbitrators, or of a majority of them, as to any matter so submitted to them shall be absolute, final and conclusive upon the parties hereto, and such parties shall abide by such decision and perform the conditions thereof as if the same were made a part of this Indenture.

Lastly. It is mutually understood and agreed by and between all the parties hereto that at any termination of this agreement each party shall be released from all obligation or liability to the others, except for the payment or delivery of any balances of money or shares of stock then due under the terms of this agreement.

In Witness Whereof, the Associates and the Trustee have hereunto set their hands and seals, and the St. Paul Company has caused these presents to be executed by its President, thereto duly authorized, and its corporate seal to be hereto affixed and properly attested, the day and year first above written.

FREDERICK M. HUBBELL, (Seal)
FREDERICK M. HUBBELL & SON. (Seal)
(Seal) CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

Attest:
F. M. Myers,
Secretary.

By Rosewell Miller,
President.

Rosewell Miller,
Trustee. (Seal)

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Stipulation of Counsel.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY and The Wabash Railroad Company, Plaintiffs,

vs.

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, Frederick C. Hubbell and F. M. Hubbell & Son, Defendants.

Stipulation of Counsel Respecting the Admission of Copies of Certain Documentary Evidence on the Part of the Plaintiffs.

It is hereby stipulated between Counsel for the Complainants and defendants in the above entitled cause, that copies of the contracts, deeds and documents, a list of which is hereto attached, may be offered and admitted in evidence in said cause, on the part of the complainants, subject, however, to every objection that might be made or urged against the originals.

It being the intention that said copies shall be given the same effect as evidence as would be given to the originals of said contracts, deeds and documents.

Said copies shall be designated as "Complainants' Exhibits" and shall be numbered from No. 80 to No. 93 inclusive, each of said exhibits being identified by the initials of Counsel.

A list of said contracts, deeds and documents is as follows:

Complainants' Exhibit No. 80 Copy of contract between the Des Moines & St. Louis Railroad Company, and James F. How, dated February 18, 1881, respecting the construction of the Des Moines & St. Louis Railroad.

Complainants' Exhibit No. 82 Deed of F. M. Hubbell to James F. How, Trustee, dated March 23rd, 1881.

Complainants' Exhibit No. 83. Declaration of Trust executed by Geoffrey O'Hara, dated March 12th, 1881.

Complainants' Exhibit No. 84. Deed from Geoffrey O'Hara to James F. How, Trustee, dated September 13th, 1881.

Complainants' Exhibit No. 85. Deed of Henry A. Gardner and wife, to James F. How, Trustee, dated February 23rd, 1881.

Complainants' Exhibit No. 86. Deed of Annie Savery and Husband to James F. How, Trustee, dated June 1st, 1882.

Complainants' Exhibit No. 87. Deed of Hoyt Sherman, assignee, to James F. How, Trustee, dated November 26th, 1883.

Complainants' Exhibit No. 88. Deed of Edward Dennis, Mary Dennis and Friederika Dennis to James F. How, Trustee, dated July 25, 1883.

Complainants' Exhibit No. 89. Deed of Ewing, Jewett & Chandler to James F. How, Trustee, acknowledged November 20th, 1883.

Complainants' Exhibit No. 90. Deed of Maria McCauly and husband to James F. How, Trustee, dated August 8th, 1884.

Complainants' Exhibit No. 91. Deed of William Dwyer and wife to James F. How, Trustee, dated August 5th, 1884.

Complainants' Exhibit No. 92. Deed of Wells H. Blodgett and wife to James F. How, Trustee, dated February 20th, 1885.

Complainants' Exhibit No. 93. Declaration of Trust executed by Frederick M. Hubbell, March 11, 1881 in favor of Des Moines & St. Louis Railroad Company and Des Moines Northwestern Railway Company.

It is further stipulated that the contract entered into January 2nd, 1882, between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company; the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, and consented to by the Wabash, St. Louis & Pacific Railway Company, which contract is designated as "Exhibit A" to the Amended Bill of Complaint herein, was filed for record in the office of the Recorder of Deeds for Polk County, Iowa, on the 28th day of September, 1886.

WELLS H. BLODGETT,

J. C. COOK,
Counsel for Plaintiffs.

GUERNSEY, PARKER & MILLER,
Counsel for Defendants.

COMPLAINANTS' EXHIBIT No. 89.

Contract, Dated February 18th, 1881, Between J. F. How and Des Moines and St. Louis Railroad Co. for Construction of Road.

This Agreement, made this — day of February, 1881, by and between the Des Moines and St. Louis Railroad Company, a corporation organized under and in accordance with the laws of the State of Iowa, party of the first part and James F. How, of St. Louis, State of Missouri, party of the second part, Witnesseth:

Whereas, J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells did on the 8th day of December, 1880, enter into an agreement with the Wabash, St. Louis & Pacific Railway Company to incorporate themselves under the laws of Iowa as a railroad corporation with a capital stock of two millions of Dollars and authorized to construct a railroad from Des Moines, Iowa, to Albia in said State and in accordance with such agreement they have duly organized themselves into a corporation by the name and style of the Des Moines and St. Louis Railroad Company, with the power and for the purpose contemplated in said agreement, which agreement, in so far as the same may be applicable is hereby referred to and made a part hereof.

Now Therefore, the said second party, being the person designated under said agreement by the Wabash, St. Louis & Pacific Railway Company for the consideration hereinafter expressed, hereby agrees to subscribe to the entire capital stock of the first party, with the exception of four shares as hereinafter provided, and agrees that he will, with all reasonable dispatch, locate, provide right of way and grounds for, construct, complete and reasonably equip the railroad aforesaid, from Des Moines, Iowa, to a connection with the railroad of the Wabash, St. Louis & Pacific Railway Company at Albia, Iowa, all of which location and construction shall be done to the approval of the said Wabash, St. Louis & Pacific Railway Company. All expenses of surveys and other expenses made by said first party up to the date of this contract, and all contracts for ties entered into by it, are hereby assumed by the second party. And the second party further agrees, accordance with said agreement of December 8th, to pay to said J. S. Polk, J. S. Clarkson, F. M. Hubbell, and J. S. Runnells, as compensation for their services as officers and agents of the said first party, and in procuring subsidies and other aid, from the execution of said contract of December 8th, to the time of the completion of said railroad the sum of ten thousand dollars in money, and the further sum of five per cent of the amount of all of said subsidies which shall be actually paid and five per cent of the value of all lands donated for right of way or station purposes, and five per cent of the value of all other aid to the construction of the railroad of said first party which may be expressly accepted by the second

party. In the event that more ground is donated in consideration of the location of a station at any point than is required upon a liberal construction for those purposes the surplus shall belong absolutely to the said J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells. The value of property donated for right of way shall be estimated at four four hundred dollars per mile. The said sum of ten thousand dollars shall be paid on the completion of the first five miles of said railroad and the commission of five per cent on the completion of said railroad.

It is expressly understood that the expenses of the parties above named, as officers and directors of the said first party hereto, and while personally engaged in procuring subsidies or right of way, and their office and clerical expenses, and the legal expenses of said first party for condemnation and other proceedings shall be defrayed from funds of said first party and not at their personal cost and shall be deducted from the amount due the second party under this contract.

In consideration of said agreements by the second party hereto, and in the payment for such location, right of way, construction and equipment of said railroad the first party agrees to issue to the second party the entire amount of its capital stock, with the exception of four shares, by him subscribed as above, and in addition thereto to deliver to him for each mile of said railroad fifteen thousand dollars in bonds of the Wabash, St. Louis & Pacific Railway Company, of the issue secured by its General Mortgage, and further secured by special mortgage on the railroad and equipments of the said first party, and all appurtenances thereto. As fast as each section of five miles of said railroad is completed there shall be issued to said second party the entire amount of fifteen thousand dollars per mile of said bonds and one hundred and twenty-five thousand dollars of said capital stock the remainder of said capital stock to be issued and delivered when this contract of subscription is completely performed by said second party.

In addition to the payment above set forth the first party shall transfer to the second party all sums of money, or monied obligations which said first party may receive in consideration of the construction of said railroad from persons or private and municipal corporations, not reserved by said agreement of December 8th aforesaid to said Polk, Clarkson, Hubbell and Runnells, and so much of the capital stock of the first party as the laws of Iowa may require said first party to transfer to persons or corporations in consideration of such local aid shall be by it so transferred and deducted from the amount of said capital stock otherwise payable to the said second party.

In Witness Whereof, the parties hereto have, this 18th day of February 1881, signed the same and the party of the first part has caused its corporate seal to be affixed thereto.

DES MOINES & ST. LOUIS R. R. CO.

(Signed) By J. S. CLARKSON,
President.

(Signed) JAMES F. HOW.

[SEAL.] Attest:

F. M. HUBBELL,
Secretary.

O. K.

GUERNSEY, PARKER & MILLER.

" "

WELLS H. BLODGETT.

COMPLAINANT'S EXHIBIT No. 82.

Deed of F. M. Hubbell and Wife to James F. How, Trustee.

F. M. Hubbell & Wife

to

James F. How, Trustee.

Filed for Record and entered for taxation the 23rd day of March A. D., 1881 at 5:45 o'clock p. m.

J. J. PAYNE,
Recorder,

By W. E. ROWLAND,
Deputy.

Know All Men By These Presents: That I, F. M. Hubbell of Polk County and State of Iowa, in consideration of the sum of Two Thousand & Sixty-Two & 50 100 Dollars, in hand paid do hereby sell and convey unto James F. How, Trustee of St. Louis County and State of Missouri, the following described premises, to-wit, and State of Iowa, to-wit:

Lots No. Twelve & Thirteen in Block Eleven, Lots No. Ten and Eleven Block No. twelve—Lot No. Sixteen in Block No. Thirteen. Lot No. Seven in Block No. Sixteen Lot No. Nine in Block No. Twenty-one, all in the Town of Des Moines, now lying in and forming a part of the City of Des Moines.

And I do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under us. And the said Frances E. Hubbell, wife of F. M. Hubbell hereby relinquishes all her right of dower in and to the above described premises.

Signed this 23rd day of March A. D. 1881.

F. M. HUBBELL.
FRANCES E. HUBBELL.

In presence of ——— ———.

STATE OF IOWA,
Polk County, ss:

On this 23rd day of March A. D. 1881, before me C. Huttenlocker a Notary Public, in and for said County, personally came F. M. Hubbell and Frances E. Hubbell personally to me known to be the identical persons whose names are affixed to the above instrument as grantors and acknowledged the same to be their voluntary act and deed for the purposes therein expressed.

Witness my hand and Notarial Seal on the date last above written.

[NOTARIAL SEAL.] C. HUTTENLOCKER,
Notary Public, Polk Co.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book #161, page 119.

Dated at Des Moines, Iowa, in said County, this the 3rd day of September, 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.
GUERNSEY, PARKER & MILLER.
" "
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 83.

Declaration of Trust of Geoffrey O'Hara.

As holder of the legal title to lot number eight (8), block thirteen (13), in the City of Des Moines, Iowa, I hereby certify and acknowledge that I hold the same as Trustee for the Wabash, St.

Louis and Pacific Railway Company, the lot in question having been purchased by that Company as an appurtenant railroad to the Des Moines and St. Louis Railroad Company under the contract between the said two Companies for the construction of the railroad from Des Moines to Albia in the State of Iowa.

Witness my hand this 12th day of March A. D. 1881.

GEOFFREY O'HARA.

STATE OF NEW YORK,
City and County of New York, ss:

On this twelfth day of March, A. D. 1881, before me undersigned, a duly appointed Notary Public for the State of New York, personally apeared Geoffrey O'Hara, to me known to be the same person described in and who executed *and* foregoing certificate, and acknowledged that he executed the same for the uses and purposes therein mentioned.

Witness my hand and Notarial Seal at the City of New York, the day and year aforesaid.

[NOTARIAL SEAL.]

WM. J. HARDING,
Notary Public, Kings County,
State of New York.

Cert. filed in New York County.

O. K.
GUERNSEY, PARKER and MILLER.
" "
WELLS H. BLODGETT.

COMPLAINANT'S EXHIBIT No. 84.

Deed of Geoffrey O'Hara to James F. How, Trustee.

Geoffrey O'Hara

to

Jas. F. How, Trustee.

This Indenture, made on the 13th day of September A. D. 1881, by and between Geoffrey O'Hara of the City of New York, State of New York party of the first part, and James F. How, Trustee of the City of St. Louis, in the State of Missouri, party of the second part: Witnesseth, That the said party of the first part in consideration of the sum of One Dollar, to me paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, and sell, convey and confirm, unto

the said party of the second part, his heirs and assigns, the following described Lots, Tracts or parcels of land, lying, being and situate in the County of Polk and State of Iowa, to-wit:

All of Lot Number Eight (8) in Block thirteen (13) Town of DeMoine in said County of Polk and State of Iowa as the same appears upon the plat of said town now on file in the office of the Recorder of Deeds of said County

To Have And To Hold, the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in anywise appertaining, unto the said party of the second part, and unto his heirs and assigns forever; the said — hereby covenanting that the said premises are free and clear of any encumbrance done or suffered by him or those under whom he claims; and that he will Warrant and Defend the title to the said premises unto the said party of the second part and to his heirs and assigns forever against the lawful claims and demands of all persons claiming under, by or through said grantor, but against no other person or persons whomsoever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.] G. O'HARA.

Signed, sealed and delivered in presence of
JOSEPH DICKSON.

STATE OF NEW YORK,
County of New York, ss:

Be it Remembered, that on this 13th day of September A. D. 1881, before the undersigned, a Notary Public within and for the County and State aforesaid personally came Geoffrey O'Hara who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned. And the said Geoffrey O'Hara further declared himself to be single and unmarried.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office in New York the day and year first above written. My term of office as a Notary Public expires on the 30th day of March 1883.

[NOTARIAL SEAL.] WM. J. HARDING,
Notary Public, Kings County,
State of New York.

Certificate filed in New York County.

Filed Oct. 10, 1881, 2 30 p. m. J. J. Payne, Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 94, page 535.

Dated at Des Moines, Iowa, in said County, this the 21st day of October, 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.

GURNSEY, PARKER & MILLER.
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 85.

Deed of Henry A. Gardner and Wife to James F. How, Trustee.

Henry A. Gardner and Wife

to

James F. How, Trustee, &c.

Know all men by these Presents: That Henry A. Gardner and Deborah C. Gardner, his wife, of Cook County and State of Illinois, in consideration of the sum of Two Thousand Dollars in hand paid by James F. How, Trustee of the Des Moines and St. Louis Railway Company, and the Des Moines and Northwestern Railway Company, of St. Louis County and State of Missouri, do hereby sell and convey to the said James F. How as Trustee of the Des Moines and St. Louis Railway Company and the Des Moines and Northwestern Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number Three (3) in block Twenty Two (22) in Hoxies Addition to the Town of Fort Des Moines, the same being within the corporate limits of the City of Des Moines.

And I hereby covenant with the said James F. How, Trustee as aforesaid, that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever, except a mortgage of $750.00 to M. H. Stanton due April 1, 1881, bearing 9% interest, which said incumbrance said James F. How as Trustee assumes to pay; and I covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever; except the aforesaid mortgage.

And the said Deborah C. Gardner hereby relinquishes her right of dower in and to the above described premises.

Signed this 23rd day of February A. D. 1881.

HENRY A. GARDNER.
DEBORAH C. GARDNER.

STATE OF ILLINOIS,
County of Cook, ss:

On the 22nd day of March A. D. 1881, before me a Notary Public within and for said County, personally came Henry A. Gardner and Deborah C. Gardner his wife, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal at Chicago on the date last above written.

[NOTARIAL SEAL.] FRANK YOUNG.

Filed April 22nd, 1881, at 2¾ o'clock P. M.

J. J. PAYNE,
Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book 94, Page 287.

Dated at Des Moines, Iowa, in said County, this 12th day of September, A. D. 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.

GUERNSEY, PARKER & MILLER.
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 86.

Deed of Annie Savery and Husband to James F. How, Trustee.

Annie Savery & Husband

to

James F. How, Trustee.

Filed for Record and entered for Taxation the 30th day of Nov. A. D. 1883 at 11:45 o'clock A. M.

J. J. PAYNE,
Recorder.

——— ———,
Deputy.

Know All Men By These Presents: That we, Annie Savery & J. C. Savery, her husband, of Polk County, and State of Iowa, in consideration of the sum of Two Thousand Nine Hundred and Fifty Dollars ($2950.00) in hand paid by James F. How, Trustee, of County of ..... and State of ..... do hereby Sell and Convey unto the said James F. How, Trustee, the following described premises situated in the County of Polk and State of Iowa, to-wit:

A strip of land Fifty (50) feet in width on the North of and adjoining the right of way of the Chicago Rock Island and Pacific Railroad in lot Number Two (2) of the Official Plat of the Northwest quarter of the Northeast quarter of Section Eight (8) in Township Seventy-Eight (78) North, Range Twenty-four (24) West of the Fifth P. M. Iowa, this conveyance of said Real estate being made in lieu and to take the place of land bought to be condemned by the Des Moines & St. Louis Railroad Company for right of way through the aforesaid official Plat Lot.

And we hereby covenant with the said James F. How, Trustee, that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

And the said J. C. Savery hereby relinquishes his right of dower in and to the above described premises.

Signed the First day of June, A. D. 1882.

ANNIE SAVERY.
J. C. SAVERY.

In presence of

——— ———.

STATE OF IOWA,
Polk County ss:

On the second day of June A. D. 1882, before me W. O. Curtiss, a Notary Public within and for said County, personally came Annie Savery and James C. Savery, her husband, personally to me known to be the identical persons whose names are affixed to the above instrument as grantors, and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal at Des Moines, Iowa, on the date last above written.

[NOTARIAL SEAL.] W. O. CURTISS,
Notary Public, Polk Co., Iowa.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 141, page 15.

Dated at Des Moines, Iowa, in said County, this the 12th day of September A. D. 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.
GUERNSEY, PARKER & MILLER.
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 87.

Deed of Hoyt Sherman to James F. How, Trustee.

Hoyt Sherman, Assignee,

to

James F. How, Trustee.

Know All Men By These Presents: That whereas, on the 23rd day of February 1875, a petition in Bankruptcy was filed in the United States District Court for the District of Iowa against Benjamin F. Allen, asking that he be adjudged a Bankrupt; and whereas on the 22nd day of April 1875, said Benjamin F. Allen was adjudicated

a Bankrupt by the said District Court for the District of Iowa, and on the 1st day of July, 1875, the undersigned was elected assignee of his Estate and that on the 12th day of July, 1875, the honorable J. M. Love Judge of the United States District Court for said District executed in due and proper form a deed of assignment to the undersigned of all estate real and personal of the said Benjamin F. Allen, Bankrupt, and whereas, on the 25th day of July 1881, a Sheriff's jury of Polk County condemned the following described tract of land as a right of way for the St. Louis, Des Moines & Northern Railway Company for the consideration named herein and whereas, the United States District Court for the District of Iowa, by an order dated November 11th, 1882, ordered and directed the undersigned Assignee to convey said tract to said Railway Company for the consideration and subject to the conditions therein named. Now, therefore, in consideration of the payment of Twenty three hundred and Seventy three 33/100 Dollars, by James F. How, Trustee of St. Louis in the State of Missouri, I, Hoyt Sherman, Assignee, do hereby Sell and Convey unto the said James F. How, Trustee, the following described real estate situate in the County of Polk and State of Iowa, viz: Beginning at a point on the Section line Eighteen Hundred and Eighty-three (1883) feet South of Northwest corner of Section No. Eight in Township No. Seventy-eight (78) North Range Twenty-four (24) West; thence North 61½° East on a line parallel to and fifty (50) feet from the Center line of the St. Louis Des Moines and Northern R. R. track as now constructed Five Hundred and Seventy-eight (578) feet; thence North 64½° East Eight hundred (800) feet; thence North 58° East Eight Hundred and Seventy two (872) feet to the East line of Lot No. Four (4) of the Official Plat of the Northwest quarter of said Section No. Eight (8); thence South along said line One Hundred Twenty-five feet (125) to the North line of the right of way of the C. R. I. & P. R. R. Co. thence South 55° West along said right of way line (which is 50 feet from Center of track) Twenty-three hundred and thirty (2330) feet to Section line; thence North along the Section line Three Hundred Fifteen (315) to the place of beginning, and the said Hoyt Sherman, Assignee, so far as he may legally do in his representative capacity, covenants for the estate of B. F. Allen, Bankrupt, to Warrant and Defend the title against the lawful claims of all persons whomsoever. Signed this 26th day of November, 1883.

HOYT SHERMAN,
Assignee.

STATE OF IOWA,
Polk County, ss:

On this 19th day of December 1883, before me a Notary Public in and for said County in person appeared Hoyt Sherman, personally known to me to be the identical person who executed the foregoing conveyance as assignee, and acknowledged the same to be his voluntary act and deed in his capacity as above stated.

Witness my hand and Notarial Seal the date above written.

[NOTARIAL SEAL.] CYRUS KIRK,
Notary Public.

This Deed of Conveyance made by virtue of an order of Court, dated November 11, 1882, is hereby confirmed and approved.
Dec. 19, 1883.

JOHN MITCHELL,
Register.

Filed Dec. 24th, A. D. at 10:55 o'clock A. M.

J. J. PAYNE,
Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 138, page 13.

Dated at Des Moines, Iowa, in said County, this the 12th day of September 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.
GUERNSEY, PARKER & MILLER.
" "
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT NO. 88.

Deed of Edward Dennis to James F. How, Trustee.

Edward Dennis et al.

to

James F. How, Trustee.

Filed for Record and entered for Taxation the 30th day of Nov. A. D. 1883, at 11:45 o'clock A. M.

J. J. PAYNE,
Recorder.

_____,
Deputy.

Know All Men By These Presents: That we, Frederick Dennis, Widow, and Edward Dennis and Mary Dennis, his wife, and sole surviving heirs at law and *legatees* of Laurent Dennis deceased and late of Polk County, and State of Iowa, in consideration of the sum of Twelve Hundred (1200) Dollars, in hand paid by James F.

How, Trustee of ..... County and State of ..... do hereby Sell and Convey unto the said James F. How, Trustee, the following described premises situated in Polk County, State of Iowa, to-wit:

Lot No. five (5) Block "D" of Scott and Dean's Addition to Fort Des Moines and now included within and forming a part of the City of Des Moines, Iowa, and for the same consideration we also release to said Trustee and the Railroad Company which he represents all damage to Lot No. four (4) in the same Block by reason of any change of grade which has been made or may hereafter be made in the management and operation of such Road.

And we hereby covenant with the said James F. How, Trustee that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; and that they are free and clear of all liens and incumbrances whatsoever.

And we hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And Mary Dennis Wife of Edward Dennis, hereby relinquishes her right of dower in and to the above described premises.

Signed this 25th day of July A. D. 1883.

EDWARD DENNIS.
MARY DENNIS.
FREDERICK DENNIS (in foreign).

STATE OF LOUISIANA,
City of New Orleans, ss:

On this Fourth day of September A. D. 1883, before me Edward A. Peyroux a Notary Public within and for said County, personally came Edward Dennis and Mary Dennis, husband & wife and personally to me known to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed for the purposes therein expressed. . . . . .

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal at the City of New Orleans, La., on the date last above written.

[NOTARIAL SEAL.] E. A. PEYROUX.
Not. Pub.

STATE OF IOWA,
Polk County, ss:

On this 2nd day of October A. D. 1883, before me, Ezra K. Failor, a Notary Public within and for said County, personally came Fredericka Dennis, personally to me known to be the identical person whose name is affixed to the above Instrument as Grantor and acknowledged the execution of the same to be her voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my Official Seal at Des Moines, Iowa, on the date last above written.

[NOTARIAL SEAL.] EZRA K. FAHLOR,
Notary Public, Polk County, Ia.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 141, page 16.

Dated at Des Moines, Iowa, in said County, this the 12th day of September A. D. 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.
GUERNSEY, PARKER & MILLER.
" "
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 89.

Release of Ewing, Jewett and Chandler to James F. How, Trustee.

Ewing, Jewett & Chandler

to

James F. How, Trustee.

Know All Men By These Presents: That we, Ewing, Jewett & Chandler of the City of Des Moines, Iowa, in consideration of the sum of Twenty-five hundred dollars, the receipt whereof is hereby acknowledged do hereby release all our interest in a certain lease held, owned, and enjoyed by us to Lot Seven (7) in Block Nine (9) of the original town of Ft. Des Moines, now a part of the City of Des Moines, Iowa, unto James F. How, Trustee; and we acknowledge settlement and satisfaction in full of all damages arising by reason of the condemnation and occupation of lot by the Des Moines & St. Louis Railroad, Wabash, St. Louis & Pacific R. R. St. Louis, Des Moines & Northern R. R. Co., or their assigns; And we further acknowledge from the Railroad Companies aforesaid full settlement and satisfaction of all damages arising by reason of the condemnation and occupancy of our Lumber Yard situated on Block Nine of the original town of Ft. Des Moines, now a part of the City of Des Moines, Iowa, taken possession of about the month of November 1881; And this instrument is understood to release and satisfy all

claim for damages that may have arisen or could arise by reason of the condemnation and occupancy of the ground occupied by us as a Lumber Yard as aforesaid, as well as all damage affecting our interest in and to said Lumber Yard.

EWING, JEWETT & CHANDLER.

STATE OF IOWA,
County of Polk, ss:

On this 20th day of November, 1883, before me, Hiram Y. Smith a Notary Public, within and for said County, personally came D. R. Ewing, to me personally known to be a member of the firm of Ewing, Jewett and Chandler, whose names are affixed to the above instrument as grantors, and acknowledged the execution of the same to be the voluntary act and deed of the firm aforesaid, for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal at Des Moines, on the date last above written.

[NOTARIAL SEAL.] HIRAM Y. SMITH,
Notary Public, Polk County, Iowa.

Filed for Record Dec. 9, 1887, at 9 o'clock A. M.

D. C. BISHARD,
Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book 196 page 238.

Dated at Des Moines, Iowa, in said County, this the 12th day of September A. D. 1912.

Mrs. FRANK W. DODSON,
Recorder.

O. K. GUERNSEY, PARKER & MILLER.
" " WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 90.

Release of Maria McCauley and Husband to James F. How, Trustee.

Maria McCauly & Husb.

to

James F. How, Trustee.

For the consideration of Two Hundred and Nine and 46/100 (209.46) dollars to us in hand paid by James F. How, Trustee, the

receipt of which is hereby acknowledged, we Maria McCauley and Thomas McCauley husband and wife, do hereby release the said James F. How, Trustee, his heirs, executors, administrators and assigns from any and all liability for and on account of damages suffered or sustained by us to the following described property-to-wit.

Lots one and two (1 & 2) Block 13 in the Town of DeMoine, and now included within the corporate limits and forming a part of the City of Des Moines, Polk County, Iowa, by reason of the location, laying down and operation of a part or portion of said railroad company's line of road, over, along and upon the alley adjoining said lots upon the South and upon which said alley the said lots abut. This release being for railroad purposes only.

In witness whereof, we have hereto set our hands this 8th day of August, 1884.

MARIA McCAULEY.
THOMAS McCAULEY.

STATE OF IOWA,
Polk County, ss:

Be it remembered that on this 8th day of August, A. D. 1884, before the undersigned a Notary Public in and for said County, personally appeared Maria McCauley and Thomas McCauley, her husband, to me personally known to be the identical persons whose names are subscribed to the foregoing release as releasers, and acknowledged the *the* instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[NOTARIAL SEAL.] FASHAY WALKER,
Notary Public, Polk Co., Iowa.

Filed for Record Dec. 9, 1887, at 9 o'clock, A. M.
D. C. BISHARD,
Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 196, Page 240.

Dated at Des Moines, Iowa, in said County, this 12th day of September A. D. 1912.

Mrs. FRANK W. DODSON,
Recorder.

O. K. GUERNSEY, PARKER & MILLER.
" " WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 91.

Deed of William Dwyer and Wife to James F. How, Trustee.

Wm. Dwyer & Wife

to

James F. How, Trustee.

Filed for Record the 9th day of Dec. A. D. 1887, at 9 o'clock A. M.

D. C. BISHARD,
Recorder.
——— ———, *Deputy.*

Know All Men By These Presents: That we, William Dwyer and Ellen Dwyer, husband and wife, of the County of Polk and State of Iowa, in consideration of the sum of Two Hundred and fifty-six and 75/100 Dollars in hand paid, do hereby Quit Claim unto James F. How, Trustee, all... Right, Title and interest in and to the following described land, situated and lying in Polk County and State of Iowa, to-wit:

That part of the alley abutting and adjoining the East seventy-one feet of Lot No. seven Block No. 14, in the Town of DeMoine, County of Polk and State of Iowa, and now a part of the City of Des Moines, and more particularly described as follows, to-wit: That part of said alley beginning on the west line of seventh street and extending westward along the line of said Lot No. 7 a distance of seventy-one feet, it being the intention to convey the grantors interest in that part of said alley abutting and adjoining seventy-one feet of said lot extending westward from the west line of said Seventh street and no more. The grantors reserve the right to use said alley subject to the use of the same for railroad purposes as now used, being that portion of the said alley heretofore condemned by the Polk Circuit Court, January term 1884.

And the said Ellen Dwyer releases all her right to dower in and to the above described premises.

Witness our hands this 5th day of August A. D. 1884.

WILLIAM DWYER.
ELLEN DWYER.

STATE OF IOWA,
Polk County, ss:

On this 5th day of August, A. D. 1884, before me the undersigned a Notary Public in and for said County appeared the above named William Dwyer and Ellen Dwyer personally to me known to be the identical persons whose names are affixed to the foregoing instrument as grantor and acknowledged the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal.

[NOTARIAL SEAL.]

J. S. CLARK,
Notary Public, Polk County, Iowa.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 112, Page 180.

Dated at Des Moines, Iowa, in said County, this 12th day of September, A. D. 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K. GUERNSEY, PARKER & MILLER.
" " WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 92.

Deed of Wells H. Blodgett and Wife to James F. How, Trustee.

Wells H. Blodgett and Wife

to

James F. How, Trustee for Solon Humphreys and Thos. E. Tutt, Receivers of the Wabash, St. Louis and Pacific Ry. Co.

This Indenture, made on the Twentieth day of February A. D. One Thousand Eight Hundred and Eighty-five, by and between Wells H. Blodgett and Emma M. Blodgett, his wife, of the City of St. Louis and State of Missouri, parties of the first part and James F. How, Trustee for Solon Humphreys and Thomas E. Tutt, Receivers of the Wabash, St. Louis and Pacific Railway Company, of the City of St. Louis and State of Missouri, party of the second part.

Witnesseth, That the said parties of the first part in consideration of the sum of One Dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do, by these presents, remise, release and forever quit claim unto the said party of the second part, the following described Lots, tracts or parcels of land, lying, being and situate in the County of Polk and State of Iowa, to-wit:

Lot Number Twenty-three (23) of Brooks & Company's Addition to the City of Des Moines, containing Six and Thirty-seven one hundredths (6.37) acres more or less, and being now within the corporate limits of the City of Des Moines, Iowa.

To Have And To Hold, the same, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said party of the second part, and his successor, successors and assigns forever — so that neither the said parties of the first part, nor their heirs, nor any other person or persons for them or in their name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them shall, by these presents, be excluded and forever barred.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.] WELLS H. BLODGETT.
[SEAL.] EMMA M. BLODGETT.

STATE OF MISSOURI,
City of St. Louis, ss:

Be it Remembered, that on this 29th day of February A. D. 1885, before me a Notary Public within and for the City of St. Louis and State of Missouri, whose Commission expires on the 29th day of June, A. D. 1885, personally appeared Wells H. Blodgett and Emma M. Blodgett, his wife, to me known to be the persons described in and who executed the foregoing instrument of writing and they severally acknowledged that they executed the same as their free act and deed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at my office in the City and State aforesaid, the day and year first above written.

[NOTARIAL SEAL.] GEO S. GROVER,
Notary Public, City of St. Louis, State of Mo.

Filed for record Feb. 23, 1885, at 10 55 o'clock A. M.
D. C. BISHARD,
Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office and of the whole thereof, and recorded in Book 138, page 372.

Dated at Des Moines, Ia., in said County, this 6th day of Sept. A. D. 1912.

Mrs. FRANK W. HOBSON,
Recorder.

O. K.
GUERNSEY, PARKER & MILLER.
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 93.

Declaration of Trust of F. M. Hubbell.

Know All Men By These Presents, that I, F. M. Hubbell of Des Moines, Iowa, hold in trust for the Des Moines & St. Louis Railroad Company and for the Des Moines Northwestern Railway Company the title to the following Real Estate.

Lots 12 & 13 in Block 11.
Lots 10 & 11 in Block 12.
Lots 16 in Block 13.
Lot 7 in Block 16.
Lot 9 in Block 21.

all in the town of Demoine now in the corporate limits of the City of Des Moines, Iowa.

And I agree to convey the same to said Companies, or to such person as they may direct whenever requested so to do.

In witness whereof, I have hereto set my hand this March 11, 1881.

F. M. HUBBELL.

STATE OF IOWA,
County of Polk, ss:

On this March 11, 1881, before me a Notary Public in and for said County personally came F. M. Hubbell personally to me known to be the identical person whose name is affixed to the above instrument as grantor and acknowledged the same to be his voluntary act and deed for the purpose therein expressed.

Witness my hand and seal on the date last above written.

[NOTARIAL SEAL.] C. HUTTENLOCHER.
Notary Public, Polk Co., Iowa.

O. K.
GUERNSEY, PARKER & MILLER.
WELLS H. BLODGETT.

Additional Evidence of F. M. Hubbell.

In the District Court of the United States in and for the Southern District of Iowa, Central Division.

THE ST. MILWAUKEE & ST. PAUL RAILWAY COMPANY, and THE WABASH RAILROAD COMPANY, Complainants,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, Frederick C. Hubbell, and F. M. Hubbell & Son, Defendants.

Stipulation.

It is hereby stipulated by and between the parties hereto that there shall be added to the deposition of F. M. Hubbell, taken in this case, commencing on the 31st day of May A. D. 1911, as a part of his testimony, examination the following:

(1.) *Question.* Mr. Hubbell, when you were examined as a witness in this case on the last day of May and first days of June, 1911, the following interrogatory was propounded to you:

"I will ask you whether, as Secretary of the Des Moines Union Railway Company, you now have in your possession, a certified copy, or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines and St. Louis Railroad Company, prior to the 8th day of April, 1899, authorizing J. F. How to be present at any meeting of the stockholders of the Des Moines Union Railway Company and vote any share or shares of stock in that Company, either for or against any proposed amendments of the Articles of Incorporation of the Des Moines Union Railway Company?"

To that interrogatory you replied as follows:

"I do not know whether I have or not. I will look for them."

Question. Now I will ask you, whether, since your former examination you have, as Secretary, made search among your papers for such a resolution as is described in the interrogatory I have just read?

Answer. Yes.

(2.) *Question.* Will you please state whether you have or have not, found such a resolution.

Answer. I have not.

(3.) *Question.* On your former examination, the following interrogatory was propounded to you:

"I will ask you whether as Secretary of the Des Moines Union Railway Company, you now have in your possession, a certified copy, or any other copy, of a resolution, adopted at any meeting of the stockholders or directors of the Des Moines and Northern Railway Company, prior to the 8th day of April, 1890, authorizing Mr. A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock in that Company, then owned or held by said Des Moines and Northern Railway Company, either for or against any proposed amendments of the Articles of Incorporation of the Des Moines Union Railway Company?"

To that Interrogatory you replied as follows:

"I do not know whether I have or not."

You were also asked the following question:

"Will you look and see whether you can find such a resolution or copy of such resolution, and produce it later, if you can find it?"

And to that question you replied as follows:

"Yes, I will look."

Question. Now, I will ask you, whether, since your former examination, you have as Secretary, made search among your papers for such a resolution as is described in the interrogatory I have just read?

Answer. Yes.

(4.) Question. Will you please state whether you have or have not, found such a resolution.

Answer. I have not.

(5.) Question. On your former examination, the following interrogatory was also propounded to you:

"I will ask you whether as Secretary of the Des Moines Union Railway Company, you now have in your possession, a certified copy or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines and Northwestern Railway Company, prior to the 8th day of April, 1890, authorizing you to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock in that Company, that were then owned or held by said Des Moines and Northwestern Railway Company, either for or against any proposed amendments of the Articles of Incorporation of the Des Moines Union Railway Company?"

To the foregoing interrogatory you replied as follows:

"I do not know whether I have or not."

You were also asked the following question:

"Will you make an examination and see whether you can find any among the papers and records?"

And to that interrogatory you replied as follows:

"Yes, I will look in the place where we keep the proxies, and see if any of them have been saved or not."

Question. Now I will ask you whether, since your former examination, you have, as Secretary, made search among your papers for such a resolution as is described in the foregoing interrogatory?
Answer. I have.

(6.) Question. Will you please state whether you have or have not found such a resolution.
Answer. I have not.

(7.) Question. On your former examination, the following interrogatory was propounded to you:

"I will ask you whether, as Secretary of the Des Moines Union Railway Company, you now have in your possession, a written proxy, signed before the 8th day of April, 1890, of W. H. Blodgett, as a stockholder in the Des Moines Union Railway Company, by which he authorized J. F. How to attend any meeting, and vote any share or shares of stock then owned by him, either for or against any proposed amendments of the Articles of Incorporation of the Des Moines Union Railway Company?"

To that interrogatory you replied as follows:

"This meeting occurred twenty-one years ago, and I do not know whether the proxies can be found, but I am certain that such proxies were in existence, and submitted at the meeting."

Question. Now I will ask you, whether, since your former examination, you have, as Secretary, made search among your papers for such a proxy as is described in the foregoing interrogatory?
Answer. I have.

(8.) Question. Will you please state whether you have or have not found such a proxy?
Answer. I have not.

(9.) Question. On your former examination, the following interrogatory was also propounded to you:

"As Secretary of said Terminal Company, have you now in your possession, any proxy executed by J. F. How, C. M. Hays, W. H. Blodgett, or either of them, prior to April 8th, 1890, authorizing A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock then owned or held by either of them in said Company, either for or against any proposed amendment of the Articles of Incorporation of said Company?"

To that interrogatory you replied as follows:

"I do not know whether I have or not?"

You were also, on that occasion, asked the following question:

"Will you look and see whether you have, and if so, will you produce them?"

To the last interrogatory you replied as follows:

"Yes, sir; I will look and see; you will have to send me a copy of the questions."

Now I will ask you, whether since your former examination, you have, as Secretary, made search among your papers, for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

(10.) Question. Will you please state whether you have or have not, found such a proxy?

Answer. I have not.

(11.) Question. On your former examination, the following interrogatory was also propounded to you:

"Will you examine, or have an examination made, to see whether you have a proxy from General Dodge, authorizing Mr. Martin to attend that meeting that was held on the 8th day of April, 1890, and vote either for or against the proposed amendments?

To that interrogatory you answered as follows:

"I will make an examination. In the different companies it was very common for proxies to be filed, and as a result they were put in a pigeon hole in our vault, and if they have not been destroyed, many of them can be found now."

Question. I will ask you whether, since your former examination, you have, as Secretary, made search among your papers for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

(12.) Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

The foregoing addition to the said depositions shall have the same force and effect in all respects as if it had been taken and returned with the said deposition in the first instance as a part thereof.

Dated this 23 day of October, A. D. 1912.

WELLS H. BLODGETT,
J. L. MINNIS,
J. C. COOK,
R. RYAN,
Solicitors for Complainants.

GUERNSEY, PARKER & MILLER,
Solicitors for Defendants.

Stipulation of Counsel.

In the District Court of the United States in and for the Southern District of Iowa, Central Division.

CHICAGO, MILWAUKEE & ST. LOUIS RAILWAY COMPANY, and the WABASH RAILROAD COMPANY, Complainants,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL, and F. M. HUBBELL & SON, Defendants.

Depositions on the Part of Complainants.

Stipulation.

It is hereby stipulated by the parties, that complainants may this day take the testimony of the witnesses Mark L. Mitchell, William H. Moorehead, and W. L. Finnicum, before J. P. Blaise, who is hereby agreed upon as a commissioner for taking the same and that the transcript of the shorthand notes of the same duly certified to by the said J. P. Blaise, may be used in evidence on the trial of this cause, the same as though it was taken under formal notice, and the parties waive any irregularity in the method and manner of taking the same.

It is further stipulated that the signing of the deposition and the shorthand notes by the witnesses is waived.

Appearances:

J. C. Cook and Robert Ryan, Attorneys for Complainants.
Parker, Parrish & Miller, Attorneys for Defendants.

Caption.

Depositions of witnesses, produced, sworn, and examined in pursuance of the stipulation hereinbefore set forth, at Des Moines, in the office of Ryan & Ryan, Manhattan Building, in the County of Polk and State of Iowa, before me, J. P. Blaise, a commissioner agreed upon by the parties, in a certain action now pending in the District Court of the United States in and for the Southern District of Iowa, Central Division, wherein Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company, are complainants, and Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son are defendants, on behalf of said complainants, this 31st day of December, 1912.

MARK L. MITCHELL, being first duly sworn on the part of the complainants, testified:

Int. 1. Where do you reside and what is your occupation?
Ans. I reside in Chicago and am a civil engineer.

Int. 2. And are employed by whom?
Ans. By the Chicago, Milwaukee & St. Paul Railway Company.

Int. 3. Will you look at the two maps or blueprints I hand you, and which the commissioner will mark as Exhibits "A-Y" and state whether that was a map made by you from actual survey and observation, and after consultation with the chief engineer of the Des Moines Union Railway Company, and whether it shows correctly that part of the city of Des Moines covered by it, and shows correctly the railway tracks known as those of the Des Moines Union Railway Company, and the right of way and tracks of the Des Moines Terminal Company?

Mr. Parrish: Objected to on the part of the defendants in so far as the question seeks to show the title to the Des Moines Union Railway Company and the Des Moines Terminal Company, to the right of way lands involved, for the reason that it is not the best evidence.

Ans. There are two maps here. Yes, I made these maps from actual survey and observations of the ground and consultation with the chief engineer of the Des Moines Union Railway. The maps show correctly the part of the city embraced by them, and show the tracks of the Des Moines Union Railway, which are colored in red on this map, and show the tracks of the Des Moines Western Railway, colored in green, and show the tracks and the property of the Des Moines Terminal Company, in yellow, and also, they show in black certain tracks which are located on the ground of the Des Moines Union Railway Company, but I am told by the engineer of the Des Moines Union Railway Company, that these certain tracks shown in black are the property of the Chicago Great Western Railway Company; and also, there is one short track shown, colored alternately red and black. This track, I understand, from what I am told by the chief engineer, is owned jointly by the Des Moines Union Railway and the Chicago Great Western Railway; I mean the Des Moines Union Railway Company.

Int. 4. Did you get your information as to the ownership of right of way from the records in the Polk County Recorder's office, and from observation, and from the chief engineer of the Des Moines Union Railway Company?

Mr. Parrish: Objected to on the part of defendants as being incompetent, immaterial, hearsay and not the best evidence of the ownership of the right of way.

Ans. I obtained this information as to the right of way of the Des Moines Terminal Company, both companies, partly from both sources mentioned by you, but confirmed by comparison and consultation with the chief engineer of the Des Moines Union Railway, with whom I had gone over the matter, and verified by independent observation and search.

Int. 5. Did you also go upon the ground and follow the various tracks of the Des Moines Union and spur tracks leading therefrom?
Ans. I did.

Int. 6. And did this also confirm your map, and what you learned from the records in the recorder's office, and what you learned from the engineer of the Des Moines Union?

Mr. Parrish: Objected to on the part of defendants as calling for a conclusion and the opinion of the witness, and not the best evidence of title.

Ans. What I found on the ground confirmed my information I obtained from the sources before mentioned.

Int. 7. State whether or not, after your map had been prepared you went over the same in detail with the chief engineer of the Des Moines Union Railway Company, and made such corrections or changes as he suggested in order to make it conform to his knowledge?

Mr. Parrish: Objected to on the part of defendants as being incompetent, immaterial, hearsay and not the best evidence.

Ans. After finishing the map, I compared it, or rather I took it and saw the chief engineer of the Des Moines Union Railway, and he went——

Int. 8. You mean you saw him in his office?
Ans. In his office. And he went over this map in detail and suggested some changes to be made, that he thought should be made in order to make it correct. I made those changes on the maps.

Int. 9. Just as he suggested?
Ans. As he suggested.

Int. 10. When did you have this consultation with the chief engineer of the Des Moines Union and complete the map as it now is?
Ans. I had the last consultation yesterday, and I completed the map as it now is yesterday.

Cross-examination.

By J. L. Parrish, Esq.:

C. Int. 1. Did you attempt to determine which pieces these companies were in possession of by warranty deed, and which they were in possession of by condemnation proceedings, and which they were in possession of by right-of-way deed, or under some other sort of a contract; did you go into that question?

Ans. Not in all cases.

C. Int. 2. You didn't attempt to distinguish between those on your maps, as I understand it?

Ans. No. It shows the property of the Des Moines Union, but it is not brought out by the color.

C. Int. 3. Does the map of the Des Moines Union pretend to distinguish between these pieces of right of way, which were acquired by warranty deed and those which were acquired by right-of-way deed, and those acquired by condemnation proceedings and those acquired by some other sort of a contract?

Ans. These maps do not show the manner of conveyance, except in cases where we have sheriff deeds; you will notice that fact on the map.

Witness excused.

William H. Moorehead, being first duly sworn on the part of the complainants, examined by J. C. Cook, Esq., testified:

Int. 1. What is your age and present occupation?

Ans. Well, I am 52 years old and am a locomotive engineer.

Int. 2. Where do you reside?

Ans. At 668 20th street, Des Moines, Iowa.

Int. 3. Are you now in the employ of the Chicago, Milwaukee & St. Paul Railway Company as a locomotive engineer?

Ans. Yes, sir.

Int. 4. When did you first enter the railroad service for any company?

Ans. Well, my first railroad service—I was in Wisconsin; I done a little work there; that is, in shop work; I had never done any road work.

Int. 5. When did you first enter the service of the Des Moines Northwestern Railway Company, on what is now the Des Moines and Fonda line?

Ans. Well, when I first went to work, it was at Waukee, that was the short line, working there in the round house; it run between Adel and Waukee then.

Int. 6. What year was that in?

Ans. I think that was in 1881 that I went to work there; I am not positive; I think it was in 1881.

Int. 7. To what point was that road then extended from Adel northward?

Ans. It was extended west, in fact it was extended both ways. It was built in here to Clive, I think; built to Clive and extended west to Panora and from Panora to Jefferson. I was transferred from Waukee to Panora, and then from there to Jefferson; that was a kind of a terminal there.

Int. 8. During this time you was at work caring for engines, I understand?

Ans. Yes, sir. I broke a little while on a construction train, too, in the meantime. The fact is, I didn't have any permanent job of any kind. I broke on a construction train a while at Jefferson.

Int. 9. While you were braking on the construction train, did you run into Des Moines?

Ans. No, sir, I did not. We was hauling supplies; Jefferson was the distributing point—hauling supplies from there north.

Int. 10. When did you first begin to work as a fireman?

Ans. I think it was in the fore part of 1882, I think; I am not positive on these dates. It has been long ago; I am not positive on the dates.

Int. 11. Was that soon after the line was extended into Des Moines?

Ans. Well, I couldn't say for that. When I went to firing I fired on one of the work trains out there; I was quite a while before I got into Des Moines. Maybe four or five months; I presume such a matter as that; I don't remember just exactly the time.

Int. 12. Did you commence running into Des Moines in the year 1882?

Ans. That I couldn't say.

Int. 13. About that time?

Ans. About somewheres in 1882 or in 1883; I couldn't say exactly for the date.

Int. 14. Was it either in 1882 or 1883?

Ans. Well, it might have been in 1883; I couldn't say; 1882 or 1883. I know I was quite a while on the front before I got in here at all; I was nothing but a new man.

Int. 15. When you began running into Des Moines were freight and passenger trains running between Des Moines and Jefferson?

Ans. Yes, sir; they had put on service between Des Moines and Jefferson; they had put on a passenger train there and also a freight train.

Int. 16. Which did you fire one, a freight or passenger?

Ans. A freight.

Int. 17. To what point in Des Moines were the passenger trains running when you first began firing, where was the depot?

Ans. The depot was an old building on the corner of Fifth and the track, where the new depot is now; there was an old building right on the corner there.

Int. 18. Did all passenger trains run to that point from the Fonda line?

Ans. All passenger trains ever I was on did.

Int. 19. How were the tracks in Des Moines when you began firing, as to having three rails laid, so as to accommodate both standard gauge and narrow gauge engines and cars; were there three rails laid?

Ans. Yes, sir; there were three rails. I think there was three rails laid as far as 16th street, down there close to the waterworks.

Int. 20. And how far east did those three rails extend with reference to the east city limits, or the packing house?

Ans. Well, in later years I worked down, went down as far as what was known as the old distillery.

Int. 21. Is that where the present packing house is?

Ans. I can't say; I haven't been in that part of the city for fifteen years; I couldn't say; there used to be a distillery there.

Int. 22. Was that close to the east city limits?

Ans. I don't know where that was. I was down as far as the starch works.

Int. 23. About how far east of the river did this third rail extend?

Ans. Oh, the third rail extended quite a ways down the Wabash; there was an old gravel pit down there.

Int. 24. How far east was that?

Ans. I don't remember how far it is down there; it might be a mile or a mile and a half. It has been so long since I have been down there; I couldn't say just the distance. It was down pretty close opposite where the starch works were; there was a gravel pit in there.

Int. 25. The starch works now have been burnt down?

Ans. They have been burned down.

Int. 26. That you say was about a mile and a half east of the river?

Ans. Well, it might be such a matter; I couldn't say exactly the distance.

Int. 27. Of what gauge were the Boone and Fonda lines when you first began to run on trains?

Ans. Narrow gauge.

Int. 28. What gauge was the Albia line, or what was known as the Wabash?

Ans. Standard gauge.

Int. 29. Were those third rails laid substantially over the property over the city so that both narrow gauge and standard gauge could run over them?

Ans. So far as I know. Of course, the yard was small those days.

Int. 30. They were generally three-rail tracks?

Ans. Yes, sir.

Int. 31. Now, were those three-rail tracks maintained substantially over the whole, what is now the Des Moines Union Terminal, or Des Moines Union tracks, between the starch works in the east part of the city, and the waterworks in the west part of the city, until Boone and Fonda lines were both changed to standard gauge?

Ans. Well, I don't remember whether there was a third rail or not down to the packing house or the starch works. There was a narrow gauge track down there; I don't remember whether there was a third rail down there or not.

Int. 32. But a narrow gauge track was down there.

Ans. Yes.

Int. 33. So the narrow gauge engines could run clear down to the starch works?

Ans. Yes, sir.

Int. 34. Do you know when the Boone line was changed to a standard gauge?

Ans. Well, I am not positive, but I think it was along in 1881, I think.

Int. 35. You mean, 1891?

Ans. 1891, I should say.

Int. 36. When was the Fonda line changed to a standard gauge?

Ans. I think that was in the fall of 1892; as near as I can remember it was inthe fall of 1892.

Int. 37. Have you been continuously running on the Boone and Fonda line since you began as a fireman on the Fonda line in 1882 or 1883?

Ans. Yes, sir.

Int. 38. And are you still running?

Ans. Yes, sir.

Int. 39. Now, during all that time that you have been running on the road, have any railroad tracks or railroad terminals been used in connection with that Boone or Fonda line except the tracks and terminals now known as those of the Des Moines Union, in Des Moines?

Ans. I never run on any but these. I don't know of any. I don't know of any but these at the present time.

Int. 40. Were there any others used by the Boone and Fonda line?

Ans. I have never known of any; I never run into any but the present terminal here.

Int. 41. Have you known of any other tracks or terminals in Des Moines being used in connection with the Boone and Fonda line, except those now known as the Des Moines Union?

Ans. No, sir.

Int. 42. Has either the Albia line or Boone line or Fonda line ever had the use of any terminals or tracks in the city of Des Moines, except those now known as the Des Moines Union?

Ans. Not as I know of.

Cross-examination.

By J. L. Parrish, Esq.:

C-Int. 1. Now, Mr. Moorehead, as I understand it, the passenger depot has always been located substantially where it is now located, on Fifth street?

Ans. Yes, sir; not this same building.

C-Int. 2. But substantially the same location?

Ans. Yes, the same location.

C-Int. 3. And in the operation of passenger trains on the Boone and Fonda line, they have always come down to the depot?

Ans. Yes, sir.

C-Int. 4. The same as they do now?

Ans. Yes, sir.

C-Int. 5. And this is true and has been true ever since you commenced working or running in here?

Ans. Yes, sir.

C-Int. 6. Now, the terminal for the freight trains on the Des Moines and Boone line or the Fonda and Boone line, has always been out somewhere in the vicinity of the waterworks out on the west end?

Ans. Out on the west end there.

C-Int. 7. So that when they brought in a train from Boone or Fonda, a freight train, why they would stop at these terminals on some of these tracks out there in the vicinity of Twelfth street or west of there, and the trains would then be broken up and switched to the various places where the cars should go?

Ans. Yes, sir.

C-Int. 8. That has always been the practice?

Ans. Yes, sir.

C-Int. 9. Now, originally that switching was done by the Des Moines and Northwestern employes, or Des Moines Northwestern employes, originally?

Ans. Yes, sir.

C-Int. 10. And there came a time, however, when that switching was done by the Des Moines Union?

Ans. Yes, sir.

C-Int. 11. Of course, you do not remember, I suppose, you don't

remember so that you could give us the date when that change was made?

Ans. No, I couldn't.

Q. Int. 12. And you, since that change was made, in operating over the terminal, you operated under a Des Moines Union time card?

Ans. Yes, sir.

Q. Int. 13. That change was made, wasn't it, before the change to the gauge in the Boone and Fonda line?

Judge Cook: This is objected to as not cross-examination.

Mr. Parish: I guess I will withdraw the question.

Q. Int. 14. You say, that since the change was made you operated inside of the terminals under a Des Moines Union time card, and by that you mean, do you not, that the operation of your train within the terminals was controlled by the rules printed on the time card and with reference to other trains appearing on the time card; that is what you mean?

Judge Cook: Objected to as not cross-examination.

Ans. Why, yes. We were altogether under Des Moines Union rules under 28th street now, under this time card. They have got their own rules and cards, and we are governed by Des Moines Union rules.

Witness Excused.

W. F. PINKHAM, being duly sworn on the part of complainants, examined by J. C. Cook, Esq., testified:

Int. 1. What is your occupation and where do you reside?

Ans. I am employed at present as passenger conductor on the Chicago, Milwaukee & St. Paul Railway, and I might call Des Moines my residence, I guess.

Int. 2. When did you first enter the service of any railroad company that operated either the Boone line or the Fonda line into Des Moines?

Ans. I went to work at Des Moines on the present place where I am working now, the 2d day of July, 1885.

Int. 3. That then would be for the Des Moines Northwestern Railway Company?

Ans. At the time I went to work the Wabash was operating that. I hired to the Wabash.

Int. 4. It was then operating the Fonda line?

Ans. Yes, sir.

Int. 5. At that time, to what point in Des Moines did you run your passenger trains?

Ans. The trains I worked on, the original starting point of them from Des Moines, was at the place where the present new station now stands on Fifth street, and in coming from Fonda I came to that point.

Int. 6. When did you first begin running on the Boone line?

Ans. Well, I only made a few trips on the Boone line. I never worked but little from there; I couldn't say when.

Int. 7. When you began working on the Fonda line, were there any terminals or tracks used in the city of Des Moines, by either the Boone line or Fonda line, or in connection with either line, except those that are now known as the Des Moines Union tracks and terminal facilities?

Ans. Not to my knowledge.

Int. 8. If they had been used, you would have observed it, wouldn't you?

Ans. I think so; yes, sir.

Int. 9. Now, from that time until now, has there ever been any time when any tracks or terminals in the city of Des Moines were used by or in connection with either the Boone or Fonda lines, except those tracks and terminal facilities now known as the Des Moines Union?

A. Not to my knowledge.

Int. 10. If there had been any would you have observed it?

Ans. Well——

Int. 11. —I mean regularly used?

Ans. There might have been and there might not have been. I couldn't answer that question, Judge, because I don't know.

Int. 12. Do you know of any having been used.

Ans. No, I do not.

Int. 13. Yes you were running constantly from that time on until now?

Ans. Yes, sir.

Int. 14. In the train service?

A. Yes, sir.

Int. 15. And all trains have run to and from where the present Union Depot is located at Fifth street in West Des Moines?

Ans. The trains that I have been on, the passenger trains have.

Cross-examination.

By J. L. Parrish, Esq.:

C-Int. 1. As I understand it, the passenger station has always, during your time been located substantially where it is now located, at Fifth street?

Ans. Since I have been working there.

C-Int. 2. During all that time the Boone and Fonda passenger trains have run to and from that depot?

Ans. Yes, sir.

C-Int. 3. Now, freight trains that were brought into Des Moines from the Boone and Fonda line, always stopped out in the west part of the yard somewhere?

Ans. Yes, sir, just east of the waterworks.

C-Int. 4. Then they were broken up there and switched around over the yards as occasion might demand?

Ans. Yes, sir.

C-Int. 5. That is done by switch engines?

Ans. Yes, sir.

C-Int. 6. And, of course, they have been brought in by what you call road engines?

Ans. Yes, sir.

Redirect examination:

Int. 1. When you began working in 1885, were there or were there not three rails laid substantially over the entire yard in the city of Des Moines, so as to accommodate both narrow and standard gauge cars and engines?

Ans. Over the part of the yard I was familiar with there was. I didn't have any occasion to go east of where the present passenger station now stands.

Int. 2. Or east of the river?

Ans. No.

Int. 3. Did you observe while you were working, from 1885 to 1890, say, occasionally observe narrow gauge cars run across the river to the east side?

Ans. Well, you could see them starting with narrow gauge cars, but I don't know where they took them to. They started east, but I don't know where they went to, because I never had occasion to go across there. My duties did not take me beyond the present site of the passenger station.

Int. 4. Do you know when the Boone line was changed to a standard gauge?

Ans. If I remember rightly, to the best of my knowledge, I think it was in 1891.

Int. 5. When was the Fonda line changed to a standard gauge?

Ans. That was changed, if I remember correctly, the following year, 1892.

Int. 6. Then after both of those lines were changed to a standard gauge, state whether or not the third rail was taken up in Des Moines?

Ans. It was taken up later on, but I couldn't say when it was done.

Recross-examination:

C-Int. 1. Have you always been a passenger conductor?

Ans. No, sir; I have been running a passenger train a little better than twenty years. I was a freight conductor for five or six years, I guess. I started as a freight brakeman; then broke on a passenger train; then I was promoted and I went to braking again on a freight train, and as a freight conductor and ran a local freight train for from four to six years.

C-Int. 2. You never was engaged in the switching service here?

Ans. No, sir.

C-Int. 3. Therefore you never had any occasion to go around over the terminals, except as you came into the depot and went out with your passenger train?

Ans. Yes, sir; that is all.

C. Int. 4. In moving your trains within the terminals here, you have always moved under the Des Moines Union time card?

Ans. Not always. There was a time, if I remember correctly, that we were not governed by a book of rules or time card of the Des Moines Union Railway, but I can't say as to when that was. That was in the early stages of my service over there.

C-Int. 5. In moving your trains in and out of the terminal, in your experience, the trains you moved, you always had some particular track assigned for the movement of those trains, had you.

Ans. I don't understand you exactly.

C-Int. 6. From the depot, extending west, is there in the terminal, what is known as the main line?

Ans. There is a main line going in and out.

C-Int. 7. And in moving your trains in and out, you moved over that main line usually?

Ans. Yes, going in and out, usually.

C-Int. 8. You always done that, unless something happened to block it?

Ans. I am speaking of passenger trains.

C-Int. 9. Well, the freight trains have been brought in always to the west end of the yard and there broken up?

Ans. Yes, sir.

Redirect examination:

Int. 1. Freight trains coming in from the west would always come to a point *each* of 16th street, before the road engines were detached, as far as you know?

Ans. Yes, sir, when I was running, we would come to a point near the waterworks and head in on the sidetracks.

Int. 2. You would leave your train on the sidetracks east of 16th street, or *each* of the waterworks?

Ans. Yes, sir.

Witness Excused.

Judge Cook: The complainants now offer and introduce in evidence a certified transcript of the Articles of Association of the Des Moines Terminal Company.

Mr. Parrish: Objected to on the part of the defendants as being incompetent, immaterial, irrelevant, not properly identified and not the best evidence.

Judge Cook: The complainants also introduce in evidence the two maps or blueprints, identified by the witness, Mark L. Mitchell, and marked by the Commissioner as "Exhibit A-Y."

Mr. Parrish: The defendants object to the maps "Exhibit A-Y," in so far as they purport to show the title of the properties referred to, and the manner in which the same were obtained, and the character of such title, as not the best evidence.

The Commissioner: The certified transcript of the Articles of Association of the Des Moines Terminal Company, above offered, is hereto attached and returned with these said depositions. The two maps, "Exhibit A-Y," are detached, but returned herewith to the clerk of said U. S. District Court.

Mr. Parrish: It is conceded that the complainants do not now have any right to use any terminal property or railway, within the city limits of Des Moines, except such rights as they may have, if any, in the terminal property involved in this suit.

Commissioner's Certificate.

I, J. P. Blaise, Commissioner, and a Notary Public within the county of Polk and state of Iowa, hereby certify:

That in pursuance of the stipulation hereinbefore first set forth, I caused to come before me at the office of Ryan & Ryan, Manhattan Building, Des Moines, Polk county, Iowa, on the 31st day of December, 1912, the witnesses, Mark L. Mitchell, William H. Moorehead and W. L. Finnicum.

That said witnesses were then and there by me duly sworn, and their testimony was correctly taken down in shorthand by me. That the signing of the shorthand notes or the transcript thereof by each of said respective witnesses was waived by the parties.

I further certify that the translation of my said shorthand notes so taken is a full, true and complete translation thereof.

The said depositions, together with the certified copy of the Articles of Association and the two maps, "Exhibit A-Y," introduced on the part of the complainants, are herewith returned to the clerk of the district court of the United States in and for the Southern District of Iowa, Central Division, at Des Moines, Polk county, Iowa.

Witness my hand and notarial seal this 31st day of December, 1912, at Des Moines, Polk county, Iowa.

J. P. BLAISE,
Commissioner, and Notary Public in and for Polk County, Iowa.

Articles of Incorporation of the Des Moines Terminal Company.

Knew All Men By These Presents: That we, F. M. Hubbell, H. D. Thompson and C. Huttonlocker, do hereby associate ourselves together for the purpose of forming a corporation for pecuniary profit under the provisions of Chapter one (1) Title nine (9) of the Code of 1897 of Iowa, and amendments thereto, and to that end do hereby adopt, acknowledge and publish the following Articles of Incorporation, to-wit:

Article I. The name of this corporation shall be "Des Moines Terminal Company" and its principal place of business shall be at the city of Des Moines, county of Polk and state of Iowa.

Article II. The objects of this corporation and the general nature of the business to be transacted by it shall be the acquisition of railways and railway property inlending the stock, bonds and debentures of any other railroad or railroads in and about the city of Des Moines, Iowa, and in the state of Iowa, and in other parts of the United States of America, of every kind and description, by purchase, lease or construction, and the ownership, maintenance and operation thereof, including the purchase, construction, lease, ownership, maintenance, operation and use of depots, union depots, freight houses, union freight houses, railway and repair shops, stock yards, and union stock yards, and such other real and personal property as it may deem needful or convenient for the carrying on of its business including the furnishing of terminal facilities and the performance of terminal and switching services for other persons, firms, or corporations. It shall have power to sell, mortgage, lease or otherwise dispose of its property or any part thereof, or interest therein and shall possess all other powers conferred upon railway corporations and upon corporations for pecuniary profit by the laws of the state of Iowa, including the power to condemn private property for its use.

Article III. The capital stock of this corporation shall be two hundred thousand dollars ($200,000) divided into shares of one hundred dollars each. Said shares shall be paid for when issued either in money or in property taken at its fair market value.

All shares of stock not subscribed for and taken at the time of the organization of this corporation, shall be issued only when authorized by resolution of the board of directors adopted at a regular or special meeting by the vote of the majority of all the members of said board.

It shall not be necessary, in order to enable this corporation to carry on the business for which it is organized, that all of its capital stock be subscribed or taken.

Article IV. This corporation shall commence upon the date the certificate of authority is issued to it by the secretary of the state of Iowa, and shall continue for fifty (50) years, with the right of renewal as now or hereafter provided by the statutes of the state of Iowa.

Article V. The affairs of this corporation shall be managed and its business conducted by a board of directors composed of not more than nine persons nor less than three persons, who shall be elected by the stockholders at their regular annual meetings to be held at the office of the company in Des Moines, Iowa, on the first Thursday of January of each year. All directors shall hold their offices for one year and until their successors are duly elected and qualified. Until the first annual meeting of the board of directors of this corporation shall consist of F. M. Hubbell, H. D. Thompson and C. Huttenlocker.

The board of directors shall have power to issue bonds and to authorize the execution of mortgages or deeds of trust securing the same, to enter into contracts, to purchase real and personal property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other acts and things as may be proper or necessary for the corporation to do. In order to facilitate the transaction of business, power is hereby expressly conferred upon each of the directors to delegate by written authority some other person to act or vote for him and in his stead at any meeting of the board of directors, provided, the said authority shall be filed with the secretary of this corporation at or before the time the meeting convenes.

The board of directors shall fill all vacancies occurring in the board until the next annual meeting of the stockholders and shall elect the officers of the corporation hereinafter provided for.

Article VI. The officers of this corporation shall be a president, vice-president, secretary and treasurer, of which the offices of secretary and treasurer may be filled by one person. All of said officers shall be elected annually from the persons composing the board of directors, as hereinbefore provided. Said officers shall hold their

offices for one year and until their successors are duly elected and qualified. They shall exercise such powers and be charged with such duties as usually pertain to their respective offices. Until the first annual meeting of this corporation, the officers shall be F. M. Hubbell, president; H. D. Thompson, vice-president; C. Huttenlocker, secretary and treasurer.

Article VII. The board of directors shall hold regular meetings on the first Tuesday of each month. Special meetings of the board of directors may be called by the president, or in the case of his absence or disability, by the vice-president, and shall be called upon request preferred in writing by two members of the board.

Article VIII. Annual meetings of the stockholders shall be held on the first Thursday of January of each year, commencing with the years 1903. Special meetings of the stockholders may be called at any time by the president, or by two directors, but at least ten day's notice of all special meetings shall be given to each stockholder by mailing him at his address, as shown by the books of the corporation, a notice stating the time and place of such meeting.

At all meetings of the stockholders, each stockholder shall be entitled to cast one vote for each share of stock owned by him as shown by the books of the corporation, and said vote may be cast either in person or by proxy, but if by proxy, written authority therefor must be [filed] with the secretary at or before the time the meeting convenes.

Article IX. The private property of the stockholders of the corporation shall be exempt from liability for the debts and undertakings of the corporation.

Article X. The highest amount of indebtedness to which the corporation may at any time subject itself, shall be the amount authorized by law.

Article XI. Any of the articles, except the ninth exempting the property of stockholders from liability for corporate debts, may be amended by a vote of a majority of all the stock then outstanding in favor thereof, at any annual meeting of the stockholders or at any special meeting of the stockholders called therefor, but of each special meeting a notice, containing the proposed amendment, shall be mailed to each stockholder at his address, as shown by the books of the corporation.

Executed at Des Moines, Iowa, this 29th day of May, A. D. 1902.

F. M. HUBBELL.
H. D. THOMPSON.
C. HUTTENLOCKER.

STATE OF IOWA,
Polk County, ss:

Be it remembered, that on this 29th day of May, A. D. 1902, before me, the undersigned, a Notary Public in and for Polk County, Iowa, personally came F. M. Hubbell, H. D. Thompson and C. Huttenlocker to me personally known to be the identical persons whose names are subscribed to the foregoing Articles of Incorporation, as incorporators, and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and affixed my Notarial Seal at Des Moines, Iowa, the date last above written.

[Seal Polk County, Iowa.]

A. C. MORRISON,
Notary Public in and for Polk County.

Filed for record May 29, 1902, at 3:55 o'clock p. m. and recorded in Book 15, page 536.

JOHN P. COOK,
Recorder.

STATE OF IOWA, *ss:*

Filed for record in the office of the Secretary of State June 6, A. D. 1902, and recorded in Book P-3, page 432.

W. B. MARTIN,
Secretary of State.
D. A. HITES,
Deputy.

Des Moines Terminal Company.

Amendment.

Know All Men By These Presents:

That at a special meeting of the stockholders of the Des Moines Terminal Company duly held at its office in the city of Des Moines, Iowa, in accordance with its articles of incorporation, on the 4th day

of June, A. D. 1907, of which meeting all of the stockholders of the said corporation had due notice and at which meeting all of the shares of the capital stock of the said corporation, were duly and fully represented either in person or by proxy, the articles of incorporation of the said Des Moines Terminal Company were amended by striking out the first sentence of Article 3 of the said articles of incorporation the words and figures "two hundred thousand dollars ($200,000)," and adopting and substituting in lieu thereof the words and figures "five hundred thousand dollars ($500,000)," and the president and secretary of said corporation were at said meeting duly authorized and empowered to execute, acknowledge and record said amendment and publish notice thereof in the manner provided by the laws of the state of Iowa. Said Article Three (3) of said articles of incorporation as amended, to hereafter read as follows, viz:

Article III. The capital stock of this corporation shall be Five Hundred Thousand Dollars ($500,000), divided into shares of One Hundred (100) Dollars each. Said shares shall be paid for when issued, either in money or in property taken at its fair market value. All shares of stock not subscribed for and taken at the time of the organization of this corporation shall be issued only when authorized by resolution of the board of directors adopted at a regular or special meeting, by the vote of the majority of all of the members of said board. It shall not be necessary in order to enable this corporation to carry on the business for which it is organized, that all of its capital stock be subscribed or taken.

In witness whereof and by virtue of the authority aforesaid, the undersigned, president and secretary respectively, of the Des Moines Terminal Company have hereunto set their hands and affixed the seal of the said corporation at Des Moines, Iowa, this 4th day of June, A. D. 1907.

[CORPORATE SEAL.]

F. M. HUBBELL,
President.
C. HUTTENLOCKER,
Secretary.

STATE OF IOWA,
Polk County, ss:

Be it remembered that on this 4th day of June, A. D. 1907, before me, the undersigned, a Notary Public in and for Polk county, Iowa, personally appeared F. M. Hubbell and C. Huttenlocker, president and secretary respectively of the Des Moines Terminal Company, personally known to me, who being by me each duly sworn, did say

that they are the president and secretary respectively of the Des Moines Terminal Company, a (croporation,) and that the seal affixed to the annexed instrument is the corporate seal of the said corporation, and that said instrument was signed and sealed in behalf of the said corporation by authority of its stockholders, and the said F. M. Hubbell and C. Huttenlocker acknowledged the said instrument to be their voluntary act and deed and the voluntary act and deed of the said corporation by them, its president and secretary, thereunto duly authorized.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

WALTER MAUTHE,
[SEAL.] *Notary Public in and for Polk County, Iowa.*

POLK COUNTY, IOWA:

Filed for record June 12, 1907, at 10:55 o'clock a. m., and recorded in Book 19, Page 523.

MRS. FRANK W. IRONSON,
Recorder.
By GEO. B. HEPBURN,
Deputy.

STATE OF IOWA, *ss:*

Filed for record in the office of Secretary of State, June 20, A. D. 1907, and recorded in Book N-4, Page 374.

W. C. HAYWARD,
Secretary of State.

STATE OF IOWA:

Secretary of State.

I, W. C. Hayward, Secretary of State of the state of Iowa, and keeper of the corporate records thereof, do hereby certify that the attached instrument in writing is a true and correct copy of the Articles of Incorporation and Amendment to Articles of Incorporation of the Des Moines Terminal Company, of Des Moines, Iowa, as the same appear of record in this office.

In testimony, whereof, I have hereunto set my hand and affixed the official seal of the Secretary of State of the state of Iowa. Done at Des Moines, the capital of the state, this 15th day of November, 1912.

W. C. HAYWARD,
[SEAL.] *Secretary of State.*

In the District Court of The United States, Southern District of Iowa, Central Division.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, and THE WABASH RAILROAD COMPANY, Complainants,

vs.

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, Defendants.

Admission of Respondents as to How Letter.

It is admitted by defendants that Exhibit 94, attached hereto, is a correct copy of a letter from James F. How, acting general manager of the Wabash, St. Louis & Pacific Railway Company, to Gen. S. Grover, one of the general attorneys of said corporation, and that the signature on said letter and the postscript is in the handwriting of the said How, and that the same may be considered as offered and admitted in evidence in said cause on the part of complainants, subject, however, to all and every objection thereto on the part of the defendant that might be made or urged against the original, it being the intention that the copy shall be given the same effect as evidence as would be given the original of said letter.

Dec. 31, 1912.

PARKER, PARRISH & MILLER,

N. T. GUERNSEY,

For Defendants.

EXHIBIT 94.

Wabash, St. Louis & Pacific Railway Company.

Office of General Manager.

St. Louis, March 25, 1881.

Geo. S. Grover, Esq.,
Att'y's Office.

DEAR SIR:

We are buying considerable property in Des Moines. The vouchers for same are approved in this office and paid through treasurer. This property is purchased in the names of different parties or in my name as trustee and will be finally transferred to me as trustee. I wish you to arrange to keep an account of all these matters in your office. See that the deeds are all properly made out, that the description of the property is right and that certificates from Parsons & Runnells certifying to the correctness of the title are on file, that the deeds are duly recorded in fact everything that is necessary to show a complete record in connection with the property.

(2)

I enclose some certificates that have arrived after vouchers have been made. Other certificates are attached to the vouchers. We have a tracing of the property which is purchased or is intended to be purchased in this office and you can have copy of same made.

This is a matter involving over $100,000.00 and I rely upon you to see that it is correctly kept.

Yours truly,

JAMES F. HOW,
Actg. Gen. Mgr.

Also please make out a certificate that the property deeded to me as trustee, describing same, is the property of the Des Moines & St. Louis and Des Moines & North Western R. R. Co.

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(26,905)

(26,906)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 278.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL.

No. 279.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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2 In the District Court of the United States for the Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company, and The Wabash Railroad Company, Complainants,

vs.

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Defendants.

Stipulation as to Reports of The Wabash Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company to the Interstate Commerce Commission.

It is hereby stipulated and agreed by the parties in the above entitled cause:

1. That the complainants herein have each, as required by law, filed certain annual reports with the Interstate Commerce Commission for the years ending June 30, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, and for other years. That each of said reports was duly signed and sworn to by the president or other chief officer, and by the treasurer or other officer in charge of the accounts of the company making the report, before a person duly authorized to administer oaths. That the verification of each of said reports was in substantially the following form:

State of .....,
County of .....—ss.

We, the undersigned, ... President, and ....., ... of the ..... Company, on our oath do severally say that the foregoing return has been prepared, under our direction, from the
3 original books, papers, and records of said Company; that we have carefully examined the same, and declare the same to be a complete and correct statement of the business and affairs of said Company in respect to each and every matter and thing therein set forth, to the best of our knowledge, information and belief; and we further say that no deductions were made before stating the gross earnings or receipts herein set forth; except those shown in the foregoing

accounts; and that the accounts and figures contained in the foregoing return embrace all of the financial operations of said company during the period for which said return is made.

....., President.
(or other chief officer)

....., Treasurer.
(or other officer in charge of the accounts)

Subscribed and sworn to before me this .... day of ....., 19...

....., ...

2. That said reports, among other things show:

On page 36 of each of said annual reports so filed for the years ending June 30, 1898, June 30, 1899, June 30, 1900, June 30, 1901, June 30, 1902, and June 30, 1903, there appears the following:

"Instructions for Answering Questions on Opposite Page.

* * * * * * * * *

State in table 'A' the names of all railway stocks owned, and in table 'B' the names of all stocks owned other than railway stocks, whether yielding an income from dividends or not, and the par value of same. For the dividend paying stocks, give the amount of dividends or income received from the same during the year. The 'Grand Total' of income here shown should be carried to 'Income Account', page 31 (or 33), after deducting the expenses, if any, attending the same.

Under 'Valuation' give the value at which the stocks specified are carried into the 'General Balance Sheet' against the item 'Stocks Owned' on page 49.

* * * * * * * * *

In case any changes in the amount of stocks owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 53."

4 3. On the opposite page in each of said reports, being page 37, there appears a list of the corporations in which the Company making such report, owned stock, the par value of the stock so owned by it, the dividend thereon received during the last year and the cost of said stock.

4. The name of the Des Moines Union Railway does not appear in this list in any of said reports so filed by The Wabash Railroad Company for the said years ending June 30, 1899, June 30, 1900, June 30, 1901, June 30, 1902 and June 30, 1903.

5. The name of the Des Moines Union Railway Company does not appear in this list in the reports so filed by the said Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1898 and June 30, 1899.

6. In each of the reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1900, June 30, 1901, June 30, 1902 and June 30, 1903, there appears the following entry on page 37:

"Stocks Owned.
A. Railway Stocks.

Name	Total Par Value	Rate	Income or dividend received,	Valuation
Des Moines Union Ry. Co.	100,000.00			1000.00"

7. On page 36 of each of the said annual reports so filed by The Wabash Railroad Company, and on the same page of the similar reports so filed by the Chicago, Milwaukee & St. Paul Railway Company, for the years ending June 30, 1904, June 30, 1905, June 30, 1906 and June 30, 1907, there appears the following:

"Instructions for Answering Questions on Opposite Page.

* * * * * * * * *

State in table 'A' the names of all railway stocks owned (including as such the stocks of railway bridge companies, and depot, station or terminal companies that are directly involved in the business of steam railway transportation), and in table 'B' the names of all stocks owned other than railway stocks, whether yielding an income from dividends or not, and the par value of same. For the dividend paying stocks, give the amount of dividends or income received from the same during the year. The 'Grand Total' of income here shown should be carried to 'Income Account' page 31 (33) after deducting the expenses, if any, attending the same.

Under 'Valuation' give the value at which the stocks specified are carried into the 'General Balance Sheet' against the item 'Stocks Owned' on page 49.

* * * * * * * * *

In case any changes in the amount of stocks owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 53."

8. On the opposite page, being page 37, there appears in each of said reports a list of the corporations in which the company making the report owned stock, the par value of the stock so owned by it, the dividend thereon, received during the last year and the cost of said stock.

The name of the Des Moines Union Railway Company does not appear in this list in the report so filed by the Wabash Railroad Company for the year ending June 30, 1904.

9. In each of the said reports so filed by the Wabash Railroad Company for the years ending June 30, 1905, June 30, 1906 and June 30, 1907, the following items appear on the said opposite page, being page 37 of said reports.

"STOCKS OWNED
A. RAILWAY STOCKS.

Name	Total par value	Rate	Income or dividend received	Cost
Des Moines Union Railway Company	$50,000.00			$1.00
Des Moines & St. Louis Railroad Company	$2,000,000.00			1.00"

6 10. On page 37 of each of the similar reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the same years ending June 30, 1904, 1905, 1906 and 1907 respectively, there appears the following entry:

"STOCKS OWNED.
A. Railway Stocks.

Name	Total par value	Rate	Income or dividend received	Valuation
Des Moines Union Railway Company	$100,000.00			$1,000.00"

11. On page 48 of each of the said annual reports so filed by The Wabash Railroad Company for the years ending June 30, 1908, and June 30, 1909, and on the same page of the similar reports filed by the Chicago, Milwaukee & St. Paul Railway Company for the same years appears the following:

"Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page entries or notations sufficient to show that no question or item has been overlooked. The word 'none' may be used wherever applicable. If returns are not made as required, some reference, as 'see page 48' should be made to this page, on which a brief statement of the reason for the variation or omission should be given.

In the table on the opposite page should be entered all stocks owned of active railway corporations (including as such, the stocks of railway bridge companies, and depot, station, switching, or terminal companies that are directly involved in the business of steam railway transportation. An active corporation is one which either operates railway property or maintains an organization for the purpose of distributing income.

All stocks owned by respondent are to be reported, whether they are free assets or are pledged for the issue of other securities; but the two classes should be entered separately in their appropriate columns as 'Unpledged' or 'Pledged'. The securities shown as 'Pledged' should also appear in the last column on page 31.

For the dividend-paying stocks give the amounts of dividends declared on the same during the year, except
7 that no income should be shown for 'Stocks of respondent corporation.' The total of income here shown, when added to the corresponding total on page 57, should be carried to the Income Account and entered against 'Dividends declared on stocks owned or controlled.'

If stocks have been sold during the year covered by this report any dividends accruing on them during the time they were held, as also the rate of accrual, should be entered on the opposite page, but the par value need not be given.

There should also be entered all dividends accruing on stocks controlled but not owned, by the respondent corporation.

Under 'Valuation' give the value at which the stocks specified are carried into the General Balance Sheet against the item 'stocks owned' on page 83.

Separate entries under the appropriate headings should be made for (1) 'Stocks of respondent corporation' the par value of which should correspond with the entry in the column 'In treasury' under 'Total par value held by respondent corporation' on page 21; (2) 'Stocks of corporations whose property forms a part of the system of respondent corporation', which

should include all stocks owned of active railway corporations whose mileage is included on page 13 or in the upper table on page 15C; and (3) 'Stocks of corporations whose property does not form a part of the system of respondent corporation', which should include stocks owned of all other active railway corporations.

In case any changes in amount of stocks owned have occurred during the year covered by this report, a full explanation of such changes should be given on page 87."

12. On the following page, being page 49 of each of the said reports, filed by The Wabash Railroad Company for the years ending June 30, 1908, and June 30, 1909, the following entry appears:

"RAILWAY STOCKS OWNED
1. Active Corporations.

Stocks of Corporations whose property does not form a part of the Operating System of Respondent Corporation.	Par value of stocks owned not held in sinking or other funds.		Dividends declared		Valuation of stock owned
	Unpledged	Pledged	Rate	Amt.	
Des Moines Union Ry. Co.		$50000.	None		1.00

13. On same 49 of the similar reports filed by the Chicago Milwaukee & St. Paul Railway Company for the year ending June 30, 1908, there appears the following:

8 "RAILWAY STOCKS OWNED.
1. Active Corporations.

Stocks of corporations whose property does not form a part of the operating system of respondent corporation.	Par value of stocks owned not held in sinking or other funds.		Dividends declared.		Valuation of stocks owned.
	Unpledged	Pledged	Rate	Amount	
Des Moines Union Railway Company	100,000.00				1,000.00"

14. On page 49 of the similar report filed by the Chicago, Milwaukee & St. Paul Railway Company for the year ending June 30, 1909, appears the following entry:

"RAILWAY STOCKS OWNED.
1. Active Corporations.

Stocks of corporations whose property does not form a part of the operating system of respondent corporation.	Par value of stocks owned not held in sinking or other funds.		Dividend declared		Valuation of stocks owned.
	Unpledged	Pledged	Rate	Amt.	
Des Moines Union Railway Company	100,000.00				100,000.00"

15. On page 8 of each of the annual reports so filed by each of the complainants for the years ending June 30, 1898, and June 30, 1899, there appears the following:

"Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word 'None' may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases,
9 refer by note to this page, as for example, 'See page 8', where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The mileage to be returned on the opposite page is the mileage, the operations of which are in the 'Income Account', as returned on page 31 of this report. Should operations on any part of the mileage have been begun within the twelve months covered by this report, a full statement of facts should be furnished.

In giving the mileage, name the roads according to the classification and in the order indicated, and state the actual distance between terminals, single track, entering in the last column but one the mileage for each strip of road named, and in the last column the 'Miles of line for each class of roads named.'

Under 'B' of this table, the 'Spurs' referred to should include only those used for traffic purposes, as for example, a spur running from main line to a quarry or factory. Spurs in the nature of sidings should be entered only on page 67, against the item 'Miles of yard track and sidings,' under table 'A'.

By 'Line operated under trackage rights' is meant such lines as are used in common with other companies by the

company making report, but not owned by such company. Such lines constitute part of the line operated, but form no part of the property of the operating company. Roadway held in joint ownership may also be returned under this head, or the proportion of roadway so owned may be returned under 'Main line' owned; but in either case full explanation must be given in order to avoid duplication of line.

In case any changes have taken place during the year covered by this report, either in the classification of line as given on opposite page, or in the length of line reported, such changes should be explained in full on page 53.'

16. On the opposite page, being page 9 of each of said reports there appears the following printed heading:

"Property Operated.

(For roads making operating reports.)

Name of Every Railroad the Operations of Which are Included in the Income Account—Page 31.

In giving roads below, observe the following classification and order;

1. Railroad Line represented by capital stock:

A. Main Line

B. Branches and Spurs.

(See "Instructions" page 8).

2. Proprietary Companies whose entire Capital Stock is owned by this Company.

3. Line Operated under Lease for specified sum.

4. Line Operated under Contract, or where the rent is contingent upon earnings or other considerations.

5. Line Operated under Trackage Rights.

---

10 17. In each of said reports below this heading appears what purports to be a list of all the railroads owned, leased or operated under joint trackage arrangement by the Company making the report (or owned by the Purchasing Committee in the said Wabash Railroad Company's report).

The Des Moines Union Railway Company does not appear on this list in any of said reports.

On the said page of the said report of The Wabash Railroad Company for the year 1899 the following appears;

"Lines Belonging to Purchasing Committee:

Des Moines & St. Louis, R. R. Harvey,—Des Moines, 43.4 miles"

18. On page 8 of each of the said annual reports so filed by The Wabash Railroad Company for the years ending June 30, 1900, June 30, 1901, June 30, 1902, and June 30, 1903, respectively, and also on each of the like reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the same years there appears the following:

"Instructions for Answering Questions on Opposite Page.

* * * * * * * * *

The mileage to be returned on the opposite pages is the mileage, the operations of which are in the 'Income Account', as returned on page 31 of this report.

The statement should be made of the facts as they existed at the end of the year, or of any shorter period for which operating returns are made. If the operation of any part of the mileage so reported was begun within the period for which returns are made, an explanation of the fact should be given.

* * * * * * * * *

In giving the mileage, name the roads according to the classification, and in the order indicated, and state the actual distance between terminals, single track entering in the last named column but one the mileage for each strip of road named, and in the last column the 'Miles of line for each class of roads named.'

Under 'B' of this table 'Spurs' referred to should include only those used for traffic purposes, as for example, a spur running from main line to a quarry or factory. Spurs in the nature of sidings should be entered only on page 67, against the item 'Miles of yard track and sidings' under table 'A'.

11 By 'Line operated under trackage rights' is meant such lines as are used in common with other companies by the company making report, but not owned by such company. Such lines constitute part of the line operated, but form no part of the property of the operating company. Roadway held in joint ownership may also be returned under this head, or the proportion of roadway so owned may be returned under 'Main line' owned,; but in either case full explanation must be given in order to avoid duplication of line.

In case any changes have taken place during the year covered by this report, either in the classification of line as given

on opposite page, or in the length of line reported, such changes should be explained in full on page 53."

19. On the opposite page of each of said reports, being page 9 of said reports, there appears the following heading:

"Property Operated.

(For Roads Making Operating Reports.)

Name of Every Railroad the Operations of Which are Included in the Income Account—Page 31.

In giving roads below, observe the following classification and order,

1. Railroad Line represented by capital stock:

A. Main Line

B. Branches and Spurs.

(See 'Instructions' page 8).

2. Proprietary Companies whose entire Capital Stock is owned by this Company.

3. Line Operated under Lease for specified sum.

4. Line Operated under Contract, or where the rent is contingent upon earnings or other considerations.

5. Line Operated under Trackage Rights.

followed by a list of railroads owned, leased, or operated under joint trackage arrangements by the Company making the report; showing the terminals, miles operated in each state, and total mileage of such railroad.

The name of the Des Moines Union Railway Company does not appear in this list in any of the said reports so filed by The Wabash Railroad Company for the years ending June 30, 1900, June 30, 1901 and June 30, 1902.

20. On page 9 of the report so filed by The Wabash Railroad Company for the year ending June 30, 1903, the following entry appears on this list:

12

Lines operated under joint trackage arrangements	Terminals		Miles of line for each road named.
	From	To	
Des Moines Union Railway Company	Chesterfield	Des Moines	2.4

21. On page 9 of each of the said reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1900, June 30, 1901, June 30, 1902, and June 30, 1903, under said heading the following entry appears:

"Question #3.

Des Moines Union Ry. Des Moines 1.72"

22. On page 8 of each of the said annual reports so filed by The Wabash Railroad Company for the years ending June 30, 1904, June 30, 1905, June 30, 1906 and June 30, 1907, and also on the same page of each of the like reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for the same years there appears the following:

"Instructions for Answering Questions on Opposite Page.

* * * * * * * * *

The mileage to be returned on the opposite page is the mileage, the operations of which are in the 'Income Account' as returned on page 31 of this report.

* * * * * * * * *

In giving the mileage, name the roads according to the classification and in the order indicated, and state the actual distance between terminals, single track, entering in the last column but one the mileage for each strip of road named, and in the last column the 'Miles of line for each class of roads named'.

* * * * * * * * *

By 'Line operated under trackage rights' is meant such lines as are used in common with other companies by the company making report, but not owned by such company. Such lines constitute part of the line operated, but form no part of the property of the operating company. Roadway held in joint ownership may also be returned under this head, or the proportion of roadway so owned may be returned under 'Main line' owned; but in either case a full explanation must be given in order to avoid duplication of line.

* * * * * * * * *

23. On the opposite page, being page 9 of each of said reports, there appears the following heading:

13 "Road Operated.

Name of every Railway Company the operations of which are indicated in this report.

In giving Roads below, observe the following classification and order."

And under this heading in each of said reports so filed by The Wabash Railroad Company for said years there appears the following entry.

"5. Lines operated under trackage rights.	TERMINALS		Miles of line for each road named.
	From	To	
Des Moines Union Ry. Co.	Chesterfield	Des Moines	2.4"

24. Under this heading in each of the said reports so filed by the Chicago, Milwaukee & St. Paul Railway Company for said years, appears the following entry:

"Question 5.

Des Moines Union Ry. Des Moines 1.72"

25. On page 12 of each of the said annual reports so filed by The Wabash Railroad Company for the years ending June 30, 1908 and June 30, 1909, respectively, and also on the same page of the like report filed by the Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1908 and June 30, 1909, there appears the following:

"Instructions for Answering Questions on Opposite Page.

* * * * * * * * *

The mileage to be returned on the opposite page is the single track mileage, the operations of which are included in the 'Income Account' as returned on page 39 of this report.

* * * * * * * * *

In giving the mileage, name the roads according to the classification and in the order indicated, and state the actual single track distance between termini, entering in the last column but one the mileage for each strip of road named, and in the last column the total mileage of each class.

* * * * * * * * *

Class 1 should include all line operated which the respondent corporation owns in fee.

14 Class 2 should cover line which has been practically absorbed or joined for operating purposes to the property of the respondent carrier, the title to which is vested in some other corporation, active or inactive, whose capital stock

wholly or in a majority is owned by the respondent carrier. It should be kept clearly in mind that in many cases inactive corporations, although virtually absorbed by the controlling corporations, still retain the titles to ownership, and in such cases the roads should be reported under Class 2. From this class should be excluded all line operated under lease or contract, even though a majority of the stock is owned by respondent.

Class 3 is intended to cover all roads operated under lease, whether or not the lessee companies maintain independent organizations for the purpose of distributing income.

By 'Line operated [under] trackage rights' is meant such line as is used in common with other companies by the company making this report, but not owned by it. Such line constitutes a part of the road operated, but forms no part of the property of the respondent.

For the purpose of this report, the respondent's proportion of road held under joint ownership or joint lease for operation should be entered on the opposite page under its appropriate class, 1, 3 or 4, and the remainder should be returned as if operated under trackage rights. All jointly owned or jointly leased mileage should also be shown in detail in the lower table on page 15.

* * * * * * * * *

On page 14 of each of said reports there appears the following:

"Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page entries or notations sufficient to show that no question or item has been overlooked. The word 'none' may be used wherever applicable. If returns are not made as required, some reference as 'See page 14' should be made to this page, on which a brief statement of the reason for the variation or omission should be given.

Upper part of page:

See 'Instructions' page 12.

Lower part of page:

Under '(1) Road jointly owned or (2) Road jointly leased' should be included all properties that are jointly owned or jointly leased by the respondent. This statement should be complete for all such properties. It should be kept in mind that joint ownership means joint title to the property, and

does not relate to joint control established through ownership of the capital stock where the title to the property rests in the corporation whose stock is owned.

For each road entered in this table, give under 'Explanatory Remarks' below the names of the other joint owners or joint lessees.'

26. On the designated opposite pages of each of said reports, being pages 13 and 15, (page 15 being a continuation of page 13) for the years 1908 and 1909, there appears the following printed heading:

"Road Operated.

Name of every Railway Company the Operations of which are included in this Report.

In giving Roads below, observe the following classification and order."

27. Under this heading in each of the said reports filed by The Wabash Railroad Company for the years 1908 and 1909 there appears the following entry:

"Lines operated under trackage rights.	Terminals		Miles of line for each road named.
	From	To	
Des Moines Union Ry. Co.	Chesterfield	Des Moines	2.4"

Under this same heading in each of said reports filed by the Chicago, Milwaukee & St. Paul Railway Company for the years ending June 30, 1908 and June 30, 1909, there appears the following entry:

"Question 5.

Des Moines Union Ry. : Des Moines : 1.72"

It is also agreed that the foregoing stipulation shall be copied into the record in said cause in lieu of the original reports made by the complainants to the Interstate Commerce Commission therein referred to.

Either party shall have the right at any time prior to the final hearing to make such objections to the foregoing extracts

from said reports as might have been made to the original reports.

WELLS H. BLODGETT,
JAMES L. MINNIS,
Solicitors for Wabash Railroad Co.

J. C. COOK,
Sol. for C., M. & St. P. Ry. Co.

GUERNSEY, PARKER & MILLER,
Solicitors for Defendants.

16

Stipulation as to Reports to Executive Council of the State of Iowa, filed October 23, 1912.

17 Stipulation of Counsel Respecting Annual Reports to the Executive Council of the State of Iowa for the Purpose of the Assessment of Their Property for Taxation Made by Various Railway Companies.

It is agreed that the annual reports of the railway companies hereinafter mentioned for the years hereinafter mentioned are all in substantially the same form, each containing the name of the company, the names of its officers, its place of business and a description of its real and personal property.

That under the law requiring railroad companies in Iowa to report their property to the Executive Council for the purpose of taxation, the first report made by the

Des Moines Northwestern Railway Company

was for the year ending January 1, 1883, and the last report made by the said company was for the portion of the year ending December 31, 1886.

18 That each of the said reports purports to describe the property within the state of Iowa owned or used by the said company during the period covered by the said reports, and the said property does not include any property located in the city of Des Moines.

Des Moines and Northwestern Railway Company.

That the Des Moines and Northwestern Railway Company filed like reports covering the period commencing October 1, 1887 and extending until January 1, 1892; that the said reports so filed by the Des Moines and Northwestern Railway Company purport to describe by specific description all of the real estate owned or used by it in the operation of its railroad in the state of Iowa, and that the said real estate so described

in the said reports, did not include any real estate located within the limits of the city of Des Moines.

St. Louis, Des Moines & Northern Railway Company.

That the St. Louis, Des Moines & Northern Railway Company filed like reports, the first report so filed being for the year ending January 1, 1883, and the last report so filed being for the year ending December 31, 1889. That the said reports contain what purport to be specific descriptions of the real estate in the state of Iowa owned or used by the said company in the operation of its railroad, and that said real estate was first listed by a specific description by lots, blocks, etc. in the report for the year ending January 1, 1885.
19 That the said reports listed and described the right of way of the said company as commencing at the east line of section 7 in township 78, range 24, in Polk county, Iowa, and extending west therefrom, and did not list or describe any real estate east of the said east line. That the said report for the year ending January 1, 1883 contained the notation under item 10 "have no shops or tools".

Des Moines and Northern Railway Company.

That the Des Moines and Northern Railway Company filed like reports for the years ending December 31, 1890 and January 1, 1892, the said reports containing what purported to be a specific description by lots, blocks, etc. of the real estate and right of way owned or used by the said company in the state of Iowa in the operation of its railroad. That the right of way so described in the said reports commenced with the east line of section 7, township 78, range 24, in Polk county, Iowa, and continued westerly therefrom, but included no right of way or real estate east of the said east line.

Des Moines, Northern and Western Railway Company.

That the Des Moines, Northern and Western Railway Company filed like reports for the years ending January 1, 1893, January 1, 1894 and January 1, 1895, which reports contained what purported to be a specific description by
20 lots, blocks, etc. of all of the real estate in the state of Iowa owned or used by the said company in connection with the operation of its railway, and which reports included in such description no real estate east of the east line of section 7-78-24 in Polk county, Iowa, except that each of the said reports for the years ending January 1, 1894 and January 1, 1895 included the following lots:

Lot two (2) Official Plat NE Section 8, township 78, range 24; Lot one (1) in N. W. Section 8, township 78, range 24;

Lot two (2) N. W. Sec. 8, township 78, range 24; Lot four (4) NW Section 8, township 78, range 24.

Des Moines, Northern and Western Railroad Company.

That the Des Moines, Northern and Western Railroad Company filed like reports for each of the years ending January 1, 1896, January 1, 1897, January 1, 1898 and January 1, 1899, each of which reports purported to describe by specific description by lots, blocks, etc. all of the real estate owned or used by the said company in the operation of its railroad in the state of Iowa. That the report so filed by the said railroad company for the year ending January 1, 1896 was the same in respect to the real estate described in it as the report filed by the Des Moines, Northern and Western Railway Company for the preceding year, but that each subsequent report filed by the Des Moines, Northern and Western Railroad Company described the right of way of that company as ending at the east line of section 7, in township 78, in range 24, in Polk county, Iowa, and contained no
21 description of any real estate located east of the said east line.

The reports of the said company for the years ending January 1, 1897 and January 1, 1898 show in each instance main tracks leased of Des Moines Union Railway Company 2.12 miles.

Chicago, Milwaukee & St. Paul Railway Company.

The Chicago, Milwaukee & St. Paul Railway Company filed like reports for each of the years ending January 1, 1900, 1901, 1902, 1903, 1904 and 1905 and pursuant to the provisions of section 1334a of the Code of 1897 of Iowa filed on or before the 1st of April, 1905 with the Executive Council of the said state—

"a detailed statement showing the amount of real estate owned or used by it on December 31, 1904, for railway purposes, in each county in the state in which said real estate is situated, including the right of way, roadbed, bridges, culverts, depot grounds, station buildings, yards, section and tool houses, round houses, machine and repair shops, water tanks, turn tables, gravel beds and stone quarries, and for all other purposes, with the estimated actual value thereof, in such manner as may be required by the executive council,"

and that on or before the 1st day of April of each subsequent year, such corporation in like manner reported all real estate

acquired for any of the railway purposes above named during the preceding calendar year.

That neither the said annual reports so filed by the said Chicago, Milwaukee & St. Paul Railway Company nor the said detailed statement with the additions thereto has listed or described any real estate east of the east line of said section 7-78-24, Polk county, Iowa, as part of the real estate so owned or used by the said company.

22 Des Moines & St. Louis Railroad Company.

The Des Moines & St. Louis Railroad Company made its report to the executive council of the state of Iowa for the years ending January 1, 1883 and January 1, 1884; that in the said report for the year ending January 1, 1883, it reported machine, shop, machinery and round house located at Des Moines, and that in said report for the year ending January 1, 1884, it reported freight house, round house, water tank, machine shops and tools at Des Moines. That the reports of the Des Moines & St. Louis Railroad Company did not describe what purported to be its property by a specific description by lots and blocks.

Wabash, St. Louis & Pacific Railway Company.

That the Wabash, St. Louis & Pacific Railway Company made reports to the executive council of the state of Iowa for the purpose of taxation for the years ending January 1, 1885, December 31, 1885 and December 31, 1886; that the said reports for the years ending January 1, 1885 and December 31, 1885, under the heading of "Des Moines & St. Louis Railroad Company" schedule the round house, freight house, passenger house, water tank, shops and machinery as in the city of Des Moines.

That the first of the said reports to describe the real estate owned by a specific description by lots, blocks, etc. was the report for the year ending December 31, 1886, and that in the said report the said company listed as owned by it all of the real estate described in the deeds from How, How,
23 trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company, copies of which have been identified as exhibits 17 to 22 inclusive, in the stipulation between the parties hereto, filed March 23, 1911.

Wabash Western Railway Company.

That the Wabash Western Railway Company filed reports with the executive council of the state of Iowa for the years ending December 31, 1887 and December 31, 1888. That the

said report for the year ending December 31, 1887 reported under the head of "Des Moines & St. Louis Railroad Company" as property owned in the city of Des Moines, all of the property described in the said deeds from How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company above referred to. That the said report of the Wabash Western Railway Company for the year ending December 31, 1888 did not in the property owned by the Des Moines & St. Louis Railroad Company list or describe any of the real estate described in the said deeds from How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company above referred to.

That the specific description of the right of way reported in said last mentioned report as owned by the Des Moines & St. Louis Railroad Company and operated by the
24 Wabash Western Railway Company terminated on the west with the east line of section 2 in township 78, range 24, Polk county, Iowa.

That the report of the said Wabash Western Railway Company for the year ending December 31, 1887 reported the mileage of the Des Moines & St. Louis Railroad Company as 68.68 miles, and that the report of the said company for the year ending December 31, 1888 reported the mileage of the said Des Moines & St. Louis Railroad Company as 65.56 miles.

That the said report of the Wabash Western Railway Company for the year ending December 31, 1888 contained the following memorandum:

"Remarks.

Des Moines & St. Louis R. R. is operated by Wabash Western Railway Co. for account of Purchasing Committee.

Most of the leased track belongs to the Des Moines Union Railway Company and is used in common with other roads in Des Moines."

That each of the said reports of the Wabash Western Railway Company for the years ending December 31, 1887 and December 31, 1888 was signed and verified by James F. How, vice-president of the said company.

The Wabash Railroad Company.

That for the year ending December 31, 1888 down to and including the year ending January 1, 1905, The Wabash Railroad Company filed like reports with the executive council of the state of Iowa, in each of which said reports it listed by

specific description the real estate owned or used by it
25 in the transaction of its business in the state of Iowa, and that on or before the 1st day of April, 1905, the said The Wabash Railroad Company did—

"make to the executive council a detailed statement showing the amount of real estate owned or used by it on December 31, 1904 for railway purposes, in each county in the state in which said real estate is situated, including the right of way, roadbed, bridges, culverts, depot grounds, station buildings, yards, section and tool houses, machine and repair shops, water tanks, turn tables, gravel beds and stone quarries, and for all other purposes, with the estimated actual value thereof, in such manner as may be required by the executive council,"

and that the said The Wabash Railroad Company made annual additions to the said detailed statement of real estate, covering real estate acquired by it in the state of Iowa for the railway purposes above named after the making of the said statement. That in the said reports so made by The Wabash Railroad Company, and in the said detailed statement and additions thereto the western terminus and boundary of the real estate and right of way owned by The Wabash Railroad Company within the state of Iowa was fixed as the east line of section 2, township 78, range 24, in Polk county, Iowa and said reports and statements included no real estate west of said line.

That in the said reports so filed by The Wabash Railroad Company, the railroad of the Des Moines & St. Louis Railroad Company and of The Wabash Railroad Company was in each instance described as extending from Albia to the city limits, or east city limits of the city of Des Moines, which city limits at that time then coincided with the said east line of section 2. That the mileage of the Des Moines & St. Louis Railroad Company was in each instance stated to be 65.56 miles.

26 Des Moines Union Railway Company.

That the first report filed by the Des Moines Union Railway Company with the executive council of the state of Iowa was for the year ending December 31, 1888. That the said report described by specific description as property owned by the Des Moines Union Railway Company, all of the property described in the said deeds from How, How, trustee, Dodge, St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company to the Des Moines Union Railway Company, and each subsequent report made by the said Des Moines Union Railway Company to the executive council up to and including the report for the year

ending January 1, 1905, likewise described the said property as the property of the Des Moines Union Railway Company.

That in each of the said reports the eastern terminus of the railroad owned by the Des Moines Union Railway Company was described as the east city limits of the city of Des Moines or the old east city limits of said city, the said line being coincident with the east line of said section 2, township 78, range 24.

That the property acquired by the Des Moines Union Railway Company after the making of the deeds above referred to was listed and described by it in the said reports in the same manner as the property described in said deeds was listed, and described in said reports.

That the statements filed by the said Des Moines Union Railway Company with the executive council under sec-
27 tion 1334a of the Code of 1897 of Iowa list and describe as a part of the property owned by the Des Moines Union Railway Company all of the property described in the said deeds from the said How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company.

That ever since the making of the first report of the Des Moines Union Railway Company hereinbefore referred to, the said property described in the said deeds from the said How, How, trustee, Dodge, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company has been assessed and taxed to the Des Moines Union Railway Company.

That the property subsequently conveyed to the Des Moines Union Railway Company has been assessed and taxed to it in each year since it was conveyed to said company.

That each of the said reports hereinbefore referred to was verified by the oath of some officer of the company making the said report.

This stipulation is not intended to supersede or affect a stipulation of the parties heretofore made covering certain matter shown by reports of the Des Moines Union Railway Company, which stipulation is set out at page 491 of the printed copy of complainants' evidence, but is in addition to said stipulation last mentioned.

Each party shall have the right at any time prior to
28 the final hearing to make such objections to the matters contained in this stipulation as might have been made to the original reports hereinbefore referred to.

WELLS H. BLODGETT &
J. L. MINNIS,

J. C. COOK & R. RYAN,
Solicitors for complainants.

GUERNSEY, PARKER & MILLER,
Solicitors for defendants.

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29 **Deposition of T. J. Tobin, filed June 21, 1911.**

30 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company and The Wabash Railroad Company, Complainants, No. 2449. In Equity.

vs.

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Defendants.

Deposition of a witness produced, sworn and examined on the 31st day of March, 1911, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day at the Auditor's Office of the Wabash Railroad Company, southwest corner of Seventh and Chestnut Streets, in the City of St. Louis, State of Missouri, before me, Arthur E. Mooney, a Notary Public, in and for the City of St. Louis, State of Missouri, in a certain cause now pending in the Circuit Court of the United States for the Southern District of Iowa, Central Division, wherein the Chicago, Milwaukee & St. Paul Railway Company and Wabash Railroad Company are complainants and the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son are defendants, on the part of the defendants.

Present: J. C. Cook, Esq., counsel for the Chicago, Milwaukee & St. Paul Railway Company, Wells H.
31 Blodgett, Esq., and J. L. Minnis, Esq., counsel for the Wabash Railroad Company and N. T. Guernsey, Esq., counsel for defendants.

T. J. TOBIN, of lawful age, being produced, sworn and examined as a witness on the part of the defendants, deposes and says as follows:

Direct Examination

By Mr. Guernsey:

Q. Your name is T. J. Tobin? A. Yes sir.

Q. You reside in St. Louis, Missouri? A. Yes sir.

Q. What is your occupation?

A. Auditor of the Wabash Railroad Co.

Q. You have been in the auditing department of the Wabash Railroad Co. and its predecessors for how long?

A. For about 30 years.

Q. Do you remember when you went into the auditing department of the Wabash, St. Louis & Pacific Railway Co.?

A. November, 1880.

Q. I wish you would look at the paper marked Exhibit A., Tobin Deposition and state whether or not that is a copy of the account in the ledger of the Wabash, St. Louis & Pacific Railway Co. with the Des Moines & St. Louis Railroad Co.?

A. Yes sir.

Q. State whether or not this account marked Exhibit A. to your deposition shows the expenditures on account of the construction of the Des Moines & St. Louis Railroad?

A. Yes sir.

It is hereby stipulated that the copy, Exhibit A. may be used with the same force as if it were the original book and that the identification and proof of the books are waived.

The paper referred to, Exhibit A. Tobin Deposition, is in words and figures as follows, to-wit:

FOLD OUT IS TOO LARGE TO BE FILMED

1881			
Jan. 31	To	Audited Vouchers	3590.16
Feb. 28	"	Engineer Dept	36770.75
Mar. 31	"	"	42531.14
Apl. 30	"	"	37524.19
	"	Station Agents Frt. W. D.	3589.60
May 31	"	Engineer Dept	74523.56
	"	Station Agents W. D.	2286.41
June 30	"	Storekeeper P. & I.	1200.40
	"	Humeston & Shen. R. R.	11.52
	"	Station Agents E. D.	991.70
	"	Construction Vouchers	132508.22
	"	St. L. J. & S. R. R.	25.00
July 31	"	Freight on Co. Material	144.00
	"	" "	139.80
	"	Storekeeper, P. & I.	36.20
	"	Station Agents, W. D.	4016.38
	"	St. L. J. & S. R. R.	25.00
	"	Construction Vouchers	133422.02
Aug. 31	"	Freight on Co. Material	34.40
	"	" "	344.00
	"	Construction Vouchers	145406.34
	"	Road Dept. Iowa	11.08
	"	Storekeeper W. D.	262.66
	"	" C. & I.	233.10
	"	Station Agents W. D.	4270.43
Sept. 30	"	Construction Vouchers	137726.28
	"	Road Dept. Iowa	74.68
	"	Storekeeper	384.71
	"	" W. D.	150.00
	"	Fuel Dept. C. & I.	33.00
	"	St. L. J. & S. R. R.	50.00
	"	Station Agents	1679.14
	"	Des Moines & Nor. West.	1534.04
Oct. 31	"	Daily, Templin & Co	13000.00
	"	Freight on Co. Material	84.00
	"	Sundries	500.27
	"	Storekeeper	772.09
	"	B. & B. Dept.	780.46
	"	Des N. & N. W.	65007.00
	"	Road Dept Iowa	502.90
	"	" "	62.43
	"	Construction Vouchers	81214.79
	"	Freight on Co. Material	108.00
	"	Station Agents	1153.30
Nov. 30	"	A/c Audited Bills	44.26
	"	Freight on Co. Material	108.00
	"	Storekeeper	986.72
	"	Road Dept/ Iowa	567.67
	"	Construction Vouchers	43819.65
	"	Fuel Dept. Iowa	294.67
	"	St. L. J. & S.R. R.	50.00
	"	Station Agents	21817.67
		Forward	987715.00

1881			
Feb. 28	By	J. S. Clarkson	2000.00
Apl. 30	"	Real Estate Des Moines	67163.86
Aug. 31	"	Construction Vouchers	1534.05
	"	Real Estate Des Moines	14000.00
Sept. 30	"	H. S. Hopkins & Co	592.58
Dec. 31	"	Road Dept. Q. M. & P	2418.64
	"	Construction Vouchers	65067.60
	"	Audited Bills	29.65
	"	Exp. for Const & Equip	1199935.00
		Forward	1351741.38

Exhibit A Tobin Dep.
3-31-11 A. E. M.

33 Des Moines & St. Louis R. R.

1881		Forward	997715.00
Dec. 31	To	Freight on Co. Material	101.76
	"	Road Dept. Iowa	975.44
	"	Fuel " "	315.76
	"	Road " Q. M. & P.	2418.64
	"	Storekeeper	1335.98
	"	B. & B. Dept.	1225.00
	"	Mach. "	9.64
	"	Russell Sage	199027.79
	"	Sundry Depts.	40557.93
	"	Construction Vouchers	104878.47
	"	St. L. J. & S. R. R.	25.00
	"	Station Agents, Freight	3154.97
			1351741.38
			1251741.38
1882			
Jan. 31	To	Chief Engineer	582.00
	"	Machinery Dept.	3.86
	"	Storekeeper	406.00
	"	"	74.50
	"	Road Dept.	154.15
	"	Freight Co. Material	4.00
	"	Construction Vouchers	53005.13
	"	Station Agents	569.96
Feb. 28	"	Des Moines & N. W.	390.00
	"	Transpr. Dept.	16.00
	"	Freight Co. Material	69.00
	"	Vouchers	1044.55
	"	Construction Vouchers	12599.21
	"	Station Agents	45.51
Mar. 31	"	Road Dep.	258.39
	"	Freight Co. Material	61.00
	"	Construction Vouchers	18010.07
Apl. 30	"	Road Dept.	25.84
	"	" "	90.00
	"	Construction Vouchers	6720.05
	"	Des Moines & N. W.	138.00
May 31	"	Pay Rolls	1383.87
	"	Des Moines & N. W.	1244.88
	"	Misc. Earnings	963.00
	"	Transp. Dept.	42.37
	"	Chief Engineer	109.77
	"	Road Dept.	129.62
	"	Construction Vouchers	10393.94
	"	Station Agents	24.19
June 30	"	Transp. Dept.	233.01
	"	Machinery Dept.	315.00
	"	Chief Engineer	600.12
	"	Road Dept.	134.37
	"	Pay Rolls	3102.83
	"	Construction Vouchers	6589.43
		Forward	119533.62

		Forward	1351741.38
			1351741.38
1882			
Jan. 31	By	Real Estate at Des Moines	1600.00
	"	Audited Bills	215.26
	"	J. S. Clarkson	3032.76
Feb. 28	"	Construction Vouchers	102.24
Apl. 30	"	Des Moines & N. W.	61.00
May 31	"	Property at Des Moines	425.00
June 30	"	" "	8145.25
July 31	"	Audited Bills	503.49
Aug. 31	"	J. S. Clarkson	390.00
		Forward	14475.00

1882			
		Forward	119533.62
July 31	To	Pay Rolls	3020.30
	"	Transp. Dept	275.39
	"	Car "	250.00
	"	Chief Engineer	619.89
	"	Machinery Dept	736.00
	"	Vouchers	427.50
	"	"	14723.66
Aug. 31	"	Transpn. Dept	619.48
	"	Chief Engineer	2742.76
	"	Road Dept	22.61
	"	Machinery Dept	853.91
	"	Telegraph "	405.23
	"	Car "	2.45
	"	Transpn. "	22.00
	"	Pay Rolls	3602.40
	"	Vouchers	927.73
	"	Station Agents	1878.09
Sept. 30	"	Pay Rolls	4301.46
	"	Transpn. Dept	338.94
	"	Telegraph "	474.36
	"	Machinery "	379.50
	"	Chief Engineer Dept	556.08
	"	Road "	231.50
	"	Construction Vouchers	31917.87
Oct. 31	"	Pay Rolls	4366.90
	"	"	471.82
	"	Freight Co. Material	78.05
	"	Transpn. Dept	75.15
	"	Telegraph "	212.25
	"	Car "	.75
	"	Machinery "	440.91
	"	Chief Engineer Dept	3289.98
	"	Vouchers	10259.30
Nov. 30	"	Pay Rolls	3564.04
	"	Freight Co. Material	45.08
	"	Transpn. Dept	172.09
	"	Chief Engineer	1836.48
	"	Machy. Dept	304.45
	"	Vouchers	7772.14
Dec. 31	"	Pay Rolls	1478.55
	"	Transpn. Dept	114.00
	"	Machinery "	14.86
	"	Chief Engineer Dept	222.66
	"	Construction Vouchers	4171.47
			227753.66

1882			
		Forward	14475.00
Sept. 30	By	Audited Bills	310.22
Oct. 31	"	Cash	12.31
	"	Property at Des Moines	13551.86
	"	Audited Bills	268.25
Nov. 30	"	Construction Vouchers	.02
	"	Property at Des Moines	5558.75
Dec. 31	"	" "	1246.39
	"	J. S. Clarkson	17.70
	"	Exp. for Constn. & Equip	192313.16
			227753.66

1883			
Feb. 28	To	Vouchers	305.00
Mar. 31	"	Des Moines N. W.	171.30
	"	Vouchers	526.84
Apl. 30	"	"	500.00
July 31	"	"	1701.65
Oct. 31	"	"	747.90
Nov. 30	"	"	296.30
Dec. 31	"	"	495.00
		Forward	4743.99

1883			
Feb. 28	By	Property at Des Moines	37000.00
June 30	"	Vouchers	140.00
Dec. 31	"	"	375.59
		Forward	37515.59

35 Des Moines & St. Louis R. R.

1883		Forward	4743.99		Forward	37515.59
Dec. 31	To	J. C. Taylor	821.56			
"	"	Cost of Road &c	31950.04			
			37515.59			37515.59
1884				1884		
Jan. 31	To	Vouchers	253.85	May 28	By	Cost of Road	37141.48
Feb. 29	"	"	1248.90				
Mar. 31	"	"	473.05				
May 31	"	"	35165.68				
			37141.48				37141.48
June 30	To	Vouchers	3656.48	June 30	By	Vouchers	300.00
"	"	Audited Bills	268.25	July 31	"	Cash	2960.84
Oct. 31	"	Vouchers	103.00	"	"	Vouchers	3656.48
Dec. 31	"	"	279.50	"	"	"	459.05
"	"	Liabilities Paid	2272.36	Dec. 31	"	"	228.40
"	"	Cost of Road &c	1025.18				
			7604.77				7604.77
1885				1885			
Sept. 30	To	vouchers	125.00	Dec. 31	By	Cost of Road &c	243.16
Oct. 31	"	"	100.00				
Dec. 31	"	"	18.16				
1886				1886			
Mar. 31	"	"	12425.49	Jan. 31	By	Audited Vouchers	18.16
Apl. 30	"	"	1005.55	Apl. 30	"	Liabilities Paid	647.58
				Dec. 31	"	Cost of Road	12765.30
			13431.04				13431.04
1887				1887			
Apl. 30	To	Vouchers	300.00	June 30	By	Cost of Road	300.00

36 Q. I call your attention to Exhibit B. Tobin Deposition and ask you to state whether or not that is a correct copy of the ledger account of the Wabash, St. Louis & Pacific Railway Co. with the Des Moines Northwestern Railway Co.? A. Yes sir.

Q. Does that account show the expenditures on account of the construction of the Des Moines Northwestern Railway Co. at the date stated there? A. Yes sir.

Q. I mean the expenditures of the Wabash Railroad Co.? A. Yes sir.

Counsel state there is the same stipulation and [waivor] as to Exhibit B. Tobin Deposition which is in words and figures as follows, to-wit:

Des Moines and North Western Ry.
Construcion a/c.

1881.			
Feb. 28	To	Audited Vouchers	6504.00
Apl. 30	"	" "	10877.11
	"	Sundries	53000.00
May 31	"	Metropolitan Nat. Bank	20.00
	"	Engineer Dept	25873.80
June 30	"	Construction vouchers	53345.08
July 31	"	Metro. Nat. Bank	39486.96
	"	Storekeeper	120.00
	"	Station Agents W. D.	191.14
	"	Construction Vouchers	41770.55
Aug 31	"	Metro. Nat. Bank	70304.08
	"	Construction Vouchers	74386.95
Sept 30	"	Met. Nat. Bank	28560.81
	"	Unpaid & Acc'd Coupons	2960.00
	"	Genl. Mortgage Bonds	148000.00
	"	Freight Co. Material	138.00
	"	Narrow Guage Con. Co	15625.00
	"	Construction Vouchers	160100.96
Oct. 31	"	Unpaid & Acc'd Coupons	740.00
	"	Construction Vouchers	65200.88
Nov. 30	"	Metro Bank	48048.01
	"	Construction Vouchers	87184.57
Dec. 31	"	Metro. Nat. Bank	48402.57
	"	B. & B. Dept	425.00
	"	Construction Vouchers	52159.25
	"	"	570.73
			1033995.43

1881			
June 30	By	Audited Bills	600.00
Sept 30	"	Des Moines & St. L.	1534.05
Oct. 31	"	Cash	899.76
	"	Des Moines & St. L.	65067.60
Dec. 31	"	N. Y. & Pen. Car Trust	4772.80
	"	Exp. for Const & Equipt	961121.24
			1033995.43

1882			
Jan 31	To	Chief Engineer	594.88
	"	Metro. Nat'l Bank	44903.60
	"	Construction Vouchers	105801.68
	"	Freight Co. Material	123.00
	"	Construction Vouchers	6379.50
	"	" "	631.15
Feb. 28	"	Metro. Nat'l. Bank	968.01
	"	Construction Vouchers	7532.91
Mar. 31	"	Engineer Dept.	650.00
	"	Audited Bills	.68
	"	Construction Vouchers	18317.93
Apl. 30	"	Audited Bills	.21
	"	Pay Rolls	113.41
	"	Construction Vouchers	11334.08
	"	Des Moines & St. L.	61.00
	"	Station Agents	4360.03
May 31	"	Audited Bills	2178.63
	"	"	9303.24
	"	Misc. Earnings	135.00
	"	Genl. G. M. Dodge	67045.09
	"	Construction Vouchers	6734.58
June 30	"	Chief Engineer	150.77
	"	Vouchers	2784.30
July 31	"	Chief Engineer Dept.	568.54
	"	Vouchers	1441.11
	"	"	12696.92
		Forward	304810.25

Exhibit B, Tobin Dep.
3-31-11 A. E. M.

1882			
Jan. 31	By	Constn. Vouchers	6379.50
	"	"	631.15
	"	R. E. Des Moines	1174.59
Feb. 28	"	Des Moines & St. L.	390.00
	"	Property Des Moines	18711.07
	"	Audited Bills	109130.82
	"	"	414.24
Apl. 30	"	Cash	39.28
	"	Misc. Securities	1.00
	"	Audited Bills	16473.14
	"	Property Des Moines	3257.24
	"	Des Moines & St. L.	138.00
May 31	"	Audited Bills	14500.00
	"	Property Des Moines	425.00
	"	" "	4065.91
	"	Des Moines & St. L.	1244.88
	"	Maint. of Way	113.41
	"	Sundries	124648.83
June 30	"	Audited Bills	178.18
	"	Property at Des Moines	1546.65
Aug. 31	"	" "	391.91
	"	C. S. Martin	225.00
Sept. 30	"	Constn. Vouchers	100.32
	"	Property at Des Moines	330.00
Oct. 31	"	Cash	75.22
	"	Property at Des Moines	260.87
		Forward	305946.21

38 Des Moines and North Western Ry.

		Forward	304810.25			Forward	305046.21
1882				1882			
Aug. 31	To	Chief Engineer	1565.48	Nov. 30	By	Cash	300.00
	"	Car Dept	2.68	"	By	Property Des Moines	1688.43
	"	Pay Rolls	2128.16	Dec. 31	By	Cash	19.75
	"	Vouchers	18840.69		"	Construction Vouchers	1550.00
Sept. 30	"	Pay Rolls	1188.44		"	Delayed "	30.80
	"	Chief Engineer	1126.61		"	Exp. for Const. & Equipment	99830.88
	"	Vouchers	14016.08				
	"	Freight Co. Mat'l	24.00				
	"	" "	573.97				
Oct. 31	"	Pay Rolls	6983.29				
	"	Chief Engineer	1881.71				
	"	G. F. Shepherd P. M.	606.88				
	"	Vouchers	10081.20				
Nov. 30	"	Pay Rolls	1160.10				
	"	Freight Co. Matl.	239.25				
	"	Chief Engineer	2308.60				
	"	Vouchers	17001.40				
Dec. 31	"	Pay Rolls	1192.64				
	"	Chief Engineer	1238.78				
	"	Construction Vouchers	15131.45				
	"	G. F. Shepherd P. M.	744.84				
			408390.07				408396.07
1883				1883			
Feb. 28	To	Vouchers	1880.50	Mar. 31	To	Sundries	688.30
Mar. 31	"	Gen. G. M. Dodge	1002.50	May 31	"	Constn. Vouchers	30.80
	"	Vouchers	272.30	Oct. 31	"	Vouchers	54.80
Apl. 30	"	"	491.50	Dec. 31	"	Income a/c	5536.22
May 31	"	Audited Bills	6.36				
	"	Vouchers	531.79				
July 31	"	"	1359.35				
Sept. 30	"	"	118.22				
Oct. 31	"	"	616.50				
Dec. 31	"	"	25.10				
			6297.12				6297.12
1884				1884			
Jan. 31	To	Vouchers	135.50	May 28	By	Cost of Road	3395.57
Feb. 29	"	"	611.56				
Mar. 31	"	"	2648.51				
			3395.57				3395.57
June 30	To	Vouchers	650.42	Oct. 31	By	Gen. G. M. Dodge	4676.44
Oct. 31	"	Gen. G. M. Dodge	83719.07	Dec. 31	"	Cost of Road &c	82292.05
			86369.49				86369.49
1885				1885			
Sept. 30	To	Vouchers	20.63	Dec. 31	By	Audited Bills	984.00
Dec. 31	"	Audited Bills	290.00				
	"	Cost of Road &c	573.95				
			984.00				984.00
1886				1886			
Mar. 31	To	Audited Bills	6.00	Dec. 31	By	Cost of Road	628.50
Apl. 30	"	Vouchers	622.50				
			628.50				628.50
1887				1887			
Apl. 30	To	Vouchers	158.90	June 30	By	Cost of Road	158.90

Q. Now you remember that on the 12th day of January, 1910, we took your deposition here in a case then pending in the District Court of the State of Iowa in and for Polk County, entitled Chicago, Milwaukee & St. Paul Railway Co. vs. Des Moines Union Railway Co. and that in that case you prepared a statement showing the expenditures of the Wabash, St. Louis & Pacific Railway Co. on account of the terminal property in Des Moines? A. Yes sir.

It is agreed that a certified copy of Exhibits A, B, C, C-2, C-3 and C-4 to the deposition of Mr. Tobin may be furnished to the Notary taking this deposition, and may be attached to this deposition and returned as an exhibit to it certified by the clerk of the court in which the deposition is now on file. (See p. 77.)

Q. Exhibit A. to your former deposition is headed, "Real Estate, Des Moines, joint account D. & St. L. and D. & N. W.;" these initials D. & St. L. and D. & N. W. indicate what?

A. D. & St. L. indicates Des Moines & St. Louis Railroad and D. & N. W. indicates Des Moines and Northwestern Railroad.

Q. And these exhibits to your former deposition A, B, C, C-2, C-3 and C-4 show with as much detail as appears on the books of the Wabash, St. Louis & Pacific Railway Co., the record of the expenditures that I referred to? A. Yes sir.

Q. These statements and exhibits are largely, if not entirely copies of the journal entries relating to these expenditures, are they not? A. Yes sir.

Q. Now, to illustrate, in Exhibit C. there is an entry here under date of February 8th, 1882, of $18,711.07, and in connection with it a memorandum "Statement in detail filed with J. V. 77;" J. V. means journal voucher, doesn't it?

A. Yes sir.

Q. And you searched for that journal voucher when we took your deposition before and you were unable to find it? A. Yes sir.

Q. So that the details are not any more in your possession as to that item than they appear here?

A. No sir.

Q. As to this item $18711.07, as to which you are not able to find the journal voucher, does the journal show how this expense was distributed? A. Yes sir.

Q. Will you read what the journal shows with reference to that matter, reading what follows the words, "for amount expended in the City of Des Moines charged to construction account, Des Moines Northwestern Railway now transferred?"

A. (Reading) "Statement in detail filed herewith, subclassification charged and to be credited. Buildings and fix-

tures $606.32; bridging $38.77; caboose and freight cars $180.; engineering $467.45; frogs and switches $34.61; grading $2046.39; machine shops and engine houses $6063.78; miscellaneous $165.72; sidings $513.53; soliciting and right of way expenses $4.; track laying and surfacing $752.28; traffic stations and warehouses, $6411.40; water stations $1426.82; total $18711.07."

Q. I believe that when we were here before we found the vouchers referred to in the next item, No. 10056 and 10057, were for principal and interest on account of the purchase of some lots, were they not, without going into details?

A. Yes sir.

Q. Now, referring to Exhibit A. to your former deposition there is a charge there to this account of $67,163.86, is that the charge which corresponds with the credit under date of April 30th, 1881, in the account with the Des Moines & St. Louis Railroad which you have identified as Exhibit A. to this deposition? A. Yes sir.

41 Q. And in this same Des Moines & St. Louis Railroad Co. account under date of August 31st, there is a credit of $14,000.; did that credit correspond to the charge of $14,000. under date of August, 1881, in the account Exhibit B to your former deposition? A. Yes sir.

Q. Still referring to this Des Moines & St. Louis account, Exhibit A. to this deposition, there is a credit under date of January 31st, 1882, of $1600., by real estate at Des Moines, is that a part of the item of $3956.01 appearing as a charge under February, 1882, in the account Exhibit C., to your former deposition? A. Yes sir.

Q. Now, referring still to this Des Moines & St. Louis account Exhibit A. to this deposition, under date May 31st, 1882, there is a credit of $425., property at Des Moines, is that credit the credit that corresponds to the charge in the account Exhibit C-2, to your former deposition, "Amount charged to construction, Des Moines & St. Louis R. R. Co., account December, 1881 in J. V. S. 42, for one half of one 54 foot turn table shipped to Des Moines, Iowa, in cars 2404 K. C. & N., 304 I. P. C. now transferred"? A. Yes sir.

Q. On June 30th, 1882, there is a credit in this Des Moines & St. Louis R. R. Co. account by property at Des Moines of $8145.25, is that the item appearing in your account Exhibit C-2 under date of June, 1882, for amounts charged in construction record now transferred, Des Moines & St. Louis Railroad? A. Yes sir.

Q. And in this same Des Moines & St. Louis Railroad Company account, Exhibit A. to this deposition, appears under

date of October 31st, 1882, a credit by property at
42 Des Moines $13551.86; is that a part of the charge in the account Exhibit C-3 to your earlier deposition, of $13812.73, under date of October, 1882? A. Yes sir.

Q. In this account, Exhibit A. to this deposition, Des Moines & St. Louis R. R. Co., under date of November 30th, 1882, there is a credit by property at Des Moines $5558.75; is that credit included in the item of $7247.18 charged in the account of Exhibit C-3, in your former deposition, in November, 1882? A. Yes sir.

Q. And is the item in the Des Moines & St. Louis Railroad Company account Exhibit A. to this deposition credited under date of December 31st, 1882, property at Des Moines, $1246.39, the credit which corresponds to the charge in the account Exhibit C-3 to your former deposition, of the same amount, December, 1882? A. Yes sir.

Q. Now referring to Exhibit B. to this deposition, the account with the Des Moines Northwestern, I see the account is headed, "Des Moines and North Western Ry., that is the way it appears on the ledger, is it? A. Yes sir.

Q. This was prior to the organization of that company and that is a clerical error, I suppose; now, there is an item here of $1174.59 in this Exhibit B. to this deposition, credited under date of January 31st, 1882; is that also a part of the charge in Exhibit C. to your former deposition of $3956.01 in February, 1882? A. Yes sir.

Q. Referring again to the item of $18711.07, charged in February, 1882, in Exhibit C. to your former deposition, is that the charge which corresponds to the credit in the account Exhibit B. to this deposition, under date of Feb
43 ruary 28th, 1882, by property Des Moines?
A. Yes sir.

Q. And is the charge $3257.24 made under date of April, 1882, in Exhibit C. to your former deposition the charge which corresponds to the credit of the same amount in account Exhibit B. to this deposition, under date of April 30th, 1882, property Des Moines? A. Yes sir.

Q. And is the next item on Exhibit C. to your former deposition charged there $425., the charge which corresponds with the credit on the books of the Wabash, St. Louis & Pacific Railway Company to the account Exhibit B. of this deposition of the same amount under date of May 31st, 1882, by property, Des Moines? A. Yes sir.

Q. And is the next item in Exhibit C. to your former deposition, $4965.91, the charge which corresponds to the credit in Exhibit B. to this deposition of the same amount under date of May 31st, 1882, property, Des Moines?

A. Yes sir.

Q. And is the charge in Exhibit C. to your former deposition, $591.91, under date of August, 1882, the charge which corresponds with the credit in Exhibit B. to this deposition, under date of August 31st, 1882, by property at Des Moines, $591.91? A. Yes sir.

Q. And is the charge $330. in Exhibit C-2 to your former deposition, under date of September, 1882, the charge which corresponds to the credit in Exhibit B. to this deposition of the same amount, September 30th, by property at Des Moines?

A. Yes sir.

Q. And is the item under date of October charged in Exhibit C-2 to your former deposition, $260.87, the charge which corresponds to the credit under date of October 31st,
44 1882, in the same amount, property at Des Moines, in Exhibit B. to this deposition? A. Yes sir.

Q. Is the credit in Exhibit B. to this deposition, $1688.43, by property at Des Moines, under date of November 30, 1882, made up of the three items charged in Exhibit C-3, to your former deposition, November, 1882, $849.25, $751.89 and $87.29? A. Yes sir.

Q. Now, did this statement which you made up in connection with your former deposition, and which is Exhibits A. B. C, C-2, C-3, C-4, to that other deposition, include all of the expenditures of the Wabash, St. Louis & Pacific Railway Co. on account of the terminal property in Des Moines as far as they appear on the books of that company? A. Yes sir.

Q. Now, in this Exhibit C. to your former deposition there is charged in May, 1882, an item, "Amount expended by Genl. Dodge in city limits of Des Moines as per statement filed with J. V. No. 199½, marked A, $36391.39,"—in the first place J. V. means journal voucher there, I suppose? A. Yes sir.

Q. Now, will you explain just what a journal voucher is or was at that time?

A. A journal voucher covers the entry to be made upon the books and it is customary to file any correspondence or documents with the journal voucher as a matter of record.

Q. A journal voucher itself would be a copy of the entry or the entry would be copied from the journal voucher?

A. Yes sir.

Q. And whoever authorized the making of the entry would sign this journal voucher, or in some way indicate that the entry was authorized?

A. Yes, it might not be signed but the handwriting would indicate who made it.

Q. Then as a matter of convenience you would file with this journal voucher explanatory correspondence or state-
45 ments or any papers that might tend to explain the entry?

A. Yes sir, in connection with the transaction.

Q. Now, have you this journal voucher 199½?

A. Yes sir, here is the original.

Q. In whose handwriting is the original journal voucher?

A. In my handwriting.

Q. Is this paper that is marked "Exhibit C. Tobin Deposition 3-31-11" the journal voucher referred to? A. Yes sir.

Q. Now referring to this original journal voucher that has been marked "Exhibit C. Tobin Deposition 3-31-11," there are attached to that, are there not, Exhibits D. to H. inclusive, all marked Tobin Deposition 3-31-11? A. Yes sir.

Q. These papers, Exhibits C. to H. inclusive, to your deposition, 3-31-11 are attached together as a file and commencing at the bottom run in alphabetical order, that is, C, D, E, F, G, H? A. Yes sir.

Q. Now, this original journal voucher Exhibit C. Tobin Deposition, 3-31-11, is the voucher for the entry in whose account? A. Gen. G. M. Dodge's account.

Q. It shows a credit to Gen. Dodge's account of an aggregate of $103436.48, does it not? A. Yes sir.

Q. And in that credit there is included an item of $36391.39, that is correct, is it? A. Yes sir.

Q. And that item, $36391.39, is the credit corresponding with the charge of the same amount in the account Exhibit C. to your former deposition, under date of May, 1882?

A. Yes sir.

Q. And the explanation immediately following that "For amount expended by Genl. Dodge, in City limits of Des Moines as per statement herewith filed, marked 'A'", is explanatory of this $36,391.39, is it not? A. Yes sir.

46 Q. And that statement attached to the journal voucher marked "A" is the paper we have now marked "Exhibit H. Tobin Deposition 3-31-11"? A. Yes sir.

Q. In the same way the statement "Construction account, Des Moines, North Western Railway, $67045.09," shows another charge that is made to make up the balance of the credit of $103436.48 given Gen. Dodge by this entry? A. Yes sir.

Q. The paper marked "Exhibit G. Tobin Deposition 3-31-11," is Exhibit B. to this journal voucher and shows, does it not, the items of the expenditures going to make up the $23,387.62 which is included in the aggregate credit to Gen. Dodge of $103,436.48, this $23,387.62 being one half of the gross amount of those expenditures? A. Yes sir.

Q. And then Exhibit F. Tobin Deposition 3-31-11, is the statement referred to in this journal voucher as Exhibit C.,

showing how the item of $43,657.47 included in said total credit to Gen. Dodge is arrived at? A. Yes sir.

Q. And the two papers marked "Exhibit E. Tobin Deposition, 3-31-11" and "Exhibit G. Tobin Deposition 3-31-11" are explanatory statements which were filed with the journal voucher in accordance with the custom to which you have already referred? A. Yes sir.

It is hereby stipulated that the Notary may make copies of Exhibits C. to H. inclusive, Tobin Deposition, 3-31-11, and return them as exhibits to the said deposition, marking them as originals, and that said copies may be used with the same force and effect as the originals.

The exhibits referred to are in words and figures as follows, to-wit:

47 Wabash, St. Louis & Pacific Railway Co. 1882
JOURNAL ENTRY May
TO

Sundries to Genl. G. M. Dodge 103,436.48

Property in Des Moines J. F. How, Trustee 36,391.39
For amount expended by Genl. Dodge in City limits of Des Moines as per statement herewith filed marked "A"

Construction A/C Des Moines No. West Ry. 67,045.09
For amount expended by Genl. Dodge on the road between Des Moines and Clive as per statement filed herewith marked "B"

Account	Total	½ W. St. L. & Pac.
Bridging	5,939.43	2969.72
Bldgs. & Fixt	107.31	53.66
Cross Ties	5,162.80	2581.40
Cattle G. & Cross	75.00	37.50
Engineering	1,243.92	621.96
Fencing	80.00	40.00
Frogs & Switches	462.15	231.08
Grading	13,703.57	6 851.78
Hand Cars	47.00	23.50
Iron & Steel Rails—Frt	914.10	457.05
Land & Land Dam	9,690.25	4845.12
Miscellaneous	944.66	472.33
Spikes & Fast	1,408.23	704.12
Sal. & R. of Way Exp	247.28	123.64
Traffic Sta. & W. H.	854.50	427.25
Track Tools	538.55	269.27
Telegraph	390.44	195.22
Track Laying etc	4,102.55	2051.27
Water Stations	863.51	431.75
	46,775.25	23387.62

Also for amount expended by him on the Road from Clive to Waukee as per statements filed herewith and marked "C" all payable by W. ST. L. & Pac. Ry.

Forward..... 23,387.62

I Certify that the above entry is correct and should be made on the books of this Company.

Exhibit C. Tobin Dep.
3-31-11
A. E. M.

48 Wabash, St. Louis & Pacific Ry. Co. 1882
JOURNAL ENTRY May
No. 2. TO

Forward.....		23,387.62	
Account			
Bridging.....	6,760.08		
Cross Ties.....	6,313.90		
Engineering.....	1,673.66		
Frogs & Sw.....	132.67		
Grading.....	19,011.58		
Hand Cars.....	47.00		
Iron & Steel Rails-Frt.....	1,344.75		
Land & Land Dam.....	6,211.55		
Miscellaneous.....	667.60		
Sal. & R. of Way Exp.....	510.52		
Spikes & Jt. Fastgs.....	2,140.44		
Tracklaying & Surf.....	2,463.77		
Track Tools.....	560.67		
Telegraph.....	535.19		
Less.....	48,373.38		
Spikes & Joint Fastenings borrowed from Des. M. & No. West Ry.	4,715.91	43,657.47	
		67,045.09	

11

Genl. G. M. Dodge
to Const. A/C Des M. No. West..... 110,542.98

For rails furnished by W. St. L. & Pac. Ry. for road between Des Moines and Clive—½ cost payable by Genl. Dodge—Distance 5.54 miles—55 tons per mile costing in St. Louis $49.80 per ton
Total $15,174.06 - ½ - 7,587.03

Also for rails furnished for road from Clive to Boone—37.53 miles 55 tons per mile—$49.80 per ton in St. Louis—Gen. Dodge having paid freight north of St. Louis..... 102,955.95

See certificates of measurement and other relative papers filed herewith

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I certify that the above entry is correct and should be made on the books of this Company.

49 Genl G. M. Dodge,
In account with
Wabash, St. Louis & Pacific Railway Co.

DEBITS

Expenditures by W. St. L. & P. Ry. Co. on road Des Moines to Clive, $15,174.06		
1-2 payable by Genl. Dodge	$7,587.63	
On road Clive to Boone	102,955.95	$110,542.98

CREDITS

Expenditures by Genl Dodge on acct. property in city limits of Des Moines	$36,391.39	
on road Des Moines to Clive, $46,775.25		
1-2 payable by W. St. L. & P. Ry. Co	23,387.62	
On road Clive to Waukee	43,657.47	$103,436.48
Balance due W. St. L. & P. Ry. Co		7,106.50

May 31st, 1882.

A copy of above was sent by Mr. Trumbull to Polk & Hubbell, in June 82.

Exhibit D—Tobin Dep.
3-31-11
A. E. M.

50 St. Louis, May 31, 1882.

Jas. F. How, Esq.
3rd Vice President,
St. Louis, Mo.

Dear Sir:—

In accordance with your instructions, the assistant Auditor visited Des Moines on the 29th inst., and the following is respectfully submitted as result of a careful examination of vouchers and accounts, made by him, in connection with Mr. F. M. Hubbell, President, Narrow Gauge Const. Co., and Mr. E. C. Kinney, Chief Engineer in charge of construction.

Statements in detail of expenditures made by Gen'l Dodge, were prepared and certified, and will be submitted for your future information as soon as copies can be prepared in this office.

Expenditures by W. St. L. & P. R'y Co.

On road from city limits of Des Moines to Clive including property in Clive.

Iron Rails, 5.54 miles at 55 tons per mile, 304.7 tons, costing in St. Louis $49.80 per ton	$15,174.06

Freight north of St. Louis paid by Genl Dodge.

On Road from Clive to Boone

Iron rails 37.53 miles, 55 tons per mile, 2064,15 tons at $49.80 per ton	$102,794.67	
Freight St. Louis to Ottumwa, on 19 cars ties	161.28,	$102955.95

Expenditures by Genl Dodge

On account of property in city limits of Des Moines	$36,391.39
On account of road from city limits of Des Moines to Clive	46,775.25
On account of road from Clive to Waukee	43657.47

Under my interpretation of the terms of proposed settlement, I find that Gen'l Dodge will owe this company $7,106.50 as fully set forth in account herewith enclosed.

Yours truly,

Exhibit E—Tobin Dep.
3-31-11
A. E. M.

51 COST OF ST. LOUIS DES MOINES & NORTHERN RY. FROM CLIVE TO WAUKEE.

June 7th 1881. In Voucher $1,149.73.	
Short & Foreman part of their voucher 17.50 for field books and original charged to Engineer Tools	5.00
H. D. Thompson 1-4 of his expense to Delphi, Ind. 48.85 to examine Iron ets, originally charged to Rolling stock	12.22
M. E. Nutting et al, 1-4 to Pay roll Engineer corps for May originally charged to Engineering	131.00
M. E. Nutting part of his voucher for 244.15 for board of his crops, for May & originally charged Engineering	61.00
Kueffel & Esser part of their voucher 35.33 for drawing material originally charged to Engineering	8.33
June 27th In Voucher 8869.69.	
John Beckwith stamps in April & May 18.00 for News papers originally charged to Miscellaneous	3.18
Polk & Hubbell 1-3 office rent for April May, and June in voucher of 111,700 originally charged to Miscellaneous	6.00
The Tribune Company part of Voucher 10,40 advertising "Ties wanted" originally charged to Ties	5.20
S. M. Grunnell right of way over N. W. N. W. 32,79,25 charged originally to right of way	110.00
J. N. Whitmarsh damage to crop W. 1-2 S. E. 25, 79, 26 originally charged to right of way	10.00
E. M. Campbell, right of way over N. E. 1-4 31, 79, 25 except to school house originally charged to right of way	200.00
Thos Young damage to E. 1-2 S. W. N. E. 34, 79, 25 originally charged to right of way	115.00
July 1881. In Voucher $4,021.12.	
Mary E. Allen damage to S. E. N. W. 32, 79, 25 originally charged to right of way	67.50
The Tribune Co. part of voucher 3,84 advertising notice to contractors originally charged to Bridging	1.28
J. C. Cummins part of his voucher 128,50 for salary and expenses for June originally charged to right of way	85.67

July 1881. In Voucher $5 958.23	
M. E. Nutting etal Engineer corps for June part of his roll 254.00 and originally charged to Eng	63.00
J. R. Rogers etal Engineer corps June for June part of roll 220.50 originally charged to Eng	100.00
Short & Foreman part of their	
	984.38
Exhibit F. Tobin Dep. 3-31-11 A. E. M.	
For'd	$984.38
Short & Foreman part of their voucher 9,17 Engineer Stationery originally charged to Stationary	4.50
Emly & Co. in voucher 325,52 6 N. G. switches as per invoice originally charged to iron	110.52
Jas. McDanough & F. B. Harvey roll 22,75 for June originally charged to grading	11.38
July 1881. In Voucher 6,091.64	
Mrs. Sarah Day damage to S. E. 32, 79,25 & originally charged to Right of way	7.00
J. D. Seeberger portion of hardware bill June 298.45 originally charged to grading	111.82
E. C. Kinney, portion of his salary & expenses for June originally charged to Engineering	50.00
J. D. Seeberger, portion of hardware bill June, 1881 129,72 originally charged to grading	48.64
J. R. Rogers, portion of his expense bill of Eng. corps for June voucher 14,49 originally charged to Engineering	5.49
July 1881. In Voucher, 2,196.75.	
Engineer M. E. Nutting etal 1-2 of June roll originally charged to Engineering	240.00
M. E. Nutting 1-2 of his expenses for party of June originally charged to Engineering	75.13
M. E. Nutting 1-2 of voucher 126.49 for expense of his party June 1881 originally charged to Engineering	63.25
July 27th, 1881. In Voucher 4995,10	
James Herron right of way over Brier land and being my damage for garden	15.00
July 30th In Voucher 2345,21	
A. J. Anderson etal damage as lessee to S. E. S. W. 27,79, 26 owned by E. Kurtz, and charged to right of way	25.00

August 1st in Voucher 4194,49	
Stephen Adams shff Dallas Co. Coms award	
S.E.S.W. 27,79,26 owned by E. Kurtz	250.00
S.W.S.E. 27,79,26 owned by L. O. Reving	150.00
S.2 S.W. 26,79,26 owned by G. E. E. Wright	1200.00
S.W.S.E. 26,79,26 owned by D. Morrison	150.00
S.E.S.E. 27,79,26 owned by E. Carpenter	150.00
S.W.S.W. 25, & S.E.S.E. 26,79,26, owned by H. J. Carter	320.00
S.E.S.W. Sec 25,79,26 owned by Jos Carter	180.00
all in one voucher and charged to right of way	
Stephen Adams Shff fees for July 27th 1881 obtaining above right of way, and charged to right of way	56.00
E. C. Kinney portion of his salary & expense	
For'd	4,208.11
53 For'd	4,208.11
voucher 340,83 for July 1881 & charged to Engineering	100.00
C. F. Loweth etal Roll Engineers & c. for July 358,13 originally charged to Engineering	65.00
H. P. Thompson damage as lessee to W. 2 S. E. 27,79,26 owned by L. Rering originally charged to right of way	12.50
Iowa State Register portion of voucher 199,50 printing and advertising originally charged to miscellaneous	35.00
Aug. 1881 In Voucher 2916,08	
D. D. Farnsworth damage S.E.N.E. 33,79,25 charged to right of way	4.00
A. R. Smalley voucher for sundry abstracts, in Dallas County on right of way	45.75
T. S. Johnson damage to orchard etc, on W.2 S.E. 25,79, 26 charged to right of way	118.00
J. M. Grinnell damage to W.2 N.W. 32,79,25 originally charged to right of way	50.00
Jas. B. Moore damage to S.E.S.E. 25,79,26 originally charged to right of way	245.00

August 1881 In Voucher 3170,99

T. R. Wilkes damage to S.W.S.W. 27,79,26 originally charged to right of way	115 00
C. E. Campbell damage as lessee of W.2 S.W. 27,79,26, and charged to right of way	15 00
F. V. Stowe part of his voucher 17,62 for tallow originally charged to grading	6 12
Nathan & Dreyfus part of 1 ejector 1,1903, 52,50 originally charged to Engineering tolls	8 00
Geo Knapp & Co portion of voucher 7,20 Advertising for proposals and originally charged to Grading	1 60
L. F. Wormack, damage to S.W.S.W. 30,79,25 originally charged to right of way	5 00
J. C. Cummins 1-2 of his salary and expenses, for July on right of way business and originally charged to Right of way.	65 65
Risely & Vail 1-2 of voucher 16,50 for board of commissioners and originally charged to right of way	8 25
C. W. Reed board of Coms 1-2 voucher 5,00 and originally charged to right of way	2 50
A. C. Holmes 1-2 of voucher 24,50 for livery to Commissioners in June & July and originally charged to right of way	12 25
A. D. Littleton Sheff Coms award to Cyrus Morris damage to N.W. 31,79,25 originally charged to right of way	300 00
J. N. Whitemarsh damage to crop on W.2 S.E. 25,79,26 in addition to former amount R. of W	10 00
In Voucher 6351,57	
J. D. Seeberger part of voucher 381,15 for	
	5,432 73

54

	$ 5,432.73
hardware in June & July originally charged to Grading Tools.	190.56
J. R. Rogers part of Voucher 260 expenses on Engineering originally charged to grading Tools	1.60
Aug 10th in Voucher 3920,62.	
J. W. Russell furnishing abstract for right of way originally charged to right of way	112.45
C. R. I. & P. R. R. in voucher 105 frt on 6 switches boards 8, 13 and 1, railway crossing and 4 connections—14,02 originally charged spikes	22.15
August 23 1881 In voucher 5031,46.	
John Graham lessee of Brier land in 28, 79, 26 damage and charged originally to right of way	15.00
August 26th 1881. In voucher 3550,55.	
James Herron rent of one acre ground on Brier land originally charged to right of way	2.00
J. R. Rogers etal Engineer corps, part of his July roll 225,00 originally charged to Engineering	135.00
Read Hastie & Co. part of their bill 216,75 for abstract and originally charged to right of way	51.00
Sept 6th In Voucher 5327,66.	
A. D. Littleton Sheffs. com's award in his voucher of 605,00 viz,-	
N W. 34, 79, 25 owned by M. White est	200.00
W, 2 S.W.N.E. 34, 79. 25 owned by Saml Young, all charged to right of way	75.00
Sept. 7th In voucher 2470,69.	
J. R. Rogers livery hire in Aug per voucher originally charged to Engineering	29.37
J. R. Rogers etal Engineer corps Aug 1881 originally charged to Engineering	205.00
G. H. Lewis services as condemning S. 2 S.W. 26, 79, 26 Right of Way	25.00
Sept. 10th 1881. In Voucher 3450,55.	
T. R. North publishing appraisement notices Dallas Co. originally charged to right of way	36.00
J. S. Polk, damage to Brier land in 28, 79, 26 originally charged to right of way	376.05
In Voucher 4097,10.	
J. S. Runells prorata share expenses voucher 165,00 going to New York etc originally charged to miscellaneous	25.00
Fw'd	6,933.51

55

For'd	$ 6,935.31
W. O. Litten 1-2 express charges & postage, voucher 9,81 originally charged to Engineering	4 90
C. F. Loweth etal Eng corps for Aug 517,12 part of voucher & all charged to Engineering	75 00
J. D. Seeberger part of his hardware bill 695.01 in August 1881 and all originally charged to grading to grading tools	295 01
Getchell & Sons voucher for lumber 881,59 in Aug part and all charged to Bridging	400 26
S. B. Tuttle part of voucher 426,70 for tile etc June & July 1881 and all charged to grading	163 70
Polk Co. Coal Co. bill 88,95 part of same in Aug. and all originally charged to Fuel	38 95
G. S. Snoer, part of his 12,45 voucher in July & Aug 1881 and all charged to grading	5 45
L. A. Stewart part of his 12,18 voucher for oil & C. in Aug. and charged to grading	4 68
D. M. Packing Co. part of voucher 30,24 for Aug "Waste" and all charged to grading	16 00
Weaver & Maish, part of their voucher 15,60 oils and originally charged to Bridging	3 90
Jos Carter labor with team in Aug originally charged to grading	10 00
Sept 22nd. In voucher 6280,40.	
J. A. Martin et al Aug roll 703,41 we take out part of it, and all charged originally to Bridging	253 41
John Ribinett etal part of Aug roll 570,70 and all charged to grading	295 70
Cail Johnson S, 1-2 days labor in August and all charged to grading	14 87
Frank Jarrett 1-2 87,75 drayage in July & Aug 1881 originally charged to grading	3 98
Eagle Iron Works, part of 84,73 vouchers Aug all originally charged to grading	24 73
Matt Murray etal Aug Roll part 1080,30 originally charged to grading	780 30
D. Sullivan 4 days in Aug while injured originally charged to grading	7 00
A. Rosberg etal pay roll Aug all of voucher and originally charged to grading	1,035 85
G. P. Hanawalt services for D. Sullivan hurt while at work and originally charged to grading	14 00
J. W. Carr etal Roll for Aug 1881 originally charged to grading	178 02
Jas. T. Reynolds, et al part of pay roll 915,21 originally charged to grading	365 21
October 19th In Voucher 2371,04.	
E. C. Kinney part of his salary for Sept. 250,00 charged originally to Engineering	25 00
J. R. Rogers, etal Sept Roll Engineer account	32 47
Polk & Hubbell of voucher 7.00 for check book, and despatch originally charged to miscellaneous	1.75
For'd	$10,991 80

	For'd	$10,991 80
Sept. 30th In Voucher 6856,09		
P Herron etal part of Aug roll 366,14 originally charged to grading		218 14
Pat Crowley et al Aug roll part of 903,06 originally charged to grading		603 04
October 6th. In Voucher 6930,05		
Jos. Carter damage to crop account fence left open and originally charged to right of way		40 00
October 23. In Voucher 6780,52.		
A. Rosberg etal, Sept Payroll originally charged to Surfacing track		1,122 68
Wm. Fricker, etal 1-3 of Sept roll for wipers originally charged to Construction		30 00
Matt Murry et al 1-2 Sept roll 853,61 originally charged to Construction		426 80
M. A. Hill, et al 1-3 of 246,99 Sept roll originally charged to Construction		82 33
John Morss etal 1-3 of 225,00 Sept roll originally charged to Construction		75 00
J. A. Martin, etal 922,21 Sept roll originally charged to Construction		322 20
T. R. Andrews, et al Sept roll originally charged to tracklaying etc		81 55
Getchell & Sons, in their voucher 1450,16 originally charged to Bridging &c. in lumber furnished in Sept		729 53
Oct. 27th In Voucher 6954,01.		
S. B. Tuttle voucher stone pipe for Sept originally charged to Bridging		215 00
J. D. Seeberger, part of his hardware bill for Sept 209,52 originally charged to Const		73 00
S. B. Tuttle, voucher stone pipe for Aug. originally charged to Bridging etc		117 50
Pioneer Coal Co. for part of 20,00 for Bloxburg coal in Sept. originally charged to fuel		7 00
Polk Co. Coal Co. voucher 170,00 Sept. charged to fuel		65 00
L. A. Steward part of voucher 19,20 for oils in July Aug & Sept originally charged to fuel		6 90
W. R. Sanders, etal Sept roll originally charged to Construction		174 99
J. Reynolds, etal Eng. Fire & c. part of Sept roll originally charged to Construction		167 00
D. D. Harger, etal part of Sept roll 234,50 originally charged to telegraph		87 94
John Morss Roadmaster Sal for 1-2 of Oct. 50,00 out of same and originally charged to Tracklaying and surfacing		12 50
For'd		$15,650 90

57	Up	15650.99
	Dec. 7th In Voucher, 2841,70.	
	Martin Flynn damage to N,2,N,2,33 and N,2,N.E. 32,79, 25 originally charged to right of way	1498.50
	T. L. Johnson damage to W,2,S.E.25,79,26 leased to Jordan and originally charged to right of way	140.00
	T. L. Johnson damage to crop W,2,S.E.25,79,26 originally charged to right of way	20.00
	E. C. Kinney out of his voucher, Sal. for Nov. 250,00 originally charged to Engineering	25.00
	Nov 12th. In Voucher 6214.48.	
	J. A. Martin, etal part of 733.64 Oct roll originally charged to Bridging	100.00
	J. A. Martin et al part of Oct. Roll 1881 424.16 originally charged to Bridging	200.00
	Olof Frisk, etal all of Oct roll originally charged to track laying and surfacing	300.51
	A. Rostberg, etal all of Oct roll originally charged to track laying and surfacing	943.28
	Dec. 19th. In Voucher 2863,84.	
	N. Houghton 1 hand car out of voucher 282.00 originally charged to rolling stock	47.00
	Jno S. Polk, part of his voucher 138,89 for salary 1-4 originally charged to miscellaneous	34.72
	H. G. Huttenlocher, 1-4 of his salary 200.00 originally charged to miscellaneous	50.00
	Jan. 19th. In Voucher 6711,98.	
	J. A. Martin etal Dec. part of roll 801,64 originally charged to Bridging	50.00
	Feby 18th. In Voucher 4312,62.	
	Aulman & Turner part of voucher 7,25 foundry work originally charged to track laying and surfacing	3.25
	E. C. Kinney, part of his Dec. Sal, and Ex 278,40 originally charged to Engineering	25.00
	E. C. Kinney etal part of 452,50, Jan sal, originally charged to Engineering	25.00
	Sept. 6th. In Voucher 5327,66.	
	E. C. Kinney, part of his Aug. Sal 250,00 originally charged to Engineering	25.00
	Mch. 16th 1882. In Voucher 3566,12.	
	J. J. Payne recording sundry deeds in his voucher, 38,00 originally charged to land and land damages	10.00
	J. A. Runnells part of his expense 150,00 going to New York in Dec. 1881 originally charged to miscl	33.00
	For'd	19,181.25

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For'd	19,181.25
April 7th 1882. In Voucher 2245,33.	
Chriss Barr right of way voucher N.E.N.W. 32,79,85, Polk County	20.00
In Voucher 3099,16.	
Farrow Bros for 13476 ft Pine plank originally charged to Bridging	283.00
C. R. I. & P. Frt on 4 piling	96.72
E. C. Kinney part of his voucher, Engineering Oct	25.00
C. F. Loweth, etal part of his Oct. Roll Engineering	50.00
Division of work done by Martin Flynn being the grading from Clive to Waukee, 57388 Cu yds Earthwork at 24 cents.	13,773.12
3, 1-4 acres clearing at $20	65.00
Division of work done by Raymond & Campbell being the Bridging from Clive to Waukee.	
3512 ft Piling at 48 ct	1,685.76
646 ft B. M. Oak at $42	27.13
57161 ft B. M. Pine at 34,00	1,943.47
9775 pounds wrought iron at 5, 1-4 cts.	513.19
1184 pounds Cast iron at 5 ct	59.20
Division of Iron & Ties &c. from Clive to Waukee, 8,1-3 miles.	
448,25 tons rails 958720#.	
Freight on same E. St. Louis to Des Moines	1,344.75
30710 pounds splices, bars, at 2,25	690.98
6134 pounds splices Bolts at $4.50	276.03
Freight on same from Springfield to Des Moines 18,3-4	69.08
36812 pounds spikes at $2.85	1,049.14
Freight on same Chicago to Des Moines .....15 ct	55.21
22490 Ties at 25 ct	5,622.50
630 Bridge Ties at 48 ct	302.40
Freight on same from Missouri to Des Moines	1,867.60
Division of repairs, on Rolling stock from Clive to Des Moines	409.40
Division of Telegraph Poles, wire and Freight Clive to Waukee 8,15 miles	447.25
Total	$49,857.18

59 CR.

By 4500 ties borrowed at 25 ct purchased by Wabash St L. & P. and intended for line west of Waukee.	1125.00
Also Freight on same	358.80

It was estimated that fastenings actually purchased by Genl Dodge would lay 43 miles. The road Clive to Boone including siding etc, is 37,53 showing that line Des Moines to Waukee. Should be charged with 5,47 miles In the statement prepared it is shown that line Des Moines to Waukee was charged with fastenings for 19.09 miles showing over charge to that line of 13.62 miles which is adjusted with the following deductions.

48769# splices at $2,25	1097.30
10896 Nuts and bolts at $4,50	490.32
Freight on same from Springfield to Des Moines	178.60
61971 Spikes at $2,85	1766.17
Freight on same from Chicago to Des Moines	92.95

It was also found that the fastenings actually purchased would not lay 43 miles, but were short the following:—

20000 splices, at $2,25	450.00
12600 Nuts and bolts at $4,50	567.00
Freight from Springfield on same	73.57
Total Cr	$6199.71

Note

Genl Dodge furnished fastenings for line Des M. to Waukee and charged for them, but as shown above he could not have had enough to have laid that line and also completed Clive to Beene and did actually borrow from fastenings intended for line west of Waukee enough to complete his own line, viz,:- 13,62 miles.

CLIVE TO WAUKEE.

Total charges	$49857.18
Cr by Wabash	6199.71
Balance	43657.47

We hereby certify that the foregoing is a correct exhibit of expenditures by Genl. G. M. Dodge, on account of Narrow Guage railroad between towns of Clive & Waukee, Iowa.

E. C. Kinney,
Chf. Eng.
F. M. Hubbell,
Prest Const. Co.

60 I hereby certify that I have examined the foregoing statement in connection with the accounts and vouchers pertaining thereto and believe the same to be correct.

MORRIS TRUMBULL,
Asst. Auditor, W. S. L. & P. Ry. Co.

May 30, 1882.

61 Cost of the St. Louis, Des Moines & Northern Railway from Des Moines to Clive.

June 7th, 1881, in Voucher 1.149,73.

Part of M. E. Nutting et al Engineer Corps April of 155,66 and originally charged to Engineering	120.66
M. E. Nutting part of his expenses of $42.20 for board of his party in April 1st charged to Engineering	31.70
Part of E. C. Kinney Salary, expenses for April of 338,60 originally charged to Engineering	169.34
Short & Foreman, part of their voucher of $17.50 for field books and originally charged to Stationery	5.00
Geo. Giteens part of his $36.42 voucher for April Expense of Engineer corps originally charged to Engineering	20.92
H. D. Thompson 1-4 of his expenses to Delphi, Ind., to examine iron, etc., originally charged to rolling stock	12.21

June 1st. In Voucher $2,104.49

M. E. Nutting part of his voucher for $244.15 for Board of his Engineer corps for May and originally charged to Engineering	61.00
E. C. Kinney part of his salary and expenses voucher of $368.01 for May and originally charged to Engineering	85.00
Charles F. Lowoth part of his voucher of $92.18 salary 22 days in May originally charged to Engineering	46.18
Keuffel & Esser part of their voucher for $35.33 for drawing material and originally charged to engineering	8.00

June 27th, in Voucher $8,869.69

John Beckwith P. M. Stamps in April and May for newspapers originally charged to miscellaneous	3.17
Polk & Hubbell 1-3 office rent for April, May & June 1881 in voucher $111.70 originally charged to miscellaneous	6.00
The Tribune Co. 1-2 of voucher $10.40 advertising ties w wanted and originally charged to ties	5.20
A. H. Crim damage to S.W.S.E. 35, 79,25 originally charged to right of way	125.00
E. D. Cox, damage to N.W.N.E.E.2 N.W. 3,78,25 originally charged to right of way	90.00
J. H. Byers damage to S.E. S.W.12 78 25 originally charged to right of way	200.00
Ford	989.38

Exhibit G. Tobin Dep
3-31-11
A. E. M.

62	For'd	989.38
	July 1881, in Voucher 4,021.12	
	Tribune Co., Chicago part of their voucher 3.84 originally charged to bridging	1.28
	J. C. Cummins, part of his voucher 128.50 for slry expense as right of way agent, originally charged to right of way for June	42.83
	July 1881, in Voucher 4,583.71	
	A. D. Littleton, Shff Com award damage to Wm. Holroys leasehold in lot 9 O. P. 7, 78 24 Polk Co. originally charged to right of way	50.00
	A. D. Littleton Shff Com award damage to lot 10 O. P. Sec 7, 78, 24, owned by J. M. Dorr originally charged to right of way	880.00
	A. D. Littleton Shff Com award, damage to D. M. File Works, interest in Lot 10 O. P. 7, 78, 24 originally charged to right of way	1500.00
	A. D. Littleton Shff Com award as damage to lot 9, O. P. 7, 78,24, owned by B. E. Haines, originally charged to right of way	1150.00
	July, in Voucher 5,958.26	
	Polk & Hubbell right of way over N.E.N.E. 3, 78, 25, originally charged to right of way	112.50
	R. M. Taft, right of way over S.W.N.E. S.W.12, 78, 25, damage to crops, right of way	100.00
	M. E. Nutting part of his engineer corps, for June in Voucher 254,000 originally charged to Engineering	60.00
	J. R. Rogers, et al engineering corps part of June roll 220.50 originally charged to Engineering	100.00
	Emloy & Co. in Voucher 8,325.52 for L. 14' 49" crossing originally charged to iron	215.00
	Jas T. Reynolds, et al, Eng. Fire & Wipe, part of roll June 90.32 and originally charged to grading	45.16
	Jas McDonough & F. B. Harvey roll 22.75 June originally charged to grading	11.37
	John Moran et al, part of June roll 139.00 originally charged to grading	69.50
	Jas McWilliams, et al June roll 432.22 originally charged to grading	216.11
	Frank Galliger, et al, part of June roll 403.10 and was originally charged to grading	201.55
	A. Neilson et al part of June roll 533.72 and was originally charged to grading	266.86
	Henry Sunland et al part of June roll 326.43 and originally charged to grading	163.42
	J. Horton et al, part of June roll 591.32 and was originally charged to grading	295.66
	Barney McCurne, et al part of Roll June 396.60 originally charged to grading	198.30
	For'd	6,668.92

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For'd	$6,068.29
July 1881 in Voucher 6091.64	
A. D. Littleton, Shff Com. award W.2 S.W. 35,79,25 owned by Louis F. Webb originally charged to right of way.	300.00
A. D. Littleton Shff Com. award E.2 S.W. 35,79,25 owned by W. J. Webb and originally charged to right of way	500.00
T. E. Brown so much of O. P. 9 Gov. Lot 1 & 2 in Sec 13, 78, 25 as lies within 50 feet of center of Main track & c originally charged to right of way	200.00
L. P. Wilcox damage to S.E.N.E. 3,78,25 originally charged to right of way	400.00
A. D. Littleton Shff Com. award on	
W.2 S.W.S.E. 12, 78, 25, owned by Rashworth	175.00
N.W.S.W. 12, 78, 25 owned by Shaw est	440.00
N.E.S.W.S.E. 11,78,25 owned by P. Bennett	60.00
S.E.N.E. 11, 78, 25 owned by D. Lamont	500.00
S.W.N.E.11 and N.W. N.E. of 11 & N.E. N.W. of 11, all in 78,25, owned by D. B. Murrow	650.00
S.E.S.W. 2,78,25 damage to school house all originally charged to right of way.	25.00
J. D. Seeberger portion of voucher for hardware in June 1881 298.45 originally charged to grading	111.82
J. D. Seeberger portion of voucher for hardware in June 1881 129.72 originally charged to grading	48.65
Tom Braden portion of half voucher 26.00 for railway plows, originally charged to grading	13.00
L. A. Stewart 1-3 of voucher 45.41 for oils and tallow in June originally charged to grading	15.30
Warner & Carrother 1-2 of June voucher 52.14 for plumbing, etc., originally charged to grading	26.07
E. C. Kinney portion of his salary & expense for June originally charged to Engineering	50.00
J. R. Rogers part of his expense for June of engineer party voucher 14.49 originally charged to Engineering	6.00
July 1881 in Voucher 2196.75	
A. D. Littleton, Shff Com. award for right of way Lot M. of Sub D. J. T. Wheeler's est. owned by S. H. & H. E. Lewis and being part of N.W.N.E. 3,78,25	500.00
S.W.N.W. 2,78,25 owned by J. A. Goodhue	20.00
N.W.S.W. 2,78,25 owned by Roshworth	325.00
S.W. 2,78,25, owned by A. Clegg	435.00
Lot 16 O.P.S.W. 7,78,24 owned by Martin Welker all charged to right of way.	160.00
Aug. 1st 1881 in Voucher 4194.49.	
E. C. Kinney portion of his expenses and salary voucher 340.83 July originally charged to Engineering	50.00
For'd	11,679.76

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For'd	11,679.76
C. F. Loweth, portion of his engineer roll, July 357.13 and originally charged to Engineering	60.00
Ia. State Register portion of Voucher 199.50 for printing and advertising originally charged to miscellaneous	35.00
Aug. 1881. In Voucher 3170.99	
F. V. Stowe part of voucher 17.62 for tallow and charged to grading	5.50
Nathan & Dreyfus, part of one I Jector II 1903 voucher of $52.50 originally charged to Engineering Tools	8.00
Geo. Knapp and Co. part of voucher 7.20 for advertising for proposals originally charged to Grading	1.60
J. C. Cummins 1-2 of his salary & expense for July on right of way & charged to right of way	65.65
Risely & Vail 1-2 of Board for Commissioners and charged to right of way	8.25
C. W. Reeds Board of Commissioners 1-2 voucher 5.00 and originally charged to right of way	2.50
A. C. Holmes 1-2 of livery hire for Commissioners of voucher for 24.60 and originally charged to right of way	12.25
Aug. 12th, 1881 in Voucher 6351.57	
A. D. Littleton Shff Com. award in his voucher 927.50 to P. Mattes leasehold in S.E.N.W.11,78,25 and owned by D. Lamont and originally charged to right of way	75.00
J. D. Seeberger, part of hard are bill June and July 581.15 originally charged to grading tolls	190.55
Polk Co. Coal Co. 1-2 of voucher 69.15 for coal in June, July and Aug. originally charged to Fuel	34.56
Getchell & Sons 1-2 of lumber Bill 453.40 July and originally charged to Bridging	226.70
J. R. Roger, part of voucher 2.60 Engineers Ex. and originally charged to grading	1.00
Pioneer Coal Co. in Voucher 20.80—1,000 Blossburg coal originally charged to Fuel	5.00
Aug. 16th, 1881. In Voucher 3920.62	
P. Mattes cost vs. R. R. Co. on taking right of way and charged to miscellaneous	4.25
C. R. Merrill 1-2 of his Blacksmith Bill June & July 21.85 originally charged to Grading	10.93
G. W. Harvey use of plow 10 days in July 1881 and originally charged to grading	2.50
J. T. Reynolds, et al, 1-2 of July 1881 roll and was originally charged to Grading	509.32
D. P. Shegret 1-2 of July Roll 22.62 originally charged to grading	11.31
For'd	12,949.63
Chas. Newbust, et al 1-2 of July roll and was	

65

For'd	12,949.63
originally charged to grading	278.87
Aug. 23rd, 1881, in Voucher 6544.68	
Fred Johnson et al 1-2 of roll July 1881 66.50 originally charged to grading	33.25
P. McGuire, et al 1-2 of July roll 515.03 and originally charged to Grading	257.52
H. M. Trow et al 1-2 of July roll 654.95 originally charged to Grading	327.48
O. Tedrow, et al 1-2 of July roll 712.05 and was originally charged to Grading	356.03
A. Rosberg et al 1-2 July roll 216.47 and was originally charged to grading	108.23
John Robnett et al 1-2 of Roll July 446.02 and originally charged to Grading	223.01
J. P. Henning 1-2 of July roll $607.35 and was charged to grading	303.68
Matt Murry, et al 1-2 of July roll 803.70 originally charged to grading	401.85
Ryan Norman et al 1-2 of July roll 920.23 originally charged to grading	460.12
Frank Galliger et al 1-2 of July roll 920.72 originally c'arged to grading	460.36
Jerry Sullivan et al 1-2 of July roll 207.72 originally charged to Grading	103.86
Aug. 26th in Voucher 3550.55	
Tom Braden in his voucher 57.00 July for 1.10" R. R. Plow originally charged to grading tool	27.00
P. F. Morrissey, one cow killed by train west of City limits originally charged to Miscell	45.00
J. R. Rogers et al part of his July pay roll. 225.00 for engineer corps charged originally to Engineering	90.00
Read Hastie & Co. Part of their voucher 216.75 for abstracts and originally charged to right of way	71.25
Sept. 6th in voucher 5327.66	
A. D. Littleton Shff Com. award in voucher 605 S.W.S.E. 12,78,25 owned by D. Wright heirs	25.00
S.W.S.E. 12,78,25 owned by H. Fagan heirs	25.00
O.P.lot 12 N.E.S.W. 7,28,24 owned by Joseph Knotts	20.00
all originally charged to right of way	
For'd	16,567.14

66	For'd	16,567 14
	J. S. Runnells pro rata share expense voucher 165.00 to N. Y. etc. originally charged to Miscellaneous	24 00
	W. O. Litten 1-2 of his voucher 9.81 for express charges and postage originally charged to engineering	4 91
	C. F. Loweth et al engineer corps Aug part of roll 517.12 originally charged to engineering	75 00
	J. D. Seeberger part of Voucher 695.01 for hardware in Aug. and all originally charged to grading tolls	250 00
	H. F. Getchell & Sons voucher lumber in Aug. 881.59 originally charged to bridging (This is part)	380 00
	S. B. Tuttle, part of voucher 438.70 for tile in June and July 1881 and all originally charged to Grading	175 00
	Polk Co. Coal part of voucher 88.95 for Aug. and all originally charged to Fuel	25 00
	G. S. Sneer, part of his 12.45 voucher in July & Aug. and all originally charged to grading	4 00
	L. A. Stewart part of his 12.18 bill for oils in Aug. and all originally charged to grading	4 50
	D. M. Packing Co. part of voucher for waste 30.24 originally charged to grading	8 00
	Weaver and Maish part of voucher 15.60 in Aug. for oils and Co. originally charged to Bridging	3 90
	Sept. 22nd, 1881 In Voucher 6280.40	
	J. A. Martin et al Aug. Payroll and all charged to bridging 703.41. We charged out of it	225 00
	John Robinett et al pay roll Aug. part of 570.70 all originally charged to grading	275 00
	Eagle iron works, part of voucher 84.73 Aug. and all charged to Grading	25 00
	C. R. I. & P. R. R. Frt. on 1 R. R. crossing and 1 ball step chains all originally charged to iron	13 08
	Emloy Co. 1 R. R. crossing 36' 30" &c. originally charged to grading	234 07
	H. N. Trow, et al. roll for Aug. and originally charged to grading	872 55
	J. T. Reynolds et al part of Aug. pay roll 915.21 originally charged to grading	350 00
	Oct. 19th In voucher 2371.04	
	E. C. Kinney part of his Sept. Sal Eng. 250.00	25 00
	Polk & Hubbell of voucher for 7.00 for check Books and dispatch originally charged to Miscellaneous	1 75
	Sept. 30th. In voucher 4856.09	
	H. E. Lewis, et al Bal of damage to the J. T. Wheeler est. in Sec. 3,78,25 originally charged to right of way	50 00
		19,592 90

67

Ford	$19,562.90
P. Herman et al part of Aug. Pay roll 368,14 and originally charged to Grading	150.00
P. Crowley, etal part of Aug. Roll 903,04 and originally charged to Grading	300.00
J. Klinger for medical services paid Dr. Hanawalt injured while in service of Co. originally charged to Grading	5.00
G. W. Collins etal Aug. Pay roll on fences and originally charged to Bridging etc	296.72
Oct 6th. IN Voucher 4830,05.	
J. J. Payne 1-2 of his voucher 48,00 recorders fees originally charged to right of way	24.00
Jos. Groves 28 days time while disabled and for board and attendance originally charged to Miscellaneous	93.00
Oct. 22. In Voucher 6789,52.	
W. Fricker et al 1-3 of Pay roll Sept. "Wipers" originally charged to Construction	30.00
Matt Murry et al 1-2 of 853,61 Sept Roll originally charged to Construction	426.81
G.W. Collins, et al Sept. 1881 all of same & originally charged to Construction	159.25
S. P. Johnson C. Eckman work in Sept. 1881 originally charged to Construction	18.50
W. A. Hill et al 1-3 of 246,99 Sept roll and originally charged to Construction	82.33
John Moran et al 1-3 of 225 Sept roll originally charged to Construction	75.00
J. A. Martin et al part of 922,21 Sept roll originally charged to Construction	300.00
Chas. Swanson et al Sept roll originally charged to Tracklaying and Surfacing	261.12
Getchell & Sons, part of their voucher 1459.16 tor lumber in Sept 1881 and originally charged to Bridging	729.53
Oct. 27th, 1881. In Voucher 4,954,61.	
J. D. Seeberger part of his voucher for hardware in Sept 208.52 originally charged to Construction	70.00
Pioneer Coal Co. part of 20,00 voucher for Blossburg Coal originally charged to Fuel	7.00
Polk Co. Coal Co. part of voucher 170.70 for coal in Sept. and originally charged to fuel	55.00
L. A. Stewart part of voucher 19,30 for oils originally charged to Fuel in July and Aug. & Sept	6.00
O. Sund et al tracklaying Sept Roll and originally charged to Tracklaying	784.99
J. T. Reynolds, etal Eng. Fire etc. part of Sept. roll 467, originally charged to Construction	150.00
Ford	$23,617.15

68	Ford	$23,617 15
	D. D. Harger et al part of Sept roll 234.50 originally charged to Telegraph Construction	97 94
	Nov. 21st, In Voucher 2950,87.	
	Thos Flynn damage to 34, 79, 25 for right of way and depot grounds and charged to Right of Way	500 00
	Fairbanks Morse & Co. 1 tank 1 set of fixtures 1 pump and 11-60 tower all in voucher of 805,00 originally charged to Water Stations	335 00
	John Moran Roadmaster out of his 30,00 voucher originally charged to Tracklaying, and Surfacing	12 50
	Nelson & Wherry Building depot at Clive originally charged to Traffic Stations and Warehouses	345 00
	Nov. 30th. In Voucher 1213,25.	
	J. D. Seeberger part of voucher 434,55 for hardware in Oct. originally charged to Fencing Bridging etc	30 00
	Mary Shaw 1 cow killed in Oct and originally charged to miscellaneous	35 00
	Getchell & Sons, in their voucher 1162,75 for lumber in Oct. for Tank and Water Station	200 00
	Dec. 7th, 1881 In Voucher 2841,70.	
	E. C. Kinney in voucher 250, for salary Nov. originally charged to Engineering	25 00
	Nov. 30, in Voucher 6214,48.	
	Conductors & Brakemen part of Oct roll 181,45 originally charged to Surfacing and Tracklaying	90 72
	Ed. Selven et al Oct roll originally charged to Tracklaying and Surfacing	11 25
	Chas. Swanson et al Oct. roll originally charged to Tracklaying and Surfacing	230 40
	Chas Bwrjman et al Oct. roll originally charged to Tracklaying and Surfacing	240 40
	Engineers & Firemen 1-3 of 311,65 Oct roll originally charged to Tracklaying and Surfacing	103 89
	Chas Bwrjkman et al Oct Roll and charged to Tracklaying and Surfacing	57 62
	M. Hartnett et al Oct Roll originally charged to Tracklaying and Surfacing	230 25
	J. A. Martin et al part of Oct. roll 733,84 originally charged to Building and Fixtures	160 00
	Dec. 23rd. In Voucher 7100,90.	
	Chas Bwrjkman et al all of Oct. roll originally charged to Tracklaying and Surfacing	510 91
	Ford	$27,283 00

09 Fund $27,262.00

J. A. Martin et al part of his Oct. 532,48 originally charged to Cattle Guards and Crossings 72.00

Dec. 19th, In Voucher 2863,48.

M. Houghton voucher 282, one hand car originally charged to Rolling stock 47.00

J. S. Polk part of his voucher 128,80 salary 1-4 originally charged to miscellaneous 34.72

G. H. Huttenlocher 1-4 of his salary $200, originally charged to miscellaneous 50.00

W. Langdon Material and Framing Clive Depot and platform originally charged to Traffic Station and Warehouses 825.00

January 19th, 1902. In Voucher 513.40.

G. Howe Recorder Dallas County recorders fees in voucher 38.19 originally charged to right of way 16.20

January 19th, 1902. In Voucher 6711,98.

M. Hartnett et al Surfacing Dec 1881 West of Des Moines originally charged to Surfacing 292.37

J. A. Martin et al part of his roll 801,64 originally charged to Fencing Dec 50.00

Chas Berkman et al Dec. 1881 roll originally charged to Tracklaying and Surfacing 500.67

January 20th, In Voucher 2105,80.

R. M. Alexander part of his voucher 14.62 painting Section house at Clive originally charged to Building & T 7.31

L. P. Wilcox, 2 loads of straw for tanks and well at Clive originally charged to Water Stations 3.50

February 18th, In Voucher 4312,62.

Aulman & Turner part of Voucher 7,25 foundry Work originally charged to Tracklaying and Surfacing 2.00

Chicago Lumber Co. part of 73,31 000' plain paper for Clive Station originally charged to Traffic Stations & Warehouses. 19.50

Chicago Lumber Co. part of 43,33 Lumber in Dec. for Clive tank originally charged to Water Stations 38.23

Getchell & Sons in voucher 238,75 Dec. for 74' Tar felt for tank originally charged to Water Stations 2.50

Warner & Carrother Plumbing Goods for Water Tank originally charged to Water Stations 39.54

J. Polland damage as leasehold on Dorr place charged to Right of Way 15.00

E. C. Kinney part of his salary & expenses for 278.40 originally charged to Engineering 25.00

Fund $29,336.22

70

Fund	$39,336 22
Fairbanks Morse & Co. 5 days time for man at Clive tank and ex originally charged to Water Stations	27 22
E. C. Kinney et al Jan Salary part of 452,50 originally charged to Engineering	25 00
Sept. 6th In Voucher 3327,66.	
E. C. Kinney part of his voucher Aug. Sal. 250.00 originally charged to Engineering	25 00
March 10th, 182. In Voucher 2566.12.	
P. Bennett Right of way N E S E 11,78,25 originally charged to Right of way	86 00
J. J. Payne, Recording sundry deeds in his voucher 20,00 originally charged to Right of way	6 75
J. D. Seeberger, part of his 83,76 voucher for hardware originally charged to Water Stations	17 43
In Voucher 3089,16	
Part of J. S. Runnells Expense voucher 100, to N. Y. originally charged to miscellaneous	20 00
Frank Perry Salary for Oct. originally charged to miscellaneous	25 00
E. C. Kinney part of his Oct. voucher 272,50 originally charged to Engineering	25 00
C. F. Loweth et al part of Oct. Pay roll	30 00
Division of work done by Martin Flynn, being grading etc from Des Moines to Clive,	
19078 Cu yds earthwork at 24 ct	4,294 72
750 ft grubbing ... at 10,00 per 100'	75 00
3,17-72 acres clearing at 20,00	64 72
Division of Earthwork done by Raymond & Campbell and being the Bridging from Des Moines to Clive	
3175 ft piling at 60 ct	1,524 00
783 ft B. M. Oak at 42,00	32 89
66863 ft B. M. Pine at 34,00	2,246 14
2927, pounds of wrought iron at 5,1-4 cts	398 17
1342 pounds cast iron at 5 cts	67 10
Distribution of Iron Ties etc, from Des Moines to Clive. 5,66 miles	
304,2-10 tons rails 631080'	
Freight on same from E. St. Louis to Des Moines	914 10
20280 pounds splices bars at 2,25	454 50
4040 pounds Bolts at 4,50	181 80
Freight on same from Springfield to D. M	45 45
24216 pounds spikes at 2,85	690 16
Freight on same Chicago to Des Moines	36 32
14730 Ties at 25 ct	3,682 50
500 Bridge ties at 48 ct	240 00
Freight on same from Missouri to Des Moines	1,235 10
Fund	$40,084 29

71	Fund	$46,064.20
	Division of Repairs on Rolling Stock from Des Moines to Clive	408.05
	Division of Telegraph material Des Moines to Clive on poles Wire, and Frt. 5.1-2 miles	302.30
	TOTAL	$46,775.25

We hereby certify that the foregoing is a correct exhibit of expenditures by Genl G. M. Dodge, on account of track structures and other improvements on account of Narrow Guage railroad between city limits of Des Moines and Town of Clive Iowa.

E. C. Kinney,
Chief Engineer.
F. M. Hubbell,
Prest. Const Co.

I hereby certify that I have examined the foregoing statement in connection with the accounts and vouchers pertaining thereto and believe the same to be correct.

Morris Trumbull,
Asst Auditor, W S L P Ry. Co.

May 30th. 1882.

72 STATEMENT OF EXPENDITURES BY GENL. G. M. DODGE ON ACCOUNT OF BUILDINGS TRACKS, ETC. IN DES MOINES.

In voucher, 1,149,73 June 7th, 1881, part of M. E. Nutting et al Engineer corps, of $155,66 & originally charged to engineering, April roll	$35.00
Part of M. E. Nutting voucher of $42.20 for boarding his party in April, 1881, originally charged to engineering	10.50
Part of E. C. Kinney voucher of $338.60 for salary and expenses in April originally charged to Engineering	56.40
Short and Foreman part of their voucher of $17.50 for field books originally charged to Engineering tools	2.50
Mills & Abdill for Engineers supplies per voucher and was originally charged to Stationary	14.35
Geo. Githens, part of his $36.42 voucher originally charged to Civil Engineering being April Ex of corps	7.50
H. D. Thompson, 1-4 of his expenses to Delphi, Ind. to examine iron, etc. originally charged to Rolling stock	12.21
June 1st in voucher 2104.49 E. C. Kinney part of his salary and expenses, voucher 368.01 for May, 1881, and originally charged to Engineering	25.00
Chas. F. Loweth part of his voucher 92.18 for 22 days salary in May, originally charged to Engineering,	25.00
Keuffel & Essex part of their voucher of 35.33 for drawing material in May originally charged to Engineering	3.00
Chas. Sengfelter voucher painting and lettering two signs	5.00
L. Robinson for drop light and other plumbing material, originally charged to Engineering	7.00
June 27th In Voucher 8859.69 Frank H. Perry, Clerk hire for April & May attending right of way and other business, Des Moines originally charged to Miscellaneous	50.00
Polk & Hubbell part of office rent April, May & June, 1881, in voucher 111.70 originally charged to Miscellaneuos	6.00
J. U. Wyst lot 7 & fr lot 8 Keene & Poindexters addition and fr lot 8 in 22 Hoxies Add subject to right of way of C. R. I. & P. R. R. and originally charged to right of way	1900.00
Amt. paid for damage to O'P' lot N. E. 8, 78, 24 owned by J. C. Savery etal originally charged to right of way	1950.00
July, 1881 In Voucher 4021.12 Commissioners fees paid A. D. Littleton Shff., originally charged to right of way	120.00
T. E. Browns strip of ground 50 feet wide off south side lot 1 O'PN. 1-2 N.E.8,78,24 originally charged to right of way	1200.00
Frank Perry for June originally charged to Miscel.	25.00
T. E. Brown, for O. P. Lot 5 in N. E. 1-4 8 & O. P. lot 13 in N. W. 9 all 78,24 originally charged to right of way	1800.00
July, 1881 In voucher 5958.23 M. E. Nutting etal Eng. Corps June, 1881 part of his role 254, originally charged to grading	63.00
J. R. Rogers etal Engineers corps of June part of roll Forward	7315.46

Exhibit H. Tobin Dep.
3-31-11
A. E. M.

73

Ford	7,315.46
220,50 originally charged to Engineering	20.50
Jas T. Reynolds, etal Eng. Fire & Wipes for June 1881 Part of roll 90.32 & Originally charged to grading	45.16
A. Hess voucher moving telegraph poles near Allens Hill originally charged to Grading	3.00
John Moran etal Roadmaster part of June roll 139, Originally charged to Grading	69.50
Jas. McWilliams part of June roll 432.22 & was originally charged to Grading	216.11
Frank Gallagher etal part of June roll 403.10 & originally charged to Grading	201.55
A. Nelson etal part of June roll 533.72 and originally charged to Grading	266.86
Henry Sunland etal part of June roll 326.43 & originally charged to Grading	163.41
J. Horton etal part of June roll 591.32 and originally charged to Grading	295.66
Barney McCurne etal part of June roll 396.60 and originally charged to Grading	198.30
July In voucher $6091.64.	
J. D. Seeberger part of hardware voucher 298.45 For June, 1881 originally charged to Grading	74.81
J. D. Seeberger hardware voucher 129.72 for (part) June originally charged to Grading	32.43
Tom Braden, one Railway plow in voucher 26, originally charged to Grading,	13.00
H. F. Getchell & Sons lumber bill for June, 1881 originally charged to Bridging	85.93
G. S. Sneer hardware bill June originally charged to Grading	6.25
L. A. Stewart 2-3 voucher for oil and tallow in June originally charged to Grading	30.61
Pioneer Coal Co. Bill for June, 1881 originally charged to Grading	20.00
Warner & Carrothers 1-2 of Voucher 52,14 June for plumbing, etc. originally charged to Grading	26.07
C. City Gas Co. for month of June originally charged to Miscellaneous	1.20
E. C. Kinney portion of his salary & Expense for June, 1881 originally charged to Engineering	150.00
J. R. Rogers, part of his voucher 14.49 for expense of his part for June originally charged to Eng	3.00
L. Harbach for office furniture bot in April & May originally charged to Miscellaneous	46.00
Ford	9,284.86

	9284.81
July 27th 1881 In voucher 4995,10, Sarah A. Hughes, for lot 2 of O.P.N.W.9,78,24 deed and charged to right of way	900.00
Aug. 1st 1881 In voucher 4194.49 E. C. Kinney, part of his salary & expense voucher 340,83 for July originally charged to Engineering	25.00
C. F. Loweth et al, Pay roll July 1881 a portion of it and originally charged to Engineering	125.00
Iowa State Register, portion of voucher 199,50 for painting and advertising, originally charged to Miscellaneous	50.00
Aug. 1881 In voucher 2916,08 Frank Perry voucher for clerk salary for July 1881 & Originally charged to Miscellaneous	25.00
Aug. 1881 In voucher 3170,99 L. Harbach for office furniture, bot in May 1881 and charged to Engineer tolls	42.00
Carter & Hussey Record Book and charged originally to Miscellaneous	1.85
F. V. Stowe part of voucher 1762 for one barrel tallow, originally charged to grading	6.00
Aug. 12 1882 In voucher 6351,57 E. J. Adams & Co. deed for lots 1 and 2 in block 22 Hoxies addition originally charged to right of way	1515.55
Warner & Carrother for 9,1-2 feet iron pipe & C. originally charged to grading	1.77
Eagle Iron Works, 1 cast tongs Iron 40 lbs. 3,1-2 & in their voucher 7,33 (first lien) originally charged to grading	1.40
Cap City Gas Co. gas for mo. of July 1881 and charged originally to fuel	90
J. D. Seeberger, part of voucher 581,15 for hardware in June & July originally charged to grading tools	200.00
Polk County Coal Co. 1-2 of coal bill June, July & August 69,15 originally charged to fuel	34.55
H. F. Getchell & Sons, 1-2 of their lumber bill 453,40 July originally charged to Bridging	226.70
Pioneer Coal Company in voucher 20,80 July 3160, Blossburg Coal originally charged to fuel	15.80
Aug. 16 1881 In voucher 3920,62 F. E. Buck M. D. Services for man hurt and while and originally charged to miscellaneous.	5.40
C. R. Merrill part (1-2) of his blacksmith bill 21,85 for June, July & August & originally charged to grading	10.92
Jas Jas. F. Reynolds, et al (1-2) July roll 1018,64 and originally charged to grading	509.32
Jas. F. Reynolds, et al D. P. Stegrat 1-2 of July roll 22,32 originally charged to grading	11.31
Chas. Newquist et al 1-2 of roll 557.73 and was originally charged to grading	278.86
Aug. 23 1881 In voucher 6544.68 Hattie W. Field & Husband, Deed for lot 5 in 33 of Keene & Poindexters addition originally charged to right of way	700.00
Fred Johnson et al 1-2 of July roll 66.50 and was originally charged to grading	33.25
Peter McGuire et al 1-2 of July 1881 roll & was originally charged to grading	257.51
H. N. Trow, et al 1-2 of roll July 1881 654,95	
Ford	14,262.90

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Up	14,262,90
originally charged to grading	327,47
O. Tedrow, et al 1-2 of July roll 712,05 and was originally charged to grading	356.02
A. Rostberg et al 1-2 of July roll 216,47 originally charged to grading	108,24
John Robinett 1-2 of July roll 446,02 & originally charged to grading	223,01
J. P. Hemming et al 1-2 of July roll 607,35 originally charged to grading	303,67
Matt Murry et al 1-2 of July roll 803,70 originally charged to grading	401,85
Ryan Norman et al 1-2 of July roll 920,23 originally charged to grading	460,11
Frank Gallager et al 1-2 of July 920,72 originally charged to grading	460,36
Jerry Sullivan et al 1-2 of July roll 207,72 originally charged to grading	103,86
Aug. 26th in voucher 3550,55 Tom Braden in his voucher 57,00 for No. 10,1-2 scale, originally charged to grading tools.	30,00
Read Hastie & Co. for part of their voucher 216,75 for abstract and originally charged to right of way	17,50
Sept. 6th 1881 in Voucher 5327,66 N. M. Hubbard lot 6 in 31 and lots 6, 7, & 8 in Block 33 Keene & Poindexters add all originally charged to right of way	2250,00
Sept. 7th 1881 in Voucher 2470,69 Frank H. Perry clerk hire for August originally charged to Miscellaneous	25,00
In voucher 84697,00. Western Telephone rental instrument August originally charged to Engineering	6.50
C. F. Loweth et al Engineer Corps August part of roll 517,12 originally charged to Engineering	60,00
J. D. Seeberger, voucher for hardware 695,01 part of same and all originally charged to grading Tools	150,00
Getchell & Sons, voucher for lumber 881,59 part share and all charged to Bridging for August	100,00
Ewing & Co. lumber in Aug 1881 per voucher originally charged to Bridging	54,60
S. B. Tuttle part of voucher 438,70 for tile etc in June & July all originally charged to grading	100.00
Polk Co. Coal Co. part voucher 88,95 for Coal in Aug. all originally charged to fuel	25,00
Geo. S. Sneer part of his voucher 12,45 and all originally charged to grading	3,00
L. Harbach voucher for office Furniture and all charged to Fuel	58,05
L. A. Stuart part of his bill 12,18 for oils in Aug. & all charged to grading	3,00
Weaver & Maish part of voucher 15,60 Aug originally charged to Bridging	3,90
Sept. 22, in voucher 6280,40 J. A. Martin et al Aug. pay roll portion of 703,41 all charged originally to Bridging	225,00
Ford	20,119,04

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	20,119.04
Frank Jarrett 1-2 drayage 7,75 in July & Aug. and originally charged to grading	3.87
Eagle Iron Works, part of voucher 84,73 in Aug. and all charged originally to grading	25.00
Matt Murray et al Aug. roll part of 1090,30 originally charged to grading	300.00
Albert Chase et al Pay roll for Aug. 1881 originally charged to grading	111.06
J. T. Reynolds, et al Trainmen & Machinests &c. Aug. pay roll and part of 915,21 originally charged to grading	200.00
Oct. 19th in voucher 2371,04 E. C. Kinney part of his salary as Engineer charged to Engineering for Sept	25.00
P. L. Rice, labor in July originally charged to grading	7.16
A. C. McFarland, balance labor in July 1881 originally charged to grading	4.77
Frank Jarrett draying in Sept & originally charged to grading	5.50
Polk & Hubbell, of voucher for 7,00 check book and despatch & originally charged to miscellaneous	1.75
Louis Hengst 2,1-2 days drafting in Oct. originally charged to Engineering	7.00
Sept. 30th in voucher 4856,09. Oliver Tedrow, et al Aug. Payroll originally charged to grading	960.14
Clarence Waltz et al Aug. Payroll originally charged to grading	654.19
Oct. 6th in voucher 4830,05 Frank H. Perry Sept. salary Clerk originally charged to miscl	25.00
Oct. 22nd in voucher 6789,52 Wm Fricker et al Sept. Payroll wipers, 1-3 originally charged to Construction	30.00
John Robinette, et al 1-2 of 555,01 Sept. Roll originally charged to Construction	277.51
M. A. Hills, et al, 1-3 of 246,99 Sept. Payroll originally charged to Construction	82.33
John Moran et al 1-3 of 225, Sept. roll originally charged to Construction	75.00
M. Hartnett et al Sept. roll originally charged to Construction	294.01
John A. Martin et al part of 922,21 Sept. roll originally charged to Construction	300.00
P. McGuire et al pay roll for Sept. 1881 originally charged to surfacing track	623.43
Chas. Newlon et al Sept. roll originally charged to track laying	222.60
John Elvason Labor in June in city charged originally to grading	22.75
Oct. 27th. in voucher 4954,61 N. S. McDonnell & Co voucher of 95,15,1 wrought iron forge for blacksmith ac. const	18.44
J. D. Seeberger hardware bill 208,52 in Sept. part of same & all originally charged Construction	65.00
Ford	24,460.55

77

Up	$24,460.55
Pioneer Coal Co. part of voucher 20 for Coal in Sept. 1881 originally charged to Fuel	6.00
Polk Co. Coal Co. part of voucher 170,60 for coal in Sept. 1881 originally charged to Fuel	50.00
L. A. Stewart in voucher for 19,30 for Oils etc. in July, Aug & Sept. originally charged to Fuel	6.50
Warner & Carrothers Plumbing material in Sept. originally charged to Engineering	20.87
Mills & Abdill Stationery Bill for Sept. originally charged to Engineering	31.85
H. N. Trow etal Sept. Payroll and originally charged to Surfacing Track in Des Moines	728.75
J. T. Reynolds etal part of Sept. Roll 467.00 originally charged to Construction	467.00
D. D. Harger etal Telegraph Roll Sep. 234.50 originally charged to Telegraph	58.62
Nov. 21 in voucher 3950.07 Fairbanks Morse & Co. in Voucher 805, for one Mill originally charged to Water Stations	275.00
John Moran Roadmaster part of his 50, voucher originally charged to Track laying and Surfacing	12.50
Frank Pelton Surveying lot corner of 7th street & C. originally charged to Engineering	13.00
Nov. 30th in Voucher 1213,25	
J. D. Seeberger part of his voucher 434.55 for hardware in Oct. and originally charged to Bridging Track laying and Fencing etc	54.55
Polk County Coal Co. part of voucher 201,25 for Oct. originally charged to Fuel	75.00
Getchell & Sons in Voucher 1162,73 for lumber in Oct, per voucher Water stations	250.00
Dec. 7th In voucher 2841.70	
E. C. Kinney in voucher 250, Nov. Salary originally charged to Engineering	100.00
C. F. Loweth Nov. Roll part of 175, voucher, originally charged to Engineering	75.00
Frank Jarrett drayage for Oct. 1881 originally charged to miscellaneous	2.50
Western Telephone Inst. for Oct. originally charged to Miscellaneous	6.50
Nov. 30th in Voucher 6214,48.	
Conductors and Brakeman part 1-2 of Oct. Roll 181,45 originally charged to Tracklaying and Surfacing	90.73
Tom Trim et al Oct. Roll laying track in yard originally charged to Track laying and surfacing	108.92
John Cook & B. Thompson labor in yard Oct. originally charged to Tracklaying & Surfacing	21.00
MA. Hill etal 1-2 of Oct. Roll 38,40 originally charged to Track laying & Surfacing	19.45
Engineer & Fireman 1-3 of 311,65 Oct. Roll originally charged to Tracklaying & Surfacing	103.88
J. A. Martin part of Oct. Roll 733,64 originally charged to Bridging	100.00
M. A. Hill Oct. Roll charged to Tracklaying & S	293.00
John Robinett etal part of Oct. Roll 318,43 originally charged to Tracklaying & Surfacing	224.16

78

	$27,655.33
Dec. 23rd in Voucher 7.100,90	
Mr. Hartnett etal all of Oct. Roll and charged to Tracklaying & Surfacing	322.78
Dec. 19th In Voucher 2863,84	
Jno. S. Polk and one half of his voucher 138,89 for salary originally charged to Miscellaneous	69.45
H. G. Huttenlocher Stenographer salary for Nov. originally charged to Miscellaneous	50.00
H. G. Huttenlocher Stenographer 1-2 of his salary 200.00 originally charged to miscellaneous	100.00
Jan. 19th in voucher 6711,98	
J. A. Martin part of his roll 801,64 originally charged to Water Station	200.00
Jany. 20th in voucher 2105,89	
C. F. Loweth part of Dec. Roll 225 charged to Engineering $100, miscellaneous $50	150.00
Feb. 18th in voucher 4312,62	
Aulman & Turner part of voucher 7,25 for foundry work originally charged to Rolling Stock	2.00
Western Telegraph Inst. for Dec. 1881 originally charged to Telegraph	3.25
E. C. Kinney etal part of his Jany. salary originally charged to Engineering (452,50)	202.50
E. C. Kinney part of his Dec. Sal. &Ex. 278.40 first charged to Engineering	100.00
Sept. 6th In voucher 5327,66.	
E. C. Kinney part of his Aug. salary 250, originally charged to Engineering	25.00
March 16th, 1882 in voucher 3566,12	
Harry Elliott paid him his amount which was originally charged to Right of way.	750.00
Mrs. Knudson Board for L. Sanstrum who was hurt while on duty and originally charged to Tracklaying and Surfacing.	19.10
J. J. Payne, recording Hubbard Callanan and Field deeds originally charged to Right of way	2.25
L. Knudson Board for L. Sanstrum, while hurt originally charged to tracklaying and Surfacing	17.60
A. Sanstrum settlement for personal injuries originally charged to Tracklaying and Surfacing	50.00
In Voucher $3,099.16	
Cate & Graham 4 loads, drayage originally charged to Construction	3.00
E. C. Kinney part of his voucher 272,50 Oct. originally charged to Engineering	50.00
C. F. Loweth etal part of his Oct. Roll Eng	40.00
Division of work done by Raymond & Campbell and being the Bridging in Des Moines 288 feet piling at 48 cts	138.24
	$29,950.50

79

Up	$29,950.50
4470 ft. B.M. Pine at $34,00	151,98
284 pounds of wrought iron at 5,1-4 cts	14.91
96 Pounds of cast iron at 5 cts	4.80
Distribution of Iron Ties etc. in Des Moines 4 miles of track	
283,25 tons rails at 461440 Frt. on same St. Louis to Des Moines.	849.75
14800 splices bars at 2.25	311.00
Freight on same Springfield to Des Moines 18,3-4	33.29
17741# spikes at 2.85	505.62
2956# splice bolts at 4.50	133.02
Frt. on spikes (17741) from Chicago to Des Moines	26.61
11088 ties at 25 cts	2772.00
56 Bridge ties 6x8'8" at 48 ct.	268.80
Frt. on same from Missouri to Des Moines	868.25
Division of re-pairs of rolling stock in Des Moines	408.46
Division of Telegraph material for pole wire	
Frt. on 1,68 miles at cost 55,00 per mile	92.40
	36,391.39

We hereby certify that the foregoing is a correct exhibit of Expenditures by Genl. G. M. Dodge on account of tracks, structures and other improvements in city limits of Des Moines made in connection with St. Louis Des Moines & Northwestern Railway.

E. C. Kinney
Chf. Eng.
F. M. Hubbell,
Prest. Const. Co.

I hereby certify that I have examined the foregoing statement in connection with the accounts and vouchers pertaining thereto and believe the same to be correct.

Morris Trumbull
Ast. Auditor W. St. L. & P. Ry.

May 30th 1882

COPY

80 **Counsel for each of the complainants, while consenting to the use of copies instead of the originals and waiving the formal identification of the books and papers in the office of the Wabash Railroad Company object to the evidence as not binding upon complainants and because the original of said books and records cannot be competent or material on the issues as between the Chicago, Milwaukee & St. Paul Railway Co. and the Wabash Railroad Co., and the Des Moines Union Railway Co.**

Q. Now, I call your attention to Exhibit I., Tobin Deposition, 3-31-11 and ask you whether that is the original journal voucher, No. 1750, of the Wabash, St. Louis & Pacific Railway Co.? A. Yes sir.

Q. And with certain papers attached to it?

A. Yes sir.

Q. Now, there is attached to this a memorandum in lead pencil, in whose handwriting is that memorandum?

A. I think that is James F. How's writing, our former vice president.

Q. And at the date of this journal entry he was the chief executive officer in the west of the Wabash St. Louis & Pacific Railway Co., was he not? A. Yes sir.

Q. This memorandum reads as follows, doesn't it: "The Road cost $691,506—length of Road 48.73 length City Limits to Clive 5.38 Clive to Waukee 8.15 we to allow Gen'l Dodge the average price per mile that the road cost—on above basis as follows City Limits to Clive ½ of 5.38 Clive to Waukee 8.15 and to charge him up with the a/c against him as per our books except that as unpaid interest on Des Moines property he is to have credit on the $36,491.39 which he retains."

81 Counsel for complainants object to the contents of this memorandum just read as being incompetent and immaterial and not binding upon them in this action.

A. Yes sir.

Q. The last three sheets here beginning with the words, "Wabash St. Louis & Pacific Railway Company, journal entry, October 1884," of this Exhibit I. Tobin Deposition, 331-11, constitute the journal entry itself, do they not?

A. Yes sir.

Q. Now, this first entry "Sundries to Railroads, Ind. & Sundries, Genl. G. M. Dodge," is a readjustment of the account with Gen. Dodge, is it not?

Counsel for complainants make the same objection.

A. The journal voucher reads "For adjustment of construction accounts on new basis—as per statements hereto attached."

Q. Commencing with this first page that I have referred to where the journal entry itself commences where does the first journal entry stop?

A. At the foot of that page.

Q. At the foot of the first page? A. Yes sir.

Q. That is a statement of debits or credits?

A. Both.

Q. Now, which are the debit items?

A. "Construction account Des Moines, North Western R. R."

Q. What is the amount?

A. $85,718.07; rent of property $5,094.80; railroad vouchers $2762.18."

Q. Are those all charges against which they are—

A. That is a credit to Gen. Dodge.

Q. And charges the Wabash Company? A. Yes sir.

Q. Now on the other page, the next page, we have the debits to this same account, that is credits to the Wabash Co. and debits to Gen. Dodge? A. Yes sir.

82 Q. Amounting in the aggregate to $23134.23?

A. Yes sir.

Q. Then the next is "Railroads, Ind. and Sundries, Genl. G. M. Dodge, Real Estate A/C, to Rail Roads, Ind. & Sundries, Genl. G. M. Dodge. For balance at credit of former account transferred to credit of the latter account $12,965.55;" that is another credit entry transferring this balance of $12965.55? A. Yes sir.

Q. Then what follows that is a summary of the condition after the entries preceding had been made?

A. Yes sir.

Q. That that I refer to ends with the words, "Credit Balance $51,106.36?" A. Yes sir.

Q. The item that follows that, "Railroads, Ind. and Sundries, Genl. G. M. Dodge to Gen. G. M. Dodge, Ownership in Property in Des Moines," and what follows, is that the opening of a new account to which is transferred the balance derived as above stated? A. Yes sir.

Q. Now; what is the date of the entry of the opening of that new account? A. October, 1884.

Q. Now, the first page of this Exhibit I, Tobin Deposition 3-31-11 is headed, "St. Louis, November 10th, 1884;" I will call your attention to the item in the journal entry "$114,619.42, see the statement attached hereto" is that the statement referred to?

A. That amount $114619.42 is mentioned on the first statement.

Q. I know that, but your journal voucher says "See statement attached hereto," now that means attached to the journal voucher, doesn't it? A. Yes sir.

Q. And the statement attached to the journal voucher
83 that is referred to is the one that is on the first page?

A. Yes sir.

Q. That would indicate that the entry was not in fact made until November, wouldn't it?

A. No, this first page is dated November 10th, we didn't close our books until November 30th, 1884, for the October account.

Q. You mean it would be in the October account but in fact made in November?

A. Yes sir, made in November.

Q. Now, next follows the statement headed, "St. Louis, October 1st, 1884, St. Louis, Des Moines & Nor R. R. Co.

in account with the Wabash, St. Louis & Pacific Railway Co.," showing a total of $8544.37, and following that is a statement of a similar account showing $19.13; those are the lists attached in explanation of the items of $8544.37 and $19.13 in the journal voucher?

A. On the second page of the journal voucher, yes sir.

Q. And the two letters attached, one from G. M. Dodge and the other from James F. How, general agent, are papers that were filed with the journal voucher in accordance with the practice to which you have referred?

A. Yes sir, these are copies, not originals, both are marked copies.

Mr. Guernsey: I assume this copy of the journal voucher may be used in lieu of the original or in lieu of the book?

Mr. Minnis: Yes sir.

The paper referred to, Exhibit I, is in words and figures as follows, to-wit:

84 (Copy of memorandum in lead pencil attached to first page of Exhibit I. Tobin Deposition 3-31-11.)

The Road cost
$691.506 =
length of Road 48.73

---

length
City Limits to Clive 5.38
Clive to Waukee 8.15

---

we to allow Gen'l
Dodge the average price
per mile that the road
cost—on above basis as follows
City Limits to Clive ½ of 5.38
Clive to Waukee 8.15
and to charge him up
with the a/c against
him as per our books
except that as unpaid
interest on Des Moines
property he is to have
credit on the $36,491.39
which he retains.

The following appears on the back of the said exhibit.

Wabash St. Louis & Pacific Ry Co

Journal Voucher.

No. 1750

Debit .....

Credit .....

$.....

Journal Folio.....Month of Oct 1884

Approved for Entry:

..... Auditor.

.....

Exhibit I. Tobin Dep
3-31-11 A. E. M.

65 A. C. 111

St. Louis, Nov. 10th, 1884.

Wabash St. Louis & Pacific R. R. Co., in Account with
General Dodge a/c St. Louis Des Moines & No. Ry.

- CREDITS -

By valuation of Road at 14190.56 per mile		
1/2 Road Des Moines to Clive 2.69 miles		38 172 69
" Clive to Waukee 8.15 miles		115 653 06
" 3/4 of Interest on Expenditures in Des Moines made by Genl. Dodge; on $36,391.39 June 1st 1882 to May 28th 1884 at 7%		
3/4 of $5094.79		3 821 10
" Sundry Vouchers-a/c Expenses &c		2 762 18
		160 408 94

- DEBITS -

To Cost of Rails per Explanation Below	114 619 42	
" 1/4 of Interest on Expenditures by Wabash, St. L. & Pac. Ry. Co. on property in Des Moines to May 28th 1884	12 563 69	
" Operating Expenses &c to May 28th 1884 per bills rendered	18 491 93	145 674 84
Balance in favor General Dodge		14 734 10

Note - Iron Rail a/c

Road Clive to Boone	37.53	
1/2 Road Des Moines to Clive	2.69	40.22
Road Clive to Waukee	8.15	
Road Panora to Fonda	86.40	
1/2 Road Des Moines to Clive	2.69	97.24
		137.46

Total cost of Rails laid outside of Des Moines City limits $391,735.16

Genl. Dodge's proportion ..... 4022 = $114,619.42

13746

66 A. G. III.

St. Louis, October 1st, 1884.

St. Louis, Des Moins & Nor. R. R. Co. in Account with the
Bill No. Wabash, St. Louis & Pacific Railway Co.

Audited Bills – Sundries.				Papers Sent.	
8623	For Material furnished at D. M. Aug.	82	Sept.	10	6.32
8650	" Coal, wood & gas, July & Aug.	"	"	"	60.61
8690	" Labor & Mat. at D.M., Aug.	"	"	"	64.70
8726	" " " " "	"	"	"	95.67
10106	" Pro. Coal used Frt. Ho. & Pass. Depot, Dec.	63	Janv.	15	1.91
10567	" " Wages, Etc., Feby.	"	Mar.	16	76.62
10603	" " Water	"	"	"	22.17
10660	" " Switching exps.	"	"	"	106.10
10809	" " Wages, Janv.	"	"	"	76.32
11018	" Labor & Material, Feby.	"	"	"	56.39
11031	" " " "	"	"	"	140.90
11356	" Switching expenses, Mar.	"	Apr.	13	74.27
11357	" Water "	"	"	"	10.60
11359	" Labor & Material "	"	"	"	19.64
11360	" Pro. Wages, "	"	"	"	151.39
11407	" Labor and Material "	"	"	30	206.35
11518	" " " "	"	"	"	198.62
11815	" " " Apl	"	May	14	219.55
11840	" Pro. Wages, "	"	"	31	155.01
11841	" " " "	"	June	9	63.65
12066	" " " May	"	"	"	111.14
12100	" " " "	"	"	23	166.45
12139	" Labor & Material "	"	"	23	356.63
12254	" " " "	"	July	12	189.17
12463	" Pro. Wages, June	"	"	"	71.16
12464	" " " "	"	Aug.	9	211.06
12497	" Labor & Material "	"	"	"	203.71
12622	" " " "	"	"	"	121.46
12640	" " " "	"	"	"	9.81
12935	" " " July	"	"	23	3.64
13090	" " " "	"	"	"	299.50
13072	" Pro. Wages, "	"	"	"	100.21
13076	" " " "	"	"	"	23.62
13324	" " " Aug.	"	Sept.	18	54.10
13325	" " " "	"	"	13	98.22
13543	" Labor & Material "	"	"	18	110.71
13725	" " " Sept.	"	Oct.	12	279.35
13916	" " " Aug.	"	"	19	244.69
13975	" Pro Wages, Sept.	"	"	23	21.67
13976	" " " "	"	"	"	71.11
	Amount forward,				5,406.23

67 A. O. 111.

St. Louis, Oct. 1st, 1884.

St. L. D. M. & Nor. R. R. Co. in Account with the
Bill No. Wabash, St. Louis & Pacific Railway Co.

Audited Bills – Sundried – Continued.			Papers Sent.		
Forward No. 1					5,008 23
13977	For Pro. paid Regan Bros. for Spauls.	83	Oct.	23	26 80
14000	" " Wages	"	Nov.	10	81 99
14204	" " "	"	"	"	73 18
14257	" Labor & Material	"	"	15	437 76
14364	" " "	"	"	20	155 92
14783	" " " Nov.	"	Dec.	14	141 79
14795	" " " "	"	"	20	123 27
14873	" Pro. Wages	"	"	"	71 07
14874	" " " and water	"	"	"	60 16
14944	" " Less H. J. Lowermann	84	Jany.	10	4 50
15234	" Labor & Material	"	"	19	129 98
15296	" " "	"	"	"	334 31
15299	" Pro. Wages Dec.	"	"	"	40 72
15300	" " " "	"	"	"	48 56
15551	" " " Jany.	84	Feby.	7	51 94
15552	" " Water "	"	"	"	5 50
15553	" " Wages "	"	"	"	54 13
15981	" Material & Labor "	"	"	20	116 68
15712	" " " "	"	"	"	609 62
16088	" " " Feby.	"	Mar.	15	142 75
16115	" Pro. Wages "	"	"	17	60 39
16116	" " " "	"	"	"	63 05
16530	" Material & Labor "	"	"	19	160 77
16535	" Pro Wages Mar.	"	Apr.	16	69 89
16536	" " Water Feby.	"	"	"	7 15
16538	" " Wages Mar.	"	"	"	70 94
16859	" " Water	"	May	6	2 71
16860	" Wages	"	"	"	68 86
16861	" " "	"	"	"	60 60
16957	" Material & Labor	"	"	15	46 69
17040	" " "	"	"	17	122 50
17296	" Repairs cars May	"	June	20	81 22
17446	" Pro Wages "	"	"	19	51 29
17447	" " " "	"	"	"	52 83
17449	" " Water "	"	"	"	4 35
17579	" Labor & Material	"	July	10	102 24
					8,544 37

88 A. C. 111

St. Louis, October 1st. 1884.

St. L. D. M. & N. R. R. Co. in Account with the
Bill No. Wabash, St. Louis & Pacific Railway Co.

Audited Bills – Overcharges		Papers Sent.		
E- 9536 For o/c		83	Sept. 21	.40
F-16109 " "		"	Dec. 4	11.91
16121 " "		"	" 31	.67
16648 " "		84	Jany. 30	6.15
				19.13

89 Wabash, St. Louis & Pacific Railway
Solon Humphreys and Thomas E. Tutt,
Receivers.

James F. How,
General Agent for the Receivers.

St. Louis, Mo., Nov. 20th, 1884.

James F. How
St. Louis, Mo.

Dear Sir:—

I am in receipt of yours of the 17th inst. I am willing to take Judge Blodgett's advice upon the question of making a transfer of the balance due me by the Wabash Company prior to the time the Receivers took charge. Therefore please have the transfer made and give me credit on the terminal property for the balance due me from the Wabash. Be kind enough to have this credit rated from the time the Receivers took charge, so that I will only have to pay interest on the difference between the total amount of my present interest and the total cost.

Are there any additional expenses to go into these terminals at Des Moines. I hope not. I think we should go to work now and get the Northwestern in on our terminals so as to reduce our expenses. I am going West in a short time and will see Mr. Hewitt if you think best.

When you have the accounts all settled up on your books please notify me here officially, so that I can make the proper entries on my Des Moines Northern Books.

I think it is best to base everything upon a rate of interest not to exceed 6 per cent per annum, because it might create trouble hereafter were we to put this at 7 per cent.

I am very much obliged to you for your attention to all these matters.

Very truly yours,

(Copy) G. M. DODGE.

90 Wabash, St. Louis & Pacific Railway
Solon Humphreys and Thomas E. Tutt,
Receivers.

James F. How,
General Agent for the Receivers.

St. Louis, Mo., Nov. 17th, 1884.

Gen. G. M. Dodge
New York.

Dear Sir:

Your letter of 13th received. Since then I have received your telegram in reply to mine, agreeing to the settlement of the old account on the basis of the statement I sent you. In regard to your desire that we should charge you no more than six per. cent interest on the cost of terminal property in Des Moines, if you insist upon this charge I suppose we will have to agree to it, that being the legal interest charge in the State of Iowa. We are, however unable to borrow money at that rate and do not feel that the 7% charge is too high.

Concerning the settlement of the balance due you by the Wabash Co. prior to the appointment of the Receivers by giving you credit on our books for that amount of interest in the improvements on the terminal property in Des Moines standing in the name of James F. How, Trustee, I have had a talk with Col. Blodgett concerning the matter and he sees no legal objection to doing this, but the settlement of your balance in this manner, would have to be made at your risk, in case any question should arise in the future concerning it. With this understanding I see no objection to making this entry on our books.

Awaiting your reply, I remain,

Yours truly,

JAMES F. HOW,

(Copy) Genl. Agt.

JOURNAL ENTRY October, 1884.

TO

Sundries	To Railroads, Ind. & Sundries, Genl. G. M. Dodge,			
	For readjustment of Construction accounts on new basis—as per statements hereto attached.			
Construction Account Des Moines North Western R. R.				
	For amount allowed to Genl. Dodge for construction of Road Des Moines to Waukee at average rate per mile, as o tained from cost of the entire Narrow Guage Sy m, as built by him Boone to Clive and Des Moines to Waukee=48.73 miles-cost as per Genl. Dodge's books=		$691,506.00	
	or average cost per mile = ...		14,190.56	
	Valuation of the Des Moines North Western R. R. on that basis,			
	Des Moines to Clive = 2.69 miles =	$38,172.60		
	Clive to Waukee, 8.15 miles =	115,653.06	153 825 66	
	Less			
	Amount already allowed			
	per Journal voucher No. 199 1/2 =	$23,387.62		
	" " " " 199 1/2 =	43,657.47		
	" " " " 567	1,062.50	68 107 59	85 718 07
Rent of Property				
	For amount allowed to Genl. Dodge as Interest on expenditures made by him in Des Moines			
	See Journal vr. No. 245 =	$12,965.55		
	" " " " 245 =	23,425.84		
		36,391.39		
	at 7% per annum on			
	from June 1st, 1882 to May 28th, 1884	5,094.79		
	W. St. L. & P. Ry. proportion= 3/4		3 821 10	
	For reduction in our Interest charge against him—He having decided to retain interest in property in Des Moines as expended by him, viz:	36,391.39		
	we have charged him on same - from June 1st, 1882 to May 28th, 1884 - 7% per annum =	5,094.79		
	Genl. Dodge's proportion= 1/4		1 273 70	5 094 80
Railroad Vouchers				
	St. Louis, Des Moines & Northern Ry.			
	For the following vouchers favor St. L. D. M. & N. Ry. transferred to the credit of Genl. Dodge			
	See list attached			2 762 18
				93 575 05

I certify that the above entry is correct and should be made on the books of This Company.

.....

92 Wabash, St. Louis & Pacific Railway Company. 188⁴.
JOURNAL ENTRY October
TO

Rail Roads Ind & Sundries			
Genl. G. M. Dodge To Sundries			
Construction Account Des Moines N. Western R. R.			
For amount chargeable to Gen'l Dodge in readjustment of cost of Iron Rail furnished by the Wabash St. Louis and Pacific Ry. Co. Amount furnished as per new Basis			
See statement attached hereto.....		114 619 42	
Less			
Amount already charged per Journal voucher No. 199 1/2	$7,587.03		
" " " 199 1/2	102,955.95	110 542.98	4 076 44
Audited Bills Sundries			
St. Louis Des Moines & Northern Ry.			
For the following bills against the St. L. D. M. Ry transferred to the debit of Gen'l Dodge			
See list attached.....			8 544 37
Audited Bills Overcharges			
St. Louis Des Moines & Northern Ry.			
For the following bills against the St. L D. M. on Ry transferred to the debit of Gen'l Dodge			
See list attached.....			10.13
Rail Roads Ind & Sundries			
St. Louis Des Moines & Northern Ry.			
For balance at debit of this account transferred to debit of Gen'l Dodge.....			10 494.29
			23 134 23

I certify that the above entry is correct and should be made on the books of this Company.

.....

93 Wabash, St. Louis & Pacific Ry. Company
JOURNAL ENTRY October 1884
.....TO.....

Railroads Ind. & Sundries
Genl. G. M. Dodge Real Estate A/C
To Rail Roads Ind. & Sundries
Genl. G. M. Dodge

For balance at credit of former account transferred to credit of the latter account..... 12 965 55

Genl. Dodge's account will stand as follows:

	Debit		
Balance – before making above entries.....	$32300.01		
Debit entries above.....	23134.23	55 434 24	
	Credit		
Credit entries as above.....	$12,965.55		
	93,575.05	106 540 60	
Credit Balance.....		51 106 36	

Railroads Ind. & Sundries
Genl. G. M. Dodge
To Gen. G. M. Dodge,
Ownership in Property in Des Moines.

For balance standing at credit Gen. Dodge's A/C now transferred to a General Ledger A/C. This balance is to stand and constitute Gen. Dodge's interest in the Des Moines property. On this amount he is to receive from the W. St. L. & P. Ry. 3/4 of 6% per annum commencing May 29th, 1884. He is to pay the W. St. L. & P. Ry. 1/4 of 6% per annum commencing May 29th, 1884, on the expenditures made by that Company as shown in the A/C Property in Des Moines Jas. F. How, Trustee viz. $357,967.31 less Gen. Dodge's interest $51,106.36 net $306,860.95

I certify that the above entry is correct and should be made on the books of this Company.

Morris Trumbull,
Asst. Auditor.

94 Counsel for complainants while consenting to the use of copies instead of the originals and while waiving any objection to the identification of the books and papers, object to the introduction and use of any of the foregoing testimony as the accounts are matters appearing in the books, records or papers or accounts of the Wabash, St. Louis & Pacific Railway Co. as to dealings between that company and Gen. Dodge, or any of the other railroad companies, on the ground that the same cannot be binding upon these complainants; and do not show transactions with these complainants; and the complainants also object to all such evidence as being incompetent, irrelevant and immaterial.

Counsel for defendant states that he would like to have the record show that neither party objects to the use of copies in lieu of the originals.

Q. I call your attention to the paper marked Exhibit J. Tobin Deposition, 3-31-11, and ask you if you know in whose

handwriting this is, except the words, "Add rental paid to Wabash St. L. & P., see below", and the figures on the line opposite those words, the words, "Do 1/4 of net cost of round house, see below," and the figures on the line in which those words appear and the words, "Add 1/2 net cost of round house, see below," and the figures on the same line where these words appear the second time?

A. It is in the handwriting of a former clerk employed in this office by the name of F. H. Pund.

Q. And he was in the employ of the Wabash, St. Louis & Pacific Railway and afterwards of the Receivers?

A. Yes sir.

It is agreed that a copy of the exhibit just referred to by the witness, Exhibit J., may be substituted and returned by the Notary in lieu of the original.

The Exhibit referred to is in words and figures as follows, to-wit:

95 PROPERTY IN DES MOINES, IOWA.

General G. M. Dodge, Ownership	51,106.36	
Interest on same at 6% per annum May 29th 1884 to May 1st, 1888	12,035.53	63,141.89
Add rental paid to Wabash St. L&P. See below		7,887.72
1/4 of net cost of Round House, See below		3,058.40
		74,088.01
Wabash, St. Louis & Pacific Ry. Co.—Ownership	306,860.95	
Interest on same at 6% per annum May 29th, 1884 to May 1st, 1888	72,265.73	
	379,126.68	
Add		
Taxes paid by Receivers, W. St. L&P. Ry	4,755.04	
	383,881.72	
Deduct		
Rental collected from St. Louis, Des Moines & Northern R. R. Co. May 29th, 1884 to Nov. 1, 1887 41 3/31 months at $191.93 per month	7,887.72	375,994.00
Add 1/2 of net cost of Roundhouse. See below		6,116.80
		382,110.80

COST OF NEW ROUND HOUSE, etc. AT DES MOINES, IA.

Total expenditures—Construction of Round-House—Tracks—Turntable, etc		17,733.60	
Less			
Insurance collected on old Round House		5,500.00	12,233.60
Divided as follows:			
The Des Moines, & North Western Ry. Co.	1/4 =	3,058.40	
The St. Louis, Des Moines & Northern Ry. Co.	1/4 =	3,058.40	
The Purchasing Committee of the W.St.L.&P.Ry	1/2 =	6,116.80	12,233.60

375,994
12,233.60
7,887

395,114
63,141.89

$458,256.49

Exhibit J. Tobin Dep.
3-31-11. A. E. M.

36 Counsel for complainants object to this exhibit on the same grounds as heretofore stated.

At this point a recess was taken until 2:30 P. M.

Counsel for complainants object to each and every part of the testimony as to the books, records and papers offered and introduced, because the same are the books and papers of the Wabash, St. Louis & Pacific Railway Company and mere hearsay as to each of the complainants and do not amount to an admission or record of the complainants or either of them, and show no transactions between the parties to this suit; and further because they are not the books, records or admissions of any parties through whom either of the complainants claim in this action; and because in a general way, such evidence is irrelevant, incompetent and immaterial and the complainants now move to strike out all of such evidence.

Counsel for complainants waive any further identification of the books as the books of account of the Wabash, St. Louis & Pacific Railway and consent to the use of copies of the journal vouchers instead of the original entries in the journals copied from said vouchers.

Cross-Examination

By Mr. Blodgett:

Q. Are the records and books from which you have been testifying the records and books of the Wabash, St. Louis & Pacific Railway Co.? A. Yes sir.

97 Q. They are not the books of the complainant, the Wabash, Railroad Co.? A. No sir.

By Mr. Cook:

Q. And they are not the books of the Chicago, Milwaukee & St. Paul Railway Co.? A. No sir.

By Mr. Blodgett:

Q. Are the exhibits that have been produced and attached to your testimony made from the books of the Wabash, St. Louis & Pacific Railway Co.? A. Yes sir.

Q. These books of the Wabash, St. Louis & Pacific Railway Co. only relate to transactions had before the Receivers were appointed of the property of that company, do they not?

A. That is true, yes sir.

Q. Down to what date do they show the transactions of the Wabash, St. Louis & Pacific Railway Company?

A. Down to the date the Receivers were appointed, May 28th, 1884, the Wabash, St. Louis & Pacific books contain transactions covering the latter date, but applying to business prior to May 28th, 1884.

Q. You carried out the transactions that took place down to that date that were not entered on the books of the company prior to the appointment of the Receivers?

A. Yes sir.

Q. Do these books show the accounts between the Wabash, St. Louis & Pacific Railway Company, and the Des Moines & St. Louis Railroad Company? A. Yes sir.

Q. Now, Mr. Guernsey in his examination referred to a number of items that appear in these books as charg-

98 ing; now, does that mean that those items were charged by the Wabash, St. Louis & Pacific Railway Co. against Des Moines & St. Louis Railway Co.? A. Yes sir.

Q. That is what that indicates? A. Yes sir.

Q. That indicates in other words that on those dates the Des Moines & St. Louis Railway became indebted to the Wabash Railroad Co. in the amount indicated in those items?

A. That is correct.

Q. Now, Mr. Guernsey asked you if later on those same items were not shown as credited, did he not?

A. Yes sir.

Q. And you answered, did you not, that they did?

A. Yes sir.

Q. Well, now, what would you understand from that entry of credits of that same amount at a later date in these books?

A. The expenditures were made by the Wabash, St. Louis & Pacific Railway and taken up in the construction records of the Des Moines & St. Louis Railroad; for example, some

of these expenditures covered property in Des Moines proper; a similar condition existed so far as the Des Moines & Northwestern, expenditures were made and taken up on the Des Moines Northwestern construction records. These transfers were made later on so as to transfer the joint property of the Des Moines & St. Louis and the Des Moines Northwestern in a separate account called, "Property in Des Moines"; it was the joint property of the Des Moines & St. Louis and Des Moines Northwestern; it was taken out of those two accounts and transferred to a separate account so as to show what it was.

Q. That would not indicate then, as I understand you, that the Wabash, St. Louis & Pacific Railway Co. had been
99 reimbursed the amount?

A. No, they were not, it was merely a transfer in order to get all the property in Des Moines together in a separate account.

Redirect Examination

By Mr. Guernsey:

Q. In the first place you said that the items referred to by me as charges were charged by the Wabash to the Des Moines & St. Louis? A. Yes sir.

Q. I referred to other charges so that statement is not wholly accurate; for instance I referred to charges made to real estate in Des Moines and I referred to charges made against Gen. Dodge in the Dodge account; that statement put generally in that way, in referring to all the items that I referred to as charges, would not be correct, would it?

A. As I understand the question asked me was whether these charges to the Des Moines & St. Louis were charges made by the Wabash, St. Louis & Pacific and I answered yes.

Q. Then you limit that to the charges made to the Des Moines & St. Louis?

A. I think the question read that way and I so answered.

Q. Of course the record will show how it read?

By Mr. Cook:

Q. How about the Des Moines North-western?

A. Similar.

By Mr. Guernsey:

Q. This is the situation then, whenever the Wabash, St. Louis & Pacific advanced any money for the construction of the Des Moines & St. Louis that was charged against that company? A. Yes sir.

Q. And appears in this account identified as Exhibit A to this deposition? A. Yes sir.

Q. And whenever it advanced any money for the con-
100 struction of the Des Moines Northwestern that money was charged to that company and appears in the account that has been identified as Exhibit B. to this deposition?

A. Yes sir.

Q. Now, then, later they took out of those accounts everything that had been expended in the City of Des Moines and charged it to this other account, representing the investments in the City of Des Moines?

A. All property in Des Moines, two accounts, real estate in Des Moin and property in Des Moines.

Q. And those credits to which I called your attention on the account of the Des Moines & St. Louis and Des Moines Northwestern were credits made to offset the charge to this other account which is represented by the papers that are Exhibits A, B, C, C-2, C-3 and C-4 to your former deposition that was referred to?

A. Yes sir, real estate in Des Moines and property in Des Moines.

Q. There was no money paid over at that time but these amounts that had been advanced and had been expended within the City limits were transferred to this account which we call property in Des Moines here in this exhibits of yours?

A. That is so far as these transfers were concerned?

Q. Yes. A. Yes sir.

Q. Now, you state it was the joint property of the Des Moines & St. Louis and Des Moines Northwestern; do the books show that? A. Yes sir.

Q. Where?

A. The first entry that was made was made on April 8th, 1881, charging real estate of Des Moines—

Q. Just read the entry please?

A. (Reading), "Real estate, Des Moines, Iowa, joint account D. & St. L. and D. & N. W. to Des Moines & St. Louis Railroad for the following payments for account of real
101 estate in the City of Des Moines, Iowa, charged to latter account in the months of February, March and April, 1881, now transferred to former account, the property being held for joint account of the Des Moines & St. Louis and Des Moines & Northwestern Railways as per letter of James S. Clarkson, president, filed herewith."

Q. Now that is what the book shows?

A. Yes sir.

Q. That shows that the Wabash, St. Louis & Pacific had expended some money to acquire this property, does it not?

A. Yes sir.

Q. And it does not show that it had ever been reimbursed, does it? A. No sir.

Q. Now, would you say that it showed that that property, which was purchased with this money belonged to those other people at that time?

Counsel for complainants objects to the question as calling for the conclusion and opinion of the witness.

A. That is all I could say (pointing to the entry).

Q. All that you know about it is what appears in this entry, isn't it? A. Yes sir.

Q. You didn't intend on your cross-examination to create the impression that you had any personal knowledge with reference to the matter or that you had any knowledge in reference to it aside from what the books show?

A. No sir.

Q. Now, you said these books were the books of the Wabash, St. Louis & Pacific Railway Co. in whose custody are they now?

A. In the custody of the auditor of the Wabash Railroad.

Q. How long has he had them? A. All the time.

Q. Ever since it was a railroad hasn't he?

A. Yes sir.

Q. The present company when it was organized and
102 took over the property, took these books with it?

A. Yes sir.

Q. And they have been in its possession ever since?

A. Yes sir.

Q. Now prior to that time they were in the possession of the Wabash Western Railway Co.—or Railroad Company, which was it? A. The Wabash Railway Co.

Q. Were they not? A. Yes sir.

Q. That company had this property west of the river now operated by the Wabash Railroad Co. prior to its acquisition by the Wabash Railroad Co., did it not? A. Yes sir.

Q. Now, then, prior to the time that the Wabash Western Railway Co. had these books who had them?

A. They were in the possession of the Receivers of the Wabash St. Louis & Pacific Railway Co.

Q. And did the Purchasing Committee have them at any time? A. No sir.

Q. And prior to the Receivers they were in the possession of the Wabash, St. Louis & Pacific Railway Co.?

A. Yes sir.

Q. So that these books have been in the auditing department and with the books of account of whoever has had possession of and been operating the railroad now owned by the

Wabash Railroad Co. ever since these entries were made, have they not? A. Yes sir.

Q. Now, you state the books there related to transactions down to the date of the appointment of the Receivers; referring to this journal voucher No. 1750 relating to entries made in October, 1884, and especially to the letters which accompany that journal voucher would you say that the agreement for the making of that entry had been made prior to the appointment of the Receivers?

A. That I do not know; I do know this, that this cov-
103 ered transactions that occurred prior to the appointment of the Receivers and therefore were taken up on the Wabash, St. Louis & Pacific Railway Company's books.

Q. Well, have you examined these letters?

A. I don't understand that the letters would cut any figure at all.

Q. I didn't ask you that, I asked you whether you had examined them? A. No sir.

Q. Will you please do so?

A. I quote from Gen. Dodge's letter as follows—

Q. I didn't ask you that, I just asked you to examine the letters; have you examined both of them? A. Yes sir.

Q. Those letters were filed with the journal voucher as explanatory of the transaction? A. Yes sir.

Q. Now, in view of those letters what do you say as to whether the basis for the making of these entries shown by the journal voucher that I have just been referring to was established prior to the appointment of the Receivers?

A. That I do not know, it may have been the subject of previous correspondence and carried on for a year.

Q. Is there anything in the letters to create that impression, if so, please call it to our attention?

A. Neither pro nor con.

Q. Now, I wish you would state one more thing, Mr. Tobin, which is not redirect examination, but I omitted it; the old books of the Wabash, St. Louis & Pacific Railway Co. showed charges here to this account of real estate in Des Moines, aggregating $357,967.31, now you may state whether you are familiar with the books of the Wabash Western Railway Co. and with the books of the Wabash Railroad Co.?

A. Yes sir.

Q. Do the books of either of those companies contain
104 any account showing this real estate in Des Moines as an asset of the company?

A. That I am not prepared to say without making an examination.

Q. Well, will you make an examination and let us know and you can tell by looking at your balance sheets, can't you, whether this real estate is listed as an asset?

A. I can determine it from an examination.

Q. And will you also tell us whether the stock in the Des Moines Union Railway Co. which stands in the name of the New York Trust Co. is listed in the balance sheets as an asset? A. Yes sir.

Q. Do you remember whether it is or is not?

A. No sir, I do not.

Q. If you find any account in the books of either the Wabash Western Railway Co. or the Wabash Railroad Co. carrying this real estate inside of the city limits of Des Moines as an asset, will you have copies of such account or accounts attached to your deposition? A. Yes sir.

Counsel for the Chicago, Milwaukee & St. Paul Railway Co. renews his former objection to the testimony on redirect examination in regard to books and papers of the Wabash, St. Louis & Pacific Railway Co., and renews his motion to strike out on the same ground as heretofore made, and each of the complainants separately makes the same objection and the same motion on the same ground.

At a subsequent date to the above examination witness conveyed to the Notary the information that the real estate referred to in the first question on this page was not listed as an asset, and, in answer to the second question,
105 that the stock of the Des Moines Union Railway Co. standing in the name of the New York Trust Co. is listed in the balance sheet as an asset of the Wabash Railroad Co.; that it was carried into the accounts by a journal voucher, a copy of which is marked Exhibit K. Tobin Deposition, 3-31-11, and is in words and figures as follows:

THE WABASH RAILROAD COMPANY.
ACCOUNTING DEPARTMENT.
Journal entry October 1904.

Capital Stock Des Moines Union Ry. Co.
To Profit & Loss
For Capital Stock of the Des Moines Union Ry. Co. owned by the Wabash R. R. Co. now taken up on the books of the Wabash R. R.

Certificate No.	37	1 share	H. L. Magee,
" "	28	1 "	Jos. Ramsey, Jr.
" "	35	498 shares	Continental Trust Co. of New York, Trustee
		500 shares	
Taken into account at a nominal amount			1.00

I certify that this is an exact copy of Journal voucher No. 11,665, original on file in Auditors Office.

T. J. Tobin
3/31/11 Auditor.

I certify that the above entry is correct and should be made on the books of this company.

Exhibit K. Tobin Dep.
3-31-11 A. E. M.

106 EXHIBITS A, B, C, C2, C3 AND C4 TO THE DEPOSITION OF T. J. TOBIN IN CHICAGO MILWAUKEE & ST. PAUL RAILWAY CO. VS. DES MOINES UNION RAILWAY COMPANY IN DISTRICT COURT POLK COUNTY IOWA.

REAL ESTATE — DES MOINES
Joint a/c D & St L & D & N W.

DEBITS:

April,	1881,	For the following payments for a/c of real estate in the City of Des Moines, Iowa, charged to Des Moines & St. Louis R. R. in the months of Feb'y, March and April, 1881, now transferred to real estate Des Moines, the property being held for joint account of the Des Moines & St. Louis and Des Moines & North Western Rys., as per letter of James S. Clarkson, Pt. filed herewith:			
Vr.	5746	favor J. S. Clarkson		$3436.88	
"	5762	" "		3523.75	
"	5807	" "		4238.50	
"	5838	" "		9750.00	
"	5848	" Polk & Hubbell		840.00	
"	7125	" " "		870.00	
"	7197	" " "		8005.50	
"	7468	" J. M. Coggeshall		700.00	
"	7469	" Chas. M. Hutsonpiller		1020.00	
"	7470	" John R. Rollins		4080.00	
"	8173	" J. S. Clarkson		8100.00	
"	8174	" Polk & Hubbell		3307.50	
"	8208	" Melissa C. Harney		2500.00	
"	8520	" J. S. Clarkson		6500.00	
"	8750	" Louis Hyland		3783.33	
"	8790	" Polk & Hubbell		102.00	
"	8922	" Mary C. Maginnis		5100.00	
"	8924	" Polk & Hubbell		150.50	
"	8925	" Polk & Hubbell		1155.90	$67163.86
May,	1881	Vouchers recorded in May, 1881			
No.	10093	J. S. Clarkson, Prest., real estate, May 31, '81		700.06	
"	10599	J. S. Clarkson, real estate June 17, '81		35700.00	36400.00
Voucher No. 9718		F. A. Blasher, real estate May 21, '81		875.00	
June,	1881,	Voucher 12355 J. S. Clarkson, real estate, July 15, '81			618.75
		Forward			105057.61

PAGE CUT OFF

107		Forward		$105057.61
June,	1881	Construction Vouchers		7475.00
July,	1881	Vouchers recorded in July, 1881,		
No.	13669	J. S. Clarkson, Bal. of cash due, June 17, 1881	$ 400.00	
"	13729	Polk & Hubbell, R. E. bought, July 31, '81	8950.00	9350.00
Aug.,	1881,	Amount paid for real estate in the City of Des Moines, and included in voucher favor J. S. Clarkson, No. S-73, and charged to D. M. & St. L. R. R. in error, now transferred		14000.00
Sept.,	1881,	Vouchers recorded, Sept. 1881, No. 17090, J. S. Clarkson, purchase of real estate, Oct. 5, '81	$2000.00	
		No. 17189, J. S. Clarkson, purchase of real estate, Oct. 8, '81	5259.20	
		No. 17439, St. L. D. M. & N. W., purchase of R. E., Oct. 12, '81	1750.00	
		No. 17663, Felix G. Clarke, purchase of R. E., Oct. 15, '81	3000.00	12009.20
Oct.	1881,	Voucher recorded Oct., 1881 No. 404, J. S. Clarkson, purch. of real estate Nov. 7, '81		5220.00
Nov.	1881,	Voucher recorded Nov. 1881, No. 2883, A. D. Littleton, damages to leasehold, Dec. '81		240.00
Dec.	1881,	Vouchers recorded, Dec. 1881, No. 4288, Sam'l. Merrill, purch. of lot, Dec. '81	1375.00	
		No. 4955, J. S. Clarkson, real estate, Jan. 7, '81	550.00	1925.00
		Year ending Dec. 31, 1881		$155276.81

108 PROPERTY DES MOINES.
James F. How, Trustee.

DEBITS:

Feb.	1882,	Vr. #8739, Galusha Parsons, legal services, Jan. to Dec., 1881		$4177.70
		For amount expended in City of Des Moines charged to Construction a/c Des Moines North Western Ry., now transferred. Statement in detail filed with J. V. 77	$18711.07	
		For amount of balance of a/c (real estate Des Moines) transferred. Note $155,276.81 charged real estate Des Moines in year 1881, and transferred to account expenditures for construction & exuipment (J. V. 77)	3956.01	22667.08
March,	1882	Vr. #10056, Iowa Loan & Trust Co. principal and interest on lot, March, '82.	401.30	
		Vr. #10057, Iowa Loan & Trust Co., principal and interest on lot, March, '82.	1093.80	1495.10

April,	1882	Proportion of the following vouchers for account of Des Moines real estate and charged to construction of Des Moines North Western in March, 1882 record.		
		Vr. No. R298 F. M. Hubbell, expenditures, Mar. 1882	304.63	
		Vr. 299, Aulman & Turner, water connections, Feb. 1882	29.20	
		Vr. 300, H. L. Chaffee, stoves and fixtures, Sept. 1881	86.80	
		Vr. 303, Charges R. I. & Pac. ft. charges on pipe, &c., Jan. 1882	19.70	
		Vr. 308, C. R. Merrill, new shoes for mules, Feb. 1882	4.00	
		Vr. 309, W. B. Mitchell & Co., oil, harness, &c. Jan., 1882	2.25	
		Vr. 310, N. S. McDonald & Co. iron, Feb. 1882	.90	
		Vr. 312, J. D. Seeberger, hardware, Jan. & Feb., 1882	21.87	
		Vr. 313, Geo. S. Sneer, oil cans, &c, Jan., 1882	4.75	
		Vr. 315, Western Telephone Co., rental of instrument, Feb., 1882	3.25	
		Vr. 316, L. P. Wilcox, oats, Feb. '82	3.50	
		Vr. 322, Chgs. R. I. & P., frt charges on tanks, Sept., 1881	17.09	
		Vr. 333, Wm. Langton, building roundhouse & shops, Mar. 1882	2430.00	
		Vr. 334, F. M. Hubbell, expenditures Mar., 1882	323.30	
		Vr. 335, F. M. Hubbell, expenditures, March, 1882	6.00	3257.24
May,	1882,	Amount charged to Des Moines Northwestern R. R. in Dec., 1881, (JV. R 15 for turntable shipped to Des Moines		
109		in cars 2404 K. C. & N. and 304 I. P. C. now transferred		$ 425.00
		For the following vouchers charged to construction Des Moines Northwestern R. R. now transferred Vr. No. R 90 H. & H. Elliott, R. R. crossings, Sept., 1881	$1000.00	
		No. 116, H. & H. Elliott, frogs, sw. stands &c. Nov., '81	1311.00	
		No. 157, Fairbanks & Co., scales Dec. '81	105.00	
		No. 158, L. M. Rumsey Mfg. Co., supplies, Dec., '81	570.73	
		No. 233, H. & H. Elliott, frogs & sw. stands, Jan. '82	1485.00	
		No. 237, Shickle H. & Howard Iron Co., cast pipes, Dec. '81	424.54	
		No. 294, L. M. Rumsey Mfg. Co., pipe ells and nozzles, Feb. '82	69.64	4965.91

	Amount charged to construction Des Moines & St. Louis R. R. Co. a/c Dec. 1881, in J. V. S. 42, for 1/2 of 1/54 ft turntable shipped to Des Moines, Ia. in cars 2404 K. C. & N. and 304 I. P. C. now transferred		425.00
	Amount expended by Gen'l. Dodge in city limits of Des Moines as per statement filed with J. V. No. 199 1/2, Marked A		36391.39
	For amount of iron rails, laid in City of Des Moines, furnished by W. St. L. & P. Ry. Co. charged on W. St. L. & P's. Co's. books to construction a/c Des Moines No. W. Ry. now transferred—distance 5.15 miles, 55 tons, per mile at 49.80 per ton (cost in St. Louis, Gen'l. Dodge having paid freight North of St. Louis)		14105.85
110	Forward		$ 87910.27
June, 1882,	For amounts charged in construction records now transferred Des Moines & St. Louis R. R.		
J D P			
401	Vr. No.		
8145 25	Des Moines Northwestern R. R.		
	Vr. No. R-342 J. H. Cockersham, load of hay, May, 82	7.00	
	No. 344, Wm. Langton, labor and mat'l., April 82	528.75	
	No. 350, M. C. Thomas, cost of suit, May, 82	4.40	
	No. 361, C. R. I. & P. Ry., freight on mat'l., Feb. 82	14.00	
	No. 362, E. F. Chile, moving house, April, 82	65.00	
	No. 363, H. F. Getchell & Sons, lumber, Apr., 82	20.64	
	No. 364, Polk & Hubbell, am't. advanced for hay, Apr., 82	6.75	
	No. 380, C. J. Goode, right of way June, 82	750.00	
	No. 388, N. E. Walsh, gas fitting, Nov. 1882	.85	
	No. 389, Pay rolls, engineers, etc., May, 82	107.91	
	No. 397, Frank A. Spooner, driving train, June, 82	41.35	$ 9601.90

July, 1882,		Vr. 17313 Charges Burl. & Qcy. Exp. at Des Moines, June, 82		1000.00
Aug.,	1882,	For vouchers for Des Moines real estate charged to construction Des Moines Northwestern a/c in July and August, now transferred.		
		Vr. No. r-309, Wm. Langston, interest, July, 1882	$ 58.76	
		No. 402, pay rolls, laborers, June, 1882	261.55	
		No. 403, Gus Smith, oats, Feby. to May, 1882	35.70	
		No. 409, J. J. Payne, recording fees, August, 1882	.75	
		No. 420, Pay rolls, laborers, July, 1882	111.35	
		No. 436, S. A. Robertson, lime and cement, Dec. 81, to Mar. 82	123.80	591.91
Sept.	1882,	For amount charged to construction Des Moines Northwestern R. R. in bill of Chief Engineer for Sept. 1882, for Frogs, etc. in City of Des Moines now transferred		330.00
Oct.	1882	Pay rolls audited for month of October, 1882		3610.31
		For amount charged on construction records now transferred, Des Moines North-western		
		Vr. No. 466, H. P. Skeele, expense paying rolls, Oct. 82	260.87	
				13812.73
111		Forward		116947.12
Oct.	1882,	Labor and mat'l. furnished by Chief Engineer's Dept		1861.00
Nov.	1882,	Pay rolls audited for month November, 1882		2998.58
		Labor and Mat'l. furnished by Chief Engineer's De't		6843.78
		For amounts charged on construction records now transferred, Des Moines Northwestern		
		Vr. No. 513, Des Moines Nat'l. Bank, assessment & interest, Dec., 82	849.25	
		No. 514, Iowa Nat'l. Bank Sewer, assessment & Interest to Jan. 1, 83	751.89	
		No. 515, Valley Bank, assessment and interest, to Dec. 27, 82	87.29	7247.18
Dec.	1882,	For amount charged to construction Des Moines & St. Louis R. R. for a/c real estate City of Des Moines in December, 1882, now transferred		1246.39
		Vr. No.		
		For paymaster's check issued on a/c Dec. 1882, pay rolls	3176.23	

		For labor & Mat'l. furnished by Chief Engineer Dep't		558.20
		Voucher 7408, R. E. Durkee, purchase price of lot, Jan., 1883		976.80
Jan.,	1883,	For mortgage assumed on lot 7, block 15, original town of Ft. Des Moines for 4000.00 being coupon bond dated Feb. 1, 1881, in favor of M. L. P. Hill with interest at 7% payable annually. Principal due Feb. 1, 1886, copy of deed of trust herewith (J V. 514)		4000.00
		Vr. 9365, M. L. Hill, interest on mortgage assumed Feb. 1883		280.00
		Labor & Mat'l. furnished by Chief Engineer. Dept		5216.48
Feb.	1883.	For value of bridge over the Des Moines River in Des Moines and charged to construction Des Moines & St. Louis R. R. now transferred (J. V. 528		37000.00
		Error in charging Des Moines yards to roadway and structure a/c in Chief Engineer's Dep't. V. D. folio 25		2107.34
		Vr. 10800, Des Moines Building Loan Assn. Right of way, Feb. '83	$600.00	
		Vr. 10802, Hannah Costello, Right of way, Feb. '83	300.00	
		Vr. 10919, Parsons & Runnells, legal services exp. July to Dec. '82	327.50	1227.50
Mar.	1883,	Correction of distribution on voucher 10919, S. 5, favor Parsons & Runnell's as per letter attached, (J.V.547) when the voucher was recorded it did not give location of services rendered and the distribution was not correct-now corrected.		517.00
		Forward		192203.70
112		Forward		$192203.70
Mar.	1883,	Labor & Material furnished by Chief Engineering Dep't		225.81
		Vr. No. 13548, J. J. Paynes, recording deeds Aug. to Dec. 82, Jan. 83	$ 5.50	
		No. 13686, J. Donovan, right of way	410.30	415.80

Apr.	1883,	Labor & Material furnished by Chief Engineer's Dep't			715.45
May,	1883,	Labor & material furnished by Chief Engineer's Dep't			2140.63
July,	1883	Vr. No. 2129, H. F. Getchell & Son, damages on lots, 1883		$1000.00	
		Vr. No. 2193, Parson & Runnells services as attorneys, Jan. to June, 83		40.50	1040.50
Sep.	1883	Labor & material furnished by Chief Engineer's Dep't			2090.54
		Vr. No. 5037, Frederick Dennis, purchase of lot, Sept., 1883			1200.00
Oct.	1883,	Vr. No. 7172 Parsons & Runnell's, services and expenses, July to Sept. 83		40.00	
		Vr. No. 7217, Annie M. Long, land June, 82.		1090.40	
		Vr. 7218, Hay & Sherman, Assignee, Right of way, July, 82		2166.70	
		Vr. No. 8153, Julia Maher, purchase of lot, Nov. 83		925.00	
		Vr. No. 8935, Ewing Jewett & Chandler, land, Nov. 83		2300.00	6722.10
Nov.	1883,	Vr. No. 9303, Hon. J. S. Runnell's, recording fees, Nov. 1883			3.75
Dec.	1883,	Vr. No. 11039, Hay & Sherman, right of way, Nov., 1883			213.33
					209071.61

CREDITS:

Nov.	1882.	To correct error in October pay rolls caused by addition of two rolls being carried forward and the amount included through error in recapitulation of total of rolls	$1113.89	
Oct.	1883,	Deposited by James F. How, collected from Coggeshall & Hunt, a/c collections made by them (J.V.879)	$688.23	
		Amounts received from Adams & Hastie, proceeds of rents collected after deducting sundry expenditures on commission on same	2290.73	
		Deposited by Jas. F. How, collected from T. E. Rudd, for ground rent from Oct. 1,83 to Jan. 1,84, South 20 ft. lot 9 block 20 of the City of Des Moines 50.00	3037.96	
Dec.	1883,	Received from Jas. F. How, Secty. a/c rents collected in D. Moines JV	129.26	4281.11
				202990.50

993 1/2

SUMMARY: Year ending Dec. 31, 1881, $155,276.81
" " " " 1882, 140,741.49
" " " " 1883, 61,949.01 : $202,990.50

$357,967.31

113 State of Iowa,
Polk County—ss.

I, J. P. Maher, Clerk of the District Court of the State of Iowa, in and for Polk County, do hereby certify the foregoing to be a full, true, correct and complete copy of Exhibits "A" "B" "C" "C2" "C3" and "C4" attached to the deposition of T. J. Tobin, said deposition of said Tobin being taken before Arthur E. Mooney, a Notary Public in and for the City of St. Louis, and State of Missouri; in the case of Chicago, Milwaukee & St. Paul Railway Company, vs. Des Moines Union Railway Company, and file in said cause in my office on the 17th. day of January, 1910, as full, true, correct and complete as the same remains on file in my office.

Seal
District Court
Polk County,
Iowa.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court at Des Moines, this 12th. day of June, A. D. 1911.

J. P. MAHER,
Clerk of said District Court.
By A. E. Mahan, Deputy.

114 State of Missouri,
City of St. Louis—ss.

I, Arthur E. Mooney, a Notary Public, within and for the City of St. Louis, State of Missouri, do hereby certify that, by consent of counsel for complainants and defendants, T. J. Tobin came before me on the 31st day of March, 1911, at the Auditor's office of the Wabash Railway Company, southwest corner of 7th and Chestnut Streets in the City and State aforesaid, that he was by me sworn to testify the whole truth of his knowledge concerning the matter in controversy; that he was examined and his examination reduced to writing in shorthand by me, by consent of counsel for the respective parties, at the time and place aforesaid.

I further certify that counsel agreed in my presence that they would waive the signature of the witness to the deposition and that it might be read in evidence with the same force and effect as if it had been signed.

I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

I further certify that the fee for taking said deposition is $..... and that the same is just and reasonable.

In testimony whereof, I have hereunto set my hand and official seal at the city of St. Louis and State of Missouri this 19th day of June, 1911.

(Seal) ARTHUR E. MOONEY,
Notary Public.

116

Deposition of Frederick M. Hubbell, Filed Nov. 2, 1912.

118 In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company, Complainants. No. 4429. Equity.

vs.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Respondents.

Depositions of Frederick M. Hubbell, C. Huttenlocher and F. C. Hubbell taken by agreement of parties before James F. Allen as examiner at the office of Guernsey, Parker & Miller, Des Moines, Iowa, commencing at 10 o'clock A. M. May 31st, 1911.

Present: Wells H. Blodgett, Esq., J. L. Minnis, Esq., J. C. Cook, Esq., and Robert Ryan, Esq., solicitors for complainants, and N. T. Guernsey, Esq., solicitor for defendants.

It is stipulated that said depositions shall be taken in shorthand by said examiner and that a transcript thereof certified by him to be full, true, accurate and correct shall be
119 filed and returned by him as the depositions of said witnesses.

FREDERICK M. HUBBELL, being duly sworn as a witness on behalf of defendants, testifies as follows:

Direct Examination

By Mr. Guernsey:

1. Q. Your name is Frederick M. Hubbell? A. Yes.
2. Q. Where do you reside? A. In Des Moines.
3. Q. You are one of the defendants in this suit?
A. Yes.
4. Q. How long have you resided in Des Moines?
A. Fifty years.
5. Q. What is your age? A. Seventy-two.
6. Q. And what is your business? A. Mostly real estate.
7. Q. We have here a stipulation, which we propose to use, containing a list of the offices held by you commencing

with the Des Moines Western and referring to most, if not all, of the corporations you were connected with in connection with this matter and I will ask you if defendants Exhibit 100 is substantially a correct list of the offices you have held in the various corporations? A. It is.

8. Q. You are secretary of the defendant, the Des Moines Union Railway Co.? A. I am.

9. Q. And you were named as its secretary in the original articles and have been secretary ever since?

A. I was named secretary in its original articles and have been elected ever since annually, except when the annual meeting was postponed.

10. Q. And you are also a director in the Des Moines Union Railway Company, I believe? A. Yes, sir.

11. Q. And were named as director in the original articles and have been elected to that office ever since in that company?

A. Yes.

12. Q. Have you in each instance when you have been
120 re-elected either as secretary or director of the Des Moines Union Railway Co., been so elected by the unanimous vote of all persons voting at that meeting? A. I have.

13. Q. The record that I have just referred to shows that you were an officer of the Narrow Gauge Railway Construction Co. and also an officer in the road known as the Des Moines, Adel & Western; I wish you would state in a general way how, if at all, your connection with those corporations led to your becoming interested in the development of the Terminal Road in Des Moines?

A. My partner's name was Jefferson S. Polk, our firm name was Polk & Hubbell, we became interested in the Des Moines, Adel Western Road, a narrow gauge, extending from Waukee to Adel, and we assisted in extending this line from Adel to Panora. The contract for the extension was with the Narrow Gauge Railway Construction Co.

14. Q. Now, how long was this road extending from Waukee to Adel? A. Seven miles.

15. Q. And Panora was some distance west or northwest of that?

A. The distance from Waukee to Panora was about 30 miles.

16. Q. While you were interested in this line extending from Waukee to Panora did you have any negotiations with the then Wabash Company looking to an extension of that line both northwest and also east to Des Moines? A. Yes.

17. Q. And was it in this connection that the contract of December 8th, 1880, between the Wabash, St. Louis & Pacific Railway Co., the Des Moines & Northwestern Railway Co. and the Narrow Gauge Railway Construction Co. marked Com-

plainant's Exhibit 2 to the Stipulation between the parties filed in this case March 23rd, 1911, was made? A. It was.

121 18. Q. And in that same connection was there a supplemental contract made between the Wabash, St. Louis & Pacific Railway Co. and the Narrow Gauge Railway Construction Co. on December 8, 1880, commencing with the recitation "that the Narrow Gauge Railway Construction Co. did heretofore, to-wit: on the 8th day of December, 1880, enter into a contract with the Des Moines Northwestern Railway Co., etc.," a copy of which supplemental contract is defendants Exhibit 220 in the stipulation of the parties as to certain records which the defendants propose to use?

A. There was.

19. Q. At the time this contract was made how far towards Des Moines was the then Wabash Company running its trains from St. Louis? A. Sixty-seven miles, to Albia.

20. Q. Sixty-seven miles from St. Louis or Des Moines?

A. Des Moines.

21. Q. And what, if any, extension of the Wabash lines was contemplated?

A. It was contemplated that the Wabash would extend its road from Albia to Des Moines.

22. Q. The complainants have introduced Plaintiffs' Exhibit No. 1, which is a contract dated December 8th, 1880, between J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells and the Wabash, St. Louis & Pacific Railway Co. for organizing the Des Moines & St. Louis Railroad Co.; did these contracts also grow out of the same negotiations?

A. They did.

23. Q. What was the name of the company, which owned the line between Wauker and Panora, to which you have referred?

A. It was called the Des Moines Northwestern Railway Co.

24. Q. Now, referring again to the contract for the organization of the Des Moines & St. Louis Railroad Company, [Plaintiff's] Exhibit No. 1, that company was in fact organized and the road built? A. Yes.

122 25. Q. It is said in the bill that you and your said associates, who were parties to this contract, were the executive officers, directors and managers of this railroad; as a matter of fact who built the Des Moines & St. Louis Railroad?

A. James F. How as agent for the Wabash, St. Louis & Pacific Railway Co.

26. Q. What control did you exercise over the Des Moines & St. Louis Railroad? A. None whatever.

27. Q. What did you personally have to do with the building of the Des Moines & St. Louis Railroad?

A. I had nothing to do with the building of it.

28. Q. I call your attention to a record of a meeting of the directors of the Des Moines & St. Louis Railroad Co. shown as defendants Exhibit 174 in the stipulation of the parties made this day, the meeting referred to being a directors' meeting held May 10, 1881, and will ask you whether the agreement, which is set out in that record, between James F. How, agent, and the Des Moines & St. Louis Railroad Co. is the agreement under which that road was built? A. It is.

29. Q. Do you know whether James F. How, agent, at that time sustained any official relation to the Wabash, St. Louis & Pacific Railway Co.?

A. He was one of the officers of the Wabash.

30. Q. From the time that this contract that has been referred to was made who controlled the Des Moines & St. Louis Railroad? A. The Wabash, St. Louis & Pacific.

31. Q. And what, if any, control did you exercise over the company, or the construction of its railroad, or its operation?

A. None, except to do as the Wabash wanted me to.

32. Q. This contract provides for the assistance of yourself and your associates in procuring aid, right-of-way and things of that kind; do you know whether any aid was voted to the Des Moines & St. Louis Railroad Company?

123 A. I do not.

33. Q. So far as any attention was given to those matters what did you personally have to do with them?

A. I did not have anything personally to do with them.

34. Q. There are some allegations in the bill about domination and control of the road by yourself, what is the largest amount of stock that you ever owned in it?

A. One share of $100.

35. Q. The record shows that at various times you were a director, treasurer, secretary, vice-president, and assistant secretary of the Des Moines & St. Louis Railroad Co.; now, in the first place I would like to ask you how the road was operated and whether the Des Moines & St. Louis Railroad Co. ever operated it?

A. The Des Moines & St. Louis Railroad Co. never operated the road, it was leased to the Wabash, St. Louis & Pacific and operated by the last named company.

36. Q. And afterwards by the Receivers?

A. Afterwards by the Receivers and successor companies to the Receivers.

37. Q. So far as you know did it ever have any books of account or general books aside from its records as a corporation showing the meetings of its stockholders and directors?

A. Not that I know of.

POOR COPY

38. Q. Now, after this railroad was completed was there any time when the majority of its directors were not officers or employes of the then Wabash Company? A. No.

39. Q. Now, as an officer and director, what did you do?

A. I did whatever the Wabash wanted me to do.

40. Q. Do you still own the share of stock?

A. I do not.

41. Q. What became of it?

A. I gave it to the Wabash.

42. Q. To what extent, if at all, did you influence or
124 control the policy or actions of this company, or make suggestions in regard to its policy or actions?

A. I had no control and made no suggestions.

43. Q. Now, referring to the contract between the Wabash, St. Louis & Pacific Railway Co. and the Des Moines Northwestern, which is Plaintiff's Exhibit No. 2, this contract provides that the Construction Company is to build the road, to receive the stocks, and bonds and subsidies, the bonds being Wabash general mortgage bonds, at the rate of $7000. per mile, and then provides that the Wabash shall furnish the bonds to the Des Moines Northwestern and shall repurchase them for the Construction Company at 95 cents of their par value; were those forms gone through with or not?

A. Those forms were not gone through with; the Wabash furnished the money to build the Des Moines Northwestern Railway and the Narrow Gauge Railway Construction Company never received any general mortgage bonds of the Wabash.

44. Q. This contract provides that after the road is constructed it shall be leased to the Wabash by the Des Moines North Western, was such a lease made? A. There was.

45. Q. Now, at about this time there was a railroad projected from Des Moines to Boone? A. Yes.

46. Q. And that was part of the same general plan?

A. It was.

47. Q. Who built that road? A. Gen. G. M. Dodge.

48. Q. That was known as what?

A. The St. Louis, Des Moines & Northern Railway.

49. Q. Please state whether or not you participated in the work of acquiring the property here in Des Moines which was intended for terminal purposes? A. I did.

50. Q. When was the acquisition of this property
125 commenced? A. Early in the year 1881.

51. Q. What did you do in connection with the purchasing of that property?

A. I negotiated for the purchase of all of it except where condemnation proceedings were necessary.

52. Q. And who looked after the condemnations?
A. The firm of Parsons & Runnells.
53. Q. Who laid out the plans which determined in a general way what property should be acquired for this purpose?
A. Mr. Lincoln, the engineer of the Wabash, St. Louis & Pacific Railway Company.
54. Q. What relation did the firm of Parsons & Runnells sustain to the Wabash?
A. They were local attorneys of the Wabash at Des Moines.
55. Q. Where did the money come from to pay for this property?
A. The Wabash, St. Louis & Pacific Railway Company advanced the money.
56. Q. If it was necessary for you to secure the approval of the vouchers for money paid to acquire this property before they were sent in to the Wabash, St. Louis & Pacific Railway Company, what was the approval you were required to obtain? A. J. S. Clarkson's.
57. Q. Then what you did was to negotiate the purchases, the payments to be made subject to Mr. Clarkson's approval?
A. Yes,
58. Q. Now, did you negotiate the purchases yourself, or did you use some real estate agents?
A. Both; we utilized the services of a real estate agent and in some cases I made the contracts direct.
59. Q. What was the occasion for using the real estate agents?
A. We wanted to prevent the transactions from becoming a public matter, and for that reason we took some of the titles in the name of different Wabash officials.
60. Q. I think some of that property was acquired in the name of Gen. Dodge, am I right about that? A. Yes.
61. Q. By Gen. Dodge you mean Gen. G. M. Dodge?
A. Yes sir.
126 62. Q. And for the property that was taken in that way who advanced the money? A. Gen. Dodge.
63. Q. Was any money for the acquisition of the property that was acquired in Des Moines advanced by any one except Gen. Dodge and the Wabash, St. Louis & Pacific Railway Company? A. There was not.
64. Q. Referring to Plaintiffs' Exhibit No. 4, the contract of January 2, 1882, this contract provides in the second paragraph that the expense incurred in connection with the acquisition and improvement of the property there referred to shall be borne one-half by the Des Moines & St. Louis Railroad Company and one-fourth each by the Des Moines Northwestern Railway Company and the St. Louis, Des Moines &

Northern Railway Company; as a matter of fact, did either of those companies that I have named pay any part of the cost of acquiring or improving this property?

Complainants' counsel object to the question because the evidence is incompetent to vary or contradict the terms of the written contract referred to.

A. They did not.

65. Q. What means did you have of knowing by whom these payments that you have referred to were made?

A. I attended to the disbursement of the funds used in buying this property and making improvements.

66. Q. Now, you were at that time a stockholder in the Des Moines Northwestern Railway Company? A. Yes.

67. Q. In connection with that matter of your knowledge with reference to the payment of the money in Des Moines, do you remember checking over the amounts expended by Gen. Dodge within the city limits of the city of Des Moines
127 for the purpose of an adjustment of that matter between himself and the then Wabash Company?

A. I remember it.

68. Q. And who, if anyone, representing the then Wabash Company was here at that time with you making this list of the expenditures by Gen. Dodge inside of the city limits of Des Moines?

A. Morris Trumbull was here representing the Wabash on or about May 31, 1882.

69. Q. And at the same time you checked up with Mr. Trumbull, did you not, the cost of the St. Louis, Des Moines & Northern Railway from the city limits of Des Moines to Clive and the cost of the Des Moines Northwestern Railway from Clive to Waukee? A. I did.

70. Q. I call your attention to a paper attached to the deposition of Mr. Tobin headed "G. M. Dodge paid Narrow Gauge Railway Construction Company, now charged to the Des Moines Real Estate, certified to be correct by F. M. Hubbell, President Construction Company," dated May 30, 1882, is that the statement which was made up by you and Mr. Trumbull showing the amount expended by Gen. Dodge within the city of Des Moines? A. It is.

71. Q. I also call your attention to another paper attached to the deposition of Mr. Tobin, headed "Cost of St. Louis, Des Moines & Northern Railroad from Des Moines to Clive," also certified by you and others, dated May 30, 1882; is that a statement which you and Mr. Trumbull prepared at the time referred to showing the cost? A. It is.

72. Q. I also call your attention to another statement headed "Statement of Expenditure by G. M. Dodge, account

of construction St. Louis, Des Moines & Northern Railroad from Clive to Waukee," also certified by yourself and others, dated May 30, 1882, and attached to the deposition of
128 Mr. Tobin, and I wish you would state whether that is a statement prepared by yourself and Mr. Trumbull showing the cost of the road from Clive to Waukee?

A. It is.

73. Q. Now, during the period from 1882 say until about May 1, 1888, how was this terminal property here in Des Moines operated and how was it treated?

A. It was operated by the Wabash, St. Louis & Pacific until that company went into the hands of the Receivers, and from that time operated by the Receivers.

74. Q. Who had paid for it?

A. The Wabash had paid for all of it at that time.

75. Q. And who was operating the Des Moines & St. Louis Railroad and the Des Moines Northwestern Railway?

A. The Wabash, St. Louis & Pacific Railway Co. was operating the Des Moines & St. Louis Railroad and the Des Moines Northwestern Railway.

76. Q. Did you have anything personally to do with the terminal property during this time, or until about the time Polk & Hubbell acquired from the purchasing committee the Des Moines Northwestern Railway? A. I did not.

77. Q. Do you know what arrangements were made for the maintenance of the property, taxes, and things of that kind during the period before your acquisition of the Des Moines Northwestern Railway?

A. The Wabash, St. Louis & Pacific Railway Company and its Receivers maintained and operated and paid the taxes on the terminal property.

78. Q. Complainants' Exhibits 7, 8, 9, and 10 are some resolutions of January 1, 1885, by the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, the Des Moines Northwestern Railway Company and the Des Moines Union Railway Company; I wish you would state what, if anything, was done under this set of resolutions with reference to the acquisition of
129 the property by the Des Moines Union Railway Company? A. Nothing whatever.

79. Q. Was anything, in fact, done towards the acquisition of the property by the Des Moines Union Railway Company until after the resolutions adopted on November 8, 1887, by these same railroads? A. There was not.

80. Q. Now, then after the enactment of the resolutions in 1887, as shown by the notices, Plaintiffs' Exhibits, 13, 14 and 15, and the resolution adopted by the Des Moines Union Railway Company November 8, 1887, defendants' Exhibit 202

in the stipulation of this date, what was done towards completing the purchase of the property by the Des Moines Union Railway Company?

A. The Des Moines Union had a meeting on March 1, 1888.

81. Q. Prior to that meeting what was done in the way of conveyances of the property?

A. The deeds for the conveyances of the property were executed and delivered to the Des Moines Union.

82. Q. The deeds you refer to are the deeds from James F. How, James F. How, Trustee, G. M. Dodge, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company, which are identified as Plaintiffs' Exhibits 17 to 22 inclusive?

A. Those are the deeds.

83. Q. And this resolution of the Des Moines Union Railway Company provides that on the receipt of the deeds there shall be delivered to the grantors an agreement to deliver to them, as soon as prepared, bonds and stocks; what, if anything, was done with reference to preparing an issue of bonds, or was it in this connection that the trust deed, which is Plaintiffs' Exhibit 23, was prepared, executed and delivered?

A. It was in this connection that the trust deed of the Des Moines Union covering the property purchased was
130 executed. I think it was dated November 1, 1887.

84. Q. You referred to the meeting of March 31, 1888, of the Des Moines Union; I wish you would look at Plaintiffs' Exhibit No. 26 and state whether that is the record of the meeting to which you referred. A. It is.

85. Q. And is this record headed "Des Moines Union Railway Board of Directors Meeting, March 31, 1888," defendants' exhibit 103 in the stipulation signed today, a record of the directors' meeting held on the same day? A. It is.

86. Q. Now, have you the original memorandum of the computation made as the basis for the resolution in Exhibit 25 under which those bonds were issued?

A. I have.

87. Q. And by whom was it made aside from the parts of it which are in your handwriting?

A. Made by the Wabash Company.

88. Q. And when was it made, how long have you had it?

A. I have had it since March 31st, 1888.

89. Q. This statement is the statement defendants' exhibit 281 headed "Property in Des Moines, Iowa, Gen. G. M. Dodge ownership $51,106.36," in the stipulation of this date, is it not? A. It is.

90. Q. Now, what parts of this memorandum or paper, we have just referred to are in your handwriting?

A. The line, "Add rental paid to the Wabash, St. Louis & Pacific as below, $7,887.72," and the line "do one-fourth of

net cost of round-house, see below $3,058.40," then the footing "$74,088.01," and the line "Add one-half of net cost of round-house, see below $6,116.80," and the footing "$382,110.80" are in my hand-writing.

91. Q. This memorandum at the bottom of this statement, "Cost of new round-house, etc. at Des Moines, Iowa,"
131 is the explanation of the round-house items in the statement that precedes it, is it not? A. It is.

92. Q. Now, I wish you would state whether the memorandum that we have been referring to is the memorandum from which was ascertained the amounts due the Wabash or its successors to Gen. Dodge and the Des Moines & Northwestern Railway Company as stated in this resolution of the meeting of March 31, 1888, Plaintiffs' Exhibit 26?

A. It is.

93. Q. Does the memorandum show how the amounts were ascertained?

A. It does show how the amounts were ascertained.

94. Q. In this meeting of March 31, 1888, Exhibit 26, there is a resolution for the purchase from Polk & Hubbell of Lots 3 and 4 in Block 33 in Keene & Poindexter's Addition to Fort Des Moines, is there not? A. Yes.

95. Q. Now, in the resolution of the Des Moines Union of November 8, 1887, defendants' Exhibit 102 it is resolved that the company purchase from Polk & Hubbell two lots, Nos. 2 and 3 in Block 33 of Keene & Poindexter's Addition?

A. Yes, that was an error.

96. Q. What should the description be?

A. Lots 3 and 4 in Block 33.

97. Q. In other words, the resolution of November 8, 1887, refers to the lots referred to in Plaintiffs' Exhibit 26?

A. It does.

98. Q. Were those lots afterwards conveyed by Polk & Hubbell to the Des Moines Union Railway Company by deeds defendants' Exhibits 531 and 532, that are included in the stipulation of this date? A. They were.

99. Q. Now, then, the resolutions that have been referred to passed by the various companies in November, 1887, with reference to the acquisition of this property provided
132 for an issuance of stock as well as of bonds in payment for it; when were the bonds issued with reference to the meeting of March 31, 1888, that is about when?

A. As soon as we could get the bonds engraved and distributed, it was not very long.

100. Q. It was shortly after that meeting, was it not?

A. Yes sir.

101. Q. You can refresh your recollection by Col. Blodgett's receipt for the bond, defendants' Exhibit 286, that

is in the record here, and state about when the bonds were delivered? A. We delivered the bonds about June 1, 1888.

102. Q. This resolution provided for the issuance of stock as well as bonds; when was this stock issued?

A. April 8, 1890.

103. Q. Why, if you know, was it not issued before that time?

A. Because it had not been determined how much should be issued and because Mr. How suggested that some of the stock be left in the treasury to sell to some other railroad company.

104. Q. I will call your attention to Mr. How's letters of June 28, 1888, defendants' Exhibit 287, and of September 17th, 1888, defendants' Exhibit 288, which are in the stipulation of this date, and will ask you whether they relate to these matters, the letter of June 28th being to you and the other being to Polk & Hubbell? A. They do.

105. Q. I believe that you have already stated that when the Des Moines Union was organized your interest was only indirect as a stockholder in the Des Moines Northwestern Railway Co. A. Yes sir.

106. Q. Did you, or did you not have a small or contingent interest in the stock of the St. Louis, Des Moines & Northern Railway Co.?

A. We were entitled to some stock in the St. Louis, Des Moines & Northern as stockholders in the Narrow Gauge
133 Railway Construction Co., and we were entitled to some stock in the Des Moines Northwestern Railway Co. under the same arrangement through the Narrow Gauge Railway Construction Co.

107. Q. Now, the Des Moines Northwestern Railway Co., and the St. Louis, Des Moines & Northern Railway Co. were both of them practically insolvent?

A. They were both insolvent at that time.

108. Q. Did you and Mr. Polk subsequently purchase the Des Moines Northwestern Railway from the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co.?

A. We did.

109. Q. Turning to the stipulation made today, I call your attention to the statement headed "New York, October 9, 1886, To the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co." and to the papers following it down to and including a receipt signed by the Central Trust Co. of New York by G. S. Munn, President, March 7, 1890, defendants' Exhibit 263 to 272 inclusive, and ask you to state whether those are the various propositions and agreements relating to the acquisition of that property by Polk & Hubbell in the first instance and finally by yourself? A. They are.

110. Q. There was first a general proposition and acceptance of it? A. Yes.

111. Q. Then on September 10th, 1887, there was another agreement, more complete and formal, for carrying out the accepted proposition? A. There was.

112. Q. Now, under that the mortgage upon the Des Moines Northwestern was foreclosed and the title acquired by Polk & Hubbell? A. Yes.

134 113. Q. And the Des Moines & Northwestern Railway Co., which was organized to take over the property, issued $450,000. of bonds secured by mortgage on the property which you had acquired from the Purchasing Committee and those bonds were turned over to the Purchasing Committee? A. Yes sir.

114. Q. After that, on or about the 1st of March, 1890, you made an agreement, defendants' Exhibit 271, under which you purchased from the Purchasing Committee those $450,000. of bonds? A. I did.

115. Q. This first proposition of October 9th, 1886, includes "A fourth interest in terminal property at Des Moines and 5027 shares of stock in D. M. N. W. Ry. Co." and this was prior to the transactions in 1887 and 1888 by which the Des Moines Union Railway Co. acquired this terminal property, was it not? A. Yes.

116. Q. The formal agreement that follows this that was made September 10, 1887, provides in its fifth paragraph as follows: "in case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of the fourth interest as above, the bonds and stock received from the terminal company in exchange for said one-fourth interest shall be transferred in lieu of the property to Messrs. Polk & Hubbell or their assigns or transferred by them to the committee to be held by the committee as a further security for the payment of the $450,000. above mentioned," Now, what in fact did the Purchasing Committee turn over to you as constituting the fourth interest in the terminal property in Des Moines referred to in this contract?

A. They turned over 112 Des Moines Union bonds and one fourth of the Des Moines Union stock.

135 117. Q. I wish you would refer to this receipt signed by Wager Swayne contained in the papers recently identified as relating to this transaction and state about when the bonds were turned over to you?

A. About May 29, 1888.

118. Q. And what is the fact as to whether this $112,000. was one-fourth of the bonds at that time?

A. It was considered a fourth.

119. Q. Now, what was done with those bonds?

A. They were deposited with Wager Swayne as collateral security to the $450,000. of bonds issued by the Des Moines & Northwestern Railway Co.

120. Q. And that receipt of Wager Swayne's that you have just referred to is his receipt for the bonds received on this deposit? A. Yes.

121. Q. Now, then when was it that the one-fourth of the stock in the Des Moines Union Railway Co. was turned over under this agreement? A. April 8, 1890.

122. Q. Now, did Polk & Hubbell or the Des Moines & Northwestern Railway Co. ever receive anything from the Purchasing Committee or anyone else representing this fourth interest in the terminal property in Des Moines purchased under the contracts referred to, aside from the stock and bonds which you have mentioned? A. We did not.

123. Q. There are a good many allegations in the bill with reference to certain amendments to the articles of incorporation of the Des Moines Union Railway Company made at a meeting of the stockholders of that company held April 8, 1890. In the first place who suggested the making of those amendments? A. A. B. Cummins.

136 124. Q. Do you remember what your attitude was in reference to the amendments when they were first suggested?

A. I don't remember particularly, except by referring to a letter written by Mr. Cummins to Gen. Dodge, he said to Gen. Dodge that I was opposed to it.

125. Q. The letter you refer to is a letter of January 27, 1890, defendants' exhibit 296 contained in the stipulation of this date, from A. B. Cummins to Gen. G. M. Dodge, which says, among other things: "And while Mr. Hubbell was at first disposed to oppose the amendments which I have prepared, after a full explanation with him I believe he will support them."

A. That is the letter I refer to.

126. Q. Now, before going further into that matter, I call your attention to a memorandum defendants' exhibit 297 immediately following that letter of Mr. Cummins, in the stipulation of this date, in the shape of a proposition from Mr. Ashley to you, to sell some stock and bonds of the Des Moines Union Railway Company, dated February 5th, 1890. Now, I wish you would state whether this memorandum of February 5, 1890, and the acceptance immediately following it, is the first agreement made by you with the Purchasing Committee with reference to the purchase by you of any of this stock and bonds?

A. It is the first agreement with reference to buying Des Moines Union stock and bonds.

127. Q. And following that in the stipulation of to-day is a paper defendants' exhibit 298 headed, "Draft of Contract of February 11, 1890, for purchase of Des Moines Union Stock and Bonds;" calling your attention to the original of that draft, in whose handwriting are the interlineations
137 which appear in the first two paragraphs of it?

A. The interlineations in the first two paragraphs are in my handwriting.

128. Q. And in whose handwriting is the third paragraph interlined by lead-pencil?

A. In the handwriting of Col. Blodgett.

129. Q. Now, calling your attention to defendants' exhibit 299 the next paper in the stipulation of to-day, providing for the sale to you of $67,000 of bonds, and one-eighth of the stock of the Des Moines Union Railway Company, dated February 11, 1890, I wish you would state whether that and a memorandum of agreement defendants' exhibit 300 between the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, and F. M. Hubbell, of the same date, are formal contracts that were made for the purchase of those bonds and one-eighth of the stock by you?

A. They are.

130. Q. Now, when you received the proposition of February 5, 1890, from Mr. Ashley, what did you do?

A. I took it down to No. 1 Broadway and showed it to Gen. Dodge.

131. Q. I notice that the contract as signed by you on the 11th of February 1890, is for only half of the stock covered by this proposition, and 67 of the 135 bonds, how did that happen?

A. Gen. Dodge wanted to participate in the purchase by taking half of the bonds and half of the stock and I consented to it.

132. Q. And then, when the formal contracts were written up, on February 11th, was a contract made with each one of you for the part he took? A. Yes sir.

133. Q. After the conversation with Gen. Dodge on the 5th of February, what did you do?

A. I went up to 195 Broadway to accept the proposition, Mr. Ashley had left the office to go home, and I went from there to the Grand Central depot, found him in the
138 depot, accepted his proposition, and paid him $10,000 on the trade.

134. Q. Is this receipt which follows your acceptance the receipt which was made, signed then by Mr. Ashley for the $10,000?

A. Yes, that was signed in the Grand Central depot.

135. Q. Now, it is charged in the bill that you fraudulently induced or obtained the approval of the Des Moines & St.

Louis Railroad Company to this transfer. This contract of February 11th, 1890, provides "Said Purchasing Committee hereby guarantees the approval by the Des Moines & St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days." Do you remember why any approval of the Des Moines & St. Louis Railroad Company of this was deemed necessary?

A. Under the contract of 1889, May 10, 1889, the Des Moines & St. Louis Railroad was to have half of the stock of that railroad, then owned by the Purchasing Committee, and Col. Blodgett and I both agreed to protect both sides, that it was proper to have the Des Moines & St. Louis' approval of the contract, and Col. Blodgett prepared the memorandum on that subject.

136. Q. By that you mean what I have just quoted from the contract of February 11, 1890? A. Yes.

137. Q. The contract of May 10, 1889, to which you referred, which is Exhibit P to the bill, also provided with reference to the stock that the certificates should express that they were not transferable without the consent in writing of all of the parties of the second part to that contract. That may have been also the reason for securing the consent of the Des Moines & St. Louis Railroad Company, might it not? A. It was.

139

At this point a recess was taken until 2 P. M., at which time the examination was proceeded with as follows:

138. Q. In the stipulation of this date, there is a paper, defendants' Exhibit 302, immediately following the letter from Gen. Dodge to yourself, Feb. 18, 1890, headed: "Draft for meeting Board of Directors, May 18, 1890." I show you the original of the draft and ask you if you can state who prepared it. A. This was prepared by Mr. Cummins.

139. Q. Now, turning to the record of the meeting of the directors of the Des Moines & St. Louis Railroad Company, held April 8, 1890, which appears in the stipulation of today as defendants' Exhibit 185, it appears that there were present at the meeting James F. How, C. M. Hays, A. B. Cummins, F. M. Hubbell, H. S. Priest and George S. Grover. How many of those people that were present at that meeting were not at that time connected in some way with the Wabash Company?

A. They were all connected with the Wabash Company excepting myself.

140. Q. What was Mr. Cummins' connection?

A. He was local attorney for the Wabash.

141. Q. And do you remember what office Mr. How held at that time? A. I think he was vice-president.

142. Q. Mr. Hays? A. He was general manager.

143. Q. Do you know who Judge Priest and Mr. Grover were? A. They were attorneys.

It is admitted by complainants that Henry S. Priest was
140 at the time mentioned general attorney for the Wabash Company, and George S. Grover was at the time mentioned assistant attorney.

144. Q. Now, you stated that when you made the purchase you conferred about it with Gen. Dodge, and that he took half of the purchase; what relation did he sustain then to the Des Moines & Northern Railway Company?

A. He was president and principal owner.

145. Q. Do you remember what relation he sustained to the Des Moines Union?

A. He was president of the Des Moines Union.

146. Q. And at this time what relation did you sustain to the Des Moines & Northwestern Railway Company?

A. I was president.

147. Q. And what was your interest in the company?

A. I had the controlling interest in the property.

148. Q. Now, in this stipulation of this date there appears a letter from Gen. Dodge to yourself in New York, dated February 18, 1890, defendants' Exhibit 301, in which he refers to some bonds and one-eighth of the stock. What bonds and stock are referred to in that letter?

A. The bonds and stock of the Des Moines Union Railway Company.

149. Q. You have stated that Gen. Dodge was the principal owner of the Des Moines & Northern Railway Company, and you were the principal owner of the Des Moines & Northwestern Railway Company, and that the other people interested in that sale of stock and bonds were connected with the Wabash Railway Company; was there anybody else at that time interested in the Des Moines Union Railway Company, aside from the people you have mentioned?

A. There was not.

150. Q. Did you later purchase some additional stock in the Des Moines Union Railway Company?

A. Yes, I purchased $50,000 of stock, and purchased
141 fifty bonds from the Purchasing Committee June 5, 1890.

151. Q. I call your attention to a paper in the stipulation of this date, defendants' Exhibit 303, headed, "Agreement between F. M. Hubbell and Purchasing Committee for sale to Mr. Hubbell of 50 bonds Des Moines Union Ry. Co. and 500 shares of its stock," dated June 5, 1890, and ask you to state whether that is the contract under which this additional purchase of stock and bonds was made. A. It is.

152. Q. It is alleged in the bill that you acquired the stock from the Purchasing Committee, and that thereafter you amended the articles of incorporation of the Des Moines Union Railway Company in order to give the stock value. In the first place, you have already stated, I believe, that Mr. Cummins first suggested those amendments? A. Yes.

153. Q. Was this suggestion made before or after you had acquired the first 500 shares of the stock of the Des Moines Union Railway Company which you bought from the Purchasing Committee.

A. I think the question of amending the articles had been in Mr. Cummins' mind before I bought the first stock, but I am not certain about it.

154. Q. To refresh your recollection on that, I call your attention to the date of the letter of Mr. Cummins to Gen. Dodge, which appears in the stipulation of this date, defendants' Exhibit 296, the letter being dated January 27, 1890, and to the date of the proposition and acceptance of the first purchase of stock.

A. Mr. Cummins was writing to Gen. Dodge advocating that the articles should be amended as early as January 27, 1890. I was in New York February 5, 1890, and pur-
142 chased for Gen. Dodge and myself $135,000 of bonds, and $100,000 of stock, in the Des Moines Union.

155. Q. At the time these amendments were adopted, April 8, 1890, how much of this Des Moines Union stock had you purchased or agreed to purchase from the Purchasing Committee? A. $50,000.

156. Q. It is charged in the bill that your plan was to so formulate the proceedings of the Des Moines Union Railway Company as to enhance the value of this stock. Now, who was it, in fact, who formulated the amendments to the articles of incorporation of the Des Moines Union Railway Company?

A. A. B. Cummins and W. H. Blodgett.

157. Q. What did you have to do with formulating the amendments? A. Nothing whatever.

158. Q. The bill alleges that you created such relations between yourself and the Purchasing Committee and the Des Moines & Northwestern Railway Company as would, as you believed, enable you to procure the transfer of five-eighths of the capital stock of the Des Moines Union Railway Company to yourself as soon as and when the same should be issued. Now, going back a little here, when you made your contract to buy the Des Moines & Northwestern Railway in 1886, did you know whether there was ever going to be any Des Moines Union Railway Company stock? A. I did not.

159. Q. April 8, 1890, you have said was the date when the stock was issued? A. Yes sir.

160. Q. And when it came to the issuance of the stock of the Des Moines Union Railway Company on that day, to whom was the stock in that company which was acquired in
143 connection with the purchase of the Des Moines & Northwestern Railway Company issued?

A. It was issued to the Des Moines & Northwestern Railway, as I recollect it.

161. Q. And that was what proportion of the stock of the Des Moines Union Railway Company?

A. That was one-fourth.

162. Q. And what is the fact as to whether, ever since that time, that company and its successors, including the Chicago, Milwaukee & St. Paul Railway Company, have owned at least one-fourth of the stock of the Des Moines Union Railway Company?

A. That is true, that one-fourth of the stock of the Des Moines Union has been held by the Des Moines & Northwestern or its successors from that time to this.

163. Q. It is alleged in the bill that you caused to be written into the record-book of the Des Moines Union Railway Company an untrue statement of what transpired at the meeting of April 8, 1890; I wish you would state who prepared the draft of the record of that meeting which was transcribed into the record book of the company?

A. It was prepared by A. B. Cummins.

164. Q. What is the fact as to whether this record truly states what transpired at the meeting referred to?

Complainants' counsel object to the question as calling for the conclusion of the witness, not for any facts.

A. It does correctly and truly state what transpired at the meeting.

165. Q. Now, with reference to the amendments of the articles of incorporation of the Des Moines Union Railway Company, which were adopted at that meeting, what is the fact as to whether every one interested in that company was consulted with reference to those amendments prior to
144 the meeting, and knew just what it was proposed to do?

Complainants' counsel object to the question as calling for a conclusion, and state that it would be proper for the witness to state what communication he had with the parties or what knowledge he had.

A. All the parties interested in the property were present or represented, and there was a full discussion. Everybody knew about the amendments, the details, and all voted for them.

Complainants' counsel move to strike out that part of the answer which states that all the parties interested in the property were present or represented, as being a mere conclusion of the witness and not a statement of fact.

166. Q. State, so far as you know, with whom there had been conferences as to these amendments prior to the meeting of April 8, 1890.

Complainants' counsel object to the question because it is not confined to conferences between the witness and other parties, the question calling for conferences between other parties than himself.

A. The matter of the amended articles had been pending between Mr. Cummins and Mr. Blodgett for some time. They were directed to prepare articles and the result of their efforts was the articles as finally amended; the Des Moines & Northern Railway Company, the Des Moines & Northwestern Railway Company and the Des Moines & St. Louis Railroad Company were represented, together with eight other stockholders holding one share each, and all of the stock-
145 holders voted for the amended articles.

Complainants' counsel move to strike out that part of the answer where the witness says that the matter of drafting the amended articles was up before Mr. Cummins and Col. Blodgett for quite a time and they had drafted said articles, because it appears from the answer of the witness that he does not answer of his own knowledge; and also object to that part of the answer in which he says that three railroad companies were represented, because it does not state facts, and is merely stating his conclusions.

167. Q. You have said that Col. Blodgett and Mr. Cummins had been directed to prepare amendments; what, if anything, did you have in mind or refer to as such directions?

A. The directions set out in the meeting of the Des Moines Union.

168. Q. Let me call your attention to the record of the stockholders' meeting held Jan. 3, 1890, defendants' Exhibit 107, contained in the stipulation of this date. I ask you to read what you refer to, if you find it there.

A. "James F. How moved that the question of amending the articles of incorporation of this company, as well as the question concerning the issuing of stock for the purchase price of the terminal property, be referred to attorneys W. H. Blodgett and A. B. Cummins for their investigation and recommendation; the motion was seconded and carried."

169. Q. It is alleged in the bill that this was a plan of yours to render the stock of value. After the articles had

been amended at the meeting of April 8, 1890, and when the stock was issued, what portion of the stock of the Des
146 Moines Union Railway Company did you own at that time when the transaction occurred?

A. One-eighth.

170. Q. What portion of the stock did the railroad which you then controlled—the Des Moines & Northwestern—own at that time? A. One-fourth.

171. Q. And the remaining five-eighths of that stock was held by other people? A. Yes.

172. Q. So that if you were benefiting yourself and your railroad by this transaction, you were benefiting other people to a greater extent? A. That is true.

173. Q. Now then, after this transaction, how long did you continue to own the one-eighth of the stock of the Des Moines Union Railway Company which you held April 8, 1890.

A. I sold and assigned it to the Des Moines, Northern & Western Railway Company in the latter part of the year 1891.

174. Q. In the meantime, and before this one-eighth of the stock of the Des Moines Union Railway Company was sold to the Des Moines, Northern & Western Railway Company, you acquired this additional eighth of the Des Moines Union Railway stock which was purchased by you from the Purchasing Committee under the contract of June 5, 1890, did you not? A. I did.

175. Q. And what is the fact as to whether at the same time that stock in the Des Moines Union Railway Company was sold by you to the Des Moines, Northern & Western Railway Company Gen. Dodge also sold to the last named company the stock then held by him in the Des Moines Union Railway Company? A. He did.

176. Q. The record of the meeting of the stockholders of the Des Moines, Northern & Western Railway Company held Dec. 14, 1891, defendants' exhibit 208 contained in the stipulation of this date, shows that for that stock there was
147 to be delivered to you $60,000 of the bonds of the Des Moines Northern & Western Railway Company. What were those bonds worth at the time?

A. About 45 or 50 cents on the dollar.

177. Q. Was there any market for them?

A. No market at all.

178. Q. In a letter shown in the stipulation of this date, defendants' exhibit 399 written by Mr. Otteson, secretary of the Wabash Railroad Company, to yourself, of date Oct. 19, 1897, there is this postscript: "Mr. Ashley desires me to say that there has been a small lot of bonds of the Des Moines, Northern & Western offered here as low as 45; he thought

you would like to know this." I wish you would state whether the bonds referred to there were bonds of the same issue as those you received for your Des Moines Union stock?

A. On the same railroad.

179. Q. Was it the same issue of bonds—there might have been a dozen trust deeds on the railroad—were they secured by the same trust deed?

A. It was a mortgage upon the same property, but the bonds were issued in 1895.

180. Q. State whether or not this new issue of bonds was issued to take up the old issue, and was substantially the same amount?

A. Issued to take up a previous issue, and for substantially the same amount.

181. Q. It appears from the records of the Purchasing Committee contained in the stipulation of this date, defendants' exhibit 297 that in 1897 Mr. Ashley reported at a meeting of the committee held Oct. 29th that they had sold $75,000 of the Des Moines Union terminal bonds at 90½ cents and accrued interest. Do you know of any sales of the Des Moines Union bonds earlier than that date, except what were sold to yourself and Gen. Dodge?

148 A. I do not remember of any.

182. Q. What were those bonds worth in 1890 in February and June, when you and Gen. Dodge purchased them in connection with the purchases of stock?

A. Not to exceed 85 cents; I don't believe they could have been sold for that price.

183. Q. I call your attention to the record of a meeting of the directors of the Des Moines, Northern & Western Railroad Company, held Oct. 4, 1893, defendants' exhibit 209 shown in the stipulation of this date, and also to a record of a meeting of the directors of that company held Jan. 29, 1894, defendants' exhibit 211 also contained in the stipulation of this date, and will ask you to state whether those records show the real transactions by which F. M. Hubbell & Son acquired five-eighths of the stock of the Des Moines Union Railway Company, now owned by them? A. They do.

184. Q. After this meeting of Jan. 29, 1894, that has just been referred to, did F. M. Hubbell & Son pay the obligations that are referred to in the record of this meeting, which were to be paid by them under the resolutions there set out, as the consideration for this stock?

A. Yes, F. M. Hubbell & Son paid all the obligations set out in those resolutions.

185. Q. And what is the fact as to whether F. M. Hubbell & Son have held the stock referred to since the date of that transaction? A. They have.

186. Q. Do you remember, or can you tell, when after this meeting of Jan. 29, 1894, you saw Gen. Dodge?

A. About Feb. 1, 1894.

187. Q. And where? A. In Chicago.

188. Q. What, if anything, did you do in the way of advising him as to the transaction between F. M. Hubbell & Son and the Des Moines, Northern & Western Railway Company, as to this stock?

149 A. I showed him a copy of the records of the meeting, and told him that Hubbell & Son had bought this stock of the company, and he expressed himself as satisfied.

189. Q. What, if anything, was said by you or by him at this time with reference to his taking a part of this stock?

A. I offered to let him have an interest in the stock with me, and he said he did not want it.

190. Q. What, if anything, did he say as to his judgment as to whether it would be valuable at some time?

A. He said he thought it would be valuable at some time, but he did not want to invest in it.

191. Q. What means have you of refreshing your recollection as to this conversation with Gen. Dodge?

A. I have a diary of 1894.

192. Q. At and prior to the time that F. M. Hubbell & Son, in January, 1894, acquired this stock in the Des Moines Union Railway Company, what interest had the Chicago, Milwaukee & St. Paul Railway Company in the Des Moines, Northern & Western Railway Company?

A. Not any interest at all.

193. Q. Had it ever, up to a time after this transaction had any interest whatever in the Des Moines, Northern & Western Railway Company?

A. It had no interest in the Des Moines, Northern & Western Railway Company until several months after the transfer of the 2500 shares of stock.

194. Q. There is set out as Exhibit Q to the bill a contract between Frederick M. Hubbell and others and the Chicago, Milwaukee & St. Paul Railway Company, bearing date March 15, 1894. In the first place, can you tell us when this contract was actually signed and delivered?

A. It was signed on the 17th day of July, 1894.

150 195. Q. Have you any means of refreshing your recollections as to this? A. Yes.

196. Q. What? A. A diary.

197. Q. And prior to the making of this contract, had the Chicago, Milwaukee & St. Paul Railway Company any in-

terest whatever in the Des Moines, Northern & Western Railway Company? A. None whatever.

198. Q. In the stipulation of this date there is a copy of a letter from yourself to Roswell Miller, President of the Milwaukee Co., dated Feb. 22, 1894, defendants' exhibit 308; with whom, representing the St. Paul company, did you have the negotiations which led up to the making of the contract, Exhibit Q to the bill? A. Roswell Miller personally.

199. Q. The letter was written to him prior to the making of the contract? A. Yes.

200. Q. This Exhibit Q to the bill recites that it is executed in consideration of a traffic agreement, and that in consideration of this traffic agreement you and your associates sold and assigned to the Chicago, Milwaukee & St. Paul Railway Company 16,800 shares of the capital stock of the Des Moines, Northern & Western Railway Company, and agreed to sell to the Chicago, Milwaukee & St. Paul Railway Company an additional 6,468 shares of the capital stock of that company, the consideration for the purchase of said 6,468 shares, if the Milwaukee company elected to purchase, to be $46,200. Now, where did the 16,800 shares of the capital stock of the Des Moines, Northern & Western Railway Company that was transferred and assigned to the Milwaukee Company under this contract come from?

151 A. It was contributed by F. M. Hubbell & Son and Gen. Dodge, who owned nearly all of the stock, and possibly some other stockholders having a small interest.

201. Q. And what, if anything, did F. M. Hubbell & Son receive from the Des Moines, Northern & Western Railway Company for that stock which was turned over under this contract, Exhibit Q, in order to induce the making of the traffic arrangements?

A. Neither F. M. Hubbell & Son, nor Gen. Dodge, nor any other stockholder, got anything at all for it.

202. Q. I wish you would state whether the contract which I now show you contained in the stipulation of this date, defendants' Exhibit 309, and commencing, "This indenture, made this 15th day of March, A. D. 1894, by and between the Des Moines, Northern & Western Railway Company, hereinafter called 'Des Moines Company,' a corporation of the State of Iowa, and the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the 'St. Paul Company,' a corporation of the state of Wisconsin," etc., is a copy of this traffic agreement that we have been referring to? A. It is.

203. Q. What was it that induced you to make this arrangement with the St. Paul Company which involved the surrender to it of forty per cent. of the stock of the Des Moines,

Northern & Weste.n Railway Company, and an agreement to sell to it 6,468 additional shares for $46,200?

A. Some time during the summer of 1893, the Milwaukee Company notified the Des Moines, Northern & Western Railway Company that the divisions in freight interchanged between the two companies would be reduced from fifty per cent. to twenty-five pe cent. This great reduction in the division would prevent the Des Moines, Northern & Western

152 Railway Company from earning its interest and operating expenses; and rather than submit to bankruptcy and a foreclosure, we made this arrangement in order to obtain an increase in the division in favor of our company to forty per cent hoping therel · that we could earn sufficient revenue to pay operating expenses and interest on the bonds.

204. Q. Was this contract, Exhibit Q, finally carried out?

A. It was not..

205. Q. The railroad was acquired by the Milwaukee under some other arrangement?

A. Yes, the Milwaukee company acquired a controlling interest in the stock by purchasing Gen. Dodge's stock and stock standing in the name of L. M. Martin. They also purchased Gen. Dodge's bonds, and I think some other small lots; but they had a controlling interest in the stock of the road along about the 8th of December, 1898.

206. Q. Before we take up that matter, this contract, Exhibit Q to the bill, provided for a reduction in the interest rate from five per cent to four per cent—I mean the interest rate of the bonds of the Des Moines, Northern & Western Railway Company—and provided for the foreclosure if this was necessary to accomplish this purpose. What is the fact as to whether all the bondholders were willing to consent to the reduction?

A. We could not obtain the consent of all of the bondholders to the reduction of the rate of interest from five per cent to four per cent.

207. Q. And the foreclosure was had as the record shows here, I suppose?

A. Yes, the foreclosure was had, and the road reorganized under the name of the Des Moines, Northern & Western Railroad Company on or about March 1, 1895, I think.

153 208. Q. I wish you would state whether the following letters shown in the stipulation of this date were letters written by you to Roswell Miller, or by Mr. Miller to yourself, in connection with this foreclosure proceeding and the issuance of the new bonds under it, viz: letter from yourself to Miller dated Nov. 20, 1894, letter from Miller to yourself dated Nov. 24, 1894, letter from Miller to yourself dated Nov.

26,1894, letter from Mr. Miller to yourself of Nov. 21, 1894, and enclosure, letter from yourself to Mr. Miller dated Nov. 22, 1894, letter from yourself to Mr. Miller dated March 1, 1895, letter from Mr. Miller to you dated May 14, 1895, letter from Mr. Miller to yourself dated May 16, 1895, defendants' Exhibits 317 to 325 inclusive were all letters written with reference to this transaction? A. They were.

209. Q. Do you remember whether Mr. Miller sent you some copies of the trust deed of the Chicago, Milwaukee & St. Paul Railway Company for use in preparing the trust deed of the Des Moines, Northern & Western Railroad Company?

A. He did.

210. Q. Now, in the letter to Mr. Miller of May 11, 1895, defendants' Exhibit 341, you state that you enclose a certified copy of the following documents for his files; I wish you would state whether those documents were in the shape of a printed pamphlet, and if you have a copy of that pamphlet before you now?

A. It was in the form of a printed pamphlet, and I have one of them now in my hands.

211. Q. Now, referring to this pamphlet, the first paper set out there is the decree of foreclosure which is marked "Complainants' Exhibit 66," is it not? A. Yes, it is.

212. Q. The next thing set out in that pamphlet is the report of sale, marked "Complainants' Exhibit 67," is it not?

A. Yes.

213. Q. The next thing set out in the pamphlet is the
154 decree confirming the sale, which is marked "Complainants' Exhibit 68," is it not? A. Yes.

214. Q. What is the next thing set out in that pamphlet?

A. The next thing is the deed from Geo. F. Henry, Commissioner, to the Purchasing Committee, Gen. Dodge, F. M. Hubbell and F. C. Hubbell.

215. Q. Is that deed, Plaintiffs' Exhibit 69? A.. Yes.

216. Q. The next thing?

A. Articles of incorporation of the Des Moines, Northern & Western Railroad Company.

217. Q. The same thing as Plaintiffs' Exhibit 70? A. Yes.

218. Q. What is the next thing set out there?

A. Resolution of the Board of Directors of the Des Moines, Northern & Western Railroad Company.

219. Q. Of what date, does it show?

A. I don't see that it does.

220. Q. They are resolutions for the purchase of the road from the Purchasing Committee? A. Yes.

221. Q. What follows then?

A. The deed follows the resolution.

222. Q. Is that deed the same deed as Plaintiffs' Exhibit 71? A. Yes.

223. Q. Were any steps taken in connection with the foreclosure, so far as you know, without the knowledge of Mr. Miller? A. He was consulted at every step.

224. Q. You said a while ago that the acquisition of the property by the Chicago, Milwaukee & St. Paul Railway Company was through the purchase made in 1898, I wish you would state whether the following letters, which are contained in the stipulation of this date, viz: letter from Roswell Miller to yourself of Nov. 16, 1898, defendants' exhibit 409, another letter from Roswell Miller to yourself of November 18, 1898, defendants' exhibit 410, two letters from him to yourself of Nov. 22, 1898, defendants' exhibits 411 and 412, a letter
155 from you to Roswell Miller of Nov. 22, 1898, defendants' exhibit 413, a letter from Roswell Miller to yourself of Nov. 23, 1898, defendants' exhibit 414, a letter from yourself to Roswell Miller of Nov. 26, 1898, defendants' exhibit 415, a letter from Roswell Miller to yourself of Nov. 28, 1898, defendants' exhibit 416, a letter from P. M. Myers, Secretary, to you, of Nov. 28, 1898, defendants' exhibit 417, a letter from Roswell Miller to you of Dec. 2, 1898, defendants' exhibit 418, a letter from Roswell Miller to you of Dec. 2, 1898, defendants' exhibit 419, a letter from yourself to Roswell Miller of Dec. 3, 1898, defendants' exhibit 420, were all of them letters written in connection with this transaction?

A. They were.

225. Q. This letter of Dec. 3, 1898, from yourself to Roswell Miller, has on the copy this memorandum; "Delivered a map of Des Moines Union from 12th St. to 28th, to Roswell Miller, Frank S. Bond, in New York, Dec. 8, 1898. It had the names of grantee on each tract. F. M. Hubbell." Please state who made the memorandum on the copy? A. I did.

226. Q. What is the fact as to whether you did deliver such a map? A. I did deliver such a map.

227. Q. The letter of Mr. Miller to yourself that has just been referred to, dated Dec. 2, 1898, refers to the contract between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northern Railway Company, the St. Louis, Des Moines & Northern Railway Company; and in the letter referred to from him to you, of date Dec. 2, 1898, he says: "I observe that the contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company is only for twenty years; I think it should be for fifty years. Have you any objections to extending it so long?"

What contract is referred to in those two letters?

156 A. The contract of May 10, 1889, as ratified July 31, 1897.

228. Q. Referring to the letter again of Dec. 2, 1898, was there any other contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company except the contract of July 31, 1897?

A. No, there was no other contract except the contract of July 31, 1897.

229. Q. In connection with this sale that was made to the Chicago, Milwaukee & St. Paul Railway Company, did you have a conference with Mr. Miller on the 8th of December, 1898, in New York? A. Yes.

230. Q. Have you any means of refreshing your recollection as to what took place at that time? A. Yes.

231. Q. What? A. A diary.

232. Q. Anything else?

A. I think I wrote a letter to my firm about it.

233. Q. I call your attention to a letter signed by you bearing the letterhead of five hotels including the Hotel Imperial, New York, dated December 8, 1898, addressed to "Dear Brother and Son," defendants' exhibit 421 in the stipulation of this date; I ask you if that is the letter to which you refer?

A. It is.

234. Q. From what place was the letter written?

A. The Hotel Imperial, New York.

235. Q. Now, can you state, Mr. Hubbell, whether at that time you had any discussion with Mr. Miller as to the ownership of this 5/8 of the Des Moines Union stock by F. M. Hubbell & Son? A. I had.

236. Q. It is alleged in the bill that the signing of the agreement of July 31, 1897, Exhibit R, by yourself as
157 president and Denman as secretary of the Des Moines, Northern & Western Railroad Company was a fraud on the Milwaukee Company insofar that it attempted to give the consent of the Des Moines Northern & Western Railroad Co. to the transfer of this 2500 shares of stock in the terminal company by the railroad company to the Hubbells; as a matter of fact, you have already testified, I believe, that that stock was not acquired from the Des Moines, Northern & Western Railroad Company?

A. No, it was acquired from the Des Moines, Northern & Western Railway Co.

237. Q. And it was acquired prior to the acquisition of any interest in the Des Moines, Northern & Western Railway Co. by the Milwaukee Co.? A. Yes.

238. Q. Now, I wish you would state whether after Mr. Miller had been furnished with a copy of the contract of July 31, 1897, and before he took the bonds and stock from you in 1898, and after this matter of the ownership of this stock by F. M. Hubbell & Son had been discussed with him,

he made any objection whatever to the signing of the contract by yourself and Mr. Denman? A. He did not.

239. Q. Did this negotiation on Dec. 8, 1898, in New York with Mr. Miller result in an agreement between you and him as to the sale by you and a purchase by him of the stock and bonds of the Des Moines, Northern & Western Railroad Co.?

A. He was ready to buy our bonds and stock if I would write him a letter that the Des Moines, Northern & Western Railroad Co. should give him a contract with the Des Moines Union the same as the present contract for one hundred years. He pressed me hard to sign such a letter, I refused and
158 told him that I would come back to Iowa and see if we could get him a contract extending the contract of July 31st, 1897.

240. Q. And was that the outcome of the negotiation on the 8th of December, 1898 in New York?

A. That was the outcome of it.

241. Q. Do you remember when, in fact, the Chicago, Milwaukee & St. Paul Railway Co. purchased those bonds and that stock which were owned by F. M. Hubbell & Son?

A. The purchase was made Dec. 29, 1898.

242. Q. During this interval between Dec. 8, 1898, when you left Mr. Miller in New York, and Dec. 29, 1898, when this trade was closed, what, if anything, was done towards preparing a new lease for the Chicago, Milwaukee & St. Paul Railway Co.?

A. Mr. Cummins prepared a new contract for the Chicago, Milwaukee & St. Paul Railway Co. and I submitted it to Mr. Miller in Chicago on Dec. 27, 1898.

243. Q. Now, I wish you would state whether defendants' exhibit 430, the contract headed "Terminal Contract between Des Moines Union Railway Co. and Des Moines, Northern & Western Railroad Co." beginning "This agreement made and entered into this .... day of December, 1898," and unsigned, which appears in the stipulation of this date, is the contract which you submitted to Mr. Miller as you have stated?

A. It is.

244. Q. Attached to this contract there is a memorandum signed by yourself; when was that memorandum made?

A. It was made immediately on my return from New York, as I remember.

245. Q. From which trip to New York?

A. The trip of Dec. 29th.

246. Q. By whom was this proposed contract prepared?

A. By A. B. Cummins.

247. Q. Who was present when you took it up with
159 Mr. Miller in Chicago? A. Geo. R. Peck.

248. Q. What relation did he sustain to the Chicago, Milwaukee & St. Paul Railway Co.?

A. He was one of the attorneys, he may have been the general attorney, I think he was the head of the legal department.

249. Q. Now, was this contract agreed to?

A. Mr. Miller objected to Sec. 14 and he had Mr. Peck prepare a substitute for Sec. 17.

250. Q. In this contract opposite Sec. 14 are the words "Objected to by Roswell Miller Dec. 27, 1898," in ink; in whose handwriting are they?

A. That is my handwriting.

251. Q. And there is interlined in Sec. 11 the words "Provided, however, that no settlement involving more than $500. shall be made for any claims of personal injury or death, except with the consent and approval of the said Des Moines, Northern & Western Co.;" in whose handwriting are those words which are interlined in ink in this section?

A. Roswell Miller's.

252. Q. There is opposite Sec. 17 "Mr. Geo. R. Peck prepared new Sec. 17, which is hereto attached. Mr. Miller objected to this one, F. M. Hubbell;" who wrote that?

A. I did.

253. Q. Sec. 17 following the original section of the same number has the words at the bottom of it in ink "This Section No. 17 was prepared by Geo. R. Peck as substitute for No. 17 as drawn by Mr. Cummins, Dec. 27, 1898, F. M. H.;" who prepared that? A. It was prepared by Mr. Peck.

254. Q. Did you and Mr. Miller finally reach an agreement on Dec. 27, 1898, when you had the draft of the proposed contract under consideration?

A. No, he said he would go on with the purchase of the stock and bonds and take his chances on the contract in 1918.

160 255. Q. What did you split on in the negotiation on Dec. 27, 1898? A. Sec. 14.

256. Q. Of the original contract as prepared by Mr. Cummins? A. Yes.

257. Q. Have you any means of refreshing your recollection of this transaction aside from or in addition to the memorandum which is attached to the draft of contract which you took up with Mr. Miller Dec. 27, 1898?

A. I think I have a memorandum of it in my diary and also letters I wrote to my firm.

258. Q. In connection with this meeting was there any talk about their purchasing from F. M. Hubbell & Son, or F. M. Hubbell & Son selling any stock of the Des Moines Union Railway Co., if so, what was it?

A. Mr. Miller wanted to buy our $250,000 of stock, but I refused to sell.

259. Q. It is alleged in the bill that this Des Moines Union Railway Company's stock was never intended to have any value; how did you get at the valuation of $1,149,731.09 stated in this draft of contract considered Dec. 27, 1898, as the cost of the terminal property up to that time?

A. That was the sum of the par value of the stock then issued and the bonds outstanding at that date and the floating debt.

260. Now, this draft of contract that was considered Dec. 27, 1898, by yourself and Mr. Miller provided for the payment of 5% upon this cost including capital stock at par; what is the fact as to whether upon this part of the contract you agreed with Mr. Miller?

A. Yes, I agreed with Mr. Miller on that part of the proposed contract.

Complainants' counsel object to the statement as to whether that part of the contract was acceptable to the parties that were negotiating, and also object to all testimony in
161 reference to negotiations between Hubbell and Miller in reference to this draft of contract, because the contract was never completed or executed and the negotiation failed to materialize into a contract.

Complainants' counsel now move to strike out of the testimony of the witness all that related to the negotiations between himself and Mr. Miller in reference to a new contract, or the draft of contract mentioned, because it is not claimed that said negotiation ever resulted in a contract, or that said draft of contract was ever executed, or that the negotiations are binding, because it shows a mere effort to adjust the matter which never resulted in a completed agreement.

261. Q. This sale to the Chicago, Milwaukee & St. Paul Railway Co. of the stock and bonds of F. M. Hubbell & Son, you have said, was consummated on the 29th of December, 1898, where was the sale consummated?

A. In New York City.

262. Q. Did you have any negotiations during the next year with the Chicago, Milwaukee & St. Paul Railway Co. looking to a new contract between the company or the Des Moines, Northern & Western Railroad Co. and the Des Moines Union Railway Co.? A. I did.

263. Q. I wish you would look at the memorandum defendants' exhibit 456 which is in the stipulation of this date. "This figure made by Earling Oct. 17, 1899," and state in whose handwriting that memorandum is that I have just read?

A. It is in my handwriting.

264. Q. In whose handwriting is the memorandum in ink at the bottom "Mr. Earling would not say what he wanted for

the last 25 years, but would talk it over with Myers on one of their trips". A. That is my handwriting.

162 265. Q. Where did you get the memorandum, and when?

A. I got it October 17, 1899, I think in Chicago.

266. Q. And from whom? A. Mr. Earling.

267. Q. What matters did you have up with him at that time?

A. An effort to make a new contract between the Des Moines Union and his company.

268. Q. Now, in the stipulation of this date there follows the memorandum I have just shown, a memorandum defendants' exhibit 457 headed "We presented this to Mr. Earling October 17, 1899"; in whose handwriting is that that I have just read? A. It is in my handwriting.

269. Q. And then follows the memorandum "Memoranda for new contract"? A. Yes.

270. Q. What is the fact as to whether that is a copy of the memorandum you presented Mr. Earling October 17, 1899, in connection with the discussion of the matter of a new contract between his company and the Des Moines Union Railway Co.? A. It is.

271. Q. What relation did Mr. Earling sustain to the complainant, the Chicago, Milwaukee & St. Paul Railway Co., at that time? A. He was president or vice-president.

272. Q. Now, there is also in the stipulation of this date a memorandum defendants' exhibit 458 headed "Chicago, Milwaukee St. Paul Ry. Office of Second Vice-President, Chicago, Ill. Memo by Mr. Earling October 17, 1899;" the rest of the memorandum appearing in lead pencil, who wrote the words "Memo by Earling, Oct. 17, 1899?" A. I did.

273. Q. Now, in whose handwriting is the rest of the memorandum which is in lead pencil?

A. Mr. Earling's.

163 274. Q. Where did you receive the memorandum?

A. In Chicago.

275. Q. Now, following the memorandum to which we have just referred in the stipulation of this date there appears a paper defendants' exhibit 459 headed "Memoranda offer made to Mr. Earling in Chicago October 17, 1899;" what is the fact as to whether this paper last referred to is a basis for the lease which you offered to Mr. Earling on that date in Chicago? A. It is.

Complainants' counsel move to strike out the testimony of the witness, F. M. Hubbell, in reference to the conference between himself and Mr. Earling on October 17, 1899, because the same shows merely a negotiation between himself and Mr. Earling which never resulted in an agreement or

contract, and it is not claimed that a final agreement was reached at that conference, or that the negotiations resulted in an agreement.

276. Q. In this stipulation of this date there is a memorandum defendants' exhibit 471 beginning with the words "After expiration of the present contracts" and having written at the bottom of it in ink "Handed to me by Mr. Miller January 31, 1910;" in whose handwriting are the words I have just read written in ink? A. In my handwriting.

277. Q. Where did you obtain this memorandum or from whom? A. I obtained it from Mr. Miller.

278. Q. Which Mr. Miller?

A. Roswell Miller, I do not know whether I was in Chicago or New York, I could tell by referring to my diary.

279. Q. Have you that diary here?

A. It is here in the building.

Not being able to complete the taking of these depositions on this day, I adjourned the further taking of the same
164 until 10:00 A. M. to-morrow, June 1st, 1911.

.....,
Examiner.

165 On June 1, 1911, pursuant to adjournment, as above stated, I resumed the taking of said depositions as follows:

Present Wells H. Blodgett, Esq., J. L. Minnis, Esq., and J. C. Cook, Esq., solicitors for complainants, and N. T. Guernsey, Esq., solicitor for defendants.

Frederick M. Hubbell, in continuation of his deposition commenced on yesterday, testifies as follows:

Direct Examination

Resumed by Mr. Guernsey:

280. Q. I wish you would tell us where you were on the 31st of January, 1910, and for what purpose you had gone there, look at January 30th, if the 31st does not show you? A. (Referring to diary) I went to Chicago on the night of January 30th at the request of Mr. Earling and Mr. Miller and on the 31st of January I had an interview with Mr. Earling and Mr. Miller in Chicago.

281. Q. How much of the day did you spend with them? A. I spent all day.

282. Q. What took place at that interview, state it from your recollection, using the book to refresh your recollection. A. I spent all day with Mr. Earling and Mr. Miller. They wanted to buy our stock, I asked $250,000. for it, they would

agree to nothing, they wanted the use of the terminals and let the other company pay their rent so they could get their rent for nothing.

283. Q. What stock?

A. In the Des Moines Union Railway Co.

284. Q. In all of these negotiations that you have testified to with Mr. Miller, Mr. Earling and other officials of the Chicago, Milwaukee & St. Paul Railway Co., was there any suggestion by any one that the Chicago, Milwaukee & St. Paul Railway Co. or the Des Moines, Northern & Western Railroad Co. did not need any lease, or that they had some rights under the contract of 1882?

166

Complainants' counsel move to strike out all of the testimony of the witness in reference to his interview with Mr. Miller, the one on January 13, 1900, and his interview with Mr. Miller and Mr. Earling on January 31, 1900, because it appears that there was a mere effort to negotiate an adjustment or negotiate an agreement which did not materialize or result in any agreement or contract.

Complainants' counsel also object to the last question as being immaterial and irrelevant to any issues, and as calling for a mere conclusion and opinion of the witness.

A. There was no suggestion by either Mr. Earling or Mr. Miller that either the Chicago, Milwaukee & St. Paul Railway Co. or the Des Moines, Northern & Western Railroad Co. had any rights other than what were set up in the lease of May 10, 1889, and the ratification of that lease July 31, 1897.

285. Q. Please state whether or not, during any of these conferences, the contract of January 2, 1882, was mentioned?

A. It was never mentioned in any of these conferences.

286. Q. Now, please state whether or not in any of these conferences any one stated that the stock in the Des Moines Union Railway Co. was not intended to have any value, or that it [illegible]

167

Complainants' counsel object to the question as immaterial and irrelevant.

A. No suggestion was ever made to me by Mr. Miller or Mr. Earling or anyone else that the Des Moines Union Railway Company's stock was of no value.

287. Q. Now, did you on or about the 13th of June, 1900, have any further conversation with Mr. Earling or Mr. Miller about the matter of a new lease from the Des Moines Union Railway Co. to the Chicago, Milwaukee & St. Paul Railway Co.? A. I did.

288. Q. Where did that take place? A. In Chicago.
289. Q. With whom did you have this conversation?
A. With Mr. Earling.
290. Q. What was the occasion for your visit to him?
A. He wanted me to come there and either agree upon a lease or sell our stock.
291. Q. Did you have at that time the matter of the Burlington lease under consideration?
A. We had the Burlington lease under consideration and he objected to allowing any company to have a lease for more than eighteen years.
292. Q. What reason did he give for his objection?

Complainants' counsel object to the question as immaterial.

A. One reason was that they would make no lease to other roads unless he got a long lease for his own road.
293. Q. What road was talking of making a lease to the Burlington?
A. The Des Moines Union Railway Co. was considering a lease to the C. B. & Q. road.
294. Q. Now what, if anything, was said there about
168 a proposition with reference to a new lease from the Des Moines Union to the Milwaukee?

Complainants' counsel object to the question as being immaterial and irrelevant to any issues in this case.

A. He wanted me to make a proposition, and I, in return, asked him to think it over and make us an offer.
295. Q. What, if anything, was said at that time in reference to dividends on the stock of the Des Moines Union Railway Co.?

Complainants' counsel object to the question as immaterial.

A. He was willing that his stock should be considered with par and dividends on the stock be paid.

Complainants' counsel move to strike out this answer because it shows a mere effort to settle or adjust the matter which did not result in any agreement, and also move to strike out all the testimony of the witness in reference to the conversation or conference with Mr. Earling of June 13, 1900, or thereabouts, because it appears that it was a mere effort to settle or adjust a matter and that no contract or agreement was concluded.

296. Q. Did you have any conversation on or about August 31, 1900, with anyone connected officially with the Milwaukee Road with reference to the matter, if so with whom and where?

A. I had a conversation with Roswell Miller August 31, 1900, in New York about a 50-year lease by the Des Moines Union Railway Company to the Chicago, Milwaukee & St. Paul Railway Company. He offered to call the property worth $1,200,000 and to have the rental fixed at 5% on that amount, that is, $60,000 a year, his company to pay its
169 share.

297. Q. How about the taxes, operating expenses and all such things?

A. That was all included, to pay the operating expenses, maintenance and taxes, and $60,000 per year for the use of the property valued at $1,200,000.

298. Q. As to the two last conversations you refresh your recollection by your diary? A. Yes.

Complainants' counsel move to strike out the evidence in reference to the conversation with Mr. Miller on or about August 31, 1900, because it appears there was a mere effort to compromise or adjust a matter, or an effort to make a contract for the future, and there was no contract concluded and no agreement made, and it was merely an abortive attempt to contract in reference to the matter.

299. Q. In these records covered by the stipulation of May 31, 1911, there is reference to the Heath property, the title to which was taken originally in A. B. Cummins, trustee, why was that title taken in his name as trustee instead of directly, by the Des Moines Union Railway Company?

A. Because the Des Moines Union Railway Company did not have funds with which to buy the property, and the arrangement was that Mr. Cummins would borrow upon the Heath property as much as he could, and the Des Moines Union would pledge its first mortgage bonds in an amount sufficient to secure the balance of the purchase money to Heath.

300. Q. In a paper identified by the stipulation of date May 31, 1911, there is a letter from Mr. O. D. Ashley, president of the Wabash Railroad Company to yourself, of Aug. 7, 1895 defendants' exhibit 388 which says it encloses a
170 draft of application for the listing of bonds. Is this paper which I now show you the draft of the application that was enclosed in that letter from Mr. Ashley to yourself? A. It is.

301. Q. Now, there are some things written on here with a lead-pencil, and some words crossed out. Who crossed out the typewritten words that are crossed out and made the lead pencil interlineations? A. I did.

302. Q. These lead-pencil interlineations are in your handwriting, are they? A. Yes.

303. Q. Will you please read those to the examiner and have him indicate the typewritten words that are crossed out, by placing them in capitals, and have him indicate the lead pencil interlineations made by you by underscoring the words so interlined? A. Yes, it is as follows:

"S. T. Russell, Esq., Chairman,
Stock-List Committee,
New York Stock Exchange,
New York.

Dear Sir:

The Des Moines Union Railway Co. hereby respectfully asks to have placed on the Stock List of the New York Stock Exchange 800 of its First Mortgage bonds for $1,000 each, Nos. 1/800, amounting to $800,000. The Bonds bear semi-annual coupons, payable May and November 1st at the office of the Central Trust Co. New York. The bonds are secured by a first mortgage to said Trust Co. dated November 1, 1887, maturing November 1, 1917. The principal and interest of said bonds are payable in gold coin of the present standard.

The principal may be registered at the office .....

171 The Des Moines Union Railway Co. is a corporation organized in 1884, under the laws of the State of Iowa, and AUTHORIZED the objects of the corporation

"locate, construct, own and operate a railway in, around "and about the City of Des Moines, Iowa, including the con- "struction, ownership and use of depots, freight-houses, rail- "way shops, stock yards, and whatever may be useful and con- "venient for the operation of railways in said City, and the "transfer of cars from the lines and depots of one railway "to another, and from said depots to the various manufac- "tories, warehouses, storehouses, or elevators, and from one "manufactory, warehouse, storehouse or elevator to another "as said depots, manufactories, warehouses, storehouses, and "elevators are now constructed or may be hereafter con- "structed in or around the said City of Des Moines."

The Des Moines Union Railway Co. is the absolute owner of a right of way across the original City of Des Moines from east to west a distance of 4 miles, together with ..... acres of land not laid out into lots ALL OF WHICH IS LOCATED IN THE CENTRE OF SAID City of Des Moines. The Company owns over five miles of main track and branches two miles of second main track and 7 miles of yard track and sidings. AND BRANCHES, 15 MILES OF SIDINGS, the bridge over the Des Moines River, 3 switching engines, the passenger and freight depot, round houses and other build-

ings appurtenant to the conduct of the business of the Company as now carried on.

The terminal facilities offered by this Company are at present shared by the Des Moines & St. Louis R. R. (owned by the Wabash R. R. Co.) the Chicago & Great Western Ry. and the Des Moines Northern & Western RY. Railroad. These Companies; by agreement, pay monthly, as rental for the facilities used a sum equal to one month's interest on the bonds, besides they pay for their proportion of the expense
172 of operation. In addition the Company derives considerable revenue for switching cars for other railroads (not tenants) and in rents for the use of various portions of the property.

Herewith find specimen of bond, also copy of the recorded mortgage certified by the Trustee with the latter's certificate of its acceptance of the trust.

The Directors of the Company are

CHARLES M. HAYS, J. Ransey, Jr. Vice-Prest. Genl. Manager
Wabash RR. Co. St. Louis, Mo.

(Address and position)

H. L. Magee			
F. C. Hubbell	Prest	do	D. M. U.
A. B. Cummins		do	
H. D. Thompson	Treasurer	do	
L. M. MARTIN		do	
A. N. Denman		do	
F. M. Hubbell	Prest D. M. Nor	do	& W.
C. Huttenlocher			

The officers of the Company are

F. C. Hubbell, President;
A. C. Cummins, Vice-President;
F. M. Hubbell, Secretary;
H. D. Thompson, Treasurer.

I enclose check to your order for $100. in payment of this application.

Respectfully yours

President.

304. Q. In this same stipulation of May 31, 1911, and following the letter of August 2nd, 1895, there is a paper defendants' exhibit 389 headed "Committee on Stock List, New York Stock Exchange, March 1, 1895." State whether that

is the copy of the printed form which was furnished you
173 by Mr. Ashley in connection with the listing of those bonds? A. It is.

305. Q. I call your attention also to a letter in the same stipulation of May 31, 1911, dated September 28, 1897, from yourself to Mr. Ashley, defendants' exhibit 392, in which you state you enclose a request made by the Des Moines Union Co. to the committee of the Stock Exchange, to have 800 Des Moines Union Railway bonds listed, and also to a request dated September 28, 1897, defendants' exhibit 393, headed, "Committee on Stock List, New York Stock Exchange, Des Moines Union Railway Company," which follows the letter last referred to, and also to a letter from Mr. Otteson to yourself dated October 19, 1897, defendants' exhibit 399, which is in this same stipulation of May 31, 1911, in which Mr. Otteson says: "Enclosed herewith new balance sheet and new statement of receipts and expenditures," stating why he had made the changes; and I wish you would state whether this application to the Stock Exchange dated September 28, 1897, to which I have referred, and of which I now show you the printed copy, is the application amended and finally made by the Des Moines Union Railway Company, as stated in Mr. Otteson's letter to which I have referred.

A. It is a copy of the same application.

306. Q. And this copy contains the recommendation of the committee as to the listing of the bonds, the action of the committee? A. Yes.

307. Q. Is this application dated September 28, 1897, the only application made by the Des Moines Union Railway Company for the listing of its bonds under which they are listed and sold on the New York Exchange? A. It is.

308. Q. I call your attention to two pieces of paper
174 which I now hand you, and ask you whether those are the figures of the revised balance-sheet sent to you by Mr. Otteson, secretary of the Wabash Railroad Company, in his letter that I have referred to of October 19, 1897.

A. They are.

309. Q. Will you please read into the record the statement of receipts and expenditures, and the general balance-sheet that was enclosed in the letter of October 19, 1897, from Mr. Otteson to yourself, to which I last referred?

A. I will. They are as follows:

Receipts and Expeditures.

Receipts

Amounts recd. from the Wabash R. R. Co ..... on wheelage basis	$31,251.14
" " " Des Moines & N. W. Ry. Co. " " "	58,447.66
" " " Chicago Grt. Western Ry. Co. " " "	47,190.71
" " for outside switching & rent of real estate	10,282.49
	$147,172.

EXPENDITURES

Interest paid on First Mtge Bonds	$28,450
Taxes for year ending June 30, 1897	6,260.25
Conducting transportation	66,174.27
Maintenance of way and structures	15,935.55
" " equipment	13,679.33
General expense	6,390.11
	$136,889.51
SURPLUS	$10,282.49

GENERAL BALANCE SHEET

Assets

Cost of road and equipment	$1,053,000.
Material and supplies on hand	5,279.24
Accounts receivable	29,939.26
Cash in hands of treasurer	16.61
	$1,088,235.11

Liabilities

Capital stock	$400,000.
First Mortgage Bonds	628,000.
Bills Payable	46,242.99
Pay Rolls June 1897	7,739.17
Balance to credit Profit & Loss Acct.	6,070.95
	$1,088,235.11

175 310. Q. Taking up another matter, is this letter of Dec. 31, 1896, from yourself to Mr. O. D. Ashley a letter you wrote at the beginning of the negotiation leading to the ratification contract of July 31, 1897? A. It is.

311. Q. The letter of Dec. 31, 1896, is defendants' Exhibit 364 in the stipulation of May 31, 1911? A. Yes.

312. Q. In the same stipulation, is the letter of Dec. 31, 1896, from yourself to A. B. Cummins, defendants' Exhibit 363, a letter which you wrote to Mr. Cummins at the same time, with reference to the preparation of a new contract? A. It is.

313. Q. In the same stipulation I call your attention to a letter of Feb. 31, 1897, from yourself to Col. Blodgett, de-

fendants' Exhibit 367, stating that you enclose a contract prepared by Mr. Cummins, to be entered into between the Des Moines Union, the Des Moines & St. Louis, the Wabash, and the Des Moines, Northern & Western Railroad Company. That was in connection with this negotiation in 1897 which culminated in the contract of July 31st, 1897? A. It was.

314. Q. And in that same stipulation of May 31, 1911, is a letter of March 26, 1897, from Col. Blodgett to yourself, defendants' Exhibit 377, which relates to this same matter, does it not? A. It does.

315. Q. Now, are these two papers in that stipulation of May 31, 1911, No. 1 marked Exhibit F to deposition of Albert B. Cummins, defendants' Exhibit 378 and No. 2 Exhibit G to deposition of Albert B. Cummins, defendants' Exhibit 379 two forms of Section 3 that were enclosed in the letter of Col. Blodgett of March 26, 1897? A. They are.

316. Q. There follow here in this stipulation of May 31, 1911, after some correspondence, various drafts of proposed new contracts, defendants' Exhibits 382, 383, 384 and 385. What is the fact as to whether or not these were pre-

176 pared and considered in connection with the negotiations that led up to the contract of July 31, 1897?

A. They were prepared and considered prior to the ratification contract of July 31, 1897.

317. Q. As a matter of fact, the ratification contract was made and no new contract was entered into aside from that? A. That is a fact; no new contract could be agreed upon.

318. Q. Do you remember what it was, or upon what points you failed to agree with the Wabash people?

A. As I remember it, the Wabash people wanted to have the expenses of the freight house borne on a tonnage basis, and we on our part wanted them borne on a wheelage basis, and there we disagreed, so the contract of May 10, 1889, was ratified by the contracting parties.

319. Q. By the contract of July 31st?

A. By the contract of July 31, 1897.

320. Q. Which is Exhibit R to the bill of complaint?

A. Yes.

By Mr. Blodgett:

321. Q. That is the contract generally referred to as the ratification contract? A. Yes.

By Mr. Guernsey:

322. Q. During the period since the Des Moines Union Railway Company acquired this property in 1888, what services have you performed for that company?

A. I have been the secretary and a director, have bought all the additional real estate acquired since March 31, 1888, have negotiated for industries to be located on the tracks of the Des Moines Union, have furnished money to build structures on the Des Moines Union, and received my pay out of rents, and when the rents have reimbursed me for the cost of the structures, the rents from that time on have been turned
177 into the treasury of the Des Moines Union Railway Company. I have done a great deal more that I cannot now remember of.

323. Q. What, if anything, have you done in the way of acquiring property in anticipation of the company's needing it later?

A. Yes, I have acquired property, anticipating that the Des Moines Union would require it later; and when the time came that the company wanted it have sold it to the company at the price of cost and carriage.

324. Q. By that you mean the cost of the property plus interest and taxes?

A. Cost of the property plus interest and taxes.

325. Q. And has this happened only once, or has it happened frequently? A. It has happened a great many times.

326. Q. Where you have owned property abutting on the tracks of the Des Moines Union Railway Company, what concession have you made in the way of abutting damages—anything like that?

A. I waived abutting damages on property on the west side of the Des Moines River up to Fourteenth Street without any compensation.

327. Q. Is that an insignificant matter or a matter of some consequence?

A. It is a matter of very great consequence, because where the abutting property owners would not waive damages, we have in one instance had to pay about $6,000 for damages to a lot 132 feet long.

328. Q. Where was that with reference to the property of yours that you have referred to? A. About three blocks west.

329. Q. What, if anything, have you had to do with negotiation of leases which the Des Moines Union Railway Company has made with other railway companies aside from the complainants?

A. I have negotiated leases with the Chicago Great
178 Western Company, the C., B. & Q. Company, the Keokuk & Western, the Des Moines & Fort Dodge Railroad, the Des Moines, Iowa Falls & Northern Railway Company.

330. Q. Those are all outstanding leases, are they not?

A. Yes.

331. Q. Now, a lease was negotiated with the Iowa Central at one time quite a number of years ago; did you have anything to do with it?

A. Yes, I gave that attention.

By Mr. Cook:

332. Q. The Iowa Central never came in under that lease, as you understand?

A. No, they abandoned their intention of extending their road to Des Moines, and so never entered into possession under the lease.

By Mr. Guernsey:

333. Q. What had you to do, if anything, in connection with the location of industries on the tracks of the Des Moines Union Railway Company?

A. I have been very diligent in locating industries on the tracks of the Des Moines Union Railway Company.

334. Q. How would that affect the business of the company and of the tenants?

A. It would have a beneficial effect on the business of the Des Moines Union Railway Company, and also upon the revenues of the Wabash and of the Des Moines, Northern & Western Railroad Company and its successor, the Chicago, Milwaukee & St. Paul Company.

335. Q. You were going to look up the relative amount of trackage now, as compared with March 1, 1888; was that done or not, and also the relative amount of business now as compared with 1888. That has not been looked up, either?

A. No.

179 336. Q. What is the fact as to whether there has been a very great increase, both in facilities and in business?

A. A very great increase.

337. Q. What has been done by the company in the way of providing additional passenger facilities?

A. We have built two passenger depots, one on the west side of the river and one in East Des Moines.

338. Q. Are there any of these matters in connection with the development of the property of the Des Moines Union Railway Company,—including the acquisition of additional real estate, the building of additional tracks, the provision for additional passenger facilities, the additional equipment, locating industries on the tracks so as to increase its business and the business of its tenants, or its financial matters, since March 31, 1888, that have not received more or less of your attention?

A. They have all been matters receiving attention from me in every instance.

339. Q. What compensation have you received from the Des Moines Union Railway Company during this period?

A. Not a cent.

340. Q. And what inducements have you had for the performance of these services aside from the increase in value of your stock in the company?

A. None that I can think of.

341. Q. During the period from 1888 covered by this lease of May 10, 1889, has either of the complainants or their predecessors paid to the Des Moines Union Railway Company any money except the amounts due from them under this contract of May 10, 1889, as ratified, except the payment of coal, material or repairs, or other service rendered to them by the Des Moines Union Railway Company?

A. They have not.

180 342. Q. Now, during the earlier period of the Des Moines Union Railway Company, where funds were necessary to buy additional property and to make additions and extensions to the company's plant, how was the money customarily obtained?

A. The Des Moines & Northwestern and its successor, the Des Moines, Northern & Western, and the Wabash road, furnished money on a wheelage basis and received reimbursement by the Des Moines Union Railway Company bonds.

343. Q. And those matters were adjusted how often?

A. Usually every six months or a year, whenever it was most convenient.

344. Q. Has either of those companies made any advancement of money to the Des Moines Union Railway Company for which it has not been reimbursed as you have stated?

A. They have not.

345. Q. Col. Blodgett testified that the Wabash Company placed great reliance on your judgment as to matters in relation to the Des Moines Union; your recommendations as to the acquisition of property in Des Moines and the prices to be paid for it have usually been adopted, have they not?

A. Yes.

346. Q. What has been the situation where there was any diversity of interest between you and the Wabash, have you in mind any instances of that character where the Wabash has either asked for or adopted your suggestions?

A. The Wabash has always examined the various trades, and, as far as I remember, has adopted my recommendations.

347. Q. I do not think you understood my question. I asked you about the cases where your interests and the Wabash were adverse. For instance, take the negotiation in 1897, did the Wabash adopt your suggestions?

A. No, they did not.

348. Q. What I want to get at is what the Wabash did in cases where your interests and the Wabash interests
181 were adverse, so far as asking for or adopting your suggestions?

A. They did not adopt my suggestions where our views were adverse, our interests adverse.

349. Q. Did they ask you to advise them where your interests were adverse?

A. I don't remember that they did.

350. Q. You have already referred to the negotiation in 1897 where you disagreed; do you remember some long-winded negotiation with reference to building a track to Carlondale, or acquiring part of their track to go to Carlondale, where they thought it might not be for their interest to do it, but it might be for the interest of the Des Moines Union or Milwaukee?

A. I remember that controversy and circumstance.

351. Q. Don't you remember that the Des Moines people suggested a good many times it would be a wise thing, and the Wabash did not do it and would not do it?

A. Yes, I remember that.

352. Q. Do you remember an effort to induce the Wabash to consent to the lease to the Burlington or the Keokuk & Western, and whether you could induce it to, until after the Milwaukee had withdrawn its objection?

A. Yes; the Wabash would not consent to the lease until the Milwaukee had withdrawn its objections.

353. Q. Do you remember an effort to induce them to consent to the use of freight facilities for the Des Moines, Iowa Falls & Northern, and whether you could induce them to do this over the objection of the Milwaukee?

A. No, we could not.

354. Q. Has there been any time from the inception of the Des Moines Union down to the present time that the present Wabash Company and its predecessors have not known just exactly what your interests in the property were?

182 A. There has never been a time since the inception of the Des Moines Union that the Wabash people have not known just what our interests were.

355. Q. Has there ever been a time from the inception of the Des Moines Union down to the present time when the Milwaukee Company or its predecessors have not known just exactly what your interests in the Des Moines Union were?

A. The Milwaukee and its predecessors in ownership of the line which we sold them have at all times known what our interest was in the Des Moines Union Railway Company.

356. Q. I call your attention to a map entitled "Map of Des Moines Union Railway Company in Des Moines, Iowa," and wish you would state whether the property described in the deed from the Wabash Railroad Co. to the Des Moines Union Railway Co. dated March 20, 1899, and included in the stipulation of May 31, 1911, is the long irregularly shaped lot in plat marked O. P. Lot 9, N. W. Quarter 8-78-24?

A. It is.

The map referred to is marked "Map referred to in F. M. Hubbell's deposition. J. F. Allen, Examiner."

Cross-Examination

By Mr. Blodgett:

1X. Q. Are you one of the defendants in this case?

A. Yes.

2X. Q. Where did you reside in 1880 and 1881?

A. In Des Moines.

3X. Q. You are the Frederick M. Hubbell who was a party to a contract made Dec. 8, 1880, between Jefferson S. Polk, James S. Clarkson, F. M. Hubbell and J. S. Runnells, of the first part, and the Wabash, St. Louis & Pacific Railway Co., of the second part, providing for or looking to the construction of a railroad from Albia to Des Moines in the state of Iowa? A. I am.

4X. Q. Were you in December, 1880, a stockholder in the corporation known as the Narrow Gauge Railway Construction Co.?

A. I was a stockholder in the Narrow Gauge Railway Construction Co. at that time.

5X. Q. And were you president of the company?

A. Yes, I was president.

6X. Q. Do you remember a contract that was entered into on or about the 8th day of December, 1880, between the Wabash, St. Louis & Pacific Railway Co., the Des Moines Northwestern Railway Co. and the Narrow Gauge Railway Construction Co. providing for the construction of the road of the Northwestern Co. in a northwesterly direction from Panora, in Guthrie County, Iowa? A. I remember it.

7X. Q. Did you execute that contract as president of the Narrow Gauge Railway Construction Co.? A. I did.

8X. Q. Were you afterwards a director or officer of the Des Moines Northwestern Railway Co.? A. I was.

9X. Q. When did you become an officer of the Des Moines Northwestern Railway Co., and what offices did you hold in that company?

A. Director from 1881 to 1886, treasurer from 1881 to 1883, and 1885 to 1886, and assistant treasurer in 1884.

10X. Q. Was the Des Moines Northwestern Railway Co. afterwards, about the year 1889, reorganized under the name of the Des Moines & Northwestern Railway Co.? A. It was.

11X. Q. Did you become a director of the Des Moines & Northwestern Railway Co. upon its re-organization? A. Yes.

12X. Q. What office did you hold in that company?

A. Director from 1887 to 1892 and president from 1887 to 1892.

13X. Q. What terminals in Des Moines were used by the Des Moines Northwestern Railway Co. and afterwards
184 by the Des Moines & Northwestern Railway Co. while you were connected with those companies?

A. The Des Moines Northwestern Railway Co. was leased to the Wabash, St. Louis & Pacific Railway Co. and that company used the terminals that were afterwards conveyed to the Des Moines Union Railway Co. The Des Moines & Northwestern, which was the re-organized company, used the same terminals.

14X. Q. Were you one of the incorporators of the St. Louis, Des Moines & Northern Railway Co.?

A. Yes, I was one of the incorporators.

15X. Q. Did you become an officer of that company?

A. I was treasurer from 1881 to 1883; I was director from 1881 to 1890, secretary and assistant treasurer in 1884, vice-president 1885 to 1888, assistant secretary and treasurer 1889, secretary 1890.

16X. Q. Did you ever subscribe for any stock in the St. Louis, Des Moines & Northern Railway Co.?

Defendants' counsel objects to the question as calling for a conclusion on a matter of law, what constitutes a subscription of stock, and therefore incompetent on that account.

A. I don't remember that I ever did, but I may have done so.

17X. Q. Did you pay any money into the treasury of the St. Louis, Des Moines & Northern Railway Co. on account of any stock in that company subscribed for or held by you?

A. No.

18X. Q. Who was president of the St. Louis, Des Moines & Northern Railway Co. from the time of its organization up to the year 1889?

A. Gen. Dodge was president in 1869.

19X. Q. He was president from the date of the organization, was he not?

A. No, Mr. Clarkson was president in 1881; he was
185 president in 1882; Mr. Clarkson was president in 1883.

20X. Q. Gen. Dodge was president in 1889?

A. Yes sir.

21X. Q. Was the St. Louis, Des Moines & Northern Railway Co., about the year 1889, re-organized under the name of the Des Moines & Northern Railway Co.? A. Yes.

22X. Q. Was the Des Moines & Northern Railway Co. afterwards, about the year 1891, consolidated with the Des Moines & Northwestern Railway Co. under the name of the Des Moines, Northern & Western Railway Co.? A. It was.

23X. Q. Were you an officer of the Des Moines, Northern & Western Railway Co., if so, please state what offices you held in that company?

A. I was president from 1891 to 1895 and a director for the same period.

24X. Q. What terminals in Des Moines were used by the St. Louis, Des Moines & Northern Railway Co. and afterwards by its successor, the Des Moines & Northern Railway Co.?

A. The St. Louis, Des Moines & Northern used the terminals that are now owned by the Des Moines Union Railway Company.

25X. Q. And afterwards by the Des Moines & Northern?

A. And the same terminals were used by the Des Moines & Northern.

26X. Q. What terminals in Des Moines were afterwards used by the Des Moines, Northern & Western Railway Co.?

A. It used the Des Moines Union Terminal property under the contract of May 10, 1889.

27X. Q. Were you one of the incorporators of the Des Moines & St. Louis Railroad Co.? A. Yes.

28X. Q. Did you subscribe for any stock of the Des Moines & St. Louis Railroad Co.?

Defendants' counsel makes the same objection as made before to the former question, as to a stock subscription.

A. Yes, one share.

29X. Q. Did you ever pay any money into the treasury of the Des Moines & St. Louis Railroad Co. on account of any stock subscribed for or held by you? A. No.

30X. Q. Were you a director of the Des Moines & St. Louis Railroad Co.? A. Yes.

31X. Q. And what, if any, offices in that company did you hold?

A. I was secretary in 1881; I was secretary in 1882; I was secretary in 1883 and in 1884 and in 1885; I was secretary in 1886, as near as I can get at it, and secretary in 1887, secretary in 1888, and 1889, and in 1890, and in 1891 and in 1897.

32X. Q. Were you one of the incorporators of the Des Moines Union Railway Co.? A. Yes.

33X. Q. Did you ever subscribe for any stock in the Des Moines Union Railway Co.?

Defendants' counsel make the same objection as made to the other questions as to stock subscriptions, stating that it is incompetent because calling for a conclusion as to the legal effect of what was done or not done.

A. It was understood that eight individuals should take one share each to represent the railroad companies that were going to use the property.

34X. Q. Was that all that was done with respect to stock subscriptions?

Defendants' counsel makes the same objection.

A. Those eight men met as stockholders and directed the management of the company until 1890, when the cap-
187 ital stock was issued to pay the balance due on the Des Moines Union property.

35X. Q. Did you ever pay any money or other thing of value into the treasury of the Des Moines Union Railway Co. on account of any stock at any time held by you in that company?

A. I do not remember of paying into the treasury of the Des Moines Union Railway Co. any money for stock in that company.

36X. Q. In saying money you mean to cover the whole question, you did not pay anything of value into the treasury of the Des Moines Union Railway Co.?

A. Nothing, only twenty-five years of work.

37X. Q. Did you pay for stock in labor?

A. The arrangement was this, there were to be eight directors.—

By Mr. Guernsey:

38X. Q. The question is, whether you paid for stock issued to you in labor?

A. I don't know that I did.

By Mr. Blodgett:

39X. Q. Were you made a director of the Des Moines Union Railway Co. upon its organization? A. Yes.

40X. Q. Were you also made secretary of that company at the time of its organization? A. Yes.

41X. Q. Have you been a director of that company and its secretary ever since the date of its organization?

A. I have.

42X. Q. Do you remember a contract entered into on or about May 10, 1889, between the Des Moines Union Railway Co., the Des Moines & St. Louis Railway Co., the St. Louis, Des Moines & Northern Railway Co., and the Des Moines & Northwestern Railway Co., commonly known as the operating contract?

188 Defendants' counsel objects to that part of the question which states "commonly known as the operating contract."

A. Yes, I remember the lease or contract of May 10, 1889, entered into by the parties.

43X. Q. Did you execute that contract as secretary of the Des Moines Union Railway Co.? A. Yes.

44X. Q. Did you also execute that contract as secretary of the Des Moines & St. Louis Railroad Co.?

A. I will have to see the contract; (referring to paper) yes, I signed it as secretary.

45X. Q. And did you also execute that contract as president of the Des Moines & Northwestern Railway Co.?

A. Yes.

46X. Q. Did you purchase or negotiate for the purchase of any terminal property in the city of Des Moines that was conveyed to James F. How? A. Yes.

47X. Q. Did you purchase or negotiate for the purchase of any terminal property in the city of Des Moines that was conveyed to G. M. Dodge? A. Yes.

48X. Q. Did you purchase or negotiate for the purchase of any property in the city of Des Moines that was conveyed to the Des Moines & St. Louis Railroad Co.? A. Yes.

49X. Q. Whom did you represent in negotiating for the property in Des Moines that was conveyed to How and who provided the funds to pay for said property?

A. The Wabash, St. Louis & Pacific Railway Co. furnished the funds and I represented the Wabash, St. Louis & Pacific Railway Co.

50X. Q. Whom did you represent in negotiation for the property that was conveyed to G. M. Dodge and who
189 provided the funds with which to pay for that property?

A. I represented G. M. Dodge, and he furnshed the money to pay for it.

51X. Q. Whom did you represent in your negotiation for the purchase of the property in the city of Des Moines that was conveyed to the Des Moines & St. Louis Railroad Co. and who provided the funds with which to pay for that property?

A. I represented the Wabash, St. Louis & Pacific Railway Co. in those purchases and that company furnished the money.

52X. Q. Was some of this terminal property in the city of Des Moines, which was negotiated for by you first conveyed to the St. Louis, Des Moines & Northern Railway Co. and afterwards conveyed by that company to the Des Moines Union Railway Co.?

A. There were some pieces of that kind.

53X. Q. Whom did you represent in purchasing this terminal property in Des Moines that was first conveyed to the St. Louis, Des Moines & Northern Railway Co. and afterwards conveyed by that Company to the Des Moines Union Railway Co.?

A. In the purchase of the property I represented Gen. Dodge; in the sale of the property I represented no one, while Gen. Dodge directed the sale I didn't have anything to do with it.

54X. He negotiated the sale of the property to the Des Moines Union?

A. Gen. Dodge caused that property standing in the name of the St. Louis, Des Moines & Northern to be conveyed to the Des Moines Union.

55X. Q. Did you have anything to do with obtaining the ordinances from the municipal authorities of the city of Des Moines granting to the Des Moines & St. Louis Rail Road Co. the right to construct and operate its tracks across
190 and along certain streets and alleys in said city?

A. I had but very little to do with that, the lawyers and Mr. Polk attended to that part of it.

56X. Q. You performed no service in that matter?

A. No.

57X. Q. The Mr. Polk of whom you speak was at that time your partner? A. Yes.

58X. Q. And he was one of the four who entered into the contract in 1880 along with you and Mr. Clarkson and Mr. Runnells? A. He was.

59X. Q. Did you have anything to do with the matter of obtaining ordinances from the municipal authorities of the city of Des Moines granting to the Des Moines Union Railway Co. the right to construct and operate its tracks across and along streets and alleys in said city?

A. Yes, I have done something in that line.

60X. Q. Whom did you represent in your negotiation with the officials of the city of Des Moines respecting the original ordinance that granted to the Des Moines Union Railway Co. the right to construct and operate its tracks across and along certain streets and alleys in said city?

A. I represented the Des Moines Union Railway Co.

61X. Q. Were the same parties or the same interests financing the construction of the Des Moines & St. Louis Railroad that were acquiring terminal properties in the city of Des Moines in the name of J. F. How?

A. The Wabash, St. Louis & Pacific acquired and paid for the property that was conveyed to James F. How.

62X. Q. And was that company also providing the funds with which to construct the Des Moines & St. Louis
191 Railroad from Albia to Des Moines?

A. As far as I know the Wabash, St. Louis & Pacific Railway Co. furnished the funds to build the Des Moines & St. Louis Railroad.

63X. Q. Did not that company agree to furnish the funds in the contract entered into between yourself, J. S. Polk, J. S. Runnells and J. S. Clarkson of Dec. 8, 1880? A. It did.

64X. Q. To what point in the city of Des Moines did the Des Moines & St. Louis Railroad Co. construct its line of railroad? A. To the East line of Sec. 2-78-24.

65X. Q. To what point in the city of Des Moines did the Des Moines & St. Louis Railroad Co. construct its line of road?

Defendants' counsel objects to the question because it assumes that the line of road which belonged to the Des Moines & St. Louis Railroad Co. was constructed inside the city of Des Moines.

66X. Q. Did the Des Moines & St. Louis Railroad Co. construct any railroad in the city of Des Moines?

A. I do not understand that they constructed any railroad; the Wabash, St. Louis & Pacific let the contract to James F. How as agent, and James F. How, as agent, built the road.

67X. Q. You say the Wabash, St. Louis & Pacific let the contract to How, it was the Des Moines & St. Louis let the contract to How, was it not?

A. Maybe it was. The Des Moines & St. Louis let a contract to James F. How as agent of the Wabash, St. Louis & Pacific, to build the Des Moines & St. Louis road. It built the road to the east city limits of Des Moines; it also constructed considerable of the road inside of the city limits that was afterwards conveyed to the Des Moines Union Railroad Co.

68X. Q. Can you state the points between which the
192 road was so constructed in the city of Des Moines?

Defendants' counsel objects to this as not cross-examination, the defendants not going into an examination of this kind.

A. James F. How, as agent, constructed the standard gauge road inside of the city limits up to the round house and to Farnham Street and beyond Farnham Street from the east city limits.

69X. Q. What is Farnham Street now called?

A. Farnham Street at that time is now called Sixteenth Street in West Des Moines. They had to construct it beyond the water works in order to switch their cars in the railroad yards adjacent to the round house.

By Mr. Minnis:

70X. Q. The question is whether the Des Moines & St. Louis Road extended to the east city limits or extended to the points you stated in the city of Des Moines?

A. The Des Moines & St. Louis, or James F. How, agent, constructed the road from Albia to the east city limits and then Mr. How, as agent for the Wabash, constructed the road from the east city limits to a point west of the water works.

By Mr. Blodgett:

71X. Q. And west of Fraham Street?

A. And west of Franham Street.

72X. Q. How far west of Fraham Street are the water-works?

A. The east line of the water works is Farnham Street.

73X. Q. Did the Des Moines & St. Louis Railroad Co., or the Wabash, St. Louis & Pacific Railway Co. as its lessee, ever at any time operate the railroad you have just mentioned in the city of Des Moines?

A. The Wabash, St. Louis & Pacific Railway Co. operated the Des Moines & St. Louis Railroad from Des Moines to Albia and under lease and used the road that was con-
193 structed from the east line of the city limits to a point beyond the water works upon the track and property charged in the books of the Wabash, St. Louis & Pacific Railway Co. as property it owned in Des Moines.

At this point a recess was taken until 2:00 P. M. at which time the examination proceeded as follows:

74X. Q. You have stated that the road from Albia to the east line of the city of Des Moines was constructed under a contract entered into between How and the Des Moines & St. Louis Railroad Co.?

A. I think there was such a contract.

75X. Q. That is correct, is it not?

A. I am unable to tell whether it was with the Des Moines & St. Louis or the Wabash .

76X. Q. You have also stated that the road from the east limits to Farnham Street and a little beyond was constructed under a similar contract?

A. I think that was constructed by the Wabash.

Defendants' counsel objects to all of this testimony with reference to the construction of the road as not cross-examination.

77X. Q. Do you understand that there were two contracts or that there was one made between How and the Des Moines & St. Louis and another one between How and the Wabash, St. Louis & Pacific Railway Co.?

A. My belief is that the contract was made between the Des Moines & St. Louis Railroad Co. and James F. How, agent of the Wabash, St. Louis & Pacific Railway Co. It is further

my belief that the Wabash, St. Louis & Pacific Railway Co. built the road from Des Moines to Albia..

78X. Q. And also the road from the east line of the
194 city to Farnham Street?

A. Yes, I believe the Wabash built it.

79X. Q. Do you know whether the road from Albia to the east limits of the city of Des Moines was built under the same contract as the road from the east limits of the city to Farnham Street?

A. The road from the east limits of the city to Farnham Street was not built under any contract so far as I know.

80X. Q. By whom was it constructed?

A. By the Wabash, St. Louis & Pacific Railway Co.

81X. Q. Is it not a fact that the Des Moines & St. Louis Railroad Co. condemned by proceedings in court a portion of the right of way on which the railroad was constructed between the east limits of the city of Des Moines and Farnham Street?

A. We used the corporate name of the Des Moines & St. Louis Railroad Co. to obtain the right of way where it could not be bought by agreement.

82X. Q. You mean used it in condemnation proceedings?

A. Used it in condemnation proceedings.

By Mr. Cook.

83X. Q. In how many instances did they use it in the city of Des Moines? A. I do not know.

By Mr. Blodgett:

84X. Q. You stated that you negotiated for the purchase of real estate in the city of Des Moines that was conveyed to the Des Moines & St. Louis Railroad; now, I will ask you whether the railroad or the portion of the railroad between the east line of the city and Farnham Street was constructed on or over that real estate which you so negotiated for?

A. The railroad was constructed upon the real estate that we acquired for that purpose.

195 85X. Q. Did not the ordinances of the city of Des Moines authorize the Des Moines & St. Louis Railroad Co. to construct the railroad from the east limits of the city to Farnham Street?

A. The franchise was granted to the Des Moines & St. Louis Railroad Co.

86X. Q. In the matter of purchasing real estate and looking after the passage of the ordinances by the city of Des Moines were you acting under the contract of December 8, 1880, between yourself, Polk, Runnells and Clarkson?

Defendants' counsel objects to the question as calling for a conclusion and is incompetent on that account.

87X. Q. Under what contract, if any, were you acting, in the matter of purchasing real estate and obtaining necessary ordinances from the city of Des Moines for the construction of this road?

Defendants' counsel objects to the question for the reasons stated above.

A. I don't think we were acting under any contract for the construction of the road inside of the city limits.

88X. Q. Who employed you to render that service?

A. We attended to the purchase of the property for the Wabash, St. Louis & Pacific Railway Co. and they furnished the money.

89X. Q. Had you together with Mr. Polk, Mr. Runnells and Mr. Clarkson entered into a contract with the Wabash, St. Louis & Pacific Railway Co. in which you had promised to perform that service?

A. I don't believe that contract so reads.

90X. Q. Was the road between the eastern limits of the city and Farnham Street constructed at the same time as the road from Albia to the eastern limits of the city.

A. No.

196 91X. Q. What compensation did you receive for your work in purchasing real estate in the city of Des Moines for the construction of its railroad?

A. I never received any compensation for purchasing property in the city of Des Moines.

92X. Q. Did you not regard your compensation for the services performed in the acquisition of property in Des Moines as covered by the contract into which you had previously entered with the Wabash, St. Louis & Pacific Railway Co.? A. I did not.

93X. Q. Did you purchase or acquire any right of way for the Wabash, St. Louis & Pacific Railway Co., outside of the City of Des Moines? A. I did not.

94X. Q. What services did you and your associates perform for the $10,000 paid you in a lump sum under the contract of December 8, I think it was 1880.

A. I have no recollection that the Wabash paid $10,000, although it may have done so. It was understood between Mr. Clarkson and Mr. Runnells and Polk & Hubbell that I was not required to spend any time in the building of the Des Moines & St. Louis Railroad.

95X. Q. And did you perform this work and render this assistance in the construction of lines and acquisition of property without any compensation?

A. What property do you mean?

96X. Q. I mean the property in the city of Des Moines, and your services as an officer and director of the Des Moines & St. Louis Railroad Co.?

A. As I said before, I have no recollection that the Des Moines & St. Louis paid $10,000 to Clarkson, Runnells, and Polk & Hubbell, although it may have done so.

197 97X. Q. At what point did the Des Moines & St. Louis Railroad connect with the road of the Des Moines Northwestern and the St. Louis, Des Moines & Northern?

A. It did not connect at all. The St. Louis, Des Moines & Northern and Des Moines Northwestern terminated at West 28th, and the Des Moines & St. Louis terminated at the east city limits.

98X. Q. And your contract did not contemplate the construction of the line from Albia to a connection with those other roads?

Defendants' counsel objects to this as not the best evidence, that the contract is the best evidence of what it contemplated.

A. The contract itself would be the best evidence, but I don't remember that the two roads were to have a common terminal, or the three roads.

99X. Q. You do not think that the contract with the Wabash, St. Louis & Pacific, dated December 8, 1880, contemplated a connection of the Des Moines & St. Louis with the other lines?

Defendants' counsel objects to this as not the best evidence, that the contract would show.

A. I do not now remember what is in that contract, but it was the understanding right at the start that the Des Moines & St. Louis should terminate at the east city limits and that the property in the city should be held in a different manner.

100X. Q. At the time this contract was made in December, 1880, Polk & Hubbell were interested in a line that extended northwesterly from Waukee, Dallas County, Iowa, were they not? A. They were.

198 101X. Q. Now, the contract reads, "The second party, Wabash, St. Louis & Pacific Railway Co., owns and controls a system of roads, one of which extends as far as Albia in the state of Iowa, and is desirous of extending said railroad to a connection at Des Moines with the railroad of the first parties above mentioned," that was the contract, was it not?

A. The contract speaks for itself.

102X. Q. If the contract does so provide, if that was the object, and that was the intention when you entered into it, would you not say you were expected to aid in the construction of the line that would connect the Des Moines & St. Louis with the other two lines mentioned, one of which you were yourself interested in?

A. No, that part of the contract was abandoned right at the start.

103X. Q. Now you say it was abandoned, was the contract ever changed?

A. The contract never was changed and it never was carried out.

104X. Q. After the making of this contract the Des Moines & St. Louis Railroad was constructed from Albia to Des Moines, was it not? A. Yes.

105X. Q. And a railroad was about the same time, or at the same time constructed from the east line of the city of Des Moines to Farnham Street? A. Yes, and beyond.

106X. Q. Now, the same parties paid for both those lines, did they not? A. No, not in the first instance.

107X. Q. If those lines were paid for by different parties and by different interests, will you state what parties and what interests they were?

A. The Wabash, St. Louis & Pacific Railway Co. and Gen. Dodge built the road from the east city limits to West
199 28th Street and afterwards an accounting was had of how much money Gen. Dodge had expended inside of the city limits, and the Wabash, St. Louis & Pacific Railway Co. refunded it to him.

108X. Q. Did the Wabash, St. Louis & Pacific Railway Co. refund the money to Gen Dodge, or was Gen. Dodge reimbursed in another way?

A. He was reimbursed by the Wabash giving him credit on their books of account.

109X. Q. Then the Wabash really paid for it all, did it?

A. Finally yes.

110X. Q. Now, was the road between the east city limits and Farnham Street under construction at the same time as the road from Albia to the eastern limits of the city?

A. The road was constructed from Albia to the east city limits first, that was the first construction.

111X. Q. When was that part of the line from Albia up to the eastern limits of the city completed?

A. I don't remember the date.

112X. Q. Could you tell about?

A. Well, I should guess it was the last part of 1882 or early in 1883.

113X. Q. Well, when was the road constructed through the city of Des Moines to a connection with the other lines that have been mentioned at Farnham Street?

A. The road clear through the city was not built until after the Des Moines River bridge was constructed. Gen. Dodge built the road in the first place from West 10th Street or 11th, through to 28th Street. I don't know who built the road from 10th Street down to the depot, but the Des Moines Northwestern ran into the depot in 1881. The St. Louis, Des Moines & Northern was the next road to come into the
200 terminals, and the Des Moines & St. Louis was finished up to the corporation line sometime, I think, in 1882, and between that time and within a few months rails were laid up to the depot and then trains could be run from Albia to the depot.

By Mr. Cook:

114X. Q. What time in 1882?

A. I don't really think that the Wabash ran into the Union Depot until 1883, but I am not sure, I have no way of telling that that I know of now.

By Mr. Blodgett:

115X. Q. Did the Wabash trains run through from Albia to Farnham Street when they began moving trains?

A. They ran through to the Union Station.

116X. Q. Was that at Farnham Street, the Union Station?

A. No, the Wabash had a lease of the Des Moines & St. Louis and when rails were laid the Wabash operated the road to the Union Station and from there on to the round house, and in switching their business they had to go a considerable distance west of Farnham Street.

117X. Q. Did they have any separate management, or separate manager for that part of the line east of the eastern limits of the city than what they had for that part of the line between Albia and Des Moines? A. No, I think not.

118X. Q. You do not think they had any separate management?

A. I think the Wabash treated this property inside of the city limits just as though it was their own and operated it and paid the bills.

119X. Q. They paid the bills, repaired the track,
201 operated it just the same as they did between Albia and the city limits?

A. I think they operated it just as though it was their own property, that is the Wabash, St. Louis & Pacific.

120X. Q. You mean from Albia clear through up to Farnham Street?

A. I think they operated it just as though it was their own.

121X. Q. At the time this road was constructed was it constructed up to the east line of the city and did it stop there, or was the line being constructed at that same time through the city to Farnham Street?

A. The Wabash did not cease the construction at the east limits of the city, but continued the construction until they laid a broad gauge road to some point west of the waterworks.

122X. Q. And it was all under one management and trains were run over it all in the same way?

A. The Wabash had a lease of the Des Moines & St. Louis and the Des Moines & Northwestern and operated both roads, using all the property inside of the city limits just as though it was their own, because they had paid for it.

Complainants' counsel move to strike out "because they had paid for it" when the books will show who paid for it, and because it is not responsive to the question.

123X. Q. On what date did the Des Moines Union Railway Co. commence supervising the operation of the terminal property in Des Moines? A. May 1, 1888.

124X. Q. And up to May 1, 1888, the Wabash, St. Louis & Pacific Railway Co., or its successors had operated the line between the east limits of the city and Farnham Street the same as it operated any other part of its property, had it not?

202 A. The Wabash, St. Louis & Pacific and its successors operated the Des Moines & Northwestern until it was sold to Polk & Hubbell and it operated the rest of the property until that was sold to some one.

125X. Question read.

A. So far as I know it operated the property until the Des Moines Union took possession?

By Mr. Cook:

126X. Q. And the Des Moines Northwestern and the St. Louis, Des Moines & Northern, or their successors, also operated their trains and cars over the property in the city of Des Moines until the Des Moines Union took charge of the property in 1888?

A. The Des Moines Northwestern was operated by the Wabash, St. Louis & Pacific Railway Co.; I don't know what arrangement the St. Louis, Des Moines & Northern had for running into the city.

127X. Q. But the St. Louis, Des Moines & Northern and its successors operated their cars and engines down to the Union Station at Fifth Street, did it not, up to the time the Des Moines Union took charge of the terminal property?

A. The St. Louis, Des Moines & Northern used the terminal property from 28th Street down to the depot under some arrangement they had with the Wabash, St. Louis & Pacific Railway Co. until the Des Moines Union purchased the property inside the city limits and took possession and operated inside the city.

By Mr. Blodgett:

128X. Q. If I understand you all these companies used this property in the city of Des Moines in reaching the Union Station the same as they used any other part of that road up to May 1, 1888, is that correct?

283 A. The Wabash, St. Louis & Pacific Railway Co. operated from the east limits of the city to a point west of the waterworks and the St. Louis, Des Moines & Northern operated from 28th Street, their terminals, down to the Union Station?

Defendants' counsel move to strike out all the testimony with reference to the building and operation of the road as not cross-examination, it being something which the defendants did not go into and make the same motion to each part of the examination.

129X. Q. Were you the treasurer of the Des Moines Union Railway Co.?

A. I don't remember that I ever was.

130X. Q. Will you turn to the record of May 3, 1889?

A. It seems that I resigned as treasurer May 3, 1889.

131X. Q. Now, I will ask you this question, to your knowledge was any cash money ever paid into the treasury of the Des Moines Union Railway Company by any person or corporation on account of any share or shares of stock of that company that were issued to any one?

A. I understand that the stock of the Des Moines Union Railway Co. was issued for the payment of the property, in payment for the property.

132X. Question repeated.

A. I think all of the stock was issued in payment of the property.

Complainants' counsel move to strike out both of the answers because they are not responsive to the questions and state that the witness, who is an exceedingly intelligent witness, insists on injecting his notions in the case instead of answering a plain question.

133X. Q. How do you intend to answer that question, that there was or was not?

A. Haven't I answered it?

284 134X. Q. You have not answered it direct, you said issued for property?

A. I don't think there was any cash paid in.

135X. Q. You know as treasurer that you never received any? A. No I didn't receive any.

136X. Q. And so far as you know nothing was ever paid in money?

A. Not for stock. I have told you several times that the stock was paid for by the purchase of the property.

Complainants' counsel move to strike out the answer as not responsive to the question, and state that whether stock was issued for the property is one of the disputed points of law in this case.

137X. Q. I hand you a statement that appears in the record of the case as Plaintiffs' Exhibit No. 79, showing all the certificates that have been issued for stock in the Des Moines Union Railway Co. and will ask you whether you prepared that statement or whether it was prepared under your direction from the original books of the Company?

A. It was prepared under my direction from the stock book of the Company.

138X. Q. I notice this statement shows a large number of certificates to have been issued to certain persons therein named for one share and I will ask you to state, if you know, why these single shares were issued to the parties named?

A. To qualify them to act as Directors.

139X. Q. Have all the parties to whom these single shares were issued been members of the Board of Directors of the Des Moines Union Railway Co.?

A. I so understand it.

140X. Q. Did you conduct the negotiation that resulted in the purchase by G. M. Dodge of the 500 shares of
205 stock in the Des Moines Union Railway Co. that this record shows were issued to him on the 8th day of April, 1890?

A. Mr. Ashley, acting for the Purchasing Committee gave me an option to buy $135,000 of bonds of the Des Moines Union Railway Co. and $100,000 of its stock, and I showed it to Gen. Dodge and he wanted to have a half interest in it and I consented that he might do so and that is the way he acquired that $60,000 of stock by paying for 68 of the bonds that were mentioned in my option.

141X. Q. You have read the answer in this case, haven't you? A. Once, I just read it once.

142X. Q. Was it verified by you? A. No.

143X. Q. If it is stated in Paragraph 14 of your answer "that this stock has been at all times bought and sold and treated by the complainants and their assignors as property of value;" I will ask you to look at that statement of shares

issued and say whether it shows one transaction affecting more than one share of stock in the Des Moines Union Railway Co. in which either the buyer or seller was not yourself, or the firm of Hubbell & Son or a corporation in which you or F. C. Hubbell, or both of you, were not at the time officers?

Defendants' counsel objects to the question as argumentative, calling for a conclusion and incompetent on that account.

A. Yes, one through Gen. Dodge.

144X. Q. Have you, or has the firm of F. M. Hubbell & Son, bought or sold any stock of the Des Moines Union Railway Co. since January 29, 1894, or in other words since the date of their purchase from the Des Moines, Northern
206 & Western Railway Co. of $\frac{5}{8}$ of its issued stock?

A. F. M. Hubbell & Son have not sold any of the $\frac{5}{8}$ of the stock. We have negotiated with the Milwaukee & St. Paul many times and Col. Blodgett has suggested once or twice that we ought to sell it to them, but we have not sold it.

145X. Q. You have neither bought nor sold any since about January 29, 1894? A. No.

Complainants' counsel move to strike out the answer to the preceding question, in so far as it refers to any effort to purchase stock or sell it because the witness was not asked the question, and it is a matter of argument that he is advancing on his own behalf.

146X. Q. It is stated in Paragraph 17 of your answer that on or about the first day of January, 1892, you sold all of the stock of the Des Moines Union Railway Co. that you had bought from the Wabash Purchasing Committee to the Des Moines, Northern & Western Railway Co.; now, I will ask you whether you or the firm of F. M. Hubbell & Son owned any stock in the Des Moines Union Railway Co. between the date of that sale in January, 1892, and the date of the purchase from the Des Moines, Northern & Western Railway Co. of the stock now held by the firm of F. M. Hubbell & Son?

A. I would refer you to Exhibit No. 79, only one share, I have had certificate No. 2 for one share ever since 1890, and have got it yet.

147X. Q. And from the time when you sold your stock to the Des Moines, Northern & Western up to the time when F. M. Hubbell & Son bought $\frac{5}{8}$ of the stock you owned only one
207 share. A. That is right.

148X. Q. It is stated in paragraph 16 of your answer in this case "that the firm of F. M. Hubbell & Son never acquired a majority of the capital stock of the Des

Moines Union Railway Co. until about the 29th day of January, 1894," and further along in the same paragraph it is stated, "that said stock was transferred to F. M. Hubbell & Son by the Des Moines Union Railway Co. on or about the 4th day of October, 1893;" now, will you please state how this stock came to be transferred to the firm of F. M. Hubbell & Son in October, 1893, when it was not acquired by them until January 1894?

A. It was transferred or pledged by the Des Moines, Northern & Western Railway Co. on the 4th day of October, 1893, as security for a debt that the Des Moines, Northern & Western Railway Co. owed to F. M. Hubbell & Son.

149X. Q. And it was transferred to you at the time it was put up as collateral?

A. Yes, put up as collateral.

150X. Q. It is stated in paragraph 17 of your answer, as follows; "That thereafter, and on or about the 5th day of February, 1890, respondent, Frederick M. Hubbell, acting on behalf of himself and Granville M. Dodge agreed to purchase from said Purchasing Committee 135 bonds of the Des Moines Union Railway Co. and one fourth of its capital stock, and that pursuant to the said agreement separate contracts were made by the said Purchasing Committee with said Hubbell and said Dodge, under which the said Purchasing Committee agreed to sell to the said Hubbell 67 of said bonds and one eighth of said stock, and to said Dodge 68 of said bonds and one eighth of said stock;" now, I will ask you to state who paid the Wabash Purchasing Committee for those 68
208 bonds and one eighth of the capital stock of the Des Moines Union Railway Co. which the answer states you purchased on February 5, 1890, from said committee for G. M. Dodge? A. Gen. Dodge.

151X. Q. It appears from the statement of transfer that the 500 shares of stock of the Des Moines Union Railway Co. that were issued to G. M. Dodge on April 8, 1890, were transferred to the Des Moines, Northern & Western Railway Co. on January 5, 1892; now, I will ask you to state, if you know what consideration the Des Moines, Northern & Western Railway Co. paid for that 500 shares of stock?

A. To Gen. Dodge?

152X. Q. Yes.

A. The Des Moines, Northern & Western Railway Co. paid G. M. Dodge $65,000. in its bonds for one eighth of the capital stock of the Des Moines Union Railway Co. and one half of the capital stock of the Midland Coal Co.

153X. Q. Had you or the firm of F. M. Hubbell & Son acquired any interest in Dodge's one eighth of the capital stock of the Des Moines Union Railway Co. that had been purchased

from the Wabash Purchasing Committee before the date of that sale to the Des Moines, Northern & Western Railway Co.?

A. Neither I nor F. M. Hubbell & Son bought any stock in the Des Moines Union Railway Co. from G. M. Dodge at any time.

154X. Q. Were you a director and president of the Des Moines, Northern & Western Railway Co. on January 15, 1892? A. I think I was president and director.

155X. Q. Was F. C. Hubbell a director and vice-president of the Des Moines, Northern & Western Railway Co. on January 15, 1892? A. I think he was.

156X. Q. Was Mr. A. B. Cummins a director of and general counsel for the Des Moines, Northern & Western Railway Co. on January 15, 1892? A. Yes.

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157X. Q. Who was your attorney and legal adviser in Des Moines in the years 1889 and 1890?

A. A. B. Cummins.

158X. Q. Was Mr. A. B. Cummins also the attorney and legal advisor of the Des Moines Union Railway Co. in those years? A. He was.

159X. Q. Was he also the attorney and legal advisor of the Wabash Railway Co. during those years at Des Moines.

A. Yes sir.

160X. Q. I hand you a letter dated June 12th, 1888, which is as follows: "O. D. Ashley, President, 195 Broadway, New York. Dear Sir: I have been asked several times whether a quarter interest in the Des Moines Union Railway stock could be bought, and, if so, at what price. I, of course, am unable to give any satisfactory answer. If you have a price at which you would be willing to part with a quarter interest in the Des Moines Union Railways Company stock and are willing that I should offer it, I would like to do so. If you do not wish me to offer it for sale, shall I refer the parties to you? Yours truly, F. M. Hubbell"; I will ask you if that is your signature and you wrote or dictated that letter?

A. I dictated the letter and the signature is mine.

161X. Q. I also hand you copy of a letter dated June 16th, 1888, which is as follows, "New York, June 16th, 1888, F. M. Hubbell, Esq., Des Moines, Iowa. Dear Sir: Yours of June 12th received. My impression is that the Purchasing Committee will be glad to sell a one quarter interest in the Des Moines Union Railway stocks if they could obtain a fair price for it, but I have always supposed that it would be necessary to confine the sale to such railway companies as would be interested in the station. It seemed to be desirable to offer the stock to the Chicago & Northwestern, if we could get that company to come into the station.

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"Was there not an understanding or agreement as to the sale of the stock when the Terminal Company was formed and

would it not be prejudicial to the interest of the whole to part with the stock to outsiders?

"I should like to hear from you on this point, after which I will bring the subject before the Purchasing Committee, as soon as possible. Yours truly, O. D. Ashley;" I will ask you whether you received and now have in your possession or under your control the original of that letter, and if so, will you please state whether this is a true copy? A. Yes.

162X. Q. I also hand you a letter dated June 18th, 1888, which is as follows, "Des Moines Iowa, June 18th, 1888, O. D. Ashley, Esq., 195 Broadway, New York. Dear Sir: Yours of June 16th at hand. I agree with you that the sale of a quarter interest in the stock of the Terminal Company should be made only to a railway company, who will join with the Wabash in making a contract with the Des Moines Union, guaranteeing the interest upon the bonds and operating expenses, etc.

"I think it would be prejudicial to sell any of this stock to outsiders, and I understand it, as you do, that the stock cannot be sold without the consent of the different railroad companies who now form the Terminal Company. In a con-
211 versation with some of the Diagonal people three or four weeks ago one of them made the remark that 'they intended to buy an interest in the Terminal property.' Some years ago, in a conversation I had with Mr. Hughitt of the Chicago & Northwestern he desired me to let him know when the property was in such shape that an interest in it could be purchased. A week ago William M. Jones, who now is in St. Paul, came into my office and made inquiries in regard to the Terminal property, and said he represented a railroad company who wanted to buy an interest in the Terminal Company but refused to disclose what railroad company it was, but in the course of the conversation mentioned the C. B. & Q. Whether he mentioned this name to conceal his real object or not, I do not know.

"I do not take any stock in Jones and do not want to have anything to do with him, but it is quite probable that he was instructed by some railroad company to ascertain at what price an interest could be purchased.

"I have given you all the facts. If I can be on any assistance to you let me know, and I will do all I can. Yours truly, F. M. Hubbell." I will ask you whether that is your signature and whether you wrote or dictated that letter?

A. That is my signature and I dictated that letter.

163X. Q. I also hand you a copy of letter dated New York, February 5th, 1890, which is as follows: "O. D. Ashley, Secre-

tary, Dear Sir: I hereby accept the proposition made by you for the Purchasing Committee to me for the sale to me of
212 $135,000. of Des Moines Union Railway Co. bonds and a ¼ interest in the capital stock of that company and hand you now $10,000 and will pay the balance as soon as you deliver the property. Yours truly, F. M. Hubbell;" I will ask you if you wrote the letter of which that is a copy, and if so, whether you now have in your possession or under your control the original or a copy of the original of that letter? A. I wrote the letter and have a copy of it.

164X. Q. Is the one I hand you a correct copy? A. Yes.

165X. Q. I also hand you a letter dated April 1st, 1890, which is as follows, "O. D. Ashley, President, New York, N. Y. Dear Sir: In our last interview at your office it was understood that you would talk with Mr. Joy and Mr. Wells, of the Purchasing Committee, and write me upon what terms you would sell a one-eighth interest in the capital stock of the Des Moines Union Railway Co. Thinking that this matter might have escaped your memory, I beg to say that I would like to hear from you in regard to it. Yours truly, F. M. Hubbell"; I will ask you to state whether that is your signature and whether you wrote or dictated that letter?

A. That is my signature and I wrote the letter.

166X. Q. I also hand you a letter dated August 19th, 1890, which reads as follows: "O. D. Ashley, President, 195 Broadway, New York. Dear Sir: I have yours of August 15th, and in reply have to say that the one-quarter interest in the stock of the Des Moines Union which was sold by the Purchasing Committee to F. M. Hubbell, together with the 135,000 of terminal bonds was settled and disposed of some time
213 ago. That you may understand this matter fully, I will give you a list of the stock which has been issued and to whom.

"The authorized capital is $2,000,000. but the amount issued is $400,000, and a one-eighth interest represents 500 shares.

"Originally your Committee were entitled to one half of the stock and when it came to be issued, the one quarter which was first sold to me, was issued in two certificates and deducted from your half of the stock, namely:

No. 12 to F. M. Hubbell..... 500 shares
No. 14 to G. M. Dodge..... 500 shares
The 400,000 of stock was issued on the 8th day of April, 1890, as follows:
No. 1 to Dodge ..... 1 share
No. 2 to Hubbell ..... 1 share
No. 6 to James F. How..... 1 share
No. 7 to C. M. Hays..... 1 share
No. 9 to the Purchasing Committee..... 996 shares

Total .....1000 shares

"This being one fourth of the entire stock and belongs to the Purchasing Committee. Certificates No. 1 and 2 have been issued erroneously, No. 1 having been assigned in blank by Dodge, No. 2 is assigned in blank by me.

No. 3 to F. C. Hubbell, for..... 1 share
No. 4 to H. D. Thompson, for..... 1 share
No. 11 to D. M. & N. W. Railway Co..... 998 shares

Total .....1000 shares

which is the one-fourth interest belonging to the Des Moines & N. W. Ry. Co.

214 No. 5 to L. M. Martin, ... 1 share
No. 8 to A. B. Cummins, ... 1 share
No. 10 to the D. M. & Northern Ry. Co., ... 998 shares

Total ..... 1000 shares.

Being one-fourth which is owned by the Des Moines & Northern Railway.

No. 12 to F. M. Hubbell, ... 500 shares
No. 14 to G. M. Dodge, ... 500 shares.

Total ..... 1000 shares.

This is the 1,000 shares of stock sold by your Committee to F. M. Hubbell, with the 135,000 of bonds.

"Certificate No. 13 has never been issued, and is cancelled in the stock book, for the reason that a mistake was made in it and it was thought better to cancel it than to change the face of the certificate. This makes 4,000 shares which is all of the capital stock of the Company.

I prefer to have all of the members of the Purchasing Committee affix their signatures to the assignment of the 498 shares to me, being a part of Certificate No. 9.

"Please let me hear from you now whether this is perfectly plain and satisfactory. Yours truly, F. M. Hubbell." now, I will ask you if you wrote it? A. Yes.

167X. Q. I also hand you a letter dated October 9th, 1896, which is as follows: "Mr. J. C. Otteson, Secretary, 195 Broadway, New York N. Y. Dear Sir: I am in receipt of yours of the 6th inst. In reply have to say that there was originally $200,000 of stock owned by the Purchasing Committee of the Wabash, St. Louis & Pacific Ry. Co. the Committee sold
215 one-half of the stock to G. M. Dodge and F. M. Hubbell, I think some time prior to April 28th, 1890. There had never been any stock certificates, or stock issued until that date. At that time there was issued $400,000 of stock, as follows:

1,000 shares to the Des Moines & Northern Ry. Co.

1,000 shares to the Des Moines & Northwestern Ry. Co.

1,000 shares to the Purchasing Committee of the Wabash St. Louis and Pacific Ry. Co.

500 shares to F. M. Hubbell, and

500 shares to G. M. Dodge.

"The stock of the Wabash Company was represented by certificate #9 for 996 shares, and 4 certificatees for one share each, were issued to qualify Directors in the Company to vote.

"Afterwards the Purchasing Committee sold 500 shares to me and the transfer was made August 22nd, 1890. There was assigned by the Purchasing Committee to me, out of Certificate #9, 498 shares and there was re-issued to the Purchasing Committee certificate #15 for 498 shares, which still stand in the name of that Committee. When this sale of 500 shares last named to F. M. Hubbell, was completed the Committee then owned the following stock.

Certificate #15 for	498 shares
Certificate #6 to Jas. F. How, for.....	1 share
Certificate #7 to Chas. M. Hays, for.....	1 share.
Total	500 shares.

"On the 1st day of February, 1895, certificate #6 was cancelled and reissued to H. L. Magee, who now holds cer-
216 tificate #27 for one share of stock. On December 9th, 1895, certificate #7 standing in the name of Chas. M. Hays was assigned to Jos. Ramsey, Jr., and reissued to the last named person on that day, by certificate #28, which now stands in the name of Jos. Ramsey, Jr.

"As I understand it, the Purchasing Committee now owns the following stock:

Certificate #15 for	498 shares
Certificate #27 for	1 share
Certificate #28 for	1 share—500 shares.

Yours truly, F. M. Hubbell, Secretary."; I will ask you if you wrote that letter and if that is your signature?

A. I wrote that letter and that is my signature.

168X. Q. At the close of Paragraph 17 of your answer in this case it is stated as follows: "These respondents further respectfully show to the court that on or about the 1st day of January, 1892, the respondent, Frederick M. Hubbell, sold the two-eighths of the stock of the Des Moines Union Railway Co. so purchased by him to the Des Moines Northern & Western Railway Co."; I will ask you to state if you remember who constituted the Board of Directors of the Des Moines Northern & Western Railway Co. at the time of that transaction?

A. F. M. Hubbell, G. M. Dodge, F. C. Hubbell, A. B. Cummins, L. M. Martin, H. D. Thompson, and A. N. Denman.

169X. Q. Who was president of the company at that time?

A. I was president.

170X. Q. What consideration was paid by the Des Moines Northern & Western Railway Co. to you for said two-eighths of stock of said Des Moines Union Railway Co.?

A. $60,000. of the bonds of the Des Moines Northern
217 & Western Railway Co.

171X. Q. At the beginning of Paragraph 16 of your answer in this case it is stated as follows: "These respondents aver that the firm of F. M. Hubbell & Son never acquired a majority of the capital stock of the Des Moines Union Railway Co. until about the 29th day of January, 1894, and that the said stock was acquired at that time by them for a valuable consideration from the Des Moines, Northern & Western Railway Co., with the knowledge and approval of all of the stockholders of the said company and that the transfer of the said stock to the said F. M. Hubbell & Son was approved by all parties in interest by a contract of which Exhibit R. to the amended bill is a copy, and that said stock was transferred to F. M. Hubbell & Son by the Des Moines Union Railway Co. on or about the 4th day of October, 1893, and from and after said transfer was held and voted by said F. M. Hubbell & Son at all meetings of the Des Moines Union Railway Co., down to the commencement of this suit, with the knowledge and approval of each and every stockholder in the Des Moines Union Railway Co."; now who constituted the Board of Directors of the Des Moines Northern & Western Railway Co.

at the time it sold that stock in the Des Moines Union Railway Co. to F. M. Hubbell & Son?

A. G. M. Dodge, F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. B. Cummins, A. N. Denman and H. D. Thompson

172X. Q. Who was president of the Des Moines Northern & Western Railway Co. on the date of that sale?

A. I was.

173X. Q. What was the consideration paid to the Des Moines Northern & Western Railway Co. by F. M. Hubbell & Son for said five-eighths of all the issued stock of the Des Moines Union Railway Co.?

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A. The Des Moines Northern & Western Railway Co. owed to F. M. Hubbell & Son, $128,833.33 and Hubbell & Son were also liable as endorsers upon promissory notes to the Metropolitan Trust Co. for $20,000.; Hubbell & Son agreed to pay those notes amounting to $148,833.33 and interest and received therefor $225,000. of the Bonds of the Des Moines Northern & Western Railway Co. and 2,500 shares of the capital stock of Des Moines Union Railway Co. We were to take the bonds at 55 cents on the dollar and the Des Moines Union stock at 10 cents on the dollar.

174X. Q. And that made for 2,500 shares at that valuation, $25,000. for the stock? A. Yes.

175X. Q. Have you as secretary of the Des Moines Union Railway Co. ever had in your possession, any book or paper wherein any person or corporation subscribed for any definite number of shares of the capital stock of that company.

Defendants' counsel objects to the question as calling for a conclusion as to a matter of law.

A. As I have stated before the capital stock of the Des Moines Union Railway Co. was issued in part payment for the purchase of the Des Moines Union property.

Defendants' counsel objects to the answer as not responsive to the question and as merely giving a conclusion of the witness.

176X. Q. You mean that you have no book and have never seen any book in which any person or corporation subscribed for any given number of shares?

219

Defendants' counsel object to the question for the reason stated above.

A. I never saw any subscription book. It was a matter of contract, the Des Moines Union bought the real estate and paid for it by issuing its bonds and stock.

Complainants' counsel object to the answer and move to strike out that part of it after the words, "I never saw any subscription book" because it is not responsive to the question and is a mere conclusion of the witness.

177X. Q. Have all the certificates of stock of the Des Moines Union Railway Co. been issued by yourself?
A. Yes.
178X. Q. Have they all been issued in the same form?
A. Yes.
179X. Q. How many shares of the capital stock of the Des Moines Union Railway Co. are now outstanding?
A. 4,000 shares.
180X. Q. In this letter written by you to Mr. O. D. Ashley, August 19th, 1890, you state as follows:

"The 400,000 of stock was issued on the 8th day of April, 1890, as follows:

No. 1 to Dodge	1 share
No. 2 to Hubbell	1 share
No. 6 to James F. How	1 share
No. 7 to C. M. Hays	1 share
No. 9 to the Purchasing Committee	996 shares
Total	1000 shares

"This being one-fourth of the entire stock and belongs to the Purchasing Committee. Certificate No. 1 and 2 have been issued erroneously, No. 1 having been assigned in blank by Dodge, No. 2, is assigned in blank by me.

No. 3 to F. C. Hubbell for	1 share
No. 4 to H. D. Thompson, for	1 share
220 No. 11 To D. M. & N. W. Railway Co.	998 shares
Total	1000 shares

which is the one fourth interest belonging to the Des Moines & N. W. Ry. Co.

No. 5 to L. M. Martin	1 share
No. 8 to A. B. Cummins	1 share
No. 10 to the D. M. & Northern Ry. Co.	998 shares
Total	1000 shares

Being one-fourth which is owned by the Des Moines and Northern Railway.

No. 12, to F. M. Hubbell..... 500 shares
No. 14, to G. M. Dodge..... 500 shares

Total .....1000 shares

This is the 1,000 shares of stock sold by your Committee to F. M. Hubbell, with the 135,000 of bonds."

Now, I will ask you whether either the stockholders or Board of Directors of the Des Moines Union Railway Co. to your knowledge ever passed at any meeting, any resolution authorizing or directing you as Secretary of that company to issue certificates for the 4,000 shares of stock to the parties named in that letter of yours to Mr. Ashley, dated August 19th, 1890? Do you know of any resolution authorizing you to issue that stock in that way before it was issued? A. Yes.

181X. Q. Will you state what the resolution is?

A. "That to complete the payment of such purchase price the President and Secretary are hereby authorized to issue certificates for 3992 shares of stock, which shares including 8 already issued, in behalf of said parties aggregate 4,000 shares as follows".

221 182X. Q. What is the date of that resolution?

A. April 8th, 1890.

183X. Q. The resolution of the Board of Directors of the Des Moines Union or stockholders?

A. I think it was the stockholders.

By Mr. Guernsey:

184X. Q. You notice the directors' meeting authorizes the transfer to yourself and Gen. Dodge, the directors' meeting of the same day which is included in the question?

A. On April 8th, 1890, at a meeting of the Board of Directors of the Des Moines Union Railway Co. I find this; "C. M. Hayes offered the following resolution; 'Resolved that shares of the capital stock of this corporation of the par value of $50,000 sold by the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Railroad Co. be approved, and the transfer thereof to said Hubbell on the books of the company, be and the same is hereby ordered'. C. M. Hays moved the adoption of said resolution and it was thereupon adopted by the vote of all the directors. A. B. Cummins offered the following resolution and moved its adoption, 'Resolved that the sale of $50,000. of the stock of this company by the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. to G. M. Dodge, ratified by the Des Moines & St. Louis Railroad Co. be approved and a transfer thereof to said Dodge upon the books of the company be,

and the same is hereby ordered". The resolution was adopted by the vote of all of the directors of this company."

By Mr. Blodgett:

185X. Q. When those 4,000 shares were issued on the 8th day of April, 1890, were they not issued in pursuance of
222 that clause of Article 3 of the so-called amended articles which provides for the issue of 4,000 shares.

Defendants' counsel objects to the question as calling for a conclusion of law and because the record is here.

A. I am not lawyer enough to decide on the effect of Article 3. The stock was issued under the resolution which I have just read adopted by the stockholders and directors.

186X. Q. Prior to April 8th, and the meeting at which you say the articles were amended had there ever been any action, either by the board of directors or by the stockholders, providing for the issue of 4,000 shares of this stock?

A. The 4,000 shares of stock were issued under resolutions passed April 8th, 1890.

186X. Question repeated. A. No.

187X. Q. Well, was that meeting of the board of directors held before or after the action had been taken respecting the amendment of the articles? A. I don't remember.

188X. Q. There was a stockholders' meeting, was there not, in which it was stated that the articles were amended?

A. Yes.

189X. Q. In Article 3 of that amendment it was provided as follows, "Said 4,000 shares of capital stock shall be issued to the following corporations, and in the following proportions.

"2,000 shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. successor in ownership to the Des Moines & St. Louis Railway Co. and the present owner of the property known as the Des Moines & St. Louis Railroad.

223 "1000 shares to the Des Moines & Northwestern Railway Co. successor to the Des Moines Northwestern Railway Co.: and

"1,000 shares to the Des Moines & Northern Railway Co. successor to the St. Louis, Des Moines & Northern Railway Co., and the said shares are hereby declared to be full paid by the transfer of the aforesaid property;" were they not issued in pursuance of that clause in the article so alleged to have been amended?

Defendants' counsel objects to the question as calling for a conclusion of law, and for the further reason that the rec-

ord already in shows that under that article resolutions were adopted by the stockholders and directors in reference to the stock issued.

A. They were issued under the resolutions that I have just read of the stockholders and directors, and the directors intended to substantially follow the directions in Article 3.

190X. Q. You say that the board of directors followed the provisions of that amendment of the articles in that resolution, is that correct?

A. There were eight directors that had subscribed for one share of stock each, and in the issuing of that stock on April 8th, 1890, it was taken into account that there should be left one share of stock in the name of those eight directors, and then as the Wabash had sold one-fourth of the stock it did not go through the formality of issuing one half of the stock to the Purchasing Committee and then transferring one-eighth to Gen. Dodge and one-eighth to me, but issued it directly to Gen. Dodge and myself.

191X. Q. Instead of issuing it to the companies and 224 then have them transfer it to you?

A. Yes, we avoided one transfer by issuing it just as it was owned, except that there were eight shares issued to qualify the eight directors.

192X. Q. Before the 8th day of April, 1890, there had been nothing done by the Des Moines Union Railway Co., had there to your knowledge that provided for the issue of 4,000 shares of stock of the Des Moines Union Railway Co.?

A. No, that was decided on April 8th, 1890.

193X. Q. It was first decided on at the meeting of the stockholders that adopted that amendment? A. Yes.

194X. Q. There were 4,000 shares issued before or after the meeting, or alleged meeting of the stockholders of the Des Moines Union Railway Co. that was held on the 8th day of April, 1890, at which the articles of incorporation are alleged to have been amended?

A. They were issued after the stockholders' meeting amending the articles.

195X. Q. In Paragraph 17 of your answer in this case it is stated as follows:

"On or about the 5th day of February 1890 the respondent Frederick M. Hubbell, acting in behalf of himself and Grenville M. Dodge, agreed to purchase from said Purchasing Committee 135 bonds of the Des Moines Union Railway Co. and one-fourth of its capital stock, and that pursuant to said agreement, separate contracts were made by the said Purchasing Committee with the said Hubbell and the said Dodge, under which said Purchasing Committee agreed to sell to the

said Hubbell 67 of said bonds, and one-eighth of said stock, and the said Dodge 68 of said bonds and one-eighth of said stock;"

I will ask you if you regard that statement in your
225 answer as correct? A. Yes.

196X. Q. Further along in that same paragraph, Paragraph 17, it is stated as follows: "that thereafter on or about the 5th day of June, 1899, the respondent, Frederick M. Hubbell, purchased additional bonds, and an additional one-eighth of the capital stock of the Des Moines Union Railway Co. from said Purchasing Committee;" I will ask you whether you now consider that statement in your answer correct? A. I do.

197X. Q. Again, further along in that same paragraph 17 of your answer in this case it is stated, "These respondents further respectfully show to the Court that on or about the 1st day of January, 1902, the respondent Frederick M. Hubbell sold the two-eighths of the stock of the Des Moines Union Railway Co. so purchased by him, to the Des Moines Northern & Western Railway Co.;" I will ask you if you now consider that statement in your answer correct?

A. It is correct.

198X. Q. Were the shares you then sold all the stock you then had in the Des Moines Union Railway Co.?

A. Yes, except the one share.

199X. Q. I believe you said that you took the stock bought by F. M. Hubbell & Son from the Des Moines Northern & Western Railway Co. at an estimated value of 10 cents on the dollar? A. Yes.

200X. Q. In Paragraph 17 of your answer in this case, it is stated as follows:

"That thereafter and on the 8th day of April, 1899, the stockholders of the Des Moines Union Railway Co. at a meeting at which the holders of all of its stock were present, including the respondent, the respondents being at that time minority stockholders, unanimously adopted substitutes
226 for Articles 3, 4, 5, and 9 of the articles of incorporation of the said company, and the additional articles 11, 12, 13, 14, and 15. That article 15 of the additional articles so adopted was as follows:

'Article 15. The proceedings of the meeting held December 10th, 1884, with certain preambles including a contract executed on the 2nd day of January 1882, between the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Co. and the St. Louis Des Moines & Northern Railway Co., consented to by the Wabash, St. Louis & Pacific Railway Co., which now appears as a part of the articles of

incorporation of this company are hereby repealed, stricken out and expunged.'"

Now I will ask you whether you were present at the meeting referred to in that part of the answer which I have read to you?

Defendants' counsel object to this and all questions on this subject as not cross-examination.

A. I was present.

201X. *Q.* Did you, as a stockholder vote in favor of changing the articles of incorporation of the Des Moines Union Railway Co. contained in that part of your answer which I have just read to you? A. Yes.

202X. *Q.* Were you a stockholder in the Des Moines Union Railway Co. at the date of that meeting?

A. Yes sir.

203X. *Q.* Had you ever subscribed for a share of the capital stock? A. It seems that I did.

204X. *Q.* Had a share of the stock of the Des Moines Union Railway Co. ever been issued to you at the date of that meeting? A. No, not until after the meeting.

227 205X. *Q.* And you do not remember to have ever paid anything for that share?

A. No, we all subscribed for a share of stock to qualify ourselves as directors early in the existence of the company.

206X. *Q.* But you do not remember, you said before, to have paid any money for it? A. No.

207X. *Q.* What did you at that time understand to be the object that was to be accomplished by striking out of the articles of incorporation of the Des Moines Union Railway Co., the proceedings of the meeting held on December 10th, 1884, and the contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Co., the St. Louis Des Moines & Northern Railway Co., consented to by the Wabash, St. Louis & Pacific Railway Co.?

A. I don't know as I could tell specifically what was to be accomplished, I understood those articles were agreed upon by W. H. Blodgett and A. B. Cummins and I supposed as they were men learned in the law that they had it exactly right and I voted for it.

208X. *Q.* Then do you not remember what your own purpose was in voting to so amend the articles of incorporation of the Des Moines Union Railway Co. as to strike out of said articles the proceedings of said meeting held December 10th, 1884 and said contract of January 2nd, 1882?

A. I had no purpose in the matter only to follow the suggestion and recommendation of the two lawyers who represented the Wabash Company in the matter.

209X. Q. In that connection you speak of W. H. Blodgett; did you ever confer with him about the amendments before the adoption? A. No, I didn't.

228 210X. Q. Did you see any letter from him respecting them before adopting them?

A. I don't remember.

Not being able to complete the taking of these depositions on this day, I adjourned the further taking of the same until 10 A. M., tomorrow, June 2d, 1911.

....., Examiner.

229 On June 2nd, 1911, pursuant to adjournment as above stated, I resumed the taking of the said depositions as follows:

Present: Wells H. Blodgett, Esq., J. L. Minnis, Esq., and J. C. Cook, Esq., solicitors for complainants, and N. T. Guernsey, Esq., solicitor for defendants.

Frederick M. Hubbell, in continuation of his deposition commenced on May 31st, 1911, testifies as follows:

Cross-Examination Resumed

By Mr. Blodgett:

211X. Q. Was the meeting of December 10th, 1884 the meeting at which the Des Moines Union Railway Co. was organized? A. Yes.

212X. Q. The proceedings of that meeting were stricken out? A. Yes.

213X. Q. In Paragraph 28 of your answer you referred to Exhibit A attached to the bill of complaint, now will you look at that exhibit and state whether it is the contract entered into January 2nd, 1882, between the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Co., the St. Louis, Des Moines & Northern Railway Co., and consented to by the Wabash, St. Louis & Pacific Railway Co.? A. It is.

214X. Q. Were you familiar with that contract of January 2nd, 1882, before and at the time this meeting was held on the 8th day of April, 1890? A. I was not.

215X. Q. That contract was incorporated in the articles, was it not? A. Yes.

216X. Q. And you were one of the organizers of the company that put that contract into the articles, were you not?

A. I was one of the persons that incorporated the Des Moines Union Railway Co. but at the time of its incor-
230 poration I had not any interest in the matter.

217X. Q. In paragraph 28 of your answer in this case, it is stated as follows, "That the said F. M. Hubbell & Son, purchased the stock of the Des Moines Union Railway Co. now owned by them, and the said Frederick M. Hubbell purchased stock of said company from said Purchasing Committee, in reliance upon the fact that the Des Moines Union Railway Co. was the owner of the terminal property in controversy." Now, I will ask you to state whether at the time you purchased the stock in the Des Moines Union Railway Co. now hold by you or when you bought the stock from the Purchasing Committee you were familiar with said contract of January 2nd, 1882, to which we have just referred?

A. I was not familiar with it.

218X. Q. The original articles of the Des Moines Union Railway Co., of which you were one of the organizers, contained that contract, did they not?

A. The articles adopted December 10th, 1884, included the contracts of January 2nd, 1882.

219X. Q. It is stated in Paragraph 28 of your answer that when you purchased stock of the Des Moines Union Railway Co. from said Purchasing Committee you did so "in reliance on the fact that the Des Moines Union Railway Co. was the owner of the property in controversy." Now, in speaking of "Property in controversy," do you refer to the terminal property in the City of Des Moines?

A. I bought four miles of main line—terminal property in Des Moines.

220X. Q. When you say that you "purchased stock of the Des Moines Union Railway Co. from the Purchasing Committee in reliance on the fact that the Des Moines Union Railway Co. was the owner of the property in controversy,"
231 do you refer to the one-fourth of the stock of that company that you say, in paragraph 17 of your answer, you purchased or agreed to purchase from said Committee for yourself and Gen. Dodge on or about February 5th, 1890?

A. I did refer to it.

221X. Q. Now, you have spoken about your reliance on the ownership of this terminal property, and I will ask you whom did you consider to be the owner of this Terminal property prior to the 8th day of April, 1890?

A. The Des Moines Union Railway Co.

222X. Q. Did you at any time when you purchased stock regard the alleged amendments of the articles as having had any effect upon the title or estate of the Terminal Company in the terminals?

A. I did not know what effect the amendments had upon the title to the property, I relied upon the advice and recommendation of A. B. Cummins and Col. Blodgett.

223X. Q. Now, in saying you relied upon the advice of A. B. Cummins and Col. Blodgett, do you mean to be understood as saying that you had any personal interviews with Col. Blodgett or that you conferred with him respecting the amendments prior to their adoption?

A. No, I don't remember of conferring with Col. Blodgett. The question of amending the articles was referred by the stockholders to Col. Blodgett and A. B. Cummins, and when the recommendations came in I supposed they were all right.

224X. Q. Did you ever see any letter or opinion written by Col. Blodgett in which he recommended the adoption of the articles? A. I did not.

225X. Q. As I understand the statement in your answer you first bought for yourself, or for yourself and Gen.
232 Dodge one-fourth of the capital stock of the Des Moines Union Railway Co. from said Wabash Purchasing Committee on or about February 5th, 1890, is that correct?

A. It is.

226X. Q. And I understand from your statement in Paragraph 17 of your answer that afterwards on or about the 5th day of June, 1890, you purchased additional bonds and an additional one eighth of the stock of the Des Moines Union Railway Co. from said committee? A. Yes, I did.

227X. Q. This is correct, is it?

A. I bought it June 5th, 1890.

228X. Q. Were you not negotiating with the Wabash Purchasing Committee for the purchase of this last mentioned one-eighth of the capital stock of the Des Moines Union Railway Co. before the date on which you say in your answer the articles of incorporation of that company were amended?

A. I don't remember.

229X. Q. I will read this letter which you have identified, dated Des Moines Iowa April 1st, 1890, addressed to O. D. Ashley, New York, and signed by you, which is as follows:

"Des Moines Iowa, April 1st, 1890. O. D. Ashley, President, New York, N. Y. Dear Sir: In our last interview at your office it was understood that you would talk with Mr. Joy and Mr. Wells of the Purchasing Committee and write me upon what terms you would sell a one-eighth interest of the capital stock of the Des Moines Union Railway Co. Thinking that this matter might have escaped your memory I beg to say that I would like to hear from you in regard to it. Yours truly, F. M. Hubbell".

That is dated April 1st, 1890, were you not negotiating with the Wabash Purchasing Committee for the purchase of this last mentioned one eighth of the capital stock of the
233 Des Moines Union Railway Company, before the date on which you say in your answer that the articles of incorporation of that company were amended?

A. I wrote the letter you have just read dated April 1st, and it speaks for itself.

230X. Q. When you state in paragraph 28 of your answer that you purchased and that the firm of F. M. Hubbell & Son also purchased stock in the Des Moines Union Railway Co. "In reliance upon the fact that the Des Moines Union Railway Co. was the owner of the terminal property in controversy," do you mean that you relied on any particular deed or any particular act as having vested the title to the terminal property in the Terminal Co.?

A. I don't think I relied upon any particular deed or act, but upon all the acts of the Des Moines Union Railway Co. and the parties managing the same.

231X. Q. Did you know about the deeds from How and Dodge and others to the Terminal Co.? A. Yes.

232X. Q. And did you rely upon those deeds as having vested the fee simple title to the terminal property in the Terminal Co.?

A. I understand that all the deeds are straight warranty deeds, and the Des Moines Union Railway Co. bought all of this property and paid for it in its bonds and stock.

233X. Q. And it was those deeds and those previous transactions of the parties on which you relied as having vested the fee simple title to the terminal property in the Terminal Company?

A. I relied upon the deeds of Dodge, How, the Des Moines & St. Louis et al, to the Des Moines Union Railway Co., and the fact that the Des Moines Union paid for the property to the parties, and the fact that the three railway com-
234 panies leased from the Des Moines Union Railway Company the property for 30 years and were paying rent and attorning to their landlord.

234X. Q. And those are the matters on which you relied when you purchased the stock from the Purchasing Committee?

A. I may have had other things to rely on, but I do not think of anything now more than what I have stated.

235X. Q. Did any member of the Wabash Purchasing Committee or anyone representing or acting for them, ever represent to you that by or through the deed executed to the Des Moines Union Railway Co. in or about the year 1887, by How and Dodge or by the Des Moines & St. Louis Railway Co. or others, the Des Moines & Union Railway Co. had become

the beneficial owner of the entire estate in the terminal property in controversy?

A. I don't remember of talking with any member of the Purchasing Committee except Mr. Ashley and we did not discuss the title to the terminal property, we simply agreed upon the price that we would pay for the bonds and stock of the Des Moines Union Railway Co.

236X. Q. I will ask you whether any member of the Wabash Purchasing Committee or anyone representing or acting for them, ever represented or stated to you before you bought from them any stock in the Des Moines Union Railway Co. that the Des Moines Union Railway Co. had in any manner become the owner of the Terminal property in controversy?

A. I don't think this subject was discussed.

237X. Q. Did you before the year 1890 know about or had you ever seen or read the deed to said Terminal property that had been executed by How, Dodge and the Des Moines 234½ & St. Louis Railroad Co. to the Des Moines Union Railway Co.? A. I think I had read them.

238X. Q. State whether you, as secretary of the Des Moines & St. Louis Railroad Co. in or about the year 1887, joined in the execution of a deed wherein the Des Moines & St. Louis Railroad Co., conveyed all its railroad and property in the City of Des Moines to the Des Moines Union Railway Co.?

A. I signed the deed of the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co., Plaintiffs' Exhibit 22, dated February 21st, 1888.

239X. Q. Does the Des Moines & St. Louis Railroad Co. now operate any railroad in the City of Des Moines between Farnham Street in the City of Des Moines and the east line of the city? A. It does not.

240X. Q. What company now operates that part of the railroad that extended from Farnham Street to the old eastern limits of the city?

A. The Des Moines Union Railway Co.

241X. Q. Does the railroad just referred to and constituting a part of the property described in the deed from the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railroad Co. now constitute a part of the railroad property operated by the Des Moines Union Railway Co.?

Defendants' counsel objects to the question in so far as it attempts to construe the deed, Plaintiffs' Exhibit 22.

A. The Des Moines Railway Co. has operated the railroad and managed the property inquired about for the last 23 years.

244X. Q. You state in paragraph 17 of your answer, "that on or about the fifth day of February, 1890, the respondent Frederick M. Hubbell acting in behalf of himself and
235 Grenville M. Dodge agreed to purchase from said Purchasing Committee 135 bonds of the Des Moines Union Railway Co., and one-fourth of the capital stock,"; now I will ask you whether any member of said Purchasing Committee or either of the complainants, or any of their predecessors in title, ever at any time prior to the date of your said agreement with said Purchasing Committee, made any representations to you respecting the value of the stock of the Des Moines Union Railway Co. or respecting the title held by the Des Moines Union Railway Co. in the terminal property, and if they did, will you please state when, where and by whom such representations were made?

A. I don't remember of the Purchasing Committee making any representations as to the title which the Des Moines Union Railway Co. has to the Terminal property in the City of Des Moines.

345X. Q. In paragraph 17 of your answer in this case it is stated "that thereafter on or about the 5th day of June, 1890, the respondent Frederick M. Hubbell purchased additional bonds and an additional one-eighth of the capital stock of the Des Moines Union Railway Co. from said Purchasing Committee;" now, I will ask you whether any member of the Purchasing Committee, or either of the complainants or any of their predecessors in title ever at any time prior to your purchase last aforesaid made any representations to you respecting the value of the stock of the Des Moines Union Railway Co., or respecting the title held by the Des Moines Union Railway Co. in said terminal property?

A. I don't remember that the subject was discussed or talked about at all, by any member of the Purchasing
236 Committee. They simply sold the bonds and the stock by a written contract and I paid the price agreed upon.

246X. Q. In Paragraph 16 of your answer in this case it is stated as follows: "These respondents aver that the firm of F. M. Hubbell & Son never acquired the majority of the capital stock of the Des Moines Union Railway Co. until about the 29th day of January, 1894, and that the said stock was acquired at that time by them for a valuable consideration from the Des Moines Northern & Western Railway Co." Now, I will ask you whether any member of the Purchasing Committee or either of the complainants or any of their predecessors in title ever at any time prior to said purchase by F. M. Hubbell & Son made any representations to you respecting the value of the stock of the Des Moines Union Railway Co. or respecting the title held by the Des Moines Union Railway Co. in said terminal property?

A. The Purchasing Committee made no representations to me concerning the title to the property. I never heard the title of the Des Moines Union Railway Co. to the terminal property questioned until this suit was brought and I was made one of the defendants.

247X. Q. Mr. Hubbell when you sold one-fourth of the stock of the Des Moines Union Railway Co. that you acquired from the Wabash Purchasing Committee to the Des Moines, Northern & Western Railway Co. were both you and your son, F. C. Hubbell, officers of the Des Moines Northern & Western Railway Co.? A. We were.

248X. Q. When the firm of F. M. Hubbell & Son purchased five eighths of the stock of the Des Moines & Union Railway Co. from the Des Moines Northern & Western
237 Railway Co. were you and your son, F. C. Hubbell, officers of the Des Moines, Northern & Western Railway Co.? A. We were.

249X. Q. After you had on or about January 21st, 1892, sold two-eighths of the stock of the Des Moines Union Railway Co. to the Des Moines, Northern & Western Railway Co. as stated in paragraph 17 of your answer in this case, did you then have any of that stock left to you as an owner?

A. No, only that one share of stock was retained in my name to qualify me as a director.

250X. Q. In paragraph 28 of your answer in this case you state, "that the said F. M. Hubbell & Son purchased the stock of the Des Moines Union Railway Co. now owned by them and that said Frederick M. Hubbell purchased the stock of said company from said Purchasing Committee in reliance on the fact (among other things) that the predecessors of the complainants, for a valuable consideration sold and transferred the property in question to the Des Moines Union Railway Co."; now, to what deeds or instruments do you refer as having transferred the title held by the predecessors of the complainants in this terminal property to the Des Moines Union Railway Co.?

A. The predecessor in this case was the Wabash, St. Louis & Pacific Railway Co. They paid for the property and caused it to be transferred to the Des Moines Union Railway Co. and took the purchase price.

251X. Q. When you say that the Wabash, St. Louis & Pacific Railway Co. caused the property to be conveyed to the Des Moines Union Railway Co. do you refer to the deeds that were made by How, Dodge, and the Des Moines & St. Louis Railroad Co.?

A. I refer to all of the deeds that were made to convey the terminal property for which the Wabash, St. Louis
238 & Pacific Railway Co. had furnished the money to purchase.

252X. Q. It is also stated in this Paragraph 28 of your answer that said firm of F. M. Hubbell & Son purchased the stock of said company from said Purchasing Committee in reliance upon the fact that the complainants and their predecessors had recognized and treated the Des Moines Union Railway Co. as the owner of said terminal property; now, will you please state what facts or what acts of the complainants or their predecessors you relied upon as recognizing the Des Moines Union Railway Co. as the owner of the terminal property?

A. From the fact that the Wabash, St. Louis & Pacific Railway Co. originally caused the Des Moines Union Railway Co. to be organized, and caused the real estate to be sold to the Des Moines Union Railway Co. and took the consideration that was paid by the Des Moines Union Railway Co., and then took a lease from that company for 30 years, dated May 10th, 1889, and the fact that the Des Moines Union Railway Co. from the 1st of May, 1888, managed, operated, controlled, improved and added to the property out of its own funds ever since May 1st, 1888.

253X. Q. When you say the Terminal Company has added to the property by the expenditure of its own funds do you mean that they had acquired this additional property with funds that are commonly known in this litigation and in the affairs of this company as surplus earnings?

A. Part of the additional property was acquired by using a portion of the surplus earnings and a part of it was paid for by the sale of the Des Moines Union Railway Co. bonds.

239 254X. Q. You also state in this paragraph 28 of your answer that the firm of F. M. Hubbell & Son purchased the stock now owned by them in reliance on the fact that complainants and their predecessors have recognized and treated the Des Moines Union Railway Co. as the owner of said Terminal property; now, will you please state what facts or what acts of the complainants, or their predecessors, the firm of F. M. Hubbell & Son relied upon as recognizing the Des Moines Union Railway Co. as the owner of the Terminal property when your firm purchased the stock now owned by them from the Des Moines Northern & Western Railway Co.?

A. The stock now owned by F. M. Hubbell & Son was purchased January 25th, 1894, the Des Moines Union Railway Co. obtained the title to this property about March 31st, 1888, entered into possession of it May 1st, 1888, and the complainants and their predecessors had used the property from that time on as tenants, had paid the rent agreed upon and operating expenses, that is paid the bills that represented the rent,

and operating expenses and taxes for about 6 years when we made our purchase.

235X. Q. It is also stated in this Paragraph 28 of your answer, "That said Frederick M. Hubbell purchased stock in Des Moines Union Railway Co, in reliance upon the provisions of the articles of incorporation of said company as amended"; now, I will ask you what stock you bought from the Wabash Purchasing Committee in reliance upon the provisions of the articles of incorporation of the Des Moines Union Railway Co. as amended?

A. I bought from the Purchasing Committee one-eighth of the stock June 5th, 1890; that was about two months after the amendment of the articles?

240 236X. Q. Now, in saying that you purchased stock in the Des Moines Union Railway Co. in reliance upon the provisions of the atirecles of incorporation as amended do you mean that you considered the stock as having greater value after the alleged amendments than it had before?

A. I don't know whether that situation had any effect upon my purchase or not. I thought the purchase was a good one, and the Wabash wanted to sell and we traded.

237X. Q. Had you bought any stock in the Des Moines Union Railway Co. from any one when on January 23rd, 1890, Mr. Cummins first proposed that the articles of incorporation of that company should be amended.

Defendants' counsel object to the question because the record shows that the suggestion made on January 3rd, 1890, was made by Mr. How, not by Mr. Cummins.

A. My first purchase of Des Moines Union Railway Stock was on February 5th, 1890, and the second was on June 5th, 1890.

238X. Q. Did the Purchasing Committee, or any one representing or acting for them, represent to you at any time before you purchased stock in the Des Moines Union Railway Co. from said committee that the provisions of the articles of incorporation of said company as amended gave any additional value to the stock of the Des Moines Union Railway Co. above what it possessed before said articles were amended?

A. They did not.

239X. Q. It is also stated in Paragraph 28 of your answer in this case that, "Frederick M. Hubbell purchased stock of the Des Moines Union Railway Co. from said Purchas-

241 ing Committee in reliance upon the fact that the said contract 'Exhibit A' (being the contract of Jany. 2, 1882,) was rescinded and annulled;" now, I will ask you what stock you purchased from the Wabash Purchasing Committee

in reliance upon the fact that said contract of January 2nd, 1882, has been rescinded and annulled?

A. The stock that I bought June 5th, 1890, was purchased after these articles were amended and I relied as to its value upon the fact that the complainants and their predecessors had entered into a contract of lease and agreed to pay rent, and, also, relied upon the amendments to the articles.

260X. Q. Did you then regard those amendments as having any effect at all upon the value of the stock or upon the title held by the Terminal Co. in the terminal property?

A. No, I don't think I attached any particular importance to that.

261X. Q. Now, in regard to the contract of January 2nd, 1882, I will ask you if the Wabash Purchasing Committee, or any one acting for it, ever represented or stated to you that said contract of January 2nd, 1882, had been rescinded and annulled by the parties to that agreement?

A. As the officials of the Wabash participated in the meeting of April 8th, 1890, and changed the articles—I don't know that it was discussed after that time.

262X. Q. Did they ever represent to you that this contract had been rescinded or annulled?

A. It never was mentioned to me except as the meeting was held April 8th, 1890, and the amended articles read and approved by all the persons present and represented.

263X. Q. It it stated in Paragraph 28 of your answer,

"That said F. M. Hubbell & Son purchased stock of the
242 Des Moines Union Railway Co. now owned by them in reliance upon the provisions of the articles of incorporation of said company as amended"; now, I will ask you whether the party from whom the firm of F. M. Hubbell & Son purchased the stock now owned by them ever represented to you or to any member of the firm of F. M. Hubbell & Son that the provisions of the articles of incorporation of said company as amended increased the value of the stock of the Terminal Co. or that the estate or title of the Des Moines Union Railway Co. in said terminals had been improved, increased or in any manner affected by reason of any amendment of said articles?

A. I did not understand that the amendment of the articles increased the value of the stock. I understood the articles were amended in order to have the operations of the company conform to the way the company was being managed at that time.

264X. Q. By managed at that time you refer to it as being managed under the contract of May 10th, 1889?

Defendants' counsel objects to the question as assuming the company was managed under some contract.

A. It was managed under the articles of incorporation of the Des Moines Union Railway Co. and the Des Moines Union Railway Co. had leased to the complainants and their predecessor its property.

265X. Q. It is also stated in Paragraph 28 of your answer in this case, "That said F. M. Hubbell & Son purchased the stock of the Des Moines Union Railway Co. now owned by them in reliance upon the fact that said contract, Exhibit A, (being the contract of January 2nd), had been re-
243 scinded and annulled"; now, I will ask you whether the party from whom F. M. Hubbell & Son purchased the stock now owned by them, represented to you or to any member of the firm of F. M. Hubbell & Son, that said contract of January 2nd, 1882, had been rescinded and annulled by the parties to that agreement, and that by reason of such annulment the estate or title of the Des Moines Union Railway Co. in said terminals had been in any manner increased, improved or affected.

A. I relied upon the fact that the contract of January 2nd, 1882, had been rescinded and annulled and upon the fact that the complainants and their predecessors had recognized and treated the Des Moines Union Railway Co. as the owner of said Terminal property.

266X. Q. And no officer or representative of the Des Moines Northern & Western Railway Co. had represented to you at the time you made that purchase that the contract of January 2nd, 1882 had been rescinded or annulled?

A. That was not discussed. I knew of my own knowledge that the amended articles had been adopted April 8th, 1890, and recognized and treated from that time on as the articles of incorporation.

267X. Q. And you knew of that action taken April 8th, 1890 that purported to repeal and annul the contract of January 2nd, 1882, before you bought the stock that you now own?

A. I knew about the amendment to the articles at the time they were amended.

268X. Q. And you did not purchase the stock you now own relying on any representation that was made to you at or about the time you bought the stock by any officer of the Des Moines Northern & Western Railway Co.?

244 A. I was the main officer of Des Moines Northern & Western; I do not know what representations I made to myself, now.

269X. Q. It is also stated in paragraph 28 of your answer "that the firm of F. M. Hubbell & Son purchased said

of the Des Moines Union Railway Co. now owned by them from the Wabash Purchasing Committee in reliance upon the provisions of the articles of incorporation of said company as amended;" now, will you please state whether you had not purchased one eighth of said stock for yourself and one eighth thereof for G. M. Dodge before April 8th, 1890, which is the date on which said articles are alleged to have been amended? A. Yes.

270X. Q. It is also stated in the paragraph 28 of your answer "that the firm of F. M. Hubbell & Son purchased the stock now owned by them in reliance on the fact that the complainants and their predecessors had recognized and treated the Des Moines Union Railway Co. as the owner of said Terminal property." Now, will you please state what facts, or what acts of the complainants or their predecessors, the firm of F. M. Hubbell & Son relied upon as recognizing the Des Moines Union Railway Co. as the owner of the terminal property when they purchased the stock now held by them?

A. The fact that the Wabash, St. Louis & Pacific Railway Co., being one of the predecessor companies, conveyed and sold the terminal property to the Des Moines Union Railway Co. and assisted in organizing that company, and the fact that company paid the Wabash, St. Louis & Pacific Railway Co. the purchase price, and later on took a lease for 30 years from the Des Moines Union Railway Co. and paid its rents according to the terms of the lease, punctually, and
245 that at no time indicated, or represented, or claimed that the Des Moines Union Railway Co. was not the owner of its property which the Wabash, St. Louis & Pacific Railway Co. had sold to it.

271X. Q. When you speak of having taken a lease from the Des Moines Union, do you refer to a certain instrument dated May 10th, 1889? A. I do.

272X. Q. In paragraph 15 of your answer in this case it is stated as follows:

"These respondents further respectfully show to the Court that on or about the 10th day of May, 1889, the St. Louis Company, the Northern Company and the Northwestern Company entered into a formal written agreement of lease with the Des Moines Union Railway Co., of which Exhibit P, to the amended bill is a copy; and that the said agreement was confirmed and ratified by the successors to the original parties thereto as binding upon such successors by the agreement of which Exhibit R, attached to said bill is a copy * * * * * and that ever since the making of said contract of May 10th, 1889, (Exhibit P. to the amended bills, the occupation of the terminal property by the complainants and their predecessors in interest has been under and by virtue of said contracts;

that said contracts have been accepted by all parties in interest as defining and fixing such rights as the complainants had with reference to the use and occupation of said property."

Now I will ask you whether it is a fact that these terminal properties in controversy have been operated by the
246 parties to said contract, in accordance with the terms of said two agreements since on or about the 10th day of May, 1889.

Defendants' counsel objects to the question as incompetent, because it assumes that the contract provides for the manner of operating the terminal property which is not provided for in the terminal contracts, the terminal property being operated by the Des Moines Union Railway Co. under its articles of incorporation by its Board of Directors.

A. The terminal property has been operated since May 1st, 1888 under its articles of incorporation, and the occupation of the property by the complainants and their predecessors has been by virtue of the contract of May 10th, 1889 and July 31st, 1897.

273X. Q. Have monthly bills been rendered by the Terminal Company against the railroad companies since May 10th, 1889, in accordance with those contracts?

A. I understand they have.

274X. Q. Have these bills been paid by the complainants and their predecessors in interest? A. Mostly.

275X. Q. Has there been since May 10, 1889, to your knowledge, any other contract, agreement or writing, that has controlled or affected the operation or use of said terminal properties by the complainants and their predecessors, excepting the agreements designated in your answer as Exhibits P. and R.

Defendants' counsel objects to the question in so far as it assumes an agreement for the control and operation of the property, for the reasons urged against the preceding question.

247 A. The Des Moines Union Railway Co. has maintained and operated its property from May 1st, 1888 to the present time and has leased to the complainants or their predecessors its property by leases designated as Exhibits P. and R. and have paid the bills rendered against them with the credits to which they were entitled for money paid by the other tenants which under the contract was to be credited to the complainants, and these contracts Exhibits P and R, are the only contracts during that period which the Des Moines

Union Railway Co. has had with the complainants or their predecessors as to the occupation and use of this property.

276X. Q. Is it your understanding that the contract of May 10th, 1889 is still in force and that these terminal properties are now being used and operated under that agreement.

Defendants' counsel objects to the assumption as to operation for the reason urged against the same assumption previously.

A. I understand that the terminal property is now being used and operated under the contracts of May 10th, 1889, and July 31st, 1897.

277X. Q. It is stated in Paragraph 15 of your answer "that the occupation of the terminal property by the complainants and their predecessors in interest has been under and by virtue of said contract of May 10th, 1889"; I will ask you to state whether you now regard that statement in your answer as being true, and if you say it is not true, then will you please state wherein it is not true?

A. I understand that that paragraph in the answer is true.

248 278X. Q. You have spoken of the contract of May 10th, 1889, as a lease, have you not? A. Yes.

279X. Q. Now who has occupied or in other words who has been in possession of the terminals since May 10th, 1889?

A. The Des Moines Union Railway Co.

280X. Q. Is it your idea of a lease that the lessor remains in possession of the property?

Defendants' counsel objects to the question as argumentative and calling for a conclusion of law.

A. I do not want to construe the lease of May 10th, 1889, but I understand that under that contract the tenant companies were to run their trains into Des Moines, and that the Des Moines Union Railway Co. would break up their trains, attend to their freight and passenger business, maintain and operate the road and that the complainants have nothing to do with the operating of the road except to run their trains in and out.

281X. Q. You have spoken about the payment of rental by the complainants and their predecessors to the Des Moines Union Railway Co.; have they made any payments to the Des Moines Union Railway Co. other than those provided for in the contract of 1889? A. Not that I know of.

282X. Q. What changes, if any, took place in the management of the terminal property as a result of the alleged changes that were made in the articles of incorporation of the Des Moines Union Railway Co.?

A. I do not know of any change in the maintenance, operation or management of the property by reason of the amendment to the articles.

283X. Q. Then as I understand you, work has been performed in the same way and bills have been rendered
249 and paid in the manner since April 8th, 1890, as before that date? A. Yes.

284X. Q. Did you regard the amendments of the articles of incorporation as having any effect upon the right of the Terminal Company to what is called its surplus earnings?

A. I did not.

285X. Q. Can you mention any act or transaction that has ever been performed by the parties to the contract of May 10th, 1889 that was performed under or governed by the alleged amended articles of incorporation of the Des Moines Union Railway Co.?

A. I think the Des Moines Union Railway Co. has been operated exactly in the same manner since April 8th, 1890, as it was before that time.

286X. Q. Mr. Hubbell, it is stated in Paragraph 15 of the answer in this case that, "Complainants have expressly and affirmatively recognized the Des Moines Union Railway Co. as the owner of the terminal property now in controversy and recognized and attorned to the said company as their landlord, and assumed the position of tenants under their said contract and leases for said property."; now, when you state that the complainants have recognized and attorned to the Des Moines Union Railway Co. as their landlord, and assumed the position of tenants under said contract of May 10th, 1889, do you mean that the complainants have paid a rental to the Terminal Company for their use and occupation of the Terminal properties? A. I do.

287X. Q. In referring to the contract of May 10th, 1889, in Paragraph 15 of your answer in this case, it is stated "That by said agreement the complainants expressly and affirmatively recognized the Des Moines Union Railway Co. as the owner of the terminal property, now in contro-
250 versy, and recognized and attorned to said Terminal Company as their landlord." Now will you please state what clause or provision of the contract of May 10th, 1889, the complainants or their predecessors, have either recognized the Terminal Company as their landlord or by what acts they have attorned to the Terminal Company as their landlord?

A. I will refer to the contract as a whole and what was done under it, including the fact that payments have been made under it.

288X. Q. Mr. Hubbell in the record book of the Des Moines Union Railway Co. there appears what purports to be a rec-

ord of the proceedings of a meeting of the stockholders of the Des Moines Union Railway Co. held at Des Moines, Iowa, on the 8th day of April, 1890. That record book purports to have been signed by you as secretary of the company?

A. Yes.

289X. Q. And it reads in part as follows:

"The stockholders of the Des Moines Union Railway Co. met in an adjourned meeting pursuant to adjournment at 10 o'clock A. M., at the office of the company, on Tuesday, the 8th day of April, 1890.

"There were present in person

J. F. How, representing one share.
C. M. Hays, representing one share.
F. M. Hubbell, representing one share.
L. M. Martin, representing one share.
F. C. Hubbell, representing one share.
A. B. Cummins, representing one share.

I will ask you, as secretary of the company, whether on or prior to April 8th, 1890, Mr. J. F. How had to your
251 knowledge subscribed for any share or shares of stock of the Des Moines Union Railway Co. or whether any share or shares of stock of that company had been issued to him?

A. There were no shares of stock issued until the date of this meeting.

290X. Q. Had Mr. How to your knowledge ever subscribed for any share or shares of stock in the Des Moines Union Railway Co. prior to that date?

A. I do not know.

291X. Q. I will ask you, as secretary of the company, whether at the time that meeting was held Mr. C. M. Hayes had to your knowledge subscribed for any share or shares of stock of the Des Moines Union Railway Co. or whether any share or shares of stock of that company had been issued to him?

A. I do not know who had subscribed for stock; no stock had been issued until that date.

292X. Q. I will ask you as secretary of the company, whether at the time that meeting was held, you yourself had subscribed for any share or shares of stock of the Des Moines Union Railway Co., or whether any share or shares of the stock of that company had been issued to you?

A. None of the stock had been issued to me until on that date, and it was understood that we were all entitled to one share in order to represent the property.

293X. Q. But no stock had been issued until after this meeting?

A. No, I think it was this meeting that authorized the stock to be issued.

294X. Q. I will also ask you, as secretary of that company whether at the time that meeting was held Mr. L. M. Martin had, to your knowledge, subscribed for any share or shares of stock of the Des Moines Union Railway Co., or
252 whether any share or shares of stock of that company had then been issued to him?

A. No stock had been issued to him at that time. It was understood that he should represent one share and that he should own one share in the company.

295X. Q. As to whether he had ever subscribed to any, you do not know? A. No, I do not know.

296X. Q. I will ask you, as secretary of the company, whether at the time the meeting was held Mr. F. C. Hubbell had, to your knowledge, subscribed for any share or shares of stock, of the Des Moines Union Railway Co., or whether any share or shares of the stock of that company had then been issued to him?

A. I think that F. C. Hubbell was in the same position as the rest of them.

297X. Q. Was the same true in respect to Mr. Cummins?

A. Yes, as far as I know.

298X. Q. In this record it is also stated as follows:

"There were present by proxy:

G. M. Dodge by L. M. Martin representing one share
W. H. Blodgett by J. F. How, representing one share:"

I will ask you, as secretary of the company, whether at the time that meeting was held either G. M. Dodge or W. H. Blodgett had subscribed for any share or shares of stock of the Des Moines Union Railway Co., or whether any share or shares of stock of that company had then been issued to them?

A. No stock had been issued to any of those parties until after the authority was granted by the meeting of April 8th, 1890.

299X. Q. In this record it is also stated in part as follows: "There were also present the Des Moines & Northwestern Railway Co., successor to the Des Moines North-
253 western Railway Co., by F. M. Hubbell, president"; I will ask you, as secretary of the Des Moines Union Railway Co., whether at the time that meeting was held, the Des Moines & Northwestern Railway Co. had to your knowledge subscribed for any share or shares of stock in the Des

Moines Union Railway Co. or whether any share or shares of stock had then been issued to that company?

A. That company at that time was the owner of one quarter of the stock in the company, but the shares had not been issued.

300X. Q. When you say that the Des Moines Northwestern Railway Co. was the owner of one-fourth, do you refer to the provision in the contract of May 10th, 1889 providing for the distribution of the stock among the three companies?

A. I had reference to the fact that when I purchased the Des Moines & Northwestern Railroad, I purchased a quarter interest in the Terminal property, and hence the Des Moines & Northwestern was the owner of one fourth of the stock by reason of that purchase of October, 1886.

301X. Q. You refer in your answer to the contract between Polk & Hubbell and the Purchasing Committee that is attached to your answer as an exhibit?

A. Yes, it was under that purchase of October, 1886, that the Des Moines & Northwestern became the owner of one quarter of the capital stock, less one or two shares represented by individuals.

302X. Q. In this record it is also stated that the Des Moines & Northern Railway Co., successor to the St. Louis, Des Moines & Northern Railway Co. was present by A. B. Cummins, vice-president: I will ask you, as secretary of the Des Moines Union Railway Co., whether at the time that meeting was held, the Des Moines & Northern Railway Co.
254 had to your knowledge subscribed for any share or shares of stock in the Des Moines Union Railway Co. or whether any share or shares had been issued to that company?

A. The shares had not been issued; but the Des Moines & Northern Railway Co. was the owner of one quarter of the stock of the Des Moines Union Railway Co. at that time.

303X. Q. In what way had the Des Moines & Northern Railway Co. become entitled to one quarter of that stock?

A. By assignment of transfer of G. M. Dodge.

At this point a recess was taken until 2 P. M. at which time the taking of the deposition was resumed as follows:

304X. Q. In this record meeting it is also stated (I am referring to the record of the meeting of April 8th, 1890) that the Des Moines & St. Louis Railroad Co. was present at that meeting by J. F. How, president; now, I will ask you, as secretary of the Des Moines Union Railway Co., whether at the time that meeting was held the Des Moines & St. Louis Railway Co. had to your knowledge, subscribed for any share or shares of stock in the Des Moines Union Railway Co. or

whether any share or shares had then been issued to that company?

A. There had been no stock issued to the Des Moines & St. Louis at that time.

305X. Q. Had that company, to your knowledge, subscribed for any stock in the Des Moines, Union Railway Co. at that time?

A. My understanding is that that company was entitled to half of the stock when issued.

306X. Q. But had that company ever subscribed for any stock to your knowledge?

A. I think the resolution of November 8th, 1887, was a subscription to the stock.

255 307X. Q. In this record it is also stated as follows: "J. F. How, president, presiding.

"Whereupon by examination of the records and books of the company it was determined that all the stockholders of said company were present, either in person or by proxy, duly filed with the secretary of the company;" now I will ask you to state what records and books of the Terminal Company were examined at that meeting in order to ascertain whether all of the stockholders of the company were present, either in person or by proxy?

A. The minute book or the record of the proceedings of the company was examined, that was our information of who was entitled to stock.

308X. Q. Was the minute book of the proceedings of the Des Moines Union the only book that was examined at that meeting? A. I do not know of any other book.

309X. Q. In this record it is also stated: "That all the stockholders of said company were present, either in person or by proxy duly filed with the secretary of the company;" I will ask you, as secretary of the Des Moines Union Railway Co., whether you now have in your possession a written proxy signed before the 8th day of April, 1890, by G. M. Dodge, as a stockholder in the Des Moines Union Railway Co., by which he authorized L. M. Martin to attend that meeting and vote any share or shares of stock then owned by him, Dodge, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Co.

A. I do not know whether I have such written proxy in my possession or not. Examination discloses none.

310X. Q. Do you recollect to have ever seen such a paper?

A. Whenever the record says that a proxy was filed it
256 certainly was filed. I have hundreds of them in different companies.

311X. Q. Have you all of the records and papers of the Des Moines Union Railway Co. in your possession?

A. Most of these are here.

312X. Q. Do you mean here present?

A. Here in the building.

313X. Q. In this office?

A. In this office or in the vault.

314X. Q. Will you examine or have an examination made to see whether you have the proxy from Gen. Dodge authorizing Mr. Martin to attend that meeting that was held on the 8th day of April, 1890, and vote either for or against the proposed amendment?

A. I will make an examination. In the different companies it was very common for proxies to be filed, and as a rule they were put in a pigeon hole in our vault, and if they have not been destroyed many of them can be found now. Examination discloses none.

315X. Q. I will ask you whether, as secretary of the Des Moines Union Railway Co., you now have in your possession, a written proxy signed before the 8th day of April, 1890, by W. H. Blodgett, as a stockholder in the Des Moines Union Railway Co., by which he authorized J. F. How to attend any meeting and vote any share or shares of stock then owned by him either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Co.?

A. This meeting occurred 21 years ago, and I do not know whether the proxies can be found, but I am certain that such proxies were in existence and submitted to the meeting. Examination discloses none.

316X. Q. I will ask you whether, as secretary of the
257 Des Moines Union Railway Co., you now have in your possession a certified copy or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines & Northwestern Railway Co. prior to the 8th of April, 1890, authorizing you to be present at any meeting of the stockholders of the Des Moines Union Railway Co. and vote any share or shares of stock in that company that were then owned or held by said Des Moines & Northwestern Railway Co., either for or against any proposed amendments of the articles of incorporation of the Des Moines & Union Railway Co.?

A. I do not know whether I have or not.

317X. Q. Will you make an examination and see whether you can find any among the papers and records?

A. Yes, I will look in the place where we keep the proxies and see if any of them have been saved or not.

318X. Q. I will ask you whether, as secretary of the Des Moines Union Railway Co., you now have in your possession, a certified copy or any other copy of a resolution adopted at any meeting of the stockholders or directors of the Des Moines

& Northern Railway Co. prior to the 8th day of April, 1890, authorizing Mr. A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Co. and vote any share or shares of stock in that company then owend or held by said Des Moines & Northern Railway Co. either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Co.?

A. I do not know whether I have or not.

319X. Q. Will you look and see whether you can find such a resolution or copy of such resolution and produce it later if you can find it? A. Yes, I will look.

258 320X. Q. I will ask you whether as secretary of the Des Moines Union Railway Co., you now have in your possession a certified copy or other copy of any resolution adopted by any meeting of the stockholders or directors of the Des Moines & St. Louis Railroad Co. prior to the 8th day of April, 1890, authorizing J. F. How to be present at any meeting of the stockholders of the Des Moines Union Railway Co. and vote any share or shares of stock in that company, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Co.?

A. I do not know whether I have or not, I will look for them.

321X. Q. As secretary of said Terminal Company have you now in your possession any proxy executed by J. F. How, C. M. Hays, W. H. Blodgett, or either of them, prior to April 8th, 1890, authorizing A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Co. and vote any share or shares of stock then owned or held by either of them in said company, either for or against any proposed amendment of the articles of incorporation of said company? A. I do not know whether I have or not.

322X. Q. Will you look and see whether wou have, and if so, will you produce them?

A. Yes sir, I will look and see; you will have to send me a copy of the questions.

323X. Q. This record book states that, after the organization of the meeting, F. M. Hubbell secretary, reported to the meeting that pursuant to the articles of incorporation he had caused the following notice to be published in the Des Moines Leader, the first publication being on the 15th day of January, 1890, and the last publication being on the 18th day of January, 1890, to-wit:

259 "Des Moines Union Railway Company—notice.

"Notice is hereby given that in pursuance of an adjournment had at a regular annual meeting of the stock-

holders, held at Des Moines, January 3rd, 1890, there will be a meeting of the stockholders of the Des Moines Union Railway Company at its office in Des Moines, Iowa, on Tuesday, the 18th day of February, 1890, at eleven o'clock A. M., at which meeting there will be considered and voted upon certain amendments to the Articles of Incorporation which will then be proposed, and there will also be considered such other business as may come before the meeting. F. M. Hubbell, Secretary."

I will ask you to state whether that statement in that record book respecting the publication of that notice is correct?

A. That is what the record shows.

324X. Q. That statement, then, is correct, is it?

A. Yes.

325X. Q. This record book also states that you as secretary also reported to that meeting, "that you had pursuant to the articles of incorporation notified each stockholder of the time, place and object of this meeting, which notice contained the amendments proposed to be offered to the articles of incorporation"; now, I will ask you to state, if you will, the name of each stockholder to whom you gave a notice of that meeting, together with a copy of the amendments proposed to be offered to said articles of incorporation?

A. The notice was given to James F. How, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell, A. B. Cummins, G. M. Dodge, W. H. Blodgett, the Des Moines & Northwestern Railway Co., The Des Moines & Northern Railway Co., and the Des Moines & St. Louis Railroad Co.

260 326X. Q. And accompanying those notices did you send copies of the proposed amendments?

A. Yes, I never made up a false record in my life, and that is right, I know.

327X. Q. Have you now any personal recollection of what transpired at that meeting? A. No.

328X. Q. Well, according to your best recollection when did you first see these proposed amendments to said articles of incorporation?

A. At or before the 18th day of February, 1890; I may have seen them as early as January 3rd, 1890.

329X. Q. Were those amendments submitted by Mr. Cummins to the meeting held on the 18th day of February, 1890?

A. Yes.

330X. Q. Can you state now whether you were familiar with those amendments before the date of that February meeting?

A. I notice that I moved at the February meeting of the stockholders that the stockholders' meeting be adjourned for the purpose of having further opportunity to examine said

amendments and I fancy that I wanted further time, perhaps other stockholders wanted further time.

331X. Q. Does that record that you have before you show who was present at the meeting held February 18th, 1896?

A. Yes.

332X. Q. Will you please read their names?

A. There were present in person, F. M. Hubbell, L. E. Martin, F. C. Hubbell, A. B. Cummins, G. M. Dodge by L. M. Martin, J. F. How by A. B. Cummins, C. M. Hays by A. B. Cummins, W. H. Blodgett by A. B. Cummins.

333X. Q. As secretary of the Des Moines Union Railway Co. have you now in your possession any proxies authorizing Mr. Cummins to be present and represent Mr. Hays or Mr. Blodgett or anyone else?

A. I do not know whether I have or not, but I am certain that Mr. Cummins would not have represented Mr. How, Mr. Hays and Mr. Blodgett unless he had authority to
261 do so; I might add that these gentlemen have never repudiated the meeting.

Complainants' counsel move to strike out the eulogy on Senator Cummins, because it is not responsive to the question, and also move to strike out the part of the answer "I might add that these gentlemen have never repudiated the meeting" because it is not responsive to the question.

334X. Q. Are you a member of the Iowa bar?

A. I am an honorary member.

335X. Q. For how many years have you been a member of the Iowa bar?

A. I was admitted to the bar in Sioux City when I was about 18 years old, that would be about 54 years ago.

336X. Q. What is your present occupation?

A. Mostly buying real estate and defending this suit.

337X. Q. Are you familiar with real estate values in the city of Des Moines? A. Yes.

338X. Q. What do you consider the present value of the terminal property in controversy, its value for terminal purposes?

A. I have never figured it up, I could make an estimate on it with some time.

339X. Q. You have some impression?

A. Well, I think it is worth $2,000,000.

340X. Q. What is the present outstanding indebtedness of the Des Moines Union Railway Co.?

A. 671 bonds, $671,000.

341X. Q. Is that indebtedness all secured by the mortgage dated on or about November 1st, 1887? A. It is.

342X. Q. It is stated in Paragraph 14 of your answer, as follows: "These respondents deny that it was intended that the Des Moines Union Railway Company should take
262 title to said property as trustee for the complainants; and aver that it was intended that it should, and it did in fact, take title to said property in fee absolute for its own sole use and benefit."

Now, I will ask you to state what interest you considered the Des Moines Union Railway Co. to have in this terminal property in February, 1890, when you say you purchased from the Wabash Purchasing Committee, one-eighth of the stock of the Des Moines Union Railway Co. for yourself and one-eighth thereof for Gen. Dodge?

A. A good and perfect title in fee simple.

343X. Q. That was before the amendments?

A. Yes sir, before the amendments.

344X. Q. In Paragraph 14 of your answer it is stated as follows:

"These respondents further aver that the Des Moines Union Railway Co. has at all times been recognized by the complainants as the absolute owner of the property in question, and that it (the Terminal Company) has made large expenditures in connection with said property in reliance upon its ownership thereof".

Now, do you mean to be understood as stating that the Terminal Company has made large expenditures of its own funds on this property in reliance upon its ownership thereof?

A. I do.

345X. Q. Have any moneys been expended by the Terminal Company in connection with this terminal property, excepting from what has been designated as its surplus earnings, and such as has been realized from the sale of its bonds?

A. Those are the two sources of moneys used in purchasing additional property and making additional improvements.

263 346X. Q. Had it been represented to you by anyone that the Des Moines Union Railway Co. had acquired title to this terminal property in fee for its own sole use and benefit before April 8th, 1890, the date at which the articles of incorporation of that company are alleged to have been amended?

A. That is the way I understood that the Des Moines Union Railway Co. purchased the property and took the title in fee and owned it absolutely.

Complainants' counsel move to strike out the answer as not responsive to the question, and state that the question is

whether anybody made representations to him, not what he thought about it.

347X. Q. (346X. Q repeated).

A. I never heard it disputed at that time. I do not remember of any representations being made, but I was acquainted with all the persons connected with this company and none of them ever said that the title of the Des Moines Union was not good.

348X. Q. When you wrote this letter to Mr. O. D. Ashley, dated April 1st, 1890, which, omitting date and address reads as follows, "In our last interview at your office, it was understood that you would talk with Mr. Joy and Mr. Wells of the Purchasing Committee and write me upon what terms you would sell a one-eighth interest in the capital stock of the Des Moines Union Railway Co. Thinking that this matter might have escaped your memory I beg to say that I would like to hear from you in regard to it." Did you then consider that the Des Moines Union Railway Co. had taken title to this terminal property in fee absolute for its own sole use and benefit?

A. Yes, encumbered with the bonded debt.

264 349X. Q. Did you consider the Des Moines Union Railway Co. the absolute owner in fee, of this terminal property when the firm of F. M. Hubbell & Son bought five-eighths of the capital stock of the Des Moines Union Railway Co. from the Des Moines, Northern & Western Railway Co. on or about January 29th, 1894? A. I did.

350X. Q. Were you a director of the Des Moines, Northern & Western Railway Co. at the time that company sold five-eighths of the stock of the Des Moines Union Railway Co. to the firm of F. M. Hubbell & Son for $225,000? A. I was.

351X. Q. Were you president of the Des Moines, Northern & Western Railway Co. at the date of that transaction?

A. Yes.

352X. Q. Was F. C. Hubbell a director of the Des Moines Northern & Western Railway Co. at the time of that transaction? A. Yes.

353X. Q. Was Mr. F. C. Hubbell vice president of the Des Moines, Northern & Western Railway Co. on the date of that transaction? A. Yes.

354X. Q. Was Mr. H. D. Thompson a director of the Des Moines Northern & Western Railway Co. at the time that company sold five-eighths of the capital stock of the Terminal Company to the firm of F. M. Hubbell & Son? A. Yes.

355X. Q. Is Mr. H. D. Thompson a member of your family or otherwise related to you?

A. He is my brother in-law.

356X. Q. Was Mr. A. M. Denman a director of the Des Moines Northern & Western Railway Co. at the time that company sold five-eighths of the stock of the Terminal Company to F. M. Hubbell & Son? A. Yes, I think he was.

357X. Q. Was Mr. A. M. Denman then in your employ or was he a member of your family?

A. He was employed by the Des Moines Waterworks
265 Company.

358X. Q. Was Mr. A. B. Cummins a director of the Des Moines, Northern & Western Railway Co. in 1894 at the time you say that company sold five-eighths of the stock of the Des Moines Union Railway Co. to F. M. Hubbell & Son?

A. Yes.

359X. Q. Was Mr. Cummins also general solicitor of the Des Moines Northern & Western Railway Co. in 1894?

A. He was.

360X. Q. Was Mr. Cummins also your attorney and legal advisor at the time that sale of stock was made to the firm of F. M. Hubbell & Son? A. Yes.

361X. Q. When the firm of F. M. Hubbell & Son bought this five-eighths of the stock of the Des Moines Union Railway Co. what percentage of its par value did you pay for it, ten cents on the dollar? A. Ten cents on the dollar.

362X. Q. Were you present when the testimony of Mr. A. B. Cummins was taken in this case on or about March 23rd of the present year? A. Yes.

363X. Q. Is it true that you were opposed to amending the articles of incorporation of the Des Moines Union Railway Co. when first proposed to you by Mr. Cummins?

A. I only judge from the fact that Mr. Cummins wrote a letter to Gen. Dodge at about that time and said in it that I was opposed to it; I do not remember the incident myself.

364X. Q. You do not remember whether you were for or against the amendment to the articles of incorporation when Mr. Cummins is said to have proposed them at a meeting of the stockholders of the Terminal Company on January 3rd, 1899? A. No, I do not remember.

365X. Q. Do you remember what, if any, definite reason Mr. Cummins gave for changing the articles of incor-
266 poration, that caused you to change your mind and become in favor of them?

A. I do not remember why I became in favor of them only that they were recommended by Col. Blodgett and A. B. Cummins and I supposed they were right.

365X. Q. When you say they were recommended by Wells H. Blodgett and A. B. Cummins, do you mean to say more than that in a resolution passed in January, 1890, the matter was referred to those two gentlemen?

A. The matter was referred to those two gentlemen, and they had considerable correspondence and some conferences, and, as I understood, it came to an agreement and they recommended those articles.

366X. Q. Have you any personal knowledge as to any correspondence or conferences between W. H. Blodgett and A. B. Cummins between the date on which the amendments were proposed by Mr. Cummins at the January meeting of the Terminal Company and the time of their adoption?

A. I have seen letters of Mr. Cummins to Col. Blodgett as copied in Mr. Cummins' letter-book and heard him testify that he sent them, and that is all of the personal knowledge except what Mr. Cummins said himself.

Complainants' counsel move to strike out that part of the answer that does not refer to personal knowledge.

367X. Q. (366X. Q. repeated).

A. The only knowledge that I can now remember of is from reading the correspondence between A. B. Cummins and Col. Blodgett, on this subject.

368X. Q. Did you ever see any letter signed by Mr. Blodgett in which he expressed any opinion at all respecting the advisability of adopting or rejecting the amendments?

A. I do not know that I ever did.

267 369X. Q. You refer to the letter read by Mr. Cummins in his deposition? A. Yes.

370X. Q. Did Mr. Cummins explain to you that his purpose in amending the articles of incorporation of the terminal Co. was to straighten out the title to the terminal property?

A. I understood that his reason for claiming that an amendment of the articles was necessary was that the Des Moines Union Railway Co. was not carrying on business in accordance with the contract of January 2nd, 1882, and never had done so, and that it was necessary for the Des Moines Union to amend its articles so that they would conform to the methods and manner in which the Des Moines Union Co. was operating and transacting the business.

371X. Q. Had the contract of May 10th, 1889, been executed at that time prior to the date of these alleged amendments? A. Yes.

372X. Q. And prior to the date on which Mr. Cummins made this explanation to you respecting his purpose in amending them?

A. I cannot remember everything that occurred 21 years ago.

373X. Q. I will ask you this question, had the contract of May 10th, 1889, been executed before you ever heard of any suggestion from any one respecting the amendment of the articles?

A. Yes, I think the contract of 1889 was executed before I heard of any necessity or desirability of amending the articles.

374X. Q. Or changing the method of doing the business?

A. We did not change the method.

375X. Q. The method was not changed after the amendment? A. Not at all.

268 376X. Q. The business was transacted and has been transacted ever since, so far as you know, under the contract of 1889? A. Yes.

377X. Q. Did Mr. Cummins explain to you that the record respecting the title to these terminal properties was, in his opinion, in such a state that it was, or might become, a question as to whether those terminal properties were owned by the Terminal Company or by the railroad company?

A. He did not.

378X. Q. Did Mr. Cummins explain to you that he thought it would be a good thing for all parties to have the full title to those terminals clearly vested in the Terminal Company?

A. I understood from everybody connected with the Des Moines Union Co. that its title was perfectly good. It seems that the Des Moines Union Company at this time or since its organization, had not been operated, or its business transacted, in accordance with the contract of January 2nd, 1882, that in fact the contract of 1882 had been abandoned, and the business was being conducted in an entirely different way, and Mr. Cummins thought under the situation the articles should be amended to correspond with the methods under which the Des Moines Union had been operated ever since it took possession on May 1st, 1888.

379X. Q. You are very familiar with all these contracts; in what respect now, was the contract of May 10th, 1889 different from the contract of January 2nd, 1882 with respect to the management and conduct of the business of the Terminal Company?

Defendants' counsel objects to the question because the contracts are the best evidence and because it calls for a
269 conclusion which can only be made by a comparison of the two contracts in detail.

A. I could not say in what respect, that is in every respect, wherein it was operated in a different manner than originally contemplated. As I remember it under the contract of 1882, each company was to do its own work, go everywhere, and under the articles of incorporation, and the contract of 1889, the Des Moines Union operated the property instead of these tenant companies. There may have been other differences which I now do not remember.

380X. Q. But the one you stated is the only one you now recall?

A. That is the only one I now recall.

381X. Q. Did Mr. Cummins advise you that the desired change respecting this management of the property was to have any effect upon the title held by the Terminal Company in the terminal property?

A. No, he did not, I know a warranty deed when I see it.

382X. Q. Did he say anything to you about straightening out the title? A. No, the title was good.

383X. Q. He never argued that with you, urged that as a reason why the amendments should be adopted? A. No.

384X. Q. He never suggested that by adopting the proposed amendments something would be added to the estate then held by the Terminal Company under its deeds from How, Dodge and others? A. No, emphatically.

385X. Q. Then the question of increasing the estate or interest of the Des Moines Union Railway Co. in these terminals was not considered by you in determining whether you would be for or against the proposed amendment?

A. No.

270 386X. Q. Were you a director of the Des Moines & Northern Railway Co. during the year 1890?

A. I think I was.

387X. Q. Were you a director of the Des Moines & Northwestern Railway Co. during the year 1890? A. Yes.

388X. Q. Were you a director of the Des Moines & St. Louis Railroad Co. during the year 1890? A. Yes.

389X. Q. Was Mr. Cummins a director of the Des Moines & Northern Railway Co. during the year 1890?

A. I know in reason that he was, although to be absolutely certain I would have to consult the record. Mr. Cummins was one of the directors named in the articles when the company was organiged in the fall of 1889, and his office no doubt was continued in the year 1890.

390X. Q. Was Mr. Cummins a director of the Des Moines & St. Louis Railroad Co. during the year 1890? A. Yes.

391X. Q. Was Mr. F. C. Hubbell a director of the Des Moines and Northwestern Railway Co. during the year 1890?

A. Yes.

392X. Q. Was Mr. F. C. Hubbell a director of the Des Moines & St. Louis Railroad Co. during the year 1890?

A. I think not.

393X. Q. At the time those deeds were made by How, Dodge and others to the Des Moines Union Railway Co. in the year 1887, were you a director and also secretary of the Terminal Company? A. Yes.

394X. Q. Were you also at that time a director and officer of the St. Louis, Des Moines & Northern Railway Co.

A. Yes, I was a director.

395X. Q. Were you a director of the Des Moines Northwestern Railway Co. at the time How and Dodge executed their deeds to the Terminal Company in 1887?

271 A. I think the Des Moines Northwestern had passed out of existence.

396X. Q. The Des Moines Northwestern, I am speaking of 1887?

A. I was a director in the Des Moines Northwestern in 1887.

397X. Q. Were you also a director of the Des Moines & St. Louis, in 1887 when the deeds were executed by How, Dodge and others to the Des Moines Union Railway Co.?

A. Yes.

398X. Q. Attached to the bill of complaint in this case as Exhibit F. is a copy of certain proceedings had at a meeting of the stockholders of the Des Moines & Northwestern Railway Co. held on January 1st, 1885, which reads in part as follows:

"On motion of F. M. Hubbell the following preamble and resolutions were submitted to the meeting for its consideration, to-wit:

Whereas, the Des Moines, St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How, and James F. How, Trustee, on the 2nd day of January, 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines which had theretofore been held and used by certain of the individual parties thereto for certain purposes and upon certain conditions set out in said contract, and

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract to acquire, hold, use and en-

joy the real estate, property, right and franchises in the
272 City of Des Moines, east of Farnham Street in said City of the aforesaid railway company and signatories of said contract, acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882,

Now therefore,

Resolved, that this Company accepts and ratifies so far as its interests are affected thereby the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord, and compliance with the terms and conditions of the said contract of January 2nd, 1882. And undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign and transfer any interest of whatever name and character in and to the real state, franchises, choses in action and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract.

The same having been duly considered was on motion adopted, all the stockholders present and represented voting therefor.

273 Now, in Paragraph 7 of your answer in this case it is admitted that the above is a true copy of the record of proceedings had at said meeting, and I will ask you whether it was your understanding when you offered said preamble and resolutions at that meeting of the stockholders of the Des Moines Northwestern Railway Co., that the deed that How, Dodge and the railroad companies therein named were directed to execute, would vest in the Des Moines Union Railway Company the title to said property in fee absolute for its own use and benefit?

A. No action was taken under that resolution. I had no interest in the Des Moines Northwestern at that time of any value. I simply offered the resolutions that were handed to me by the Wabash people and offered them without paying any attention to what they contained.

Complainants' counsel move to strike out the answer as not responsive to the question.

399X. Q. Have you any other recollection respecting that matter other than what you have just stated? A. No.

400X. Q. Was it your understanding when you offered that resolution that after How, Dodge and the other parties named therein should execute deeds to the Des Moines Union Railway Co. as directed in said resolution, that the railroad companies would thereafter have no right to use said terminal property excepting on such terms and conditions as might be fixed by the Des Moines Union Railway Co. or was it your understanding that said railroad companies would continue to have the right to use said terminals on the terms stated in the contract of January 2nd, 1882, to which reference is made in the resolution?

274 A. I had no understanding on the subject, I was simply offering resolutions prepared by the Wabash with the request that I offer them. I had no interest in the property, no valuable interest in the property, or in the transaction, and I do not remember of having any understanding or convictions about it at that time.

401X. Q. You have the record here, have you not, of the Des Moines Northwestern of that meeting of the stockholders?

A. Yes.

402X. Q. Who were present at the meeting of the Des Moines Northwestern at which the resolutions were adopted?

A. J. S. Runnells, by power of attorney, representing the stock of this company held and controlled by the Mercantile Trust Co.; F. M. Hubbell, president of the Narrow Gauge Railway Construction Co., representing its stock; Polk & Hubbell representing their own stock in the company. There was a proxy given by the Mercantile Trust Co. to Mr. Runnells.

403X. Q. That was a meeting of the stockholders of the Des Moines Northwestern Railway Co.?

A. Yes sir.

404X. Q. Held January 1st, 1885? A. Yes sir.

405X. Q. Do you remember who claimed to represent the Wabash Road at that meeting?

A. My inference from the looks of things is that the stock owned by the Wabash had been transferred to the Mercantile Trust Co. and the Mercantile Trust Co. gave a proxy to J. S. Runnells.

406X. Q. Is it true that at the date of that meeting neither you nor the firm of Polk & Hubbell had any interest in the Des Moines Northwestern Railroad?

A. The railroad was completed and leased to the Wa-
275 bash, the Wabash was in the receivers' hands and hence the Des Moines Northwestern was also in the same plight and we did not think our stock was of any value.

407X. Q. Did you or the firm of Polk & Hubbell, at the date of that meeting have any stock in the Des Moines Northwestern Co.?

A. I do not know whether we did or not; the records say that Polk & Hubbell representing their own stock were present.

408X. Q. Of the Construction Company?

A. Of the Construction Company.

409X. Q. What interest did you have in the Construction Company?

A. I think that Polk & Hubbell had a half interest, and Clarkson and Runnells had a half interest in the Construction Company; its assets consisted of some stock in the Des Moines & Northwestern.

By Mr. Minnis:

410X. Q. You have said that the representative of the Wabash Company handed you the resolutions, and that you introduced them without examining them; I will ask you who handed you the resolutions?

A. I don't know whether they were handed to me by Mr. Runnells or whether they were sent from St. Louis to me or to him, but undoubtedly they were prepared by the Wabash.

211X. Q. Have you any personal recollection about that matter?

A. I know that these resolutions and the resolutions of November 8th, 1887, came to me as a surprise, I knew nothing about them until they were dropped in.

412X. Q. You do recall that you were surprised when they came to you?

A. I remember it was something new to me.

276 413X. Q. Then you must have examined them, didn't you? A. I heard them read.

414X. Q. You did know what was in them?

A. At that time I thought I knew what was in them without feeling any interest in the affair.

By Mr. Blodgett:

415X. Q. It is stated in those resolutions that were offered by you at that meeting of the stockholders of the Des Moines Northwestern Railway Company that the articles of incorporation of the Des Moines Union Railway Co. were in substantial accord with the contract of January 2nd, 1882, now, do you recollect anything about that matter or what you thought about that matter at the time that meeting was held?

A. No, I don't remember whether I had any thoughts except I was connected up with some big railroad men and I looked to them to say what should be done, and I did what they asked me to do.

416X. Q. Have any extension or spur tracks been constructed at any time since May 10th, 1889, from connections with the tracks of the Des Moines Union Railway Co. to industries or to connections with tracks of other railroad companies, with funds provided by yourself or the firm of F. M. Hubbell & Son?

A. I remember now of furnishing the right of way for about half a mile of track without compensation upon which a spur track was built.

417X. Q. And was that right of way acquired and were the spur tracks constructed upon it with funds provided by the firm of F. M. Hubbell & Son?

A. The right of way for this track I have in mind was furnished by me, and the funds to build the track were furnished by the Des Moines Union Railway Co.

277 418X. Q. The funds where funds were furnished by the Des Moines Union Railroad Co. for the acquisition of property and the construction of tracks were the proceeds of what is called surplus earnings or the proceeds of bonds?

A. Yes, all of the right of way that has been purchased and all of the land purchased and all of the tracks laid and improvements made were paid for by the Des Moines Union out of funds realized from the sale of Des Moines Union Railway bonds or by the use of what is known as surplus earnings.

419X. Q. You stated that you gave the right of way for one spur track, will you explain that a little more in detail?

A. We had what we thought was a valuable interest in the Des Moines Union Railway Co., and I did not hesitate to make a deed to the Des Moines Union Railway Co. of about half a mile of right of way.

420X. Q. I will ask you from what point to what point that spur track was built and whether it is was not built into property that was owned by you personally?

A. I could not have deeded the right of way if I had not owned the property.

421X. Q. It did lead into a tract of land owned by you?

A. Yes.

422X. Q. Will you please state a little more in detail where that spur track is located so that we may identify it on the map?

A. It commences at a point in the track that runs north and south near Twelfth Street, and runs easterly across Eleventh Street and Ninth Street, from thence it goes south

to a point just north of Morgan Street and also extends north to the north line of land that I owned at that time.

423X. Q. Was not that spur track built for the pur-
278 pose of developing and increasing the value of property owned by you?

A. It was,—the right of way was granted for a two fold purpose, to make more valuable the Des Moines Union Railway Co., whose stock I was interested in, and also to enable industries to be located on that track and on my land, hoping that it might benefit all concerned.

424X. Q. Under those circumstances you thought it would be a fair deal for you to provide the right of way and the railroad company to lay the track?

A. I thought so, yes.

425X. Q. I want to know whether any extensions or spur tracks have been at any time constructed from the tracks of the Des Moines Union Railway Co. to industries or connections with tracks of other railroad companies with funds provided by any corporation in which you or the firm of F. M. Hubbell & Son are stockholders or officers?

A. The spur tracks that have been built, have been built by the Des Moines Union Railway Co. out of its funds.

Mr. Guernsey: Do you mean by that question the tracks built by the Des Moines Union Railway Co., is that what you refer to?

Mr. Blodgett: That is what I referred to in the last question.

426X. Q. Have spur tracks been constructed from connections with the Des Moines Union Railway Co. to industries by any other railroad or terminal company organized in the City of Des Moines in which yourself or the firm of F. M. Hubbell & Son are stockholders or officers?

A. Tracks have been built by the Des Moines Western Railway Co., which connects with the Des Moines Union tracks, the money to build those tracks was furnished by the
279 Des Moines Western Railway Co., in which I have an interest and am President.

427X. Q. How large an interest have you in that corporation?

A. Individually I have stock to the amount of $18,500.

428X. Q. What percentage of the total stock is that?

A. The total stock is $217,700.

429X. Q. Does F. M. Hubbell & Son & Co. Inc. or do you personally own and control the majority of stock in that company? A. We do.

430X. Q. About this right of way that you gave to the Des Moines Union, how large a tract of land did you own at the time you gave this right of way to the Des Moines Union Railway Co.? A. I had about 120 acres.

431X. Q. And about how long is that spur track that was constructed into that tract?

A. It was 2,000. feet long, north and south.

432X. Q. How many industries were located on that 2,000 feet or reached by the spur track?

A. Do you mean now?

433X. Q. Yes?

A. There are two planning mills, the Paragon Oil Co. and a warehouse that belongs to my estate, that is all I remember on that tract; there are some other little houses.

434X. Q. Did not the extension of the track of the Des Moines Union Railway Co. into the tract owned by you largely enhance the value of your property?

A. I think not, I think I would give $10,000. if you would take it up.

435X. Q. How long have you owned the property?

A. 25 or 30 years.

436X. Q. Has it not increased very greatly in value since you owned it? A. Yes.

437X. Q. As compared with its value at the time the railroad track was extended into it has it advanced in value?

A. That land has advanced in value by reason of the paving of streets, the laying of water mains, gas mains
280 and sewers, for which the owners of the real estate have paid.

438X. Q. So that while the property has largely advanced in value since the spur track was constructed you do not attribute the increased value to the construction of the spur track? A. No, I do not, I wish it was out.

439X. Q. Is it not Des Moines River bottom land?

A. Coon River bottom land.

440X. Q. And if the industries were removed would it be more valuable for farming or residence purposes?

A. I don't think it would be suitable for residences, it is too valuable for farms.

441X. Q. Those three or four industries that you have mentioned that are located on your land, do they furnish any amount of traffic to the Des Moines Union, or to the railroad companies that are interested in the Des Moines Union?

A. They furnish some traffic to the Des Moines Union and its tenant companies.

442X. Q. When you donated that right of way and constructed the spur track you expected a return, did you not, in the way of increased value of your property?

A. I hoped that it would increase the value of the property.

443X. Q. That is the reason why you extended it?

A. The reason I extended it was because I was intent on building up the Des Moines Union Railway Co. and its business.

444X. Q. Were you not more interested in developing your own property and increasing its value than getting traffic for the railroad?

A. No, the property was all right. I did not need the aid of the railroad to develop it, but I was willing to help the railroad expand by furnishing this right of way.

281 445X. Q. And it was a spur running out to the industries from the track of the Des Moines Union Railway?

A. It is a track 2,000 feet long north and south, parallel to Ninth, with a further track connecting that north and south track with the Des Moines Union north and south track that is about where 12th Street should be.

446X. Q. And is that the only spur track that has been constructed into or for the purpose of developing real estate owned by you? A. No.

447X. Q. Will you just mention the others so we may locate them on the map if we want to?

A. The Des Moines Terminal Company have built a good many tracks in that locality, I do not think I could mention them all without making a search.

448X. Q. You are engaged, are you not, in buying, selling and developing real estate in and about the city of Des Moines? A. Yes.

449X. Q. Has this track into this property, a large tract of yours, the track for which you donated the right of way, been a profitable investment for the Des Moines Union Railway Co.? A. This track I described a minute ago?

450X. Q. The one for which you donated the right of way?

A. I think it has been profitable to the Des Moines Union Railway Co., yes.

451X. Q. It is stated in Paragraph 31 of the answer in this case, as follows:

"These respondents have at all times maintained that under the proper construction of said lease (Exhibit P), the Des Moines Union Railway Co. was entitled to said surplus earnings, and that it received and appropriated the same

282 to its own use, with the knowledge and acquiescence of the complainants, and without objection on their part, prior to the 12th day of March, 1906. That since the said date, and upon the contention of the complainants that the Des Moines Union Railway Co. was not entitled to said sur-

plus earnings, they have been kept in a separate fund and have been permitted to accumulate".

Now can you state the amount of earnings that have been received and appropriated by the Des Moines Union Railway Co. to its own use and the purposes for which said earnings have been expended? A. I cannot.

452X. Q. It would take a long examination of your books to ascertain that? A. It would.

453X. Q. You say it would require an examination of the books and accounts of the company? A. Yes.

454X. Q. Can you state now the amount of the separate fund that has been accumulated from said surplus earnings and that is now in possession of or on deposit to the credit of the Des Moines Union Railway Co.?

A. I cannot state the amount.

455X. Q. Would that require a detailed examination of the books.

A. It would not take long to make a statement of the money deposited in banks to the credit of the Des Moines Union Railway Co. bearing three per cent interest; I think there is over $300,000. of that kind of money.

456X. Q. It is stated in Paragraph 33 of your answer in this case as follows:

"These respondents further respectfully show to the Court that from and after May 10th, 1889, until the present time, monthly accounts have been rendered by the Des Moines Union Railway Co. to the tenant companies, or complainants
283 and their predecessors in interest, under the contract, and 'Exhibit P. to the Amended Bill', and that during said entire period (except only from February 11, 1891, to January 7th, 1892), said accounts uniformly did not credit the tenant companies with such surplus earnings and during said period said accounts were continuously audited and paid by the tenant companies without any claim that they were entitled to any credit on account of said surplus earnings, until about March 12th, 1906;"

Now, I will ask you to state whether it is true that from May 10th, 1889, to the present time, monthly accounts have been rendered by the Des Moines Union Railway Co. as provided in said contract of May 10th, 1889, to the railroad companies using said terminals, and that during said whole period, (excepting from February 11th, 1891, to January 7th, 1892) said monthly accounts gave no credit for any surplus earnings, and that said accounts were paid by the complainants and their predecessors down to March 12th, 1906, without claim that they were entitled to any credits on account of the so-called surplus earnings of the Terminal Company?

A. Most of the accounts have been made out against the tenant companies, from May 10th, 1889, up to the present time. The surplus earnings accruing between February 11th, 1891, and January 7th, 1892, I understand, were credited to the tenant companies, and that no complaint or demand that the surplus earnings belonged to the tenant companies as of right was asserted until March 12th, 1906.

284 457X. Q. After the contract of 1889 went into effect were not the so-called surplus earnings credited on the monthly bills of the railroad companies for quite a period of time?

A. From 1889 to 1891 the surplus earnings were a negligible quantity, scarcely anything, I do not know whether they were credited to the companies.

458X. Q. Whatever they were were they not credited on the bills? A. I don't know.

459X. Q. There was a time when they ceased to be credited on the bills, was there not? A. Yes.

460X. Q. And did they not cease to be credited in pursuance of a resolution that was passed by the board of directors or stockholders of the Terminal Company?

A. They were credited in the first place upon a resolution of the board of directors, and then later on they ceased to be credited by virtue of a resolution of the board of directors.

461X. Q. And the resolution of the board of directors of the Des Moines Union Railway Co. under which this crediting of the surplus earning ceased, was the one passed January 7th, 1892, and set out on Page 61 of the printed amended bill and which provides for the accumulation of cash capital to enable the Des Moines Union Railway Co. to pay current bills before the monthly bills could be paid by the railroad company.

Defendants' counsel objects to this as not the proper construction of the resolution which does not provide for a cash capital but recites the necessity of a cash capital.

A. On the 7th of January, 1892, the resolution was passed as follows: "Therefore be it resolved: that until the further action of the Board, the sums received as rents of real
285 estate and all switching charges shall not be credited upon the account of the tenant companies, but shall be used for the aforesaid purposes", and after the passage of the resolution the crediting of such amounts was terminated.

462X. Q. Have you read all of the resolution?

A. I have read the resolution, but not the preamble.

463X. Q. Will you now read the preamble or the whereas of the resolution also.

A. Yes, it will be found on page 61 of the complainants' bill and the preamble is as follows, "Whereas this company

is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenues from the tenant companies; Therefore be it resolved &c."

464X. Q. And then follows the resolution as you have read it?

A. Yes, I read it once before, I thought you would not want it again.

465X. Q. It is stated in paragraph 28 of your answer in this case that the complainants are both of them estopped from now or hereafter setting up or claiming that the Des Moines Union Railway Co. is not the owner of the terminal property in controversy by reason of the fact that the predecessors of complainants for a valuable consideration, sold and transferred the terminal property in question to the Des Moines Union Railway Co. Now, do you know of any deed or conveyance of any kind that has been at any time executed by either of the complainants or by any predecessor of either of the complainants that transferred or was intended to transfer the entire title and estate that was in them, or either of them to the Des Moines Union Railway Co.?

A. All of the deeds to the Des Moines Union Railway
286 Co. appear to be straight warranty deeds.

466X. Q. But do you know of any conveyance that has been made by the complainants or their predecessors to the Des Moines Union Railway Co.? A. I do.

467X. Q. Will you mention what they are?

A. James F. How, Trustee, made a deed to the Des Moines Union, G. M. Dodge, F. M. Hubbell, J. S. Polk, and a great many other people.

468X. Q. The Des Moines & St. Louis made a deed, didn't they? A. They made a deed.

469X. Q. Are the deeds you have just mentioned the deeds to which you refer as having been executed by the predecessors of the complainants which you say have vested the title to the terminal property in the Terminal Company?

A. Some of them are.

470X. Q. Are there any others?

A. I don't think I mentioned the St. Louis, Des Moines & Northern, that company made a deed, and that is the only one I remember now.

471X. Q. Aside from those you have already mentioned?

A. Yes.

472X. Q. There was a deed executed by the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co. on or about February 21st, 1888; will you look at that deed and see if it does not purport to convey to the Des Moines

Union Railway Co. all of the railroad of the Des Moines & St. Louis Railroad Co. in the City of Des Moines.

Defendants' counsel objects to this as not the best evidence, and suggests to the witness that if he is asked to state what it conveys he read the description in the deed in his answer.

473X. Q. I will ask him to read into the record the description in the deed?

A. (Reading) "Know all men by these presents, That,
287 the Des Moines and St. Louis Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, for and in consideration of One Dollar, to it paid by the Des Moines Union Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, the receipt whereof is hereby acknowledged, does hereby sell and convey unto the said Des Moines Union Railway Company, the following described premises, franchises and real estate, situated in the City of Des Moines, Polk County, Iowa.

Official Plat Lot Twelve (12) in Block twenty-two (22) Demoines; Lot two (2) in Block twenty-two (22) Demoine; Lot Ten (10) in Block Twenty-one (21) Demoine; Lots thirteen (13) and fourteen (14) in Block twelve (12) Demoine; Lots eight (8) and fifteen (15) in Block fifteen (15) Demoine; Lot eight (8) in Block Sixteen (16) Demoine; Lot three (3) in Block "I" Scott and Deans Addition; Lot Twelve (12) in Block "D" Scott and Dean's Addition; Lot four (4) in Block Thirty (30) Fort Des Moines; Lot seven (7) in Block Nine (9) Fort Des Moines; Lot Two (2) in Block Nine (9) Fort Des Moines; Lot Two (2) in Block four (4) in Fort Des Moines; East one-half (½) of Lot six (6) in Block Nine (9) Hoxie's Addition; Lot three (3) in Block Eighteen (18) Hoxie's Addition; south one-half (½) of Lot Five (5) in Block twenty-two (22) Keene and Poindexter's Addition, south one-half (½) of Lots One (1) Two (2) and three (3) in Block thirty-one (31) Keene and Poindexter's Addition; North part of Lot thirty-nine in Brooks & Co's Addition. And all of the
288 real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate, which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, side-tracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have acquired by grant, donation, purchase or otherwise, and particularly

all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance, "granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said City between Court Avenue and Vine Streets." And the said Des Moines and St. Louis Railroad Company hereby covenants to Warrant and Defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it. Signed this 21st day of February, A. D. 1888.

In witness whereof, the said Des Moines and St. Louis Railroad Company has caused these presents to be signed in its corporate name by its President and attested by its Secretary, and has caused the corporate seal of said Company to be hereunto affixed as authorized, the date and year last above written.

(Corporate Seal)

THE DES MOINES AND ST. LOUIS RAILROAD COMPANY,

289 By J. S. Clarkson, President.

Attest: F. M. Hubbell, Secretary.

474X. Q. Is this one of the deeds to which you refer in Paragraph 28 of your answer wherein you state that the predecessors of the complainants for a valuable consideration sold and transferred the property in question to the Des Moines Union Railway Co.?

A. If the Des Moines & St. Louis is a predecessor then this is one of the deeds.

Complainants' counsel object to the answer as not responsive to the question.

475X. Q. (474X. Q. repeated)

A. The Des Moines & St. Louis Railroad Company did not put a dollar of money into the purchase of the real estate described in that deed, the money was advanced by the Wabash, St. Louis & Pacific Railway Co., and the title taken in the name of the Des Moines & St. Louis for convenience or some other reason, and the Des Moines & St. Louis made this deed at the request and behest of the Wabash, St. Louis & Pacific.

476X. Q. That is a deed through which the Des Moines Union Railway Co. now holds title to the property therein described, is it not

A. I will have to let the court construe it.

477X. Q. I want to know whether that is one of the deeds to which you refer in Paragraph 28 of your answer wherein you state that the predecessors of the complainants for a valuable consideration sold and transferred the property in question to the Des Moines Union Railway Co.?

A. I answered that if the Des Moines & St. Louis was really a predecessor then this is one of them.

290 Complainants' counsel moves to exclude the answer because is it not responsive to the question.

478X. Q. (477X. Q. repeated).

A. I cannot say whether the Des Moines & St. Louis Railroad was a predecessor. I always understood that it was a paper railroad, but if it is one of the predecessors then this deed made by it is one of the deeds under which the Des Moines Union Railway Co. claims title.

By Mr. Minnis:

479X. Q. That is not the question. The question is whether you referred in the part of your answer that has been read to you to this deed?

A. I am unable to make any other answer to this question except to say that this deed in question has already been introduced in evidence by the plaintiffs and I do not feel competent or willing to construe it.

480X. Q. What deeds did you refer to in that part of your answer which is paragraph 28, which states that for a valuable consideration the Des Moines & St. Louis sold and transferred the property in question to the Des Moines Union Railway Co.?

A. I do not know any more than what I have told you.

By Mr. Blodgett:

481X. Q. We are not asking you to construe the deed, we are asking you to construe your own answer; what did you mean by that, what did you refer to in that paragraph?

A. I referred to the deeds mentioned in the resolution of November 8th, 1887, to be made by James F. How, trustee, James F. How, G. M. Dodge, the Des Moines & St. Louis Railroad Co. and the St. Louis, Des Moines & Northern Railroad Co.

291 482X. Q. Those are the deeds to which you referred in that paragraph of that answer?

A. Those are the only deeds I can remember now, there may have been others.

483X. Q. Then, as I understand, those deeds, the one from the Des Moines & St. Louis to the Des Moines Union

Railway Co. were executed in pursuance of the resolution of November 8th, 1887? A. I understand so.

484X. Q. Attached to the bill of complaint in this case as Exhibit H. is a copy of the record of certain proceedings had at a meeting of the Board of Directors of the Des Moines & St. Louis Railroad Co., held November 8th, 1887 which reads as follows:

"Resolved, That the President and Secretary of this Company, be, and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate, rights of way, franchises, roadbed and other property of said Company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from City of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second 1882, entered into by and between this Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, and others.

"Said motion having been duly considered was unanimously adopted.

"There being no other business before the meeting, it adjourned. F. M. Hubbell, Secretary."

Now, was this deed from the Des Moines & St. Louis
292 Railroad Co. to the Des Moines Union Railway Co. to which we have been referring, executed under that resolution? A. Yes, I think so.

485X. Q. Now, I will ask you whether at the time you or the firm of F. M. Hubbell & Son bought stock in the Des Moines Union Railway Co. you considered that that deed executed by the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co. in pursuance of that resolution, vested the entire title to the possession and use of the property therein described in the Des Moines Union Railway Co.? A. I did.

486X. Q. Was the Des Moines & St. Louis Railroad Co. a predecessor in title to the Wabash Railroad Co. one of the complainants in this case.

Defendants' counsel objects to the question as calling for a conclusion.

A. I should think it was.

487X. Q. Was there not a deed executed on or about November 10th, 1887, by the St. Louis Des Moines & Northern Railroad Co. to the Des Moines Union Railway Co. which appears in the record in this case as Plaintiffs' Exhibit No. 21?

A. Yes, there appears to be a deed made by the St. Louis, Des Moines & Northern Railway Co. to the Des Moines Union, a quit claim deed.

488X. Q. Now, is that one of the deeds to which you refer in Paragraph 28 of your answer when you state, "That the predecessors of complainants, for valuable consideration, sold and transferred the terminal property in question to the Des Moines Union Railway Co.?" A. Yes.

293 489X. Q. Was the St. Louis Des Moines & Northern Railway Co. a predecessor in title of the Chicago, Milwaukee & St. Paul Railway Co., one of the complainants in this case? A. Yes, I think so.

490X. Q. Do you know of any deeds or conveyances that have been made at any time by the complainants, or their predecessors, to the Des Moines Union Railway Co., other than this one made February 21st, 1888, by the Des Moines & St. Louis Railroad Co. to the Des Moines Union Railway Co. and this one made November 7th, 1887 by the St. Louis, Des Moines & Northern Railway Co. to the Des Moines Union Railway Co.?

A. I do not know of any other deeds except these two that were made by the predecessors of the complainants.

491X. Q. Attached to the bill of complaint in this case as Exhibit D., is a copy of the record of certain proceedings had at a meeting of the stockholders of the St. Louis, Des Moines & Northern Railway Co. held January 1st, 1885 which reads as follows:

"On motion of F. M. Hubbell, the following preamble and resolutions were submitted to the meeting for its consideration, to-wit, and were unanimously adopted:

"Whereas, the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge, and James F. How, and James F. How, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate, and franchises, in the City of Des Moines,

294 which had theretofore been held and used by certain of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract, and,

"Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate, property, rights and franchises in the City of Des Moines east of Farnham Street in said City of the

aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

"Now therefore,

"1. Resolved, That this company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company;

"II. Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action and rights in possession of contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or
295 claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract."

Now I will ask you whether at the time, you, or the firm of F. M. Hubbell & Son, bought stock of the Des Moines Union Railway Co., you considered that a deed, executed by the St. Louis Des Moines & Northern Railway Co. to the Des Moines Union Railway Co., in pursuance of those resolutions would vest the entire title to the terminal property therein described in the Des Moines Union Railway Co.?

A. There was no deed made by the Des Moines & Northern Railway Co. under that resolution, passed January 1st, 1885. I understood that the deed made by the St. Louis, Des Moines & Northern Railway Co. to the Des Moines Union Railway Co. under the resolution of November 8th, 1887, conveyed an unencumbered title.

492X. Q. In fee?

A. In fee; I believe it is a quit-claim deed.

493X. Q. Now, was it your understanding at the time you offered those resolutions and at the time of their adoption that a deed made in pursuance of those resolutions would vest an unencumbered title in fee to the property therein described?

A. In January, 1885, I had no valuable interest in any of these properties, I didn't have any understanding, I didn't try to understand it, I simply offered motions that were pre-

sented to me by the Wabash interests and voted for them. The same is largely true of the resolution passed November 8th, 1887, that I relied upon the big men in the concern and supposed they were doing just what they wanted to, and just what was right. I did not consider it or could not claim to have understood much about it.

296 494X. Q. It is stated in Paragraph 28 of the answer in this case that F. M. Hubbell & Son in purchasing stock in the Des Moines Union Railway Co. now owned by them relied upon the fact that the contract of January 2nd, 1882, had been rescinded and annulled; now, in stating that you relied upon the fact that the contract of January 2nd, 1882, had been rescinded and annulled do you mean that you relied on something contained in the amendments or alleged amendments of the article of incorporation of the Des Moines Union Railway Co. that that record shows were adopted April 8th, 1890? A. I so understood it.

495X. Q. What was there in those amended articles that you understood as affecting the title of the Des Moines Union Railway Co. in those terminals?

Defendants' counsel objects to the question, because it assumes that the witness said there was something in the amended articles that affected the title to the terminal whereas he has testified just the reverse of it several times.

By Mr. Minnis:

496X. Q. What clause, or sentence, or matter in the alleged amended articles did you rely on as having rescinded and annulled the contract of 1882?

A. Article 15 of the amended articles.

By Mr. Blodgett:

497X. Q. Was not the Des Moines & St. Louis Railroad Company a party to that contract of January 2nd, 1882?

A. As I remember, it was.

498X. Q. Was not the Des Moines & Northwestern Railway Co. a party to that contract? A. Yes.

297 499X. Q. Was not the St. Louis, Des Moines & Northern Railway Co. a party to that contract?

A. Yes.

500X. Q. Now, will you please state what act of any one of those three railroad companies you relied upon as constituting a rescission or as amounting to an annulment of the contract of January 2nd, 1882, by the parties to that contract, or their assigns?

A. I relied upon the conduct of all the parties from March 31st, 1888, up to the present time.

501X. Q. Can you specify any particular acts on which you relied as having amounted to a rescission or an annulment of that contract by the parties thereto?

A. I think the parties to that contract abandoned it right from the start.

502X. Q. Do you know of any writing executed by any one of those three railroad companies, in which they consented to any abandonment of that contract, or to a rescission of that agreement?

A. I do not remember of any contract. That conduct of conveying the property to the Des Moines Union and taking a lease and paying the rent I considered an abandonment of the contract of January 2nd, 1882.

503X. Q. In Paragraph 31 of the answer in this case it is stated as follows: "These respondents aver that the said original agreement, Exhibit P, has never been modified or changed with respect to the matter of said surplus earnings, but that it has been expressly ratified and confirmed." Now I will ask you whether that contract, Exhibit P, the contract of May 10th, 1889, has been modified or changed with respect to any matter other than said surplus earnings?

A. The contract of July 31st, 1897, ratifies and confirms the contract of 1889 and adds something to it.

298 504X. Q. The contract of 1897, Exhibit R, what does it add to the contract of May 10th, 1889.

Defendants' counsel objects to the question as not being the best evidence, the contract itself being in evidence.

A. All the parties who had entered into the contract of May 10th, 1889, had become insolvent, and that contract of July 31st, 1897, was made in order to have the obligation of live companies to the lease, and as the stock of the Des Moines Union had changed between 1889 and 1897, this last contract recited who were at that time the stockholders..

505X. Q. Now, does the contract of July 31st, 1897, change the contract of May 10th, in any other respect than in the matter you have just mentioned?

Defendants' counsel objects to the question for the same reason, that the contracts are both in the record and are the best evidence, and the question calls for a conclusion.

A. I have not read the contracts for many months and cannot tell whether the last one differs especially from the one of May 10th, 1889.

506X. Q. There is attached to the answer in this case as a part of Exhibit No. 3, a proposition signed by Polk & Hubbell, which reads in part as follows:

"New York, October 9th, 1886. To the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. Gentlemen. We make the following proposition in regard to the Des Moines Northwestern Railway. The mortgage to be foreclosed to cover all advances made by the Wabash Com-
299 pany to the D. M. N. W. Ry. Co. A good and perfect title free from all liens and encumbrances (including all claims that the receivers may have against it) to be made to Polk & Hubbell for said railroad (and all its property, rights, franchises, all its interest in the equipment) and a one fourth interest in the terminal property in Des Moines, and 5037 shares of stock in the D. M. N. W. Ry. Co."

Now, I will ask you whether you are the Mr. Hubbell of the firm of Polk & Hubbell who submitted that proposition to the Purchasing Committee? A. I am.

507X. Q. Was that proposition made by you, or the firm of Polk & Hubbell, accepted by said Wabash Purchasing Committee?

A. The contract of October 9th, 1886, was accepted by the Purchasing Committee.

508X. Q. As a part of that same Exhibit No. 3, attached to your answer in this case is a copy of a contract dated September 10th, 1887, the first, third and fifth clauses of which are as follows:

"1st. For the purpose of enabling Messrs. Polk & Hubbell to bid in the Des Moines Northwestern Railway at the foreclosure sale above referred to, the Committee will furnish to said Polk & Hubbell the general mortgage bonds required to make payment of said bid, so far as the same may be required and can be used in that way; the cash payment required by the decree shall be advanced by Messrs. Polk & Hubbell and credited upon the purchase price of the property above mentioned.

"2nd. The requirement of the agreement hereto annexed, for the delivery to the Committee by Messrs. Polk &
300 Hubbell of a bond for $450,000, shall be satisfied by the delivery of such bond secured by first mortgage as provided in proposition of October 9th, 1886, executed by a new corporation organized for that purpose, and holding the property disposed of at such sale.

5th. Simultaneously with the execution and delivery of said bond the Committee will convey to Messrs. Polk and Hubbell, or their assignees, the one-fourth interest in the terminal property at Des Moines, and will transfer also 5,037 shares of stock of the Des Moines Northwestern Railway Company,

and also the interest of the parties of the second part in the equipment of said Des Moines Northwestern Railway. It is hereby understood that the rolling stock of the New York & Pacific Car Trust Association is not included in this agreement."

"Simultaneously with the conveyance above mentioned one fourth interest in the terminal property at Des Moines the same shall be mortgaged back to the Purchasing Committee for further security of the said $450,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, the bonds and stock received from the Terminal Company in exchange for said one-fourth interest shall be transferred in lieu of the property to Messrs. Polk & Hubbell or their assignees, or transferred by them to the Committee to be held by the Committee as a further security for the payment of the $450,000, above mentioned."

Now, I will ask you whether it was under that contract or under a mortgage foreclosure that took place in pursu-
301 ance of that contract that you or the firm of Polk & Hubbell acquired the railroad and property of the Des Moines Northwestern Railway Co.?

A. It was under a foreclosure that Polk & Hubbell acquired the Des Moines Northwestern Railway.

509X. Q. And that foreclosure was made in pursuance of that agreement? A. Yes.

510X. Q. Was one-fourth of the stock of the Des Moines Union Railway Co. afterwards on or about April 8th, 1890, issued to the Des Moines & Northwestern Railway Co.?

A. Yes.

511X. Q. Did the Des Moines & Northwestern Railway Co. receive that one-fourth of the stock of the Des Moines Union Railway Co. into its treasury without the payment of any consideration for the same?

A. That one-fourth interest belonged to Polk & Hubbell, and Polk & Hubbell caused it to be transferred or issued to the Des Moines & Northwestern Railway Co.

512X. Q. Was that stock received by Polk & Hubbell in pursuance of that agreement that you had with the Purchasing Committee dated September 10th, 1887?

A. Yes, the Purchasing Committee conveyed that stock to F. M. Hubbell, successor to Polk & Hubbell, in accordance with the agreements of October 9th, 1886, and September 10th, 1887.

513X. Q. The question is whether the contracts you made with the Purchasing Committee October 9th, 1886, and Sep-

tember 10th, 1887, included one fourth of the stock of the Des Moines Union and whether ultimately that stock was transferred by the Purchasing Committee to you or to the railroad company in pursuance of that agreement?

A. Yes, I think it was transferred to me and I had it issued to the Des Moines & Northwestern.

302 514X. Q. And when the Purchasing Committee furnished the mortgage bonds under which the Des Moines Northwestern property was foreclosed or under which the mortgage on the property was foreclosed, and caused one fourth of the stock of the Des Moines Union Railway Co. to be transferred to you or to the Des Moines Northwestern, did you not regard the Purchasing Committee as having fulfilled its agreement?

A. I thought the Purchasing Committee fulfilled its agreement in furnishing us the bonds with which to bid off the Des Moines Northwestern Road and in furnishing us a fourth interest in the Des Moines Union Railway.

515X. Q. One fourth of the stock?

A. One fourth of the stock and one fourth of the bonds.

516X. Q. So that you do not now claim that the Purchasing Committee is shy on account of anything they agreed to deliver to the firm of Polk & Hubbell under these agreements last referred to?

A. We do not make any claim against the Purchasing Committee under those contracts.

517X. Q. When the Des Moines & Northwestern Railway Co. was afterwards consolidated, or united with the Des Moines & Northern Railway Co. under the name of the Des Moines, Northern and Western Railway Co., did that one-fourth of the stock of the Des Moines Union Railway Co. then become an asset of the Des Moines, Northern & Western Railway Co.?

A. It did.

Not being able to complete the taking of these depositions on this day I adjourned the further taking of the same until 10 A. M., tomorrow, June 3rd, 1911.

.....

Examiner.

303 On June 3rd, 1911, pursuant to adjournment as above stated, I resumed the taking of said depositions as follows:

Present: Wells H. Blodgett, Esq., J. L. Minnis, Esq., and J. C. Cook, Esq., solicitors for complainants, and N. T. Guernsey, Esq., solicitor for defendants.

Frederick M. Hubbell, in continuation of his deposition commenced on May 31st, 1911, testifies as follows:

Cross-Examination Resumed

By Mr. Blodgett:

318X. Q. You have the record book, have you not, of the Des Moines & Northwestern Railway Co., showing the proceedings had at meetings of the stockholders and Board of Directors of that company between January 1st, and April 8th, 1890; will you examine the record book and see if you find there in the proceedings of the stockholders or directors, between January 1st, and April 8th, 1890 any resolutions designating any person as an agent or proxy to attend a meeting of the stockholders of the Des Moines Union Railway Co. and vote either for or against any proposed amendments to the articles of incorporation of that company.

A. I do not find any such resolution.

319X. Q. Have you the record book of the St. Louis, Des Moines & Northern Railway Co. showing the proceedings had at meetings of the stockholders and board of directors of that company between January 1st, and April 8th, 1890?

A. I have.

320X. Q. Will you please examine that book and see whether you find any resolution passed at any meeting of the stockholders or board of directors of the St. Louis, Des Moines & Northern Railway Co. between January 1st, and April 8th, 1890, designating or appointing any one as agent or
304 proxy of that company and authorizing such person to attend any meeting of the stockholders of the Des Moines Union Railway Co. and vote any stock held or owned by the St. Louis, Des Moines & Northern Railway Co. in the Des Moines Union Railway Co. either for or against any proposed amendments to the articles of incorporation of the Des Moines Union Railway Co.?

A. I do not find any such resolution.

By Mr. Minnis:

321X. Q. Turn to page 39 of your answer, Exhibit No. 3, what is that exhibit?

A. It is the petition in the case of Des Moines Northern & Western Railway Co. and Des Moines Union Railway Co. vs. James F. Joy, O. D. Ashley, Thomas F. Hubbard, and Edgar T. Welles.

322X. Q. That petition was filed in the District Court of Iowa, in and for Polk County? A. Yes.

323X. Q. Now, refer to the beginning of the last sentence on page 39, which reads:

"That at the same time what is known as the 'terminals' in Des Moines, consisting of the property of the Des Moines Union Railway Company, as it now is known, which has been constructed, and which was a part of a railway known as

the Des Moines & St. Louis Railway, extending from Farnham Street in the said city of Des Moines to Albia in the county of Monroe and state of Iowa had been mortgaged by the said Des Moines & St. Louis Railway Company to secure railway bonds issued by the said Wabash, St. Louis & Pacific Railway Company.

"The plaintiffs further state that prior to the 9th day of October, 1886, suits to foreclose the mortgages which
395 had so been executed upon the property of the Des Moines Northwestern Railway Company and upon the terminal property, being a part of the property of the Des Moines & St. Louis Railway Company, and the said properties were about to be sold at said foreclosure sale, the proceedings therefor being then pending in the Circuit Court of the United States, in and for the Southern District of Iowa, Central Division."

Now refer to the last sentence on page 41:

"That after the said purchase was completed as aforesaid, it was mutually agreed between the said Polk & Hubbell, the Des Moines & Northwestern Railway Company and the defendants that what was known as the 'terminal' property, that is to say, so much of the property formerly belonging to the Des Moines & St. Louis Railway Company as lay between Farnham Street in the city of Des Moines upon the west and Twenty-second street in the city of Des Moines upon the east, should be held and owned by a separate corporation;"

Now refer to page 43, the bottom of the page, being the last matter at the bottom of the page:

"State of Iowa, Polk County—ss. F. M. Hubbell being first duly sworn, upon his oath said, that he is the President of the Des Moines, Northern & Western Railroad Company; that he has read the foregoing petition, and verily believes the statements therein contained are true."

Now I will ask you if at the time you made that affidavit you believed that those allegations in the petition which I have referred to were true?

A. That petition was prepared by Mr. Cummins, and
396 I relied on him to not make any statement but what was correct; I don't think I considered it seriously.

524X. Q. Well, you read the petition, didn't you?

A. I supposed that I did, but, of course, I cannot remember that I did.

525X. Q. And the Mr. Cummins, that is Senator A. B. Cummins, was the attorney, was he not?

A. Yes sir, Senator Cummins.

326X. Q. He was familiar with the facts stated in the petition, was he not? A. It seems not.

327X. Q. He was supposed to be?

A. He was supposed to be, yes.

328X. Q. And you said yesterday that you were certain he would not do a thing without authority; are you not equally certain that he would not make a misstatement of facts in a petition and have you swear to it?

A. Not if he knew it was a misstatement, he would not.

329X. Q. You did, as a matter of fact, believe the statements to be true at the time you signed the affidavit, did you not?

A. I did not believe that the Des Moines & St. Louis Railroad owned the terminals in the City of Des Moines at that time.

330X. Q. That is not the question, the petition does not say that the Des Moines & St. Louis owned the terminals at that time, but the petition does say that the terminals or so much of the property formerly belonging to the Des Moines & St. Louis Railway Co. as lay between Farnham Street on the west and Twenty second Street on the east?

A. This exhibit calls it the Des Moines & St. Louis Railway instead of calling it a railroad.

331X. Q. Yes, and railway and railroad is all the same thing, is it not?

A. It does not seem to be in the name.

332X. Q. Des Moines & St. Louis Railway Co., there
207 was not any Des Moines & St. Louis Railway Co., it was the Des Moines & St. Louis Railroad Co.?

A. That was the name of it.

333X. Q. Well, you understood at the time you made the affidavit that the facts stated in the petition were true, did you not?

A. This petition says that the property from Farnham Street had been mortgaged, that is not right.

334X. Q. That mortgage was released?

A. The Des Moines & St. Louis never mortgaged the property inside of the limits of the city.

335X. Q. The mortgage will go for itself, will it not?

A. Yes.

336X. Q. Do you mean to tell me that you verified this petition and made a false statement?

A. I purchased from the Purchasing Committee—

337X. Q. You swore that it was true, now it was true or it was not, which was it, the affidavit you made was either true or it was not? A. In what respect?

538X. Q. In the respect that the part of the terminal property beginning at Farnham Street formerly belonged to the Des Moines & St. Louis Railway?

A. It was not true, that that property was mortgaged, that was one error. If you will permit me we were trying to collect a debt and I was not trying to see whether all the allegations about the names of railroads and what they had agreed to do, that was not uppermost, I was trying to collect a just debt against the Purchasing Committee.

539X. Q. The petition contains recital of facts that you swore were true?

A. I swore to the petition, no doubt about that.

540X. Q. You were a witness in the mile track case, I believe? A. Yes.

308 541X. Q. Being a suit by the Chicago, Milwaukee & St. Paul Railway Co. against the Des Moines Union Railway Co. in the District Court of Polk County, Iowa, tried within the last two years, tried in 1910? A. I think so.

542X. Q. Now while you were upon the witness stand you were examined with respect to which railroad company placed the third rail between Fifth Street and the round house, were you not? A. I don't remember if I was.

543X. Q. I refer to page 44 of volume 1 of a transcript wherein you were asked this question by Mr. Vroman, "Q. You say you commenced at Eleventh Street and built west to Boone. Did you build east from Eleventh Street; and you answered as follows, according to the transcript, "That depends on whether the Des Moines & St. Louis got into Des Moines first. I am unable to say whether the Des Moines and St. Louis built its road out to the round house out near Fourteenth Street and the Narrow Gauge put a third rail in to get down to the depot, or whether the Narrow Gauge Co. built a narrow gauge road from Eleventh Street to the depot, and when the Des Moines & St. Louis came into the city it laid a third rail, I do not know which was first;" did you make that answer? A. I suppose I did.

544X. Q. That was true, was it not, according to your best knowledge and belief?

A. At that time, but I am satisfied now that the broad gauge was the last road to get into the city, and it laid from the Union Station a third rail to a point west of the water works.

545X. Q. But otherwise you are still satisfied with the answer to the question, are you?

A. I don't think the Des Moines & St. Louis built any
309 road at all anywhere.

546X. Q. I called your attention to Exhibit 3 to your answer wherein you made affidavit to the petition; I

have now called your attention to your testimony in the mile track case which you gave in 1910 wherein you stated that the Des Moines & St. Louis Railroad extended to Farnham Street; I will now ask you if during the trial of the mile track case you did not ascertain that it was contended by the complainants in this case and by the complainant in that case that a railroad cannot sell or dispose of any other part of its line?

A. I have heard recently that Judge Cook contends that a railroad company cannot sell a part of its line.

547X. Q. Now, it is since you learned of that that you have first made any record by testimony or otherwise of your belief that the Des Moines & St. Louis Railroad Co. did not extend to Farnham Street?

A. That information has no effect on my testimony. I have testified that the Wabash St. Louis & Pacific built the road from Albia to the Union Station and my best judgment is that it laid a third rail from the Union Station to a point west of the waterworks and that they did this work after the Des Moines Northwestern and St. Louis, Des Moines & Northern were running trains into the Union Station at Des Moines.

Cross-Examination

By Mr. Cook:

548X. Q. I suppose you say that the Wabash Railroad Co. built the line of road from Albia to the Union Station in Des Moines because that company furnished the money which built the road?

A. And because the Wabash Road let the contract to James F. How, as its agent, to build the road.

549X. Q. Now, you remember giving your testimony
310 by deposition before J. P. Blaze a Notary Public in the City of Des Moines on or about the 31st day of December, 1909, in a suit by the Chicago, Milwaukee & St. Paul Railway Co. against the Des Moines Union Railway Co. in the Polk County District Court, do you not?

A. I remember that I testified.

550X. Q. You were then asked the following questions and gave the following answers, did you not; "Int. 3. Did you live here during the existence of a railroad, known as the St. Louis, Des Moines & Northern Railway Company?

A. I did.

"Int. 4. Did said railroad company operate a railroad, and if so what was the point of beginning and terminus?

A. It began about Eleventh Street, Hoxie's Addition, in Des Moines, and was a narrow gauge road.

"Int. 5. And from Eleventh street to where did it operate?

A. It operated to Fifth Street, right south of the Court House.

"Int. 6. It did not go west of Eleventh Street then?

A. It was originally built from Eleventh Street to Boone; it let a contract for the construction—

"Int. 7. From Eleventh Street to Boone? A. Yes.

"Int. 8. But it actually operated only between Eleventh & Fifth Street; is that the idea?

A. No, it operated from Fifth Street to Boone.

"Int. 9. Then the facts are that the St. Louis, Des Moines & Northern built and operated a narrow gauge railroad from Fifth Street, in Des Moines, where the Union Depot is now, to Boone, Iowa?

A. I don't know that the St. Louis Des Moines & Northern built the narrow gauge road from 11th street to 5th street. There was a narrow gauge road built; that is, there was a three-rail track built from 11th street to 5th street,
311 and the St. Louis, Des Moines & Northern did operate down to the Union Station.

"Int. 10. And it also built and operated from 11th Street west, and North to Boone?

A. It built under a contract with the Narrow Gauge Railway Construction Company, from 11th Street to Boone.

"Int. 11. Did it operate the line so built from 11th Street to Boone? A. Yes.

"Int. 12. And it also operated in connection therewith the line, by whomsoever built, from 11th Street east to Fifth Street?

A. Its passenger trains ran into the Union Station. I have forgotten where the freight house was in those days.

"Int. 13. Then the facts are these: at one time there was a continuous line of railroad, built from 5th Street, in Des Moines, to Boone, Iowa, that by the letting of a contract, the St. Louis, Des Moines & Northern built that part of said road running from 11th Street to Boone, and that it ran its trains over said line, and thence on from 11th Street to 5th Street, and that leaves out who built that last link?

A. The St. Louis, Des Moines & Northern initial point was on 11th Street, but it did not contribute all the money that was expended west of 11th Street. The Wabash furnished most of the money to build the round house; furnished all the money to build the round house; which was west of 11th Street.

"Int. 14. Did the St. Louis, Des Moines & Northern with the exception just stated, build and operate the line referred to from 11th Street to Boone?

A. In conjunction with the Des Moines & St. Louis, it did.

312 "Int. 15. And it did operate its trains, running over said line continuously, from Boone to 5th Street?

A. Yes; during its existence it ran its trains to 5th Street.

"Int. 16. During what time did it exist and so operate?

A. I think it operated in that way until it was foreclosed.

"Int. 17. When did it begin? A. To operate?

"Int. 18. Yes?

A. My best recollection would be that it got into Boone, say, early in 1883.

"Int. 19. When was it foreclosed?

A. I don't remember.

"Int. 20. I mean, about when?

A. I couldn't imagine.

"Int. 21. About how long was it in existence as an operating road?

A. The records will show when it was foreclosed.

"Int. 22. I am trying to get simply a general idea, as to how long there was such a road operating—one year, two years, three years, or about what?

A. I should think that they operated the narrow gauge road four years; it may have been more, it may have been less.

"Int. 23. About when did they begin to build the line between 11th Street and Boone? A. In 1881.

"Int. 24. And they finished building, you think, about the year, 1883, getting into Boone?

A. Yes, I think it was early in 1883; it may have been in the last part of 1882.

"Int. 25. Who constructed the continuation of this line just referred to, to-wit; that part of it between 5th Street and 11th Street, in Des Moines?

A. My judgment would be that the Des Moines & St. Louis constructed that road, and somebody put a third rail
313 on the ties to accommodate both roads.

"Int. 26. Did this line, built and operated by the St. Louis, Des Moines & Northern, with the initial point at 11th Street, and terminating at Boone, cross Farnham Street, or 16th Street in Des Moines? A. Yes."

Now, were those questions asked you in that deposition and did you give those answers?

A. Those questions were asked and upon hearing the answers I find that many of them are not accurate and I believe that on cross-examination it was all straightened out. After having been informed that those interrogatories were made and answered in the deposition that was not used on the trial of the case I am satisfied that upon the trial of the suit in court that my answers are correct, having had more time to examine it and to learn what the facts were.

551X. Q. Those interrogatories were asked you and you did give the answers when your deposition was taken before Mr. Blaize and before the trial began? A. Yes.

552X. Q. Now, in the trial of that case and in open court did you also testify as a witness? A. I did.

553X. Q. And on that occasion were you asked the following questions by Mr. Vroman and did you give the following answers:

"Q. That is all we care to know. That closes the transaction. Now, where did the Narrow Gauge Railway Construction Co. commence to build the line of the St. Louis, Des Moines & Northern Railway Co.?

A. On Lots 1 and 2, Block 2, Hoxie's Addition.

"Q. That does not mean anything to me. Where would it be with reference to streets?

314 A. It would be at the corner of Vine and Eleventh Streets.

"Q. Now as I understand this, Vine and Eleventh Street is east of Farnham Street? A. Yes.

"Q. How many streets east? A. Five.

"Q. This road, as I understand was a narrow gauge construction? A. Yes.

"Q. In its original building from initial point to destination? A. Yes.

"Q. It was narrow gauge from the point where you started first to work east and then to Boone, the other branch, all narrow gauge? A. Yes.

"Q. When you started at Eleventh Street, as we call it, which way did you build? A. West.

"Q. I speak of you, meaning the Narrow Gauge Construction Co., you built west? A. Yes.

"Q. What line—when did you commence that work? When did the company commence that work?

A. I think we commenced in 1881.

"Q. Do you know what time of the year?

A. No, I do not know that I do without hunting it up.

"Q. It was early in the spring, was it not?

A. I think so.

"Q. When did you finish the road to Waukee or when was the road finished to Waukee? A. I could not answer.

"Q. Was it finished that same season?

A. It was finished either in 1881 or 1882, and I do not know which.

"Q. It was finished, was it not, before the conveyance of the one half interest in it to the Northwestern—the Des Moines, Northwestern?

315 A. Well, I don't know really whether it was finished before or after.

"Q. The road was finished to Clive before the conveyance of the one-half interest to the Des Moines Northwestern, was it not? A. I cannot tell about those dates.

"Q. Under your contract, under the contract of the Narrow Gauge Company with the Des Moines Northwestern, it built no part of the road between Des Moines and Clive?

A. It did not.

"Q. So that what road was built between Des Moines and Clive at that time was the road of the St. Louis Des Moines & Northern? A. It was built under that name."

Were those questions asked and those answers given by you on that trial? A. Yes.

Defendants agree to furnish plaintiffs a map showing the line of the Des Moines Terminal Company and will also show on the map the Des Moines Union Railway Company's land that was conveyed to or condemned by the Des Moines & St. Louis Railroad Co. and the Des Moines, St. Louis & Northern, the complainants to furnish the defendants information as to such conveyances and condemnations which they desire to have placed on the map, and when the map is made it can be put in evidence if desired.

554X. Q. You and your son F. C. own all of the stock of the Des Moines Terminal Company, do you not?

A. I own some of the stock individually and the remainder belongs to the corporation F. M. Hubbell, Son & Co. Incorporated.

555X. Q. Who owns the stock of this corporation?

A. The stock of the F. M. Hubbell, Son & Co. Incorporated is owned one third by H. D. Thompson, one third by F.
316 C. Hubbell, and one third by trustee of the Frederick M. Hubbell estate.

556X. Q. When was that company, the F. M. Hubbell, Son & Co. Incorporated, incorporated, about what time?

A. I could only guess at it, I think six or seven years ago.

557X. Q. And before that company was formed you owned the stock individually of the Terminal Company?

A. I don't know whether the Terminal Company was organized or incorporated after the F. M. Hubbell, Son & Co. Incorporated was formed or before, I don't know which precedes the other.

558X. Q. Is not that corporation, the F. M. Hubbell Son & Co. Incorporated, merely a corporation to own and control your estate? A. No, it is not.

559X. Q. How did Mr. Thompson acquire his stock, that is your brother-in-law? A. In what company?

560X. Q. In F. M. Hubbell & Son, & Co. Incorporated?

A. Paid for it, bought it.

561X. Q. You and your son have in your possession and have always had in your possession and under your control and have so had for several years all the corporation record books of the Des Moines, Northern & Western Railway Co., and its predecessors, except the corporation record of the Des Moines & Northern Railway Co., have you not?

A. Yes.

562X. Q. And you still have all those records in your possession? A. Yes.

By Mr. Minnis:

563X. Q. How many terminal companies are there that you are interested in? A. Three.

564X. Q. What are the names of those companies?

A. The Des Moines Union Railway Co., the Des Moines Terminal Co. and the Des Moines Western Railway Co.

317 Mr. Guernsey: I think the record ought to show that this so-called cross-examination of Mr. Hubbell is an examination of Mr. Hubbell as a witness for complainants, because about nine-tenths of it has been new matter not covered by the direct examination or referred to. I have no objection to your putting him on the stand and making him a witness, and I think you ought to do it, not do it under the guise of cross-examination.

Mr. Minnis: We contend under the rules of court that when you put Mr. Hubbell on the stand that we are entitled to interrogate him on any subject in regard to this case on cross-examination as your witness. I may be mistaken about that, but it is a question of law whether we have or not.

Mr. Cook: Will you also furnish us a map of the terminal company known as the Des Moines & Western?

Mr. Guernsey: Yes, we will furnish you a map of that.

By Mr. Cook:

565X. Q. You omitted the Des Moines Terminal Co. and the Des Moines & Western Co., did you not? A. Yes.

Redirect Examination

By Mr. Guernsey:

357. Q. In the first place about this deposition of December 1st, 1909, where you were examined by Mr. Salinger, it appears that you were duly sworn on the part of the plaintiff, examined by Mr. Salinger immediately preceding the part of the testimony read by Mr. Cook. Mr. Salinger was one of the attorneys for the plaintiff in that case, was he not?

A. Yes.

358. Q. Those transactions were transactions that oc-
318 curred in 1881 and 1882 about which he asked you on the 31st of December 1909? A. Yes.

359. Q. Had he indicated to you anything about the scope of your examination or had he given you any opportunity to refresh your recollection as to any matters about which he inquired of you before the questions were asked of you?

A. He had not.

360. Q. The deposition in fact was not used, was it?

A. It was not.

361. Q. That was a sort of fishing expedition undertaken by Mr. Salinger and was abandoned later?

Complainants' counsel objects to the question as calling for the conclusion of the witness.

A. I think it was.

362. Q. Now I want to ask you whether following the testimony read by Judge Cook you did not testify as follows, and I will read this into the record:

"Int. 27. The St. Louis, Des Moines & Northern ultimately lost its property by foreclosure and sale? A. Yes.

"Int. 28. Who became the owner?

A. The Des Moines & Northern Railway Company was the successor of the St. Louis, Des Moines & Northern Railroad Company.

"Int. 29. And from where to where did it operate?

A. I think it operated just the same as its predecessor.

"Int. 30. From Fifth Street to Boone?

A. Yes. I am under the impression there was a third rail laid across the Des Moines River, down to the Packing house, although I cannot now remember.

"Int. 31. At any rate, whether it operated more
319 than its predecessor had or not, it did operate between Fifth Street to Boone? A. It did.

"Int. 32. How long did the Des Moines & Northern Railway Company continue to operate, about how long?

A. Well, I couldn't say. It operated under that name until it was merged with what we call the Fonda line.

"Int. 33. And when do you think was that?

A. I should think, that would be in the fall of 1891, or spring of 1892.

"Int. 34. The merger did not affect the road between Des Moines and Clive at all; both merged and unmerged, the trains were run over the same track, between Des Moines and Clive?

A. There was only one track between Des Moines and Clive; all the roads, the Fonda line, and the Boone line, and the merged line, all used the same track.

"Int. 35. And that was a line beginning at Fifth Street, in Des Moines, crossing Farnham Street, going to Clive, and ultimately from there to Boone, and to Fonda, respectively?

A. The Fonda line was a narrow gauge road and it operated from the Union Station to Fonda, and the Boone line operated from the Union Station to Boone.

"Int. 36. And both operations included the running of trains from Fifth Street in Des Moines, across Farnham Street, and to Clive? A. Yes.

"Int. 37. The Des Moines Northern Railway Company, that is the Boone line, is it? A. Yes.

"Int. 38. And the Des Moines & Northwestern Railway Company, that is the Fonda line? A. Yes.

"Int. 39. And they became one road by merger, about
320 the year, 1892, did they?

A. That would be my recollection.

"Int. 40. And what was the name of the Consolidated Company created by the merger of the Des Moines Northern and the Des Moines Northwestern Railway Companies?

A. The new road was called the Des Moines Northern & Western Railway Company.

"Int. 41. What did the Des Moines Northern & Western Railway Company operate?

A. The Des Moines Northern & Western Railway Company was a standard gauge road, and operated into East Des Moines, to the packing houses and to any other industries over there.

"Int. 42. What is the fact, about its operating the same line that the St. Louis, Des Moines & Northern Railway Company had operated over, to-wit; from Fifth Street, Des Moines, across Farnham Street, and by way of Clive to Boone?

A. It operated its passenger trains from Fifth Street to Boone.

"Int. 43. By way of Farnham Street and Clive?

A. Yes.

"Int. 44. How long did the Des Moines Northern & Western Railway Company remain in existence and so operated, or about how long?

A. Until about 1895, I should think.

"Int. 45. Who became its successor?

A. The Des Moines Northern & Western Railroad Company.

"Int. 46. Did the Des Moines Northern & Western Railroad Company also operate the said line from Fifth Street, Des Moines, by way of Farnham Street and Clive, to Boone?

A. Yes.

"Int. 47. And to Fonda? A. Yes.

"Int. 48. How long did it remain in existence and so operate?

A. I think up to the time that it sold its property to
321 the C. M. & St. Paul Railway Company.

"Int. 49. That was about the year 1899?

A. Yes, I think so.

"Int. 50. Then, if I understand you correctly, Mr. Hubbell, the St. Louis, Des Moines & Northern Railway Company constructed and operated a line of railroad from 11th Street, by way of Farnham Street and Clive to Boone, and in connection therewith ran its trains over said line, and on from 11th Street to 5th Street, and that the various other railroad companies referred to in your deposition, successively, for the time stated by you, continuously operated the same railroad; there was no gap in operation, was there?

A. That is a long question.

"(Int. 50 repeated.)

A. There was no gap in operation, but the St. Louis, Des Moines & Northern did not contribute all the money that was used in constructing the St. Louis, Des Moines & Northern Railway, from 11th Street to Boone.

"Int. 51. Yes, that is in your deposition already. The point I wish to make clear now is, first, that the St. Louis, Des Moines & Northern Railway Company, though it did not furnish all the money required for construction, constructed a line of railroad from 11th Street, in Des Moines, by way of Farnham Street and Clive, to Boone, and operated it, is that true?

A. The St. Louis, Des Moines & Northern road was constructed by the Narrow Gauge Railway Construction Company, and General G. M. Dodge, contributed that part of the money that he was credited with by the Wabash when they came to settle their accounts for the construction of the road from 28th Street east to Eleventh Street.

322 "Int. 52. That does not answer my question. (Int. 51 read to witness.)

A. A road was constructed by the Narrow Gauge Railway Construction Company and turned over to General Dodge. I suppose General Dodge turned it over to the St. Louis, Des Moines & Northern.

"Int. 53. And they then operated it from Eleventh Street, by way of Farnham Street and Clive to Boone? A. Yes.

"Int. 54. And in connection therewith ran their trains on from Eleventh Street to Fifth Street?

A. Yes, and I think across the River; they had the right to use all the Des Moines Union property.

"Int. 55. And the various succeeding railroads you have named in your deposition, also operated said railroad, from Eleventh Street, by way of Farnham Street and Clive, to Boone? A. Yes.

"Int. 56. And later to Fonda? A. Yes.

"Int. 57. And that operation was continuous, was it? A. Yes."

Did you testify as I have read here in connection with your direct examination in the deposition referred to?

A. I did.

363. Q. I want to call your attention to the cross-examination and ask you if you testified in your cross-examination at that time as stated here.

"C-Int. 1. You said you lived here continuously since 1861? A. Yes.

"C-Int. 2. You were here prior to that time? A. Yes.

"C-Int. 3. And then left for a while and came back?

A. I came here in 1855 and left in 1856 and returned
323 in 1861.

"C-Int. 4. What is your age now, Mr. Hubbell?

A. Almost seventy-one.

"C-Int. 5. Now you have spoken about the construction of the St. Louis, Des Moines and Northern, or it has been referred to in the questions, sometimes, as being constructed by the St. Louis, Des Moines and Northern, and sometimes, built or constructed by the Construction Company, and the distinction has not been very accurately maintained in your direct examination; as a matter of fact this was built by the Narrow Guage Construction Company?

A. It was built by the Narrow Gauge Railway Construction Company contractor.

"C-Int. 6. Was that Narrow Gauge Railway Construction Company a corporation?

A. Yes, I think it was, I think it was a corporation.

"C-Int. 7. Now, then, where did the construction of this line commence, where in Des Moines did the construction of this line which we call the Boone line, by the Narrow Gauge Railway Construction Company, commence?

A. It commenced on Eleventh Street, on Lots 1 and 2, Block 22, Hoxie's Addition.

"C-Int. 8. That is West Eleventh Street?

A. West Eleventh Street.

"C-Int. 9. What is the fact as to whether the Construction Company built it all the way to Boone, if you remember?

A. In side of the corporation of the city of Des Moines the Des Moines & St. Louis paid part of the money.

"C-Int. 10. I am not asking who paid the money, I am just asking who built it?

224 A. The Narrow Gauge, part of it, was built by the Narrow Gauge Railway Construction Company.

"C-Int. 11. That is from Eleventh Street to Boone?

A. Yes.

"C-Int. 12. Now you referred to the Fonda line, the Des Moines Northwestern as built by the Wabash, what is the fact whether that line was built by the Wabash or by this Construction Company under a contract with the Wabash?

A. That part of it east of Waukee was built by the Narrow Gauge Railway Construction Company; money advanced originally, I think, by General Dodge, and then it was conveyed to the Des Moines Northwestern.

"C-Int. 16. Now, you talked about the operation to Fifth Street; what do you mean by operation?

A. I mean that the two narrow gauge companies ran their passenger trains to the Fifth Street depot.

"C-Int. 17. That was the passenger station in Des Moines of the Des Moines Union Railway Company? A. Yes.

"C-Int. 18. And during all of this period from the time of the commencement of the operation of these narrow gauge roads, down to the acquisition of the Des Moines Northern and Western Railroad Company by the plaintiff, the Milwaukee, these passenger trains of both of these lines, the Fonda line and Boone line, were operated into this Union Station?

A. Yes.

"C-Int. 19. And since that acquisition, the passenger trains of the Milwaukee Company have been operated into that Union Station? A. Yes.

"C-Int. 20. These trains that you have referred to that were operated into the Union Station were passenger

225 trains? A. Yes.

"C-Int. 21. Now, I think you said something about the operation of this property for freight purposes; in the early days did the Des Moines Union do the switching for these other companies or did they do their own switching, do you remember?

A. In the early days I think each company did its own switching.

"C-Int. 22. Then when you come to freight purposes, what is the fact as to whether each company used the entire terminal property, just as it used the property up to the Union Station for its passenger business?

A. Yes, each company occupied all the terminal property, and in the early days transacted all of their freight business on the southeast corner of Seventh and Cherry Streets.

"C-Int. 23. Now, that southeast corner, Seventh and Cherry Street, was where the freight house was? A. Yes.

"C-Int. 24. There was carload freight went to various places in the city which did not go to the freight house?

A. Yes, the car load freight was switched wherever it was wanted, but that that was unloaded, was unloaded in the freight house at the corner of Seventh and Cherry.

"C-Int. 25. Now, you talked about the Boone line and these other lines from the west here operating continuously to the Union Station; I wish you would state whether during that same period the Des Moines and St. Louis operated to the Union Station with its passenger trains in the same way?

A. It did.

"C-Int. 26. State whether or not during that same period it operated the track west of the Union Station to your west lead? A. Yes.

326 "C-Int. 27. What I was getting at, was the sense in which you used that word "operated;" by that you mean operated their trains over these tracks?

A. They ran their train over the tracks to accommodate their business. I remember particularly the Des Moines and St. Louis brought in car loads of coal to supply the Water Works, and switched it in themselves, in the early days.

"C-Int. 28. Now, what is the fact as to whether the continuous line over which the Boone line and Fonda line operated in the sense you used the word operated, terminated at the passenger station or went east of that for freight business?

A. The Fonda line and the Boone line had a right to go east of the Des Moines river as far as we had narrow gauge tracks. I don't remember about the narrow gauge tracks on the east side of the river.

"C-Int. 29. Do you remember whether they operated as far east as the packing house; whether there was a narrow gauge track down there or not?

A. That is my recollection, but there are others that can testify definitely.

"C-Int. 30. Your recollection is not clear?

A. No. It is my recollection we had tracks to the packing house and used to take hogs to the packing house, and I think we used to take corn to the distillery, there was a distillery there during those days.

"C-Int. 31. Now, you were connected with this Narrow Gauge Railway Construction Company, were you not?

A. Yes.

"C-Int. 32. And from whom did the Narrow Gauge Railway Construction Company receive the funds for the building of the road from Eleventh Street to the west city limits, 28th Street?

A. Part of it, from General Dodge, and part of it
327 from The Wabash, St. Louis & Pacific, originally.

"C-Int. 33. The Boone line was a narrow gauge line?

A. Yes.

"C-Int. 34. The Des Moines, St. Louis, we have referred to, came in from the east and was a broad gauge? A. Yes.

"C-Int. 35. Now, when it was built in, the parts of the property that were operated by both of these roads had to have a third rail? A. Yes.

"C-Int. 36. And who put in that third rail, west of the passenger station, as I understand it, you don't remember?

A. No.

"C-Int. 37. You don't remember whether it was done by the Des Moines Union, the Des Moines, St. Louis or the Boone line? A. I am satisfied—oh, I don't know.

"C-Int. 38. I mean who originally constructed it?

A. I don't know whether the Narrow Gauge got their rails down to Fifth Street and whether the Des Moines and St. Louis put on a third rail, or whether the Des Moines and St. Louis built into Des Moines first and permitted the St. Louis, Des Moines and Northern to put down its third rail; I don't know which got in first. The material to build the St. Louis, Des Moines and Northern was brought in, I think, mostly by the Rock Island and unloaded at Eleventh Street.

"C-Int. 39. You have given various dates here as to when these roads were organized and how long one operated and another; you have not refreshed your recollection as to those dates, that is, you didn't know what questions were going to be asked you here and did not have an opportunity to look it up? A. No.

238 "C-Int. 40. So that you do not know whether these are entirely accurate or not?

A. No, I couldn't testify that they were.

"C-Int. 41. What I want is this, to make clear, on these matters, you would have to rely on the record and not your recollection? A. Yes.

"C-Int. 42. Now, you spoke in connection with this merger, as I recollect it, of the two companies that took place late in 1891 or in the early part of 1892, as you recollect it now, as of the lines commencing at Fifth Street in Des Moines; did either of the constituent companies or the consolidated companies, so far as you know, ever claim any right of ownership to Fifth Street in Des Moines?

A. No that part on my answer in direct examination was erroneous, if I said they consolidated down to Fifth Street.

"C-Int. 43. Now, I notice in my notes here a reference to what the Des Moines, Northern and Western operated, and to what several of those roads operated here, referring to the operation to the packing houses and other industries and

operation to Fifth Street; now in what sense did you use the word 'operated' in connection with these questions and your answers?

A. I meant by that word 'operated' that the various railroad companies ran their trains wherever they pleased, over all of the Des Moines Union Railway Company's tracks."

You testified to that on cross-examination in connection with your deposition, did you? A. Yes.

Complainants' counsel offers from the record of the testimony in the trial of the case in the state court the following from the testimony of F. M. Hubbell.

329 "I feel confident that the Des Moines Northwestern was operated before the Des Moines & St. Louis, and that the Des Moines, St. Louis & Northern was the second one of the roads to be put in operation and that the Des Moines & St. Louis was the third; they all operated their trains to the depot.

By Mr. Cook:

566X. Q. Is it not the fact that the Des Moines Northwestern began to operate its trains to the depot as soon as the Narrow Gauge Road was constructed to Waukee? A. Yes.

567X. Q. And that the St. Louis, Des Moines & Northern began to operate this road from Fifth Street to Clive and northwestwardly sometime in the fall of 1881, or the early part of the year 1882?

A. The St. Louis, Des Moines & Northern was completed to Boone August 8th, 1882, and was operated from that time into Des Moines.

568X. Q. To Fifth Street?

A. They ran into the Union Station.

569X. Q. Those two railroads were narrow gauge railroads? A. Yes.

570X. Q. Now the bridge across the Des Moines River for the standard gauge road that came in from Albia was completed sometime in 1882, was it not?

A. Either late in 1882 or early in 1883.

571X. Q. And when that was completed, then that line was also operated from Albia up to the Union Station at Fifth Street?

A. The Wabash operated that line up to the Union Station.

572X. Q. And it operated its trains on beyond to the yard at the Water Works? A. Yes.

573X. Q. Some of the trains that ran into the Union Station were taken up to those yards, is that right?

A. That is right.

574X. Q. The freight trains ran up to the yards also?
A. Yes.

330 575X. Q. And it before 1888 switched its freight cars all over the Des Moines Union?

A. Yes, up until May 1st, 1888.

576X. Q. All three railroads did that until May 1st, 1888?

A. Yes, there were not three roads there were only two.

577X. Q. At the latter end?

A. The Wabash operated the Des Moines & St. Louis, and the Des Moines Northwestern under a lease.

578X. Q. I mean the three lines?

A. They were all operated to the Union Station, did their own work up to May 1st, 1888.

579X. Q. You said the road from the east was standard gauge? A. Yes.

By Mr. Guernsey:

364. Q. Your attention was called to Exhibit 3 to the answer which was verified by you, and to some errors that appeared in it, for instance it is stated in the petition that terminal property had been mortgaged by the Des Moines & St. Louis Railway Co. to secure some bonds issued by the Wabash, St. Louis & Pacific Railway Co., that was an error, was it not? A. It was.

365. Q. You were not conscious that there were any erroneous statements in the petition at the time you verified it, were you? A. I was not.

366. Q. It was prepared by Mr. Cummins, was it not?
A. It was.

367. Q. The matter in controversy was the interpretation of your contract in 1886 and 1887 with the Purchasing Committee, was it not? A. It was.

368. Q. And the statement of these other things was introductory? A. Yes.

Complainants' counsel object to the examination as being cross-examination of the defendants' witness and be-
331 cause it is leading and calls for the conclusion of the witness.

Defendants' counsel states that he claims the right to cross-examine the witness as to matters which constitute about nine-tenths of the cross-examination as to which complainants have made the witness their own witness.

369. Q. Now a good many times you were asked by Col. Blodgett as to some allegations in Paragraph 28 of the answer, stating that F. M. Hubbell & Son purchased the stock of the Des Moines Union now owned by them, that you pur-

chased the stock from the Purchasing Committee upon reliance upon the fact that the Des Moines Union was the owner of the property in controversy and you were asked to specify the various things that you relied on. Now, at the time that these transactions occurred what is the fact as to whether or not you were familiar with the provisions of article II of the original articles of incorporation of the Des Moines Union Railway Co., which was assented to by all of the parties, which stated the general nature of the business to be conducted by that company should be, among other things, the ownership and operation of railways in and about the city of Des Moines, including the construction, ownership and use of depots, freight houses, railway shops &c.?

A. Yes, I knew about the articles of incorporation.

370. Q. Now in the recitals that precede Article I of its articles, it is recited that the contract of 1882, provided that a depot company might be organized to take permanent charge of the property, and it recites in addition to that that it was the understanding of the parties that such company
332 might acquire, operate and maintain this property; do you remember whether you had seen that, or not?

A. Yes.

371. Q. Now then you knew prior to these transactions, didn't you, that article II of the original articles of incorporation of the company provided that its capital stock should be the sum of $1,000,000., and that the Board of Directors were authorized to receive in payment for it the property and franchises in the City of Des Moines then held by the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Co., the St. Louis, Des Moines & Northern Railway Co., James F. How, Trustee, James F. How, and Grenville M. Dodge? A. I did.

372. Q. You knew at that time, didn't you, that the contract of 1882 provided that the expense incurred in the purchase of this property should be borne one half by the Des Moines & St. Louis Railroad Co. and one fourth each by the Des Moines Northwestern Railway Co. and the St. Louis Des Moines & Northern Railway Co., and they had in fact, had they not, paid the money that was to entitle them to the use of the property? A. No, they had not.

373. Q. I didn't ask you whether they had or not, I asked you if you knew it or not up to the time?

A. I knew they had not.

374. Q. And you knew, did you not, at these times and when the auditing department of the Wabash Co. furnished this statement that you have identified, showing the amount of money the Wabash had in the terminal property and the amount Gen. Dodge had in the company, that they had advanced all the money paid for the property, didn't you?

A. Yes, I knew that.

333 375. Q. Now, you knew prior to the time of your making your first purchase in 1890 that the Des Moines Northwestern Railway Co. had gone out of existence, so far as owning or operating any railroad was concerned, didn't you? A. Yes.

376. Q. You knew, didn't you, prior to making your first purchase in 1890, that the Des Moines & St. Louis Railroad Co. was not and had not been operating any railroad?

A. Yes, I knew that.

377. Q. You knew, didn't you, that the trust deed which was prepared in order to secure the issue of bonds, which were to be given to the Purchasing Committee and Gen. Dodge in part payment of this property, and which was prepared by Col. Blodgett, the general solicitor, then, I believe of the Wabash property, recited that the Des Moines Union Railway Co. was a corporation organized and existing under the laws of Iowa, for the purpose of locating, constructing, owning and operating a railway in and about the City of Des Moines, including the construction, ownership and use of depots, freight houses &c.?

Complainants' counsel object to this question and to these questions generally, because this question is leading and suggestive, and the questions generally are leading and suggestive.

378. Q. I will change the form of the question. The trust deed of the Des Moines Union Railway Co. which is dated November 1st, 1887, was prepared by whom?

A. Prepared by Col. Blodgett.

379. Q. What relation did he sustain to the Wabash Company at the time?

A. I understand he was general solicitor of the Wabash Roads.

334 380. Q. This deed is signed by you as secretary of the Des Moines Union Railway Co., and it recites among other things, this "The Des Moines, Union Railway Co. is a corporation duly organized and existing under the laws of the State of Iowa, and as such is fully authorized to locate, construct, own and operate a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock yards and whatever may be useful and convenient for the operation of railways in said city, and the transfer of cars from the line and depots of one railway to another &c. * * * and for such purposes has full right to acquire by purchase and condemnation all such right of way &c. * * * as are necessary and proper for the operation and

construction of such line of railroad, and to provide itself with depot grounds, yards, shops and other terminal facilities adequate for handling the traffic to be transported upon such railroad;" you were familiar with this trust deed, were you not, prior to making the first purchase? A. Yes.

381. Q. Now, this recites further:

"Whereas, the Des Moines Union Railway Company has undertaken and partially completed the construction of a railroad in the City of Des Moines, Polk County, Iowa, extending from the main lines of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis Des Moines & Northern Railway Company to a connection with and across the lines of various other railroads which center or terminate in the said City of Des
Moines, and to various manufactories and industries
335 in said City and has purchased and owns various structures and buildings used for depots, railway shops, round houses and other structures suitable and useful for railway purposes, and has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said City;"

Now, in connection with the execution of these bonds and of this trust deed what is the fact as to whether you believed you had seen this recital in this trust deed?

A. I believe I had seen these recitals in the trust deed.

382. Q. Now, this trust deed recites further:

"Whereas, for the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds." You had some general information about that, hadn't you, prior to these matters? A. I had.

383. Q. You had been present, had you not, at the meeting of the directors of the Des Moines Union Railway Co. held on the 8th of November, 1887? A. Yes.

384. Q. Now this resolution says, "that the officers of the company on receipt of the deed referred to in the foregoing resolutions shall place the same on record, prepare mortgages on all of the property of this company, either owned or to be hereafter acquired;" was any mortgage prepared except the one to which you have been referred at any time on the
Des Moines Union property? A. No.

336 385. Q. And this resolution provided further that the officers of the company were authorized on the execution of the mortgage to cause bonds to be prepared and executed in conformity with it, the amount required to be used

in payment for the property as provided in the foregoing resolution; you knew about this? A. Yes.

386. Q. Now, you knew that those bonds were in fact issued and delivered, did you not? A. Yes.

387. Q. Prior to any purchase of stock by you?

A. Yes.

388. Q. You knew, did you not, that at this same meeting provision was made for the purchase of a couple of lots from Polk & Hubbell and they were transferred to the company by an absolute title, and some of the same bonds issued to pay for them? A. Yes.

389. Q. You knew that other property was acquired from time to time, always by an unrestricted title? A. Yes.

390. Q. Had you seen a letter written by Mr. How to Messrs. Polk & Hubbell dated September 7th, 1888, in which he said among other things, that Mr. Ashley was satisfied that the Purchasing Committee would not approve of the surrender of any of the Des Moines stock without a consideration?

A. Yes.

391. Q. You had received a letter from Mr. How of April 1st, 1889, where he says, "I think the interest due on the deed of trust on the lots owned by the Terminal Company referred to in your letter should be paid, and an arrangement made to continue the deed of trust on the property at a lower rate of interest. Of course, the interest now due and to become due should be paid by the Terminal Company."?

337 A. Yes, I received that letter.

392. Q. What lot was that?

A. I think that was the Heath property.

393. Q. The Heath property was not purchased as early as that, 1889, was not that the Hill property?

A. Yes, I think that was the trust deed held by M. L. P. Hill on the lot on which the Union Station was afterwards erected.

394. Q. And that property when conveyed to the Des Moines Union was subject to that trust deed? A. Yes.

395. Q. Who afterwards paid off the mortgage?

A. The Des Moines Union Railway Co. paid that mortgage.

396. Q. You also knew prior to buying any of this stock about the contract of 1889, did you not? A. I did.

397. Q. You know its recitations? A. Yes.

Mr. Guernsey: It is conceded that the mortgage referred to was paid out of surplus earnings.

398. Q. What was the fact as to whether or not you participated in those transactions? A. I did.

399. Q. Now, prior to the purchase of the stock and bonds, in February, 1890, what is the fact as to whether you had made the contract then by which the Purchasing Committee agreed to sell to Polk & Hubbell the Des Moines & Northwestern Railway based on your proposition of November 9th, 1886, and the contract of September 10th, 1887, and subsequent matters? A. I had.

400. Q. You were familiar with the provisions of that contract of 1887 to the effect that if the terminal property should be merged in a terminal company either before or after the transfer of the fourth interest as above the bonds and stock received from the terminal company in ex-
338 change for said one fourth interest should be transferred in lieu of the property to Messrs. Polk & Hubbell or their assigns? A. I was familiar with that.

401. Q. And what is the fact as to whether prior to the purchase of this stock and bonds in February, 1890, the Purchasing Committee had delivered under this contract of 1887, one-fourth of the stock and bonds of the Des Moines Union, as representing the fourth interest in that company?

A. Yes, the Purchasing Committee had delivered the 112 Des Moines Union bonds to me.

402. Q. Now then, when you bought this stock and bonds in 1890, February 5th, and in June, from the Purchasing Committee, did you think that stock was anything other and different so far as representing an interest in the terminal property than the stock you bought in 1887 from the same committee?

A. I did not know or think of any difference in the kind of stock.

403. Q. Did the committee or any member of the Purchasing Committee suggest to you in connection with the subsequent purchases that the stock did not mean or represent what it had meant and represented under the earlier purchases?

A. They did not.

404. Q. Now, are these matters that have been referred to here, some of the matters which you relied on and which led you to believe that the Des Moines Union Railway Co. owned this property? A. Yes.

405. Q. Can you, or do you attempt to specify everything that may have been in your mind at that time?

A. No, I could not.

406. Q. Now, you were asked by Col. Blodgett, several times, I think whether you thought that the proceedings
339 on April 8th, 1890, affected the title of the Des Moines Union Railway Co. and I believe in response you said in each instance that you did not, that you always believed it acquired the title when the original purchase was made; now

what is the fact as to whether in 1890 you believed that the purpose of those proceedings was, as stated by Senator Cummins, in substance to straighten out the record and make the record conform to the facts?

A. That is the way I understood it.

407. Q. Now you were asked as to whether or not the Purchasing Committee made any representations as to the title, and you said they did not. The members of the Purchasing Committee were also familiar with all these transactions to which I have called your attention, were they not?

A. I think they were.

408. Q. And they knew you were familiar with them?

A. Yes.

409. Q. Now, your attention has been called to a letter that you wrote to Mr. Ashley on April 1st, 1890, asking about the terms upon which Mr. Ashley would sell a one-eighth interest in the capital stock of the Des Moines Union Railway Co.; this is addressed to O. D. Ashley, president, he was president of what?

A. Of the Wabash, St. Louis & Pacific or its successor.

410. Q. April 1st, 1890?

A. It was the Wabash Railroad Co. then.

411. Q. Now, did you write this letter asking upon what terms he would sell the one-eighth interest in stock with the idea that the company did not own any property and the stock had no value?

340 Complainants' counsel object to the question as calling for the conclusion and opinion of the witness and as a mere argument.

A. No, I did not.

412. Q. You purchased this stock from the Des Moines Northern & Western Co., or rather F. M. Hubbell & Son did, on January 25th, 1894? A. Yes.

413. Q. At that time the amended articles had been adopted and filed? A. Yes.

414. Q. And you were familiar with their provisions, were you not? A. Yes.

415. Q. Col. Blodgett asked you whether you could remember his ever having said to you, or your having seen a letter in which he said, that he approved of those amended articles, and you said you could not; I call your attention to the amended articles as signed, headed, "Amendments to articles of incorporation of Des Moines Union Railway Co." and this statement, "We, the officers of the Des Moines Union Railway Co., a corporation, existing under and by virtue of the laws of the State of Iowa, do hereby state that at a meeting of the stockholders of said corporation called and held on the 8th

day of April, 1890, for the purpose of amending the articles of incorporation, said stockholders do unanimously and duly adopt the following amendments to said articles of incorporation," and will ask you whether those amendments and that statement is signed by Wells H. Blodgett?

Complainants' counsel object to this as not the best evidence.

A. It is.

416. Q. And notwithstanding the fact that you have never seen a letter of his approving those articles and do not recollect a personal conversation with him what is the fact as to whether you had seen those amendments and this statement that I have read signed by him prior to your purchase of this stock in February, 1894?

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A. Yes, I had.

417. Q. Now this article, the third amended article, provided that 4,000 shares shall be issued of the capital stock of the company as a part of the purchase price of the terminal property originally acquired by the corporation, and then it provides that it shall be issued to the Purchasing Committee of the Wabash to the Des Moines & Northwestern and to the Des Moines & Northern; you were familiar with that were you not? A. Yes.

418. Q. You were familiar with the resolutions adopted at that meeting, were you not, prior to the purchase of this stock A. Yes.

419. Q. You knew that the representatives of all of the companies had attended that meeting, did you not?

Complainants' counsel object to the question as leading, suggestive and calling for a conclusion.

420. Q. You knew that J. F. How had attended that meeting, did you not? A. I did.

421. Q. What was his relation to the Wabash Co. at that time? A. Vice president.

422. Q. You knew that C. M. Hays had attended that meeting, did you not? A. Yes.

423. Q. What was his relation to the Wabash Co. at that time? A. He was general manager.

424. Q. You knew that you yourself had attended that meeting? A. Yes.

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425. Q. And that you were president of the Des Moines & North Western Railway Co.? A. Yes.

426. Q. And you knew that your firm owned practically all, if not absolutely all of the stock of the company, didn't you? A. Yes.

427. Q. You knew that Mr. Martin was there, did you not? A. I did.

428. Q. And you knew that Mr. Cummins was there, did you not? A. Yes.

429. Q. And you knew that Mr. Martin was at that time the manager for Gen. Dodge of the Des Moines & Northern? A. He was general manager.

430. Q. And Mr. Cummins was vice president and counsel of that road? A. Yes.

431. Q. You knew that it was set out in that resolution, didn't you or was recited that the articles of incorporation had been amended so as to conform to the true intent of the several parties? A. Yes.

432. Q. You knew that it was recited in those resolutions that they were unanimously adopted in that meeting, that it was the agreement between all of the parties in interest that this property should be purchased at its fair value?

A. Yes.

433. Q. And that this was to be paid partly in bonds and partly in stock? A. Yes.

434. Q. Now, then knowing all these things what is the fact as to whether you did believe when you bought this stock from the Des Moines Northern & Western Railway Co. that the Des Moines Union Railway Co. was the owner of this property? A. I surely did.

343 435. Q. What is the fact as to whether or not the acts of these various parties at this meeting in the amendments of those articles, in the recognition by the recitals in the resolutions that the record did not correctly state the facts, in the adoption of those resolutions reciting the purchase of the property and providing for the payment of the balance of the purchase price, are some of the acts of the complainants or their predecessors, which you relied upon and refer to in your answer? A. They are.

436. Q. During the period from 1888 down to the present time, omitting now the original purchase, has the Des Moines Union Railway Co., so far as you know, purchased any piece of property without taking an absolute title to it, or a title subject to mortgage which was later paid off?

A. They have always taken an unencumbered title.

Complainants' counsel object to this answer and move to strike it out, because it states a mere conclusion and is not the best evidence.

437. Q. Now, as I understood you when Col. Blodgett was examining you, you said in your answer they always took an unencumbered title; the Heath property was encumbered when you took it?

A. We caused it to be encumbered, it was part of the agreement to purchase that it should be encumbered by Mr Cummins and the Des Moines Union Co. would assue it.

438. Q. You said, as I understood you, in answer to Col Blodgett, that prior to the meeting of April 8th, 1896, the contract of January 2nd, 1882, had been abandoned by the parties. In the first place I believe you have already said that the payment which was to be made for the property by the parties was never in fact made?

A. No, never was made.

344 439. Q. Now, then it was provided in the contract that the Des Moines & St. Louis Railroad Company should at all times be charged with the police control, supervision and maintenance of the property; did it ever after that control or ever maintain the property?

A. It did not.

440. Q. There was no provision in this contract for the operation of the property by any Terminal Company so far as I know. Did the Des Moines Union Railway Co. as soon as it acquired the property begin to operate it?

A. It did.

441. Q. Now Mr. Hubbell, I wish you would look at the record of the Des Moines & St. Louis Railroad Co. and state how many meetings of its stockholders or directors have been held since the year 1891, giving their dates?

A. From 1891 there was no meeting of the stockholders or directors until January 16th, 1897, when there was a meeting of the board of directors.

442. Q. And when was the next meeting?

A. January 25th, 1897, a special meeting of stockholders.

443. Q. When was the next meeting?

A. February 8th, 1897, a meeting of the board of directors.

444. Q. When was the next one?

A. January 5th, 1899, the annual meeting of stockholders.

445. Q. When was the next meeting?

A. February 3rd, 1899, stockholders' meeting.

446. Q. When was the next meeting?

A. March 16th, 1899, meeting of board of directors.

447. Q. Has there been any meeting since that meeting of March, 1899, as shown by this record? A. No.

At this point a recess was taken until 2 P. M. at which time the examination was resumed as follows:

345 448. Q. Now, Mr. Hubbell you were asked when you acquired this stock from the Des Moines Northern & Western in January, 1904, if you were not an officer and F. C. Hubbell was not an officer and Mr. Cummins was not the counsel &c.; I call your attention to page 3 of the record book

of that company showing a meeting held January 4th, 1894, from which I quote as follows, "F. C. Hubbell moved that the Board of Directors for 1893 viz. G. M. Dodge, F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. B. Cummins, A. M. Denman, and H. D. Thompson be re-elected for the year 1894; motion being duly seconded, the following vote was had, F. M. Hubbell voted 15,000 shares, F. M. Hubbell & Son by F. M. Hubbell voted 14,977 shares, G. M. Dodge by his proxy L. M. Martin voted 5,000 shares, L. M. Martin voted 5,950 shares, A. B. Cummins voted 1,000 shares, W. D. Winfield by his proxy L. M. Martin voted 50 shares, A. M. Denman voted 1 share, F. C. Hubbell voted 1 share, H. D. Thompson voted 1 share, total 42,000 shares. The entire shares of stock having been voted for the persons nominated by F. C. Hubbell, they were declared unanimously elected as directors of the company for the ensuing year." Were the 42,000 shares there specified all the outstanding shares at that time and were they held as indicated by this extract from the record?

A. Those were all the shares and they were held as the record recites.

Complainants' counsel admit that the Des Moines Northern & Western Railway Co. was formally dissolved by a stockholders' meeting on January 2nd, 1896.

449. Q. Col. Blodgett asked you for your opinion as to whether the contract of May 10th, 1889, was a lease; is that the same contract that is referred to throughout the
346 amended bill, until the words were by amendment stricken out by complainants as the contract in form a lease? A. It is.

450. Q. Now, you stated that the Des Moines & Northern, as I understood, was the owner of one-fourth of the stock of the Des Moines Union Railway Co., and that it became so by transfer from Gen Dodge; I wish you would state whether this stock had ever been issued to Gen. Dodge prior to April 8th, 1890, and if not, what you mean by saying it became so by transfer from Gen. Dodge?

A. It had not been theretofore issued to Gen. Dodge I suppose by his order or request.

451. Q. Col. Blodgett asked you about a notice of the meeting of the stockholders February 18th, 1890, and about its publication on the 15th and 18th days of January, 1890, as I recollect it; I wish you would look at the original record book and state whether the copy of the notice as it appears in the original record is a printed copy clipped from some newspaper and pasted into the record? A. It is.

452. Q. I believe you said you have been a member of the Iowa bar for a long time; have you been in active practice of the law all this time?

A. No, I have never tried a case; I was a member of the firm of Polk & Hubbell, Mr. Polk was a good lawyer but I never claimed to know any law except what I have absorbed from him.

453. Q. Referring to this strip of right of way that you said yesterday you donated, I wish you would look at this deed defendants' exhibit 562 in the stipulation of date May 31st, 1911, dated October 1st, 1895, signed by F. M. Hubbell and Frances E. Hubbell, by F. C. Hubbell her attorney in fact, recorded in book 438 at page 559 and state whether that is the conveyance of the piece of right of way in question to the Des Moines Union?

347 A. It is the same.

454. Q. You said that all of the deeds to the Des Moines Union were straight warranty deeds; I call your attention to Exhibits 20 and 21; was that statement of yours entirely correct?

A. It is not, Exhibit No. 20, deed of G. M. Dodge and wife to Des Moines Union Railway Co., is a quit-claim deed, and plaintiff's Exhibit No. 1, deed of St. Louis Des Moines & Northern Railway Co. to Des Moines Union Railway Co., is a quit-claim deed.

455. Q. You remember a deed the Wabash made in 1899, don't you? A. Yes.

456. Q. I have forgotten, my impression is that was not a warranty deed, do you remember?

A. I think it was a quit-claim deed. It was the conveyance of what we call the Sherman tract.

457. Q. Now then I want to go back to this contract with the Purchasing Committee under which the Des Moines Northwestern was acquired. You will remember that the agreement of September 10th, 1887, provided that one-fourth of the terminal property was to go to Polk & Hubbell, and if the corporation was organized they were to receive as representing this one fourth one-fourth of the stock of the Des Moines Union Railway Co. and one-fourth of the bonds; I also call your attention to a later contract, which is contained in the stipulation of May 31st, 1911, and commences, "Referring to a conditional contract dated October 9th, 1886, between Messrs. Polk & Hubbell of the one part, the Wabash Purchasing Committee so called of the other part," under which you purchased the bonds of the Des Moines & Northwestern Railway

348 Co. which had been issued to the Purchasing Committee as a part of the purchase price of that property. This last contract provided that you would pay and deliver to the Purchasing Committee when this agreement was signed the bonds of the Des Moines Union Railway Co. of the par value of $115,000. What is the fact as to whether these bonds

were paid and delivered to the Purchasing Committee by you under the contract I have just referred to, as a part of what you paid them for these Des Moines & Northwestern bonds?

A. Yes, the 115 Des Moines Union bonds were paid by me to the Purchasing Committee in part payment for the Des Moines & Northwestern Co. bonds.

458. Q. What is the fact as to whether the $112,000 bonds which under the contract of September 10th, 1887, the Purchasing Committee had turned over were a part of these $115,000 that went back to it? A. Yes sir, they were.

459. Q. Now if you will refer to Exhibit No. 62, which is a deed made by Polk & Hubbell to the Des Moines & Northwestern Railway Co. you will observe that it does not describe any stock or bonds of the Des Moines Union Railway Co.; I wish you would state first whether the Des Moines & Northwestern Railway Co. received any part of this $112,000. of Des Moines Union Railway bonds which the Purchasing Committee sold under the contract that we have referred to of September 10th, 1887, under which the Des Moines & Northwestern Railway was purchased by Polk & Hubbell?

A. No, it did not.

460. Q. State if you know whether at any time the Des Moines & Northwestern Railway Co., the St. Louis Des Moines & Northern Railway, the Des Moines & Northern Railway, the Des Moines Northern & Western Railway Co., or
349 the Des Moines Northwestern Railroad Co. owned any Des Moines Union Railway bonds?

A. No, they did not.

461. Q. F. C. Hubbell says he thinks the Des Moines Northwestern Co. owned a few some time; did the company last named acquire some bonds on account of advances made to the Des Moines Union for which the Des Moines Union reimbursed it by bonds?

A. Yes, I think the Des Moines Northern & Western Railway Co. did get some Des Moines Union bonds to reimburse it for money advanced to the Des Moines Union Railway Co. to buy property and make improvements here in the City.

462. Q. Did either of the companies have any of the Des Moines Union Railway Co. bonds at any time except those acquired in that way, that is to reimburse them for money which they had advanced for the Des Moines Union property or additions to it? A. No.

463. Q. You will observe that this deed from Polk & Hubbell to the Des Moines & Northwestern Railway Co. does not purport to cover any Des Moines Union stock; how did the Des Moines & Northwestern Railway Co. acquire the one-fourth of the stock in the Des Moines Union Railway Co. which was issued to the Des Moines Northwestern Railway Co. April 8th, 1890? A. By donation from me.

464. Q. You directed the issuance of the stock to that company? A. I did.

465. Q. I call your attention to the following record of the stockholders' meeting, November 1st, 1887, of the Des Moines Union Railway Co. "And it further appearing that the stock held by A. A. Talmage, he having deceased,
350 had been assigned by his executrix Mary R. R. Talmage to James How;" I wish you would state whether the paper I now hand you is the original assignment of that Talmage stock? A. Yes it is.

466. Q. Will you please read this to the examiner so that he may take it as part of your testimony.

A. (Reading) "I, Mary R. Talmage, executrix of the last will and testament of Archibald A. Talmage, deceased, do hereby sell, assign, transfer and set over to James F. How, the one share of capital stock of the Des Moines Union Railway Co. standing in the name of my said decedent on the books of the said company. Witness my hand and seal this 20th day of ..... 1887. Mary R. Talmage"; at the left hand it says, "Signed, sealed and delivered in the presence of Henry A. Lloyd."

467. Q. After Mrs. Talmage's name there is a scroll indicating a seal? A. Yes.

468. Q. Now I will ask you to state whether the paper I now hand you is a proxy signed by G. M. Dodge, authorizing C. F. Meek, to appear at the annual meeting of the stockholders of the Des Moines Union Railway Co. June 6th, 1887, as his proxy? A. It is.

469. Q. Now, I will ask you whether the papers I now hand you are proxies signed by James F. How and A. L. Hopkins, for a stockholders' meeting, of the Des Moines Union for October 1887?

A. Yes, James F. How's was to J. S. Polk, October 27th, 1887.

470. Q. Is the paper I now hand you a like proxy signed by G. M. Dodge? A. Yes.

470. Q. If the three proxies are in the same form, will you please read one of them to the examiner so we may have it in the record?

A. (Reading): "Know all men by these presents:
351 That I ..... a stockholder in the Des Moines Union Railway Co. and owning two shares of the capital stock of said company, do hereby constitute and appoint, J. S. Polk, of Des Moines, Iowa my lawful agent and attorney, for me and in my name to appear at a meeting of the stockholders of the said company to be held at the office of the company in Des Moines Iowa, between the hours of 10 o'clock A. M. and 4 o'clock P. M. of the 1st day of November, 1887

for the purpose of amending article II of the articles of incorporation of this company so as to increase the capital stock of the company to $2,000,000., and considering the question of issuing $1,000,000. of bonds of the company secured by mortgage on its property, to pay for constructing and improving said railway and property, and for the transaction of any other business coming before said meeting or at an adjournment thereof, and then and there for me and in my name to cast the vote to which I am entitled as a stockholder and which I might cast if present. Witness my hand this 27th day of October, 1887. James F. How. Witness William R. Glading."

471. Q. I wish you would look at the paper I now hand you and state whether or not this is a proxy signed by the Purchasing Committee and James F. How authorizing Charles M. Hays to vote as their proxy at the annual stockholders' meeting of the Des Moines Union Railway Co., January 6th, 1893? A. It is.

472. Q. By whom was that witnessed?

A. Witnessed by J. C. Otteson.

473. Q. He was at that time secretary of the Wabash Co.? A. Yes.

352 473. Q. Will you read that into the record?

A. (Reading) "Know all men by these presents, that we, the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Co. and J. F. How do hereby constitute and appoint Charles M. Hays, attorney and agent for me and in my name, place and stead to vote as my proxy at the annual meeting of the stockholders of the Des Moines Union Railway Co. to be held in Des Moines, Iowa, January 6th, 1893, according to the number of votes we should be entitled to cast if there personally present. In witness whereof, I have hereunto set my hand and seal this .... day of ..... 18.., Purchasing Committee, by O. D. Ashley, Secretary. Seal. James F. How, Seal. Sealed and delivered, in presence of J. C. Otteson."

474. Q. Now, I wish you would turn to the record of the meeting of the Des Moines Union Railway Co. January 6th, 1893, and state whether or not the record shows that the Purchasing Committee's stock was represented at that meeting by Charles M. Hays, its proxy? A. It was.

475. Q. How many shares? A. 498 shares.

476. Q. I wish you would state if that is a part of the stock that was issued April 8th, 1890 under the proceedings had that day? A. It is.

477. Q. Will you look at the paper I now hand you and state what it is?

A. It is a proxy to Charles M. Hays for the annual meeting of stockholders of the Des Moines Union Railway Co. to be held January 5th, 1894.

478. Q. Will you please read it?

A. (Reading) Know all men by these presents, That James F. Joy, T. H. Hubbard, Edgar T. Welles, O. D. Ashley, Purchasing Committee Trustees, stockholders in the Des Moines Union Railway Co., owners of 498 shares, have made,
353 constituted and appointed Charles M Hays of St. Louis, Mo. lawful agent and attorney for us, and in our names to appear at the annual meeting of stockholders of said company to be held in the City of Des Moines, Iowa, on the 25th day of January, A. D. 1894, for the transaction of any business which may come before said meeting or at any adjournment thereof, and then and there for us and in our names to cast the vote to which we are entitled as stockholders and which we might cast if present. Witness our hands and seals this 19th day of January, 1894. James F. Joy, T. H. Hubbard, Edgar T. Welles, O. D. Ashley, Purchasing Committee Trustees, Seal by O. D. Ashley Secretary. Witness J. C. Otteson.

479. Q. I wish you would look at the record of the meeting of the Des Moines Union Railway Company held January 25th, 1894, and state whether Mr. Hays, under this proxy was present at this meeting, and voted 498 shares of stock?

A. He was present and voted 498 shares of stock.

480. Q. And is that the same stock issued under the resolution of April 8th, 1890? A. It is, the same stock.

481. Q. What is the paper I now hand you?

A. It is a proxy from the Purchasing Committee to Charles M. Hays.

482. Q. Will you please read it?

A. Reading: Know all men by these presents, That we, James F. Joy, Thomas H. Hubbard, Ossian D. Ashley, and Edgar T. Welles, Purchasing Committee Trustees, do hereby constitute and appoint Charles M. Hays attorney or agent for us and in our names to vote as our proxy at the annual meeting of the stockholders of the Des Moines Union Railway Co. to be held at Des Moines, Iowa, on Wednesday, January 30th, 1895, and we do hereby authorize the person
354 above named to vote as our proxy at said meeting, or any adjournment thereof, according to the number of votes we should be entitled to vote, if there personally present. In witness whereof we have hereunto set our hands and seals this 25th day of January, 1895. James F. Joy, T. H. Hubbard, Edgar T. Welles, O. D. Ashley, Purchasing Committee Trustees, with seal. O. D. Ashley, secretary, sealed and delivered in the presence of J. C. Otteson."

483. Q. I hand you herewith two papers and I wish you would state what they are?

A. They are both proxies to vote at the annual meeting of stockholders of the Des Moines Union Railway Co.

484. Q. For what year?

A. The stockholders' meeting of January 6th, 1898.

485. Q. I wish you would look at the letter I now hand you and ask you if that is the letter which enclosed these proxies to you? A. It is.

486. Q. Will you read this letter, if you please?

A. (Reading) "New York, January 3rd, 1898. F. M. Hubbell, Esq., secretary Des Moines Union Railway, Des Moines, Iowa. Dear Sir: At the request of Mr. Ramsey, I enclose herewith two proxies executed by the Wabash Purchasing Committee for the Des Moines Union annual meeting to be held on the 6th. Yours truly, J. C. Otteson, Secretary."

487. Q. The same Mr. Otteson, secretary of the Wabash Company? A. Yes.

488. Q. Will you read one of the proxies, I think they are identical in form?

A. (Reading): "Know all men by these presents: That we, O. D. Ashley, Edgar T. Welles and T. H. Hubbard
355 Purchasing Committee Trustees, hereby constitute and appoint our attorney to vote as our proxy according to the number of votes we should be entitled to vote if personally present at the annual meeting of the stockholders of the Des Moines Union Railway Co. to be held at the office of said company in Des Moines, Iowa, on the 6th day of January, 1898, and at any adjournment or adjournments thereof; and we hereby empower and authorize our said attorney to vote for us and in our name, place and stead for directors of said company, and also to vote and act on any other business which may be brought before said annual meeting or any adjournment or adjournments thereof, and generally in our name and stead to vote and act in the premises as completely and effectually as we could do if personally present and to act hereby revoking any proxy heretofore given. In witness whereof, we have hereunto set our hand this 1st day of December, 1897. O. D. Ashley, Edgar T. Welles, Thomas H. Hubbard. Signed in the presence of J. C. Otteson, as to O. D. Ashley, Edgar T. Welles, and T. H. Hubbard;" they are both alike?

A. Both exactly alike.

489. Q. I wish you would look at the record of the stockholders' meeting of January 6th, 1898, of the Des Moines Union Railway Co. and state whether that stock was voted under that proxy and by whom?

A. Voted by F. M. Hubbell, as proxy for the Purchasing Committee.

490. Q. Now generally, I wish you would state whether since April 8th, 1890, at the meetings of the stockholders of the Des Moines Union Railway Co. the stock in that company which was issued April 8th, 1890, has been voted by
356 the persons to whom it was then issued, or to whom it was by them transferred, either personally or by proxy. I do not want to ask for an answer that shall be definite enough to cover each meeting, but I want to ask whether as a general thing this has been done?

A. The stock issued April 8th, 1890, is the stock that has been voted at subsequent meetings and is the only stock.

491. Q. (490. Q. repeated). A. Yes.

492. Q. Now, you have been asked several times about who built this piece of track and that piece of track, and I want, if I can to get you to tell us just what you know about this, so that we can know how much of it is inference and how much of it is not. Now, you know that this Des Moines & St. Louis record of the director's meeting of May 10th, 1881, shows a draft of a contract between that company and James F. How, agent, under which How was to build the Des Moines & St. Louis Railroad? A. Yes.

493. Q. You also know the account of which a copy if attached to the deposition of Mr. Tobin, the account being taken from the books of the Wabash, St. Louis, and Pacific Railway Company, headed, "Real Estate Des Moines. Joint a/c D. & St. L. & D. & N. W." commencing this way: "Debits: April, 1881, For the following payments for a/c of real estate in the City of Des Moines, Iowa, charged to Des Moines & St. Louis R. R. in the months of February, March and April, 1881, now transferred to real estate Des Moines, the property being held for joint account of the Des Moines & St. Louis and Des Moines & North Western Rys., as per letter of James S. Clarkson, Pt. filed herewith;" Then referring to
357 the preceding question, you knew of this account that I have just referred to on the Wabash books covering these expenditures in Des Moines? A. Yes.

494. Q. You have already testified, I believe, that you helped Mr. Trumbell to check the items which were used in carrying into this account the sum of $36,391.39, which was the amount expended by Gen. Dodge in the city limits and for which the Wabash credited him and charged this account?

A. Yes.

495. Q. Now, was it these acts which you relied upon as the basis of your statement, which you have made several times, that the Wabash Co. paid all of the money that was paid inside of the city limits of Des Moines?

A. It was.

496. Q. Now, under this stipulation, I wish to read into the record a letter from the record in the case in the State Court that has been referred to, entitled Chicago, Milwaukee & St. Paul Railway Co. vs. Des Moines Union Railway Co., "St. Louis, Des Moines & Northern Railway Co. Chief Engineer's office. E. C. Kinney, chief engineer, Des Moines, Iowa, August 24th, 1882. G. M. Dodge, Esq., 195 Broadway, New York. Dear Sir: Distance from city limits to Clive, 5⅜ miles at $4,000. ..... 21.520. Clive to Boone 35.185 miles at $8,000. ..... 281,480. Total bonds from city limits to end of track ..... 303,000. You have already received bonds of $144,000.; balance of bonds due you $159,000. I will try to get Mr. Clarkson to send certificates signed so you can get bonds from Mercantile Trust Co. Yours truly, F. M. Hubbell, Treasurer." Now, refreshing your recollection by this transcript, can you say whether the original of this letter was all in your hand-
358 writing except the letter-head? A. Yes.

497. Q. Now, Mr. Hubbell, I call your attention to the statement in Plaintiffs' Exhibit 48, which was the bill filed to foreclose the mortgage under which the bonds referred to in the letter were issued, "that the aggregate of bonds sold and now outstanding is $303,000.", and I wish you would state whether or not those bonds were issued to Gen. Dodge, by the St. Louis, Des Moines & Northern, to pay Gen. Dodge for that road? A. They were.

498. Q. Now then, will you please state whether or not the St. Louis Des Moines & Northern—and whether that is something that you knew from the letter—paid Gen. Dodge anything on account of the road inside of the city limits? A. It did not. I remember writing that letter distinctly.

499. Q. Now, what is the fact as to whether you know from the books of the Narrow Gauge Construction Co. aside from your recollection, if you have any, that Gen. Dodge advanced the money for the building of the St. Louis, Des Moines & Northern Railway to the Narrow Gauge Railway Construction Co. from the city limits of Des Moines to Boone.

Complainants' counsel objects to this as incompetent, because this is not the best evidence, and is a mere conclusion of the witness.

A. I know from the books and I know from my knowledge.

Complainants' counsel move to strike out the answer because it is indefinite as to what he knows of his own knowledge and what he knows from the books, and because it gives no [but] that is a conclusion.

500. Q. You have stated here that you had knowledge of this contract with How as agent, as to the Des Moines & St. Louis Railroad Co., and that you have knowledge or
359 believe you have knowledge that the books of the Wabash Co. showed that it had ultimately advanced all of the money for the construction of the road inside of the City of Des Moines, that a part of this had been advanced originally by Gen. Dodge, he being re-imbursed by a credit on the Wabash books, and that Gen. Dodge advanced the money through the Construction Company which it used in the work it did in building the St. Louis, Des Moines & Northern Railway, and when the St. Louis, Des Moines & Northern Railway Co. issued its bonds to Gen. Dodge it issued them only up to the west city limits of the city of Des Moines; are there any other matters of facts that occur to you now which have formed the basis of your answers as to which companies built the various pieces of track?

A. As I paid out the money that Gen. Dodge furnished to me as president of the Construction Company, I know and I remember that he furnished all the money to build the road from West 28th Street to Boone.

501. Q. That does not answer my question. (500. Q. repeated).

A. I disbursed all the money to build the tracks inside of the city of Des Moines and from 28th Street to Boone. I know where it came from and I know it personally as well as knowing it from the books, and from depositions given in regard to the books of the company of the Wabash St. Louis & Pacific Railway Co.

502. Q. Did you disburse the money that was paid for building the bridge in Des Moines?

A. No, I did not.

503. Q. Then your statement ago was a little inaccurate?

A. Yes, a little inaccurate.

504. Q. What did you mean by the statement when
360 you said you disbursed all the money that was paid in Des Moines?

A. I meant that I disbursed the money that was paid out for real estate and knew that the Wabash contributed the rest of the money by an examination of the depositions given with reference to the accounts of the Wabash Co.

505. Q. You testified that the St. Louis Des Moines & Northern used the road up to the passenger station prior to May 1st, 1888, under some arrangement with the Wabash; was its use of the property limited to that or did it go all over the whole terminals?

A. It went all over the whole terminals wherever there was a narrow gauge track, and it had occasion to use the track.

506. Q. As I recollect it you testified in Plaintiffs' Exhibit No. 79 which shows the various transfers of the Des Moines Union stock, that there were no transfers of more than one share lots except the transfer to Gen. Dodge, except the transfers in which you, or your firm or some corporation in which your firm was interested was concerned, is that correct? A. No, I don't think that answer was correct.

507. Q. Do you notice the transfer here from the Purchasing Committee to the Continental Trust Co. under date of August 28th, 1890, of 498 shares? A. Yes, I notice that.

508. Q. Did you have any interest in either side of that? A. I did not.

509. Q. You notice a transfer from the Des Moines Northern & Western Railroad Co. to the Chicago, Milwaukee & St. Paul Railway Co.? A. Yes, I notice that.

510. Q. Were you interested in either side of that? A. No.

511. Q. Do you notice a transfer from the Continental Trust Co. to the New York Trust Co.? A. Yes.

361 512. Q. Were you interested in that? A. No.

Recross Examination

By Mr. Blodgett:

566X. Q. You have referred to this transfer of Des Moines Union Railway stock by the Purchasing Committee of the Wabash Railroad Co. to the Continental Trust Co.; do you know whether that was a sale or a pledge of that stock? A. I do not.

567X. Q. You spoke of the transfer of the Des Moines, Northern & Western, to the Chicago, Milwaukee & St. Paul Railway Co., when you sold your interest in the Des Moines Northern & Western Railroad Co. to the Chicago, Milwaukee & St. Paul Railway Co., that stock went along with the property, did it not? A. Yes.

568X. Q. That transfer shown from the Continental Trust Co. to the New York Trust Co.; was not that transfer made on account of the consolidation or merger of those two trust companies?

A. I don't know anything about it, I suppose it was, but I don't know.

569X. Q. Mr. Guernsey has shown you a statement signed by Wells H. Blodgett and others in which it is set forth that a meeting of the stockholders of the Des Moines Union Railway Co. was duly called and held on the 8th day of April, 1890, for the purpose of amending the articles of incorporation of the Des Moines Union Railway Co., and at said an-

nual meeting the stockholders did unanimously adopt certain amendments to said articles, that is the statement?

A. I think so.

570X. Q. I will ask you who prepared that statement that is signed? A. That is a part of the articles.

571X. Q. Who prepared that statement to which the signatures are attached?

A. It must have been either Mr. Cummins or you, I
362 don't know.

572X. Q. You did not prepare it?

A. No, I did not.

573X. Q. I was not here, was I?

A. You were not at the meeting, only by proxy.

574X. Q. According to your best recollection, who would you say prepared it?

A. I fancy that Mr. Cummins prepared it.

575X. Q. Now, I will ask you whether Mr. W. H. Blodgett was to your knowledge present at a meeting of the stockholders of the Des Moines Union Railway Co. at Des Moines, Iowa, on April 8th, 1890? A. I think not.

576X. Q. Now, what other names besides that of W. H. Blodgett are signed to that statement, will you read them?

A. F. M. Hubbell, F. C. Hubbell, A. B. Cummins, Horace Seeley, L. M. Martin, Charles M. Hays, James F. How, G. M. Dodge, H. D. Thompson.

577X. Q. I will ask you if that statement or paper was not presented by you to W. H. Blodgett and signed by him at your request in St. Louis?

A. I have not any recollection.

578X. Q. Do you remember where or when Gen. Dodge signed that paper?

A. Gen. Dodge acknowledged it April 16th, 1890.

579X. Q. Before a notary where?

A. Before a notary in King's County, New York.

580X. Q. Now, how many persons who signed that statement were personally present at the meeting?

A. Six of the persons were personally present.

581X. Q. Read the names please?

A. J. F. How, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell and A. B Cummins.

582X. Q. What persons who signed the paper or statement were not personally present?

A. G. M. Dodge was not present; W. H. Blodgett was not present.

By Mr. Guernsey:

363 583X. Q. Was Horace Seeley?

A. It does not say he was; I don't think he was there.

By Mr. Blodgett:

584X. Q. The record does not show him present?

A. No.

585X. Q. There was another one?

A. H. D. Thompson, he was not present; Seeley and Thompson signed it without being stockholders.

By Mr. Cook:

586X. Q. It is true, is it not, that soon after the organization of the St. Louis Des Moines & Northern Railway Co. it made a contract or agreement with the Narrow Gauge Railway Construction Co. under which the latter company was to construct its road and was to receive a certain amount of bonds and a certain amount of stock per mile of road constructed?

A. My recollection is that the contract was drawn up, but the amount to be paid to the Construction Company was not filled in because the engineer was unable to give the quantities, and the reason that the bonds were $8,000. a mile, is that the law at that time did not permit more than $8,000. a mile to be issued on a narrow gauge railroad.

587X. Q. Well, it is true that the Narrow Gauge Construction Company undertook to construct the road for bonds to be issued by the railroad company and stock in that company.

A. My belief is that the contract was never executed, that we got started, Gen. Dodge began to furnish the money and nobody knew what it was going to cost, Gen. Dodge was disappointed at the amount of it and finally under protest kept on furnishing money to finish the road.

588X. Q. And took the bonds and stock?

A. And took the bonds and stock, I don't think the contract was ever signed.

364 589X. Q. Was there a contract between Gen. Dodge and the Construction Co.?

A. I don't think there was. We refused to contract any debts, unless the General would pay us.

590X. Q. Have you got the record of the Narrow Gauge Construction Co. here?

A. No, not here. He furnished all the money.

591X. Q. And got all the bonds?

A. He got all the bonds.

592X. Q. And those bonds were issued by the St. Louis, Des Moines & Northern Railroad Co.? A. Yes.

593X. Q. And he got half of all the stock that was issued? A. He got all of the preferred stock.

594X. Q. And half of the common?

A. And half of the common.

595X. Q. Of the St. Louis, Des Moines & Northern Railway Co.? A. Yes.

596X. Q. And the Construction Company got the other half of the common stock?

A. That is the way I remember it.

597X. Q. That mortgage that was given by the St. Louis Des Moines & Northern Railway Co. to secure those bonds that Gen. Dodge got was afterwards foreclosed? A. Yes.

598X. Q. Now, after the three lines of railroad came into Des Moines and were operated, how long before the Des Moines Union Railway Co. took over the property, took control of the property in 1889, was that? A. 1888.

599X. Q. In 1888 how was the terminal property maintained?

A. It was maintained by the Wabash, St. Louis & Pacific and the Purchasing Committee up to May 1st, 1888.

600X. Q. And how was the cost apportioned among the three lines?

Defendants' counsel objects to the question because the evidence shows there were only two roads using it, the Wabash Purchasing Committee and the St. Louis, Des Moines & Northern, and the question assumes that the cost was 365 apportioned between three lines when there is no evidence to show that.

A. The Wabash, St. Louis & Pacific operated the Des Moines & Northwestern and the Des Moines and St. Louis under leases, and I don't know who paid the maintenance.

601X. Q. Did the St. Louis Des Moines & Northern contribute towards it, while it was operating the Boone line?

A. I can only guess at it.

602X. Q. Don't you know it did contribute, is not that your understanding that it did contribute?

Defendants' counsel objects to the witness guessing or stating his understanding.

603X. Q. Is it not your understanding that the St. Louis, Des Moines & Northern Railway Co. contributed its proportion of the cost of maintaining the terminal property on a wheelage basis?

Defendants' counsel renews his objection.

A. I was not connected with those roads at that time and do not know how they kept their accounts. I could tell you what I supposed, I suppose that Gen. Dodge settled with the Wabash.

Complainants' counsel move to strike out the supposition of the witness as wholly incompetent and not responsive to the question.

Defendants' counsel stated that it may be stricken out.

604X. Q. Will you produce the record of the Narrow Gauge Construction Co. so that I may, if I see fit introduce any part of it? A. Yes.

366 Complainants' counsel state that when the maps referred to are prepared they will be offered in evidence by the complainants.

Not being able to complete the taking of these depositions on this day, by consent of counsel I adjourned the further taking of the same until 9:30 A. M. June 6th, 1911.

JAMES F. ALLEN,
Examiner.

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Stipulation filed October 23, 1912, as to addition to deposition of Frederick M. Hubbell.

368 Stipulation.

It is hereby stipulated by and between the parties hereto that there shall be added to the deposition of F. M. Hubbell taken in this case, commencing on the 31st day of May, A. D. 1911, as a part of his recross-examination the following:

1. Question. Mr. Hubbell, when you were examined as a witness in this case on the last day of May and first days of June, 1911, the following interrogatory was propounded to you:

"I will ask you whether, as secretary of the Des Moines Union Railway Company, you now have in your possession, a certified copy, or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines and St. Louis Railroad Company, prior to the 8th day of April, 1890, authorizing J. F. How to be present at any meeting of the stockholders of the Des Moines Union Rail-
369 way Company and vote any share or shares of stock in that company, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Company?"

To that interrogatory, you replied as follows:

"I do not know whether I have or not. I will look for them."

Now I will ask you whether, since your former examination, you have as secretary, made search among your papers for such a resolution as is described in the interrogatory I have just read?

Answer. Yes.

2. Question. Will you please state whether you have or have not found such a resolution.

Answer. I have not.

3. Question. On your former examination, the following interrogatory was propounded to you:

"I will ask you whether as secretary of the Des Moines Union Railway Company, you now have in your possession a certified copy, or any other copy, of a resolution adopted at any meeting of the stockholders or directors of the Des Moines and Northern Railway Company prior to the 8th day of April, 1890, authorizing Mr. A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock in that company, then owned or held by said Des Moines and Northern Railway Company, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Company?"

To that interrogatory, you replied as follows:

"I do not know whether I have or not."

You were also asked the following question:

"Will you look and see whether you can find such a resolution or copy of such resolution, and produce it later, if you can find it?"

370 And to that question you replied as follows:

"Yes, I will look."

Now, I will ask you, whether, since your former examination you have as secretary made search among your papers for such a resolution as is described in the interrogatory I have just read? Answer. Yes.

4. Question. Will you please state whether you have or have not found such a resolution?

Answer. I have not.

5. Question. On your former examination, the following interrogatory was also propounded to you:

"I will ask you whether as secretary of the Des Moines Union Railway Company, you now have in your possession a

certified copy or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines and Northwestern Railway Company, prior to the 8th day of April, 1890, authorizing you to be present at any meeting of the stockholders of the Des Moines Union Railway Company and vote any share or shares of stock in that company that were then owned or held by said Des Moines and Northwestern Railway Company, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Company?"

To the foregoing interrogatory you replied as follows:

"I do not know whether I have or not."

You were also asked the following question:

"Will you make an examination and see whether you can find any among the papers and records?"

And to that interrogatory you replied as follows:

"Yes, I will look in the place where we keep the proxies, and see if any of them have been saved or not."

371 Now, I will ask you whether since your former examination, you have, as secretary, made search among your papers for such a resolution as is described in the foregoing interrogatory? Answer. I have.

6. Question. Will you please state whether you have or have not found such a resolution.

Answer. I have not.

7. Question. On your former examination, the following interrogatory was propounded to you:

"I will ask you whether as secretary of the Des Moines Union Railway Company, you now have in your possession, a written proxy, signed before the 8th day of April, 1890, of W. H. Blodgett, as a stockholder in the Des Moines Union Railway Company, by which he authorized J. F. How to attend any meeting, and vote any share or shares of stock then owned by him, either for or against any proposed amendments of the articles of incorporation of the Des Moines Union Railway Company?"

To that interrogatory you replied as follows:

"This meeting occurred twenty-one years ago, and I do not know whether the proxies can be found, but I am certain that such proxies were in existence, and submitted at the meeting."

Now I will ask you, whether since your former examination, you have as secretary, made search among your papers for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

8. Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

372 9. Question. On your former examination the following interrogatory was also propounded to you:

"As secretary of said Terminal Company have you now in your possession, any proxy executed by J. F. How, C. M. Hays, W. H. Blodgett, or either of them, prior to April 8, 1890, authorizing A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock then owned or held by either of them in said Company, either for or against any proposed amendment of the articles of incorporation of said company?"

To that interrogatory you replied as follows:

"I do not know whether I have or not."

You were also, on that occasion, asked the following question:

"Will you look and see whether you have, and if so, will you produce them?"

To the last interrogatory you replied as follows:

"Yes, sir; I will look and see; you will have to send me a copy of the questions."

Now I will ask you, whether since your former examination, you have as secretary, made search among your papers, for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

10. Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

11. Question. On your former examination, the following interrogatory was also propounded to you:

"Will you examine, or have an examination made, to see whether you have a proxy from General Dodge, authorizing Mr. Martin to attend that meeting that was held on the 8th day of April, 1890, and vote either for or against the
373 proposed amendments?"

To that interrogatory you answered as follows:

"I will make an examination. In the different companies it was very common for proxies to be filed, and as a result they

were put in a pigeon hole in our vault, and if they have not been destroyed, many of them can be found now."

I will ask you whether since your former examination, you have, as secretary, made search among your papers for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

12. Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

The foregoing addition to the said deposition shall have the same force and effect in all respects as if it had been taken and returned with the said deposition in the first instance as a part thereof.

Dated this 23 day of October, A. D. 1912.

WELLS H. BLODGETT,
J. L. MINNIS,
J. C. COOK,
R. RYAN,
Solicitors for complainants.

GUERNSEY, PARKER & MILLER,
Solicitors for defendants.

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374 **Pursuant to adjournment, as above stated, on June 6th, 1911, I continued the taking of said depositions as follows:**

Present: W. H. Blodgett, Esq., J. L. Minnis, Esq., J. C. Cook, Esq., and Robert Ryan, Esq., counsel for complainants, and N T. Guernsey, Esq., counsel for defendants.

C. HUTTENLOCHER, being duly sworn, testifies as follows:

Direct Examination

By Mr. Guernsey:

1. Q. What is your name? A. C. Huttenlocher.
2. Q. Where do you reside? A. Des Moines.
3. Q. How long have you resided here?
A. Forty-five years.
4. Q. Were you employed by the firm of Polk & Hubbell during the period between 1880 and the time when the firm dissolved? A. Yes sir.
5. Q. Are these the books which you have here, the journal and ledger, of the Narrow Gauge Railway Construction Company? A. Yes sir, they are.
6. Q. What is the fact as to whether they were kept by you or under your supervision?

A. They were kept by me and under my supervision.

7. Q. In whose office were those books kept, and in what office was the business of this Construction Company transacted during the years 1881 and 1882?

A. In the office of Polk & Hubbell in Des Moines, in the rear room at 201 Fifth Street.

8. Q. In the city of Des Moines?

A. In the city of Des Moines.

9. Q. Now, what is the fact as to whether the books cover all the business transactions of the Narrow Gauge Railway Construction Company, and as to whether the entries in
375 the books were made at or about the time they purport to have been made, and are correct?

A. They are.

10. Q. Now, I wish you would tell us whether the books show how much money was disbursed through the Narrow Gauge Railway Construction Company, in connection with the building of the St. Louis, Des Moines & Northern Railway?

A. $430,938.55.

11. Q. And do those books show where that money came from? A. Yes sir.

12. Q. Where did it come from?

A. It came from Gen. G. M. Dodge.

13. Q. Was any part of that money received from any one except Gen. G. M. Dodge? A. No sir.

14. Now, will you tell us what method was adopted in getting that money from Gen. Dodge, what your practice was, how you handled it?

A. Well, the Construction Company had a small working capital furnished by Gen. Dodge which was used in paying vouchers; and when the vouchers were paid and receipted they were sent to Gen. Dodge for payment. He deposited the money at the Park Bank, New York, to the credit of Polk & Hubbell, and Polk & Hubbell drew their draft on the Park Bank in favor of the Construction Company and deposited it to the credit of the Construction Company in the Des Moines bank.

15. Q. Later, was there any change in the method, if so, what was it?

A. I think that method continued all the time except at certain periods when estimates were sent to Gen. Dodge for payment and he would deposit the money in like manner, and when that was done, we would pay the estimates, and a few times, I think, vouchers were receipted by the party and sent to him for payment before the money was advanced to
376 the Construction Company. There was not very much of the latter.

16. Q. Do these books purport to contain any account between the Narrow Gauge Railway Construction Company and the St. Louis, Des Moines & Northern Railway Company relative to the construction of the railroad that was at one time opreated by the St. Louis Des Moines & Northern Railway Company? A. No sir.

17. Q. Now, I wish you would state whether these books show the receipt by the Narrow Gauge Railway Construction Company of any bonds of the St. Louis, Des Moines & Northern Railway Company from that company or from any other source—I am talking about bonds and preferred stock?

A. Yes sir.

18. Q. What entry have you in mind?

A. Under date of August 24, 1882, I find that the Construction Company received 1938-¾ shares of stock.

19. Q. Now, was that preferred stock or common stock?

A. Common stock.

20. Q. Do you find any entries showing the receipt of any bonds? A. No sir.

21. Q. Or of any preferred stock? A. No sir.

22. Q. Now, returning to this entry, I wish you would read the entry on the journal with reference to this common stock that you have just referred to?

A. On page 332 of the journal of the Narrow Gauge Railway Construction Company, under date of August 24, 1882, "St. L. D. M. & N. stock issued to Construction Co. $193,875.00" That is the debit side of it. "Credit, Capital Stock as follows "$193,875.00, 1938-¾ shares, which is all the Construction Co. gets, city limits D. M. to Boone,, and is
377 common stock."

23. Q. In whose handwriting are those entries?

A. They are in my handwriting.

24. Q. And when were they made by you?

A. At the date of the entry.

25. Q. August 24, 1882? A. August 24, 1882.

26. Q. Aside from those entries that you have read, are there any entries upon the books of the Narrow Gauge Railway Construction Company showing the receipt by that company of any stock or bonds of the St. Louis Des Moines & Northern Railway Company? A. No sir.

27. Q. Now, aside from the entries that you have just read, do those books contain any entries to which the St. Louis, Des Moines & Northern Railway Company is a party, relating either to the construction of the railroad that was at one time operated by the St. Louis, Des Moines & Northern Railway Company, or to the payment for that railroad? A. No sir.

28. Q. Now, you have stated, I think, that these books show that the Construction Company received from Gen. G.

M. Dodge for disbursement $430,938.55 for the building of the railroad at one time operated by the St. Louis, Des Moines & Northern Railway Co. Please state what amount those books show that the Construction Co. paid out on Gen. Dodge's account for the building of said railroad.

Complainants' counsel object to the use of the books as evidence, because they could not show any account or any transaction between either of the complainants and any one, and they are not such books of account as would be competent in evidence; and furthermore object to so much of the
378 question as assumes that this money was paid out on account of Gen. Dodge, and because the question calls for the conclusion of the witness as to what the account shows and otherwise.

A. $430,938.55.

29. Q. I see you have opened the ledger at page 20. Is that the account which you used as a basis of the answer you just made? A. Yes sir.

30. Q. Will you furnish to the notary a copy of that page, showing both sides of that account with Gen. Dodge?

A. Yes.

31. Q. This page is headed, "G. M. Dodge, Const." What does "Const." mean? A. Construction.

32. Q. I call your attention to a paper which is as follows:

"Distribution of the sum of $430,938.55 paid by G. M. Dodge.

1882		
Nov. 11,	Subsidy expense	271.25
	Miscellaneous	3268.66
	Real estate	12015.55
	Joint fastenings	11677.63
	Bridging	121492.38
	Grading tools	1335.76
	Cattle G. & crossings	1208.51
	Water stations	4350.32
	Construction	4661.03
	Track laying and surfacing	27484.90
	Building and fixtures	2939.04
	Fencing	536.66
	Traffic stations & Whs.	4751.72
379	Ditching	973.65
	Frogs & Switching	126.00
	Ties	46971.85
	Telegraph	5055.00
	Right of way	47163.92
	Fuel	633.37
	Grading	89272.06
	Iron	9448.36
	Engineering	14177.03
	Engineering tools	1244.07
	Stationery	23.52
	Rolling stock	19854.06
	Real estate (recording D. M.)	2.25
	Total	430938.55

and ask you whether that is a copy of one side of this account, and whether it shows the amount received from Gen. Dodge, or the amount paid out for him?

A. Yes, this is a copy.

33. Q. It is a copy of the amounts paid out for Gen. Dodge?

A. It is a copy of the amounts paid out for Gen. Dodge.

34. Q. Is that what appears on the ledger on the debit side of this account?

A. Yes sir, being the distribution of the amount spoken of.

35. Q. And is a complete copy of the debit side of the ledger page except the references to the pages in the journal?

A. Yes sir.

Q. Now, will you read to the notary the credit side of this account? A. Yes, it is as follows:

380 Page 14.

G. M. Dodge (Const. a/c)

1881.

June	24	Pd. to Yeomans 17	1	2000.00	
"	24	Pd. to Yeomans 17	2	5810.00	
July	28	do 42	3	7030.00	
"	23	Vouchers sent to him to be paid 6	4	1149.23	
		Engineers May			
June	15	G. M. Dodge Cal. a/c.11	5	2104.49	
		Ties for May			
	15	G. M. Dodge Cal. a/c.11	6	2751.64	
	27	Frt. ties Real Est &c.20	7	8869.69	
July	7	Right of Way &c....24	8	4021.12	
"	8	Freight Right Way &c 26	9	4583.71	
"	20	Dep. by P. & H. 35	10	5958.23	
"	15	For'd Vouchers 31	11	6091.64	
"	22	Vouchers for'd 37	12	2196.75	
"	21	Logans for June ...36	13	7291.75	
"	27	Voucher forwarded ..40	14	4995.10	
"	30	do ..43	15	2345.21	
Aug.	1	do ..45	16	4194.49	
	6	do ..50	17	2916.08	
	10	do ..56	18	3170.99	
	12	do ..59	19	6351.57	
	16	do ..64	20	3920.62	
	17	Logan & K. July ties.65	21	11320.75	
	22	Vouchers 70	22	5031.46	
	23	do 71	23	2321.24	
	23	do 72	24	6544.68	
				112970.44	112970.44

381	Aug.	30	By Balance			112970.44
	"	26	Vouchers	76	25	3550.55
	"	26	do	76	26	3150.00
	"	31	do	81	27	2248.95
Sept.	6		Vouchers	85	28	5327.66
"	7		do	86	29	2470.69
"	10		do	90	30	3450.55
"	14		Martin do Flynn	93	31	12094.35
"	17		do	99	32	4697.10
"	20		"	104	33	6280.40
"	23		Raymond & C.....	107	34	10384.95
"	23		M. Kavanaugh	107	35	2870.92
"	24		Logan & Kirkham	109	36	12278.25
"	29		Vouchers	114	37	4856.09
Oct.	6		do	121	38	4830.05
"	6		S. M. Yeomans Bal.....	122	1	160.00
			to pg. 19.			191620.95

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G. M. Dodge Const.

Pg. 14

Oct.	6	/81 Bal. a/c rendered			191620.95
Oct.	18	Voucher	39	135	237.84
	20	" M. H. King	40	137	3295.60
	20	" King & Welch	41	137	1201.65
					198488.64
	20	Von Atkisson & Brongham.	42	138	2423.72
..	22	Vouchers	43	141	6789.22
	25	"	44	143	14187.09
	25	"	45	143	1459.16
	25	"	46	143	6745.78
382	27	"	47	148	4954.41
		Sept. Est.			
	27	Atkison & Brongham.....	48	149	5623.20
Nov.	9	"	49	168	3099.16
	12	M. Flynn	50	170	1877.25
	12	H. B. Mosher.....	51	170	1691.68
	12	Cannon & H.....	52	170	306.92
	12	M. H. King.....	53	170	513.01
	17	King & Welch.....	54	177	133.45
	17	Raymond & C.....	55	177	710.24
	17	" "	56	177	2428.64
	17	" "	57	177	4481.77
	17	M. Kavanagh 58		177	1436.91
	21	Vouchers	59	184	3950.67
	29	M. Kavanaugh Final.....	60	197	1228.18
	29	Vous. ford.	61	197	1213.25
	30	" "	62	200	6214.48
		H. F. Getchells.			
Dec.	5	Vou. forwarded	63	206	1162.73
	7	Vous. for'd	64	210	2841.70
	19	" "	65	219	2863.84
	23	Nov. Pay Rolls.....	66	224	7160.90
	28	Frt. on Iron Rails.....	67	227	1165.84
1882.					
Jan.	9	M. King Nov. & final.....	68	233	480.17
	9	Atkisson & B. " "	69	233	894.22
	9	J. A. Wilson, Dec. Est.....	70	233	946.58
	9	Raymond & C. "	71	233	3987.20
		Depot at			
	9	Nelson & W. Grimes.....	72	234	835.00
383	9	Vous. Forded.	73	234	513.14
	10	Raymond & C. Nov. Est...	74	234	12975.15

	18	Vous. For'ded	75	244	389.11
	18	Vous. For'ded	76	243	6711.98
	20	" "	77	245	2105.89
Feb.	6	Raymond & C. Jan. Est. ..	78		16804.40
		For'd			331676.49

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G. M. Dodge Const.

Feb.	6/82	By Balance foot up.....			331676.49
	16	Vous. forded.	79	268	4312.62
Mch.	18	" "	80	278	3566.12
Apr.	7	" "	81	286	2245.33
	12	" "	82	288	3853.22
	17	Raymond & C. Ests.	83	289	17565.83
May	3	Vous. forded	84	291	3018.70
	5	" "	85	292	2330.78
	6	" "	86	293	1465.79
	18	" "	87	297	2832.24
	24	Raymond & Co.	88	299	9556.06
	31	Sundry Vouchers	89	302	1453.78
June	13	" "	90	305	2975.10
	16	J. A. Wilson Apl. Est.	91	306	2993.95
	29	May Vouchers	92	309	3368.99
	30	June Vouchers Prt.	93	312	1599.25
July	10	Raymond & C. & Wilson...	94	316	17752.58
	17	Vouchers	95	319	2243.84
	21	" June.....	96	321	4196.00
	28	J. A. Wilson final.....	97	322	1242.00
384	28	F. T. Nelson Depot.....	98	323	1100.00
Aug.	9	Eaton & Atkisson V.	99	324	1580.00
	18	Raymond & C. 100		329	1004.60
	19	Vouchers 101		331	1339.21
	31	do 102		335	2002.06
Sept.	30	Raymond & Co. 103		341	2359.48
Oct.	2	J. A. Wilson 10% 104		342	1304.53
					430938.55

385 37. Q. Is this a correct copy of the credit side of that account, showing the various amounts received from Gen. Dodge to make up the $430,938.55? A. Yes sir.

38. Q. Now, without reference to the books of account, were you familiar with the details of the business of Polk & Hubbell? A. Yes sir.

39. Q. Did you have charge of their books of account?
A. Yes sir.

40. Q. As well as the books of account of the Construction Company? A. Yes sir.

41. Q. I wish you would state whether the Narrow Gauge Railway Construction Company, or Polk & Hubbell, ever to your knowledge received any preferred stock or bonds of the St. Louis, Des Moines & Northern Railway Co.?
A. No sir.

42. Q. Referring again to the books of account of the Narrow Gauge Railway Construction Co., will you please state whether or not any of the money for the acquisition of any right of way, which afterwards became a part of the terminal property inside of the city limits of the city of Des Moines, was paid by the St. Louis, Des Moines & Northern Railway Co.? A. No sir, not that I know of.

43. Q. Some pieces of that right of way inside of the city of Des Moines were acquired in the name of the St. Louis, Des Moines & Northern Railway Company; can you state who advanced the money to pay for the pieces of right of way that were so acquired? A. G. M. Dodge.

44. Q. Now, reference has been made to quite a number of condemnation suits which were instituted in the name of the St. Louis, Des Moines & Northern Railway Co., covering the right of way between Des Moines and Boone, and
386 outside the city limits of Des Moines; if you can, please state who advanced the money to pay for the acquisition of those pieces of right of way under those condemnations? A. G. M. Dodge.

45. Q. Now, have you prepared a statement showing the pieces of real estate inside of the city limits of Des Moines, paid for by Gen. Dodge, and what he paid for each one of them? A. Yes sir.

46. Q. Will you please read that statement to the notary?
A. Yes, it is as follows:

Page 78 Ledger.—280-256.

Real Estate Paid for by Dodge to Construction Company in City of Des Moines.

1881, June 10.	Pd. E. J. Adams for lots 1 & 2 in blk. 22 Hoxie's Addn.	$ 100 00			Journa 10
"	16 Pd. W. S. Sickman part of 800 for lot 2, O. P. 9-78-24.	100 00			12
"	23. Pd. John A. Wyet pr John Mitchell for deed to St. L. D. M. & N. Ry. for lot 7 and part lot 8 in blk 22, Keene & Poindexter's Addn. and for lot 8, in blk. 22, Hoxie's Addn.	1900 00			16
July	6. Pd. T. E. Brown for lot 5, N. E. 8-78-24 and O. P. Lot 13, N. W. 9-78-24	1400 00			23
	Also for a strip 50 ft. wide through lot 1, O. P. N ½ N. E. 8-78-24	1300 00			23-280
"	23. Pd. Sarah Ann Hughes and W. S. Sickman balance on lot 2, O. P. N. W. 9-78-24 1 acre to St. L. D. M. & N. Ry.	800 00			20
37 Aug.	11. Pd. E. J. Adams & Co. for balance for deed from Wm. M. Fagen and wife lots 1 & 2, blk. 22, Hoxie's Addn	1415 55			57
Aug.	23. Pd A. G. Field for lot 5 in blk 33, Keene .. Poindexter's Addn.	700 00			72
Sept.	5 Pd W. H. Ishbard for W. O. Curtis for lot 6 blk 31. Keene & Poindexter's				
650 00	Addn.	650 00			84
1600	and lots 6, 7, 8, 9, in Blk. 33	1600 00			84
2250					
June	25. Pd J. C. Savery per shff. for lot 2, N. E. 8-78-24.	1950 00	18	Ledger	280
July	5. Shff. Condemnation fees.	120 00	23		"
1882, Mch.	13. Pd. H. A. Elliott for 100 ft. strip S. end E. ½ lot 2, N. W. 8-78-24.	750 00	276	256	
		$13085 55			

In the paper referred to above the figures "280-256" to the right of "Page 78 Ledger," all figures to the right of the column with the footing $13,085.55, the figures "650.00 1600" and "2250" under the date of Sept. 5, and the figures "650.00" in the column referred to are in lead pencil.

47. Q. Now, at the top of the statement is "Page 78 Ledger 280-256;" are those the ledger pages?

A. Yes, of the Narrow Gauge Railway Construction Company.

48. Q. The book from which you obtained the information?

A. Yes sir.

49. Q. And then, under "Journal" and opposite the amounts, are some figures, 10, 12, 16, 23, etc.; are those the pages in the ledger and journal?

A. Yes sir; this is the journal page in pencil.

50. Q. I see down here opposite the item 1950 "Ledger 280." A. That is Ledger page 280.

51. Q. So in three or four instances you have given
388 the ledger page as well as the journal page?

A. Yes sir.

52. Q. Now, does that statement just referred to list all the real estate included in the terminal property inside of the city limits of Des Moines, and paid for by money advanced by Gen. Dodge? A. Yes sir.

53. Q. Who paid for the balance of the real estate acquired in the city of Des Moines and included in the terminal property conveyed to the Des Moines Union in 1887 and 1888 by James F. How and James F. How, Trustee, the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company and Gen. Dodge?

A. The Wabash, St. Louis & Pacific Railway Company.

54. Q. What is the fact as to whether you yourself were personally engaged in those transactions at that time?

A. I had more or less to do with them most all the time.

Cross-Examination

By Mr. Cook:

1X. Q. To make the matter short, it is true, is it not, that the Narrow Gauge Railway Construction Company had an agreement either in writing or an oral understanding, with the St. Louis, Des Moines & Northern Railway Company, that it was to construct the lines of road of that company, and was to receive a certain amount of bonds per mile and a certain amount of stock per mile as the road was being built?

A. I never heard of it or knew of it.

2X. Q. Have you the corporation records of the Narrow Gauge Railway Construction Company in your possession?

A. I don't think I have.

3X. Q. Then you knew, did you not, that the Narrow Gauge Railway Construction Company made an arrangement with Gen. Dodge under which he was to furnish money?

A. Yes sir.

389 4X. Q. For building the line, including the payment for right of way? A. Yes sir.

5X. Q. And he was to have for that all of the bonds and all the preferred stock and one half of the common stock that were issued by the St. Louis, Des Moines & Northern Railway Company? A. I don't know anything about that.

6X. Q. He did in fact receive all the bonds and all the preferred stock, and half of the common stock of the St. Louis, Des Moines & Northern Railway Company, didn't he?

A. I don't know.

7X. Q. You do not know anything about it? A. No sir.

8X. Q. You know that the Narrow Gauge Railway Construction Company got one-half of the common stock that was issued by the St. Louis, Des Moines & Northern Railway Company? A. They got what the record shows here.

9X. Q. That was half of all of the common stock?

A. I don't know whether it was or not, I can look and see.

10X. Q. Look and see.

A. It does not state what proportion it is.

It is understood and agreed between Mr. Guernsey and Mr. Cook that Mr. Cook may have access to the books of account and corporation records of the Narrow Gauge Railway Construction Co. and the books from which the witness has testified, and that Mr. Cook may hereafter introduce such parts of said books as he elects.

By Mr. Minnis:

11X. Q. Who had charge of the purchase of property acquired in the city of Des Moines that was in the names of James F. How, James F. How, Trustee, G. M. Dodge and the Des Moines & St. Louis Railroad Company, which you
390 say was paid for by the Wabash, St. Louis & Pacific Railway Company?

A. You mean the purchase of it?

12X. Q. Yes.

A. It was done at our office; Mr. Hubbell had most to do with it.

13X. Q. What do you mean by "our office?"

A. The Construction Company's office.

14X. Q. Did Mr. Hubbell have something to do with the purchase of the property?

A. Yes sir; he employed agents to look after it and get it.

15X. Q. How do you know that the Wabash, St. Louis & Pacific Railway Company paid for it?

A. Because the books show it.

16X. Q. Whose books?

A. The Narrow Gauge Railway Construction Company's.

17X. Q. Did you make those entries?

A. A good many of them.

18X. Q. Did you have any personal knowledge of any payment by the Wabash, St. Louis & Pacific Railway Company?

A. Vouchers were sent to them for payment and they remitted for it.

19X. Q. Who was president of the Narrow Gauge Railway Construction Company?

A. Mr. Hubbell tells me he was.

391 C. Huttenlocker, in continuation of his deposition, testifies as follows:

Cross-Examination Resumed

By Mr. Cook:

20X. Q. Will you look at the book which I now hand you and which is the record of the meetings of stockholders and directors of the Narrow Gauge Railway Construction Co. and state what parts of it, if any, are in your handwriting?

A. Page 52, the meeting of June 13th, 1882, of the board of directors, down to and including page 71 of the board of directors, the meeting dated December 9th, 1884.

21X. Q. The remainder of the record is in whose handwriting? A. John S. Polk's.

22X. Q. Who was the son of Jefferson S. Polk?

A. Yes sir.

Complainants' counsel here offer in evidence the following parts of said record, showing the meetings of stockholders and of directors at the dates shown in the record identified by the witness as corporation records of the Narrow Gauge Railway Construction Co.

392 Redirect Examination

By Mr. Guernsey:

55. Q. Are the journal and ledger that you referred to this morning in connection with your testimony the only books of account which the Narrow Gauge Railway Construction Co. had? A. Yes sir.

56. Q. And was this journal its book of original entries?

A. Yes sir.

57. Q. And the entries made in the journal are original entries of its transactions? A. Yes sir.

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393 **F. C. Hubbell, being duly sworn, testifies as follows:**

Direct Examination

By Mr. Guernsey:

1. Q. State your name, age, residence and occupation?

A. My name is F. C. Hubbell, age forty-seven, residence Des Moines, occupation president of the Des Moines Union Railway Co.

2. Q. You are a member of the firm of F. M. Hubbell & Son, and were in 1894? A. Yes sir.

3. Q. When did you become a director in the Des Moines Union Railway Company? A. January, 1890.

4. Q. Have you been a director continuously ever since? A. Yes sir.

5. Q. And when did you become president of that company? A. January 1892.

6. Q. Have you been president continuously ever since? A. Yes sir.

7. Q. What, if any, connection did you have personally with the acquisition of the terminal property in Des Moines, the building of the Des Moines & St. Louis Railroad, the Des Moines & Northwestern Railway, and the St. Louis, Des Moines & Northern Railway Company, or with the transfer of the terminal property in Des Moines to the Des Moines Union Railway Company?

A. I had no personal connection with any of those transactions.

8. Q. What, if any, personal knowledge had you in reference to them?

A. I had no personal knowledge.

9. Q. Were you at one time connected with the Des Moines & Northwestern Railway Company? A. Yes sir.

10. Q. When did your connection with that company commence?

A. I would have to look that up, I was a director in 1889.

11. Q. When did you first become an officer in the company just referred to?

A. I became vice-president on January 2nd, 1890.

394 12. Q. Did you have any other office?

A. I was a director.

13. Q. Were you superintendent?

A. Not at that time .

14. Q. When did you become superintendent?

A. January 1, 1891.

15. Q. And, as superintendent, did you have charge of the operation?

A. Yes sir, I was vice-president and superintendent from January 1st, 1891, until the corporation went out of existence.

16. Q. You mean the corporation went out of existence or the property was consolidated?

A. Until the consolidation of the property with the Des Moines & Northern, the consolidation of the Des Moines, Northern & Western Railway Company.

17. Q. Did you have charge of the operation of the consolidated property for the Des Moines, Northern & Western?

A. Yes sir.

18. Q. For how long?

A. Until that company was foreclosed and the new company organized known as the Des Moines, Northern & Western Railroad Company.

19. Q. Did you have charge of operations for that company? A. Yes sir.

20. Q. For how long?

A. Until Hubbell & Son sold their stock to the Chicago, Milwaukee & St. Paul Railway Company, in the last days of December, 1898.

21. Q. You were also a director in each of those companies—the Des Moines, Northern & Western Railway Company, and the Des Moines Northern & Western Railroad Company? A. Yes sir.

22. Q. Do you remember whether you were vice-president of each of them? A. Yes sir.

23. Q. Now, I wish you would state whether, during the time that you were connected with those companies that have been named, the Des Moines & Northwestern Railway
395 Company, the Des Moines, Northern & Western Railway Company and the Des Moines, Northern & Western Railroad Company, either of those companies to your knowledge claimed any rights in the terminal property under the contract of Jan. 2nd, 1882?

A. None of them did.

24. Q. Now, during this entire period I wish you would state whether you ever heard it claimed by any one, either on behalf of the companies I have mentioned, or on behalf of the Wabash Company—by Wabash Company I mean the various Wabash organizations—during that period, that any rights existed under this contract?

A. No, I never heard any officer or any one connected with the various corporations of which you spoke claim any rights for either of the companies under the contract of January 2nd, 1882.

25. Q. Now, during the time you were connected with the companies that have been mentioned, did either of the companies with which you were so connected assert any right to occupy the terminal property of the Des Moines Union Railway Company, except the rights conferred upon them by the lease of May 10, 1889, as ratified July 31, 1897?

A. No sir, I never heard anybody discuss any rights to use the terminal property, only under the contract mentioned.

26. Q. During the period that you were president of the Des Moines Union Railway Company—that is, from 1892 down to the time this suit was brought—what is the fact as to whether frequently matters came up for adjustment between the Des Moines Union and the tenant companies?

A. Yes sir, there were occasional disputes as to the payment of bills, nothing of a serious nature.

27. Q. During this entire period since you have been
396 president of the Des Moines Union, and up to the time of the bringing of this suit, please state whether any of the tenant companies to your knowledge ever asserted any rights whatever under the contract of 1882?

A. They never did.

28. Q. In the bill in this case, Paragraph 11 of the amended bill, if my notes are correct, it is said that the companies then owning the three railroads; the Des Moines & St. Louis, the Des Moines & Northwestern and the St. Louis, Des Moines & Northern, purchased more property adjacent to that theretofore acquired, and turned it over to the Terminal Company and built a union passenger depot and additional sidetracks or some spur tracks to industries. Now, what is the fact as to whether those companies, or either of them purchased more property adjacent to that theretofore acquired and turned it over to the Terminal Company?

A. It is not correct.

29. Q. Have you assisted me in getting together the material that is contained in this stipulation of May 31, 1911?

A. Yes sir.

30. Q. And what is the fact as to whether you have searched through the deeds of the Des Moines Union Railway Company, and does this stipulation of May 31, 1911, with the stipulation filed March 23, 1911, contain all the deeds conveying property to the Des Moines Union Railway Company of which you have any knowledge, or which you are able to find?

A. Yes sir.

31. Q. What is the fact as to whether either of the companies built a union passenger depot as alleged in this paragraph of the bill? A. It is not true.

32. Q. When was the Union Station built?

A. During the year 1898.

397 33. Q. And who had charge of the building of it?

A. I did.

34. Q. And what relation did you then sustain to the Des Moines Union Railway Company? A. President.

35. Q. And by what company was the Union Station built?

A. The Des Moines Union Railway Company built it.

36. Q. What additional property was acquired on account of that Union Station?

A. A strip of land 44 feet wide north and south, extending from Fifth Street to Sixth Street, and a strip of land fourteen feet wide extending from Sixth to Seventh Streets.

37. Q. Now, I wish you would state whether the deeds which are referred to and which are contained in the stipulation of May 31, 1911, being the deed from F. M. Hubbell, Trustee, dated May 2, 1898, defendants' exhibit 568, the deed

from F. M. Hubbell and wife, dated May 2nd, 1898, defendants' exhibit 569, and the deed from F. M. Hubbell dated Feburary 15, 1899, defendants' exhibit 571, and the deed from F. M. Hubbell dated March, 1899, defendants' exhibit 572, are conveyances by which the title to this property was transferred to the Des Moines Union Railway Company? A. Yes sir.

38. Q. Now, did either of the Wabash Companies or the Des Moines, Northern & Western Railroad Company acquire any of this property, or pay for it, or have anything to do with its acquisition?

A. Nothing at all. The Des Moines Union bought and paid for it.

39. Q. Do you remember the manner in which it was paid for? A. I cannot remember at this moment.

40. Q. Now, with reference to this same paragraph of the amended bill it is said that these complainants built additional side tracks or spur-tracks; what is the fact about that?

A. It is not true.

398 41. Q. Did you have any personal connection with the negotiations of the contract between F. M. Hubbell and the Purchasing Committee which was made on for the purchase of the Des Moines Union stock and bonds?

A. No sir.

42. Q. Have you any personal knowledge with reference to those transactions? A. No sir.

43. Q. It is alleged on page 31 of the bill that you conspired with F. M. Hubbell and with divers other parties unknown to the complainants, and contriving how you might so manpulate the proceedings and records of said corporation to accomplish your designs and purposes; caused a statement to be written into a book purporting to be the record of the corporate proceedings of the Des Moines Union, to the effect that said Frederick M. Hubbell had been elected Secretary of said Des Moines Union Railway Company (I think that refers to the meeting of January, 1890); you first became a director in 1890, as I recollect? A. Yes sir.

44. Q. What do you say as to this so-called conspiracy, do you know anything about such a conspiracy?

A. No sir, there was no conspiracy.

45. Q. Now, it is said that pursuant to this conspiracy you and your father and these other alleged conspirators that are unknown, caused notices to be sent out to persons designated as stockholders in the Des Moines Union, stating there would be a meeting of the stockholders of the company for the purpose of amending its articles of incorporation. What did you have to do with sending out the notices?

A. I had nothing to do with sending out the notices.

46. Q. If you have any knowledge as to any plans or pre-arrangements or agreements between your father and
399 yourself, or your father and any one else, or yourself and any one else, pursuant to which notices were sent out, state what it was.

A. I had no agreement at all, nor do I know of any agreement. The general understanding was that we were to have a meeting on that date.

47. Q. The record shows that they adjourned to meet on that date? A. I believe so.

48. Q. It is alleged further at page 32 of the amended bill as printed, "And your orators further show that afterwards they, the said defendants Frederick M. Hubbell, Frederick C. Hubbell, and their confederates, caused an untrue statement to be written into what purports to be the record book of said Terminal Company, etc.," referring to the record of the meeting of April 8, 1890; I wish you would state what, if anything, you had to do with either preparing the record or its entry in the record book of the Des Moines Union.

A. I had nothing to do with preparing the record or of its entry upon the record books.

49. Q. What is the fact as to whether you attended the meeting of April 8, 1890? A. Yes sir.

50. Q. I wish you would state what you had to do personally with preparing the amendments to the articles of incorporation of the Des Moines Union Railway Company that were adopted at that time?

A. I had nothing to do with them further than to vote in favor of the amendments.

51. Q. Please state, as far as you can remember, what, if any, consideration you had given prior to the time of that meeting, either to the necessity of those amendments or to the form which they should take.

A. I had not had anything to do with those questions.

400 52. Q. These amendments were adopted April 8, 1890. Please state whether or not, if any claims were at that time asserted under the contract of January 2d, 1882, you had any knowledge of it, and if so, what knowledge you had.

A. There was no claim asserted under the contract of 1882.

53. Q. I wish you would state whether you have any recollection of either knowing, or anticipating, at the time that these amendments were adopted, that it would at any time be important to show that the contract of January 2, 1882, had been rescinded. If so, what recollection have you in reference to that matter? A. I have not any.

54. Q. Please state whether, in connection with this transaction, it was suggested by any one that the Des Moines Union

Railway Company was not the owner in fee of the terminal property which has been conveyed to it, and if so, by whom such suggestion was made, and what it was.

A. I am sure there was no such suggestion; I don't remember of any.

55. Q. Now, from the time you became president of the Des Moines Union Railway Company in 1892, down to the present time, what have you had to do with the acquisition of the property acquired by the Des Moines Union Railway Company during that period?

A. I have had something to do with every transaction.

56. Q. What have you had to do with the question of determining whether property should be acquired, the price to be paid for it, and so on?

A. The question of the necessity of purchase was generally decided by me, and the price to be paid was a question that was decided by the board of directors.

401 57. Q. Now, in connection with those purchases, were there conferences with the other directors or not?

A. Yes, sir.

58. Q. I wish you would state whether, in connection with any one of these transactions, it has ever been suggested to you by anybody—if so, by whom—and what the suggestion was—that there was a trust here, or that in taking the title the Des Moines Union should not take it absolutely, but should recognize some trust?

A. There was no suggestion at any time by any person that any trust existed; and the title to all the property acquired since I have been connected with the company has been a complete title, without any reservation in favor of any other person or corporation.

59. Q. When was it you first learned that it was claimed that the Des Moines Union was not the absolute owner of the terminal property?

A. The first intimation I had was when I read the complainants' bill.

60. Q. In what case? A. In the pending case.

61. Q. In this case? A. In this case.

62. Q. And that bill was filed when, do you remember?

A. In 1907.

63. Q. So that for about fifteen years or more before the bill was filed you had been president of the Des Moines Union Railway Company, and during the greater period before the bill was filed you had been vice-president and superintendent, and charged with the operation of one of the tenant companies, at least? A. Yes.

64. Q. Now, it is set up in Paragraph 15 of the bill that Frederick M. Hubbell, Frederick C. Hubbell, and their con-

federates, having made certain things to appear in Article III of the amended articles, proceeded with the issuance of
462 the stock—I believe you have already said you had nothing to do with the preparation of the amended articles? A. Yes, sir.

65. Q. So far as you know, were you consulted with reference to them, or did you make any suggestions in reference to them?

A. I am quite sure I was not consulted, and am quite certain I made no suggestions.

66. Q. Now, it is said on information and belief that you and your father and your confederates caused a statement to be inserted in Article III that 2,000 shares of the Des Moines Union Railway Company stock should be issued to the Purchasing Committee, knowing that that statement was not and could not at the time be true. Did you at the time know or believe that that statement was not a true statement in the articles? A. I thought the statement was true.

67. Q. Now, it is also alleged there that you and your father and your said alleged confederates—pausing there for a moment; do you know, or have you any idea, who are referred to in the bill as "your alleged confederates"?

A. It must be the other directors of the Des Moines Union Railway Company.

68. Q. Do you know anybody else that had anything to do with the transaction?

A. No, there was no one else.

69. Q. Now, it is said you caused this statement that the Purchasing Committee owned the 2,000 shares to be inserted to conceal the sale of part of the stock to Frederick M. Hubbell. Is that true or not?

A. Oh, no; that is not true.

70. Q. It is also said that you had something to do with causing the preamble and the resolution to be adopted by the board of directors of the Des Moines & St. Louis April 8, 1890, in paragraph 16 of the bill, reciting that $400,000
463 of the capital stock of the Des Moines Union had been issued as a part of its purchase price, and that the Purchasing Committee had sold to Frederick M. Hubbell one-eighth of it, and to Gen. Dodge one-eighth of it, and that the sales were ratified, confirmed and approved by the Des Moines & St. Louis Railway Company. What, if anything, did you have to do with the preparation of the records or the adoption of the resolution?

A. I had nothing to do with it or any part of it.

71. Q. There is a similar statement about a resolution adopted by the Des Moines & St. Louis Railway Company Feb. 11, 1891, relating to the second purchase by your father from

the Purchasing Committee. What, if anything, did you have to do with preparing the record, preparing the resolution, and the adoption of the resolution referred to?

A. I had nothing to do with any part of the transaction.

72. Q. I wish you would state who, if any one, there was at the time in question, who was interested, either in the Des Moines Union Railway Company or the Des Moines & St. Louis Railroad Company, who did not know all about these purchases made by your father?

A. All of the people interested in the properties were familiar with all of the transactions.

73. Q. Now, it is said that you caused similar resolutions to be adopted by the boards of directors of the Des Moines & Northwestern Railway Company, the St. Louis, Des Moines & Northern, or the Des Moines & Northern Railroad Company. What are the facts about that?

A. I don't recall anything at this moment with respect to that matter.

74. Q. Do you know whether such resolutions were ever adopted or not? A. No, I don't know.

404 75. Q. Did you have anything to do with their adoption, if they were adopted?

A. I can't remember a thing about it.

76. Q. At the time the stock was acquired from the Purchasing Committee, who did you believe owned it prior to making the same to F. M. Hubbell & Son, Gen. Dodge and F. M. Hubbell?

Complainants' counsel object to the question as immaterial.

A. I believe the Purchasing Committee of the Wabash owned it.

77. Q. Now, referring to the ratification agreement of July 31, 1897, I wish you would state whether in connection with that agreement you wrote to Mr. J. R. Ramsey, Jr., then vice president and general manager of the Wabash Road, the letter signed by F. C. Hubbell, dated February 18th, 1897, defendants' exhibit 368 shown in the stipulation of May 31st, 1911? A. Yes sir, I wrote that letter.

78. Q. Now the record shows various drafts of proposed contracts that were considered prior to the substitution for them of the contract that was signed July 31st, 1897, which is Plaintiffs' Exhibit 37, could you on referring to those proposed contracts state the points of difference as to which the parties were unable to agree? A. Yes sir.

79. Q. Will you please state what it was?

A. The Wabash people wanted the new contract to provide that the cost of maintaining the Union Station and the employees therein should be prorated among the tenant lines

upon the passenger car wheelage and they also wanted the expenses of the freight house including truckers, clerks &c. to be prorated on the basis of the number of tons of freight through the freight house.

405 80. Q. You have stated what the Wabash wanted, what was the attitude of the other tenant company?

A. The Des Moines Northern & Western Railroad Co., and the Des Moines Union desired that the expenses at the passenger house and also at the freight house be borne on the basis of the total wheelage of the Des Moines Union.

81. Q. And it was this difference that was not reconciled?

A. That was the reason we could not agree.

82. Q. And after this negotiation or effort to agree had been abandoned this ratification of the contract of July 31st, 1897, was signed? A. Yes sir.

83. Q. Now it is said in the bill that you and Mr. Frederick M. Hubbell caused to be inserted in the contract of 1897 a statement of the then ownership of the stock in the Des Moines Union Railway Co., what is your recollection, if you have any, about that?

A. The contract—I would like to look at the contract (referring to contract) the contract of 1889, section 24, recites that the Des Moines & St. Louis Railroad owns half of the capital stock of the Des Moines Union, and when we came to make a ratification of the contract of 1889 in the year 1897, the stock ownership had changed, and the recitation in the ratification contract of 1897 was made to correctly state the then ownership of the stock in the Des Moines Union Railway Co.

84. Q. Now, it is said that these things were carefully concealed from the complainants, is that true?

A. No sir.

85. Q. Have you looked through these proposed contracts that were under consideration from early in February, 1897, until July, to see whether each draft furnished to the other parties contained this statement in substance, as to the

406 stock ownership?

A. I don't remember that at this time.

86. Q. Now, you, at this time, were a director, vice president and superintendent of the Des Moines Northern & Western Railroad Co. of which the Chicago, Milwaukee & St. Paul Railway Co. acquired its stock in the Des Moines Union, were you not? A. Yes sir.

87. Q. Was any effort made to conceal this from that company? A. No sir.

88. Q. This was some seven years after the stock had been purchased from the Purchasing Committee, was it not?

A. Yes sir.

89. Q. Now it appears that at a meeting of the Des Moines Union Railway Co., held October 4th, 1893, F. M. Hubbell stated to the board of directors that 2500 shares of the stock had been transferred by the Des Moines Northern & Western Railway Co. to F. M. Hubbell & Son, and asked the consent to that transfer and that the directors granted it. It also appears that at a meeting of the Des Moines Union Railway Co. on January 25th, 1894, F. M. Hubbell & Son were present representing this 2500 shares of stock, all of the stock being present, and I think it also appears that at each subsequent meeting up to 1897 this stock was present and was voted by F. M. Hubbell & Son; now, who was there in view of this record that had any interest in this matter from whom this could have been concealed in 1897, as far as you know?

A. I cannot imagine any method by which it could have been concealed, and furthermore there was no effort or reason for its concealment.

90. Q. There is a good deal of correspondence in this stipulation of May 31st, 1911, between yourself and the
407 officers of the Wabash Co. with reference to the Carbondale traffic, where was Carbondale?

A. The Carbondale property is mining property and it lies immediately east of the present city limits of Des Moines, say two miles east of the eastern terminus of the Des Moines Union Railway.

91. Q. That means two miles east of the old city limits?

A. Yes sir, two and a half.

92. Q. And what is the fact as to whether this property was accessible over the line of the Wabash Co.?

A. Yes sir.

93. Q. Please state whether or not the earnings which the Des Moines Union Railway Co. received on account of this Carbondale traffic are part of the so-called surplus earnings?

A. Yes sir.

94. Q. Now, there has been some property exchanged between the Des Moines Union Railway Co. and the Chicago, Rock Island & Pacific Railway Co. within recent years, has there not? A. Yes sir, quite a little.

95. Q. And under this exchange the Des Moines Union deeded some property to the Rock Island and the Rock Island deeded some to the Des Moines Union?

A. Yes sir.

96. Q. And there has been an exchange of property between the Des Moines Union and the Des Moines Western Co.?

A. Yes sir.

97. Q. In those instances there was a deed by the Des Moines Union to the Des Moines Western, and a deed by the Des Moines Western to the Des Moines Union?

A. Yes sir.

98. Q. What is the fact as to whether each of these exchanges was made after a conference with the other directors of the Des Moines Union and with their approval?

A. Yes sir.

99. Q. Please state whether or not in each instance the property conveyed by the Des Moines Union included some property which was deeded to it in connection with the original acquisition of the terminal property in 1887 and 1888? A. That is correct.

100. Q. Please state what, if anything was suggested by anyone in connection with these transactions as to this property being subject to a trust?

A. There was no suggestion by anyone that there was any trust estate in any of this property.

101. Q. What, if any, knowledge did you have as to any claim that any of this property was subject to a trust at the time you executed and delivered these conveyances?

A. I knew of no trust or claim of trust.

102. Q. Now, during the time that you have been president of the Des Moines Union Railway Co., I wish you would state whether either of the tenant companies, including the complainants and their predecessors, has paid any amount to the Des Moines Union Railway Co. aside from the payments under the contract of May 10th, 1889, as ratified?

A. No sir.

103. Q. Now, in earlier periods when the company was hard up for cash how were the funds secured to pay for property which it purchased and to pay for additions which were made to the railroad?

A. When the company was in need of funds for improvement the Des Moines Union asked the Wabash, and the Des Moines, Northern & Western or its predecessors, to advance money to the Des Moines Union to make improvements, and at frequent periods the Des Moines Union would settle those accounts by paying to the Wabash and the Des Moines, Northern & Western and its predecessors bonds of the Des Moines Union Railway Co. at par, with one exception, I think in one case the Des Moines Union sold its bonds to the two companies at 97 per cent.

104. Q. Now, was any money raised in any other way?

A. On several occasions when the Des Moines Union bought property, it would buy it subject to a mortgage which it would assume.

105. Q. Were there any cases where F. M. Hubbell & Son advanced money to be repaid out of rents, such as that?

A. Yes, sir, a number of instances where F. M. Hubbell & Son would advance money to build buildings upon the property of the Des Moines Union and collect the rents from the buldings until such time as the rents would reimburse F. M. Hubbell & Son for the advances.

106. Q. What necessity was there for buildings?

A. The buildings were constructed to enable us to secure industries on the Des Moines Union tracks.

107. Q. Then they were for the use of tenants who would furnish traffic, produce traffic?

A. Yes sir, it was for the purpose of producing traffic, securing traffic.

108. Q. Now, what was the fact as to whether in some instances, bonds were issued directly in payment for property?

A. Yes, there were several cases where the Des Moines Union issued its bonds to the people from whom it purchased property.

109. Q. Now, the bill in this case refers to a contract made between the Chicago, Milwaukee & St. Paul Railway Co. and F. M. Hubbell & Son, and their associates, whereby F. M. Hubbell & Son and their associates gave to the Chicago, Milwaukee & St. Paul Railroad Co. 40 per cent of the stock of the Des Moines Northern & Western Co. in consideration of a traffic contract, this contract being Exhibit Q. to
410 the bill; were you familiar with this transaction?

A. I was familiar with it, yes.

110. Q. What, if anything, did you have to do personally with negotiating the contract?

A. I do not think I was ever present at any of the meetings.

111. Q. What was it that induced F. M. Hubbell & Son to turn this stock over to the Chicago, Milwaukee & St. Paul Railway Co. and to give it an option for additional stock at a nominal amount, by the acquisition of which it might secure control of this railroad?

A. The Des Moines Northern & Western and Chicago, Milwaukee & St. Paul had been interchanging their freight business on a basis of division of 50 and 50, and the Chicago, Milwaukee & St. Paul cut the division to 25 per cent to our company and 75 per cent to the other company, and that reduced our earnings so much that our company could not live, and in order to get a better division for our company we and our associates gave to the Chicago, Milwaukee & St. Paul—made the contract in question.

112. Q. Now, there are some averments in the bill about this foreclosure that this contract contemplated, and F. M. Hubbell & Son saying they were unable to secure the assent of the bondholders to a reduction in the interest. So far

as you know did you have any personal connection with that transaction? A. No sir.

113. Q. Have you any recollection in reference to it?

A. Very little, nothing but a vague recollection.

114. Q. What is the fact as to whether you personally took part in the transaction by which 2500 shares of
411 the Des Moines Union Railway Co., were first pledged by the Des Moines Northern & Western Railway Co. to F. M. Hubbell & Son as collateral security, and afterwards transferred to F. M. Hubbell & Son absolutely?

A. Yes sir, I was present at both of those meetings of the directors.

115. Q. I wish you would state whether the record of those two meetings which have been introduced one of October, 1893, and the other one of January, 1894, both of them meetings of the directors of the Des Moines, Northern & Western Railway Co., correctly show what the real transaction was?

A. Yes sir.

116. Q. At the time the stock was pledged as collateral to F. M. Hubbell & Son and at the time it was transferred absolutely to F. M. Hubbell & Son, state whether or not the Chicago, Milwaukee & St. Paul Railway Co. had any interest whatever, either as stockholder or otherwise, in the Des Moines Northern & Western Railway Co. or its property?

A. They had no interest of any description in the Des Moines Northern & Western Railway.

117. Or its property?

A. Or its property at either of those dates.

118. Q. Will you state what services you have performed for the Des Moines Union Railway Co. since 1892 when you became president?

A. I performed all of the duties usual to the office which I held, and have had direct oversight of the improvement of the property, building additions to it, purchasing all the material, supervising every expenditure that the company made and have had to do very largely with the negotiations the company has had with its numerous tenant roads and with the public of the City of Des Moines, State of Iowa.

412 119. Q. What have you had to do with reference to the maintenance of the property and purchase of equipment? A. That has all been under my jurisdiction.

120. Q. What, if anything, have you had to do with the negotiations of the various leases which the company has with other companies?

A. I have taken part in all of those negotiations.

121. Q. Putting it generally, I wish you would state whether any expenditures made by the company or contracts made by the company are not made under your supervision?

A. I think I can say there are none, no purchases made that do not come under my supervision, and at this moment I do not think of any contract of any material amount that does not come directly under my supervision.

122. Q. Take the matter of development of the property, getting new industries, extending its tracks, acquiring real estate, and all that, what is there that you have had to do in that connection?

A. I am the one who has given that the most attention.

123. Q. Take the matter of its relation with other roads, other than the tenants, have you had anything to do with that?

A. Yes sir.

124. Q. How about matters such as negotiations for the exchange of property with the Rock Island that has been referred to? A. I took part in that.

125. Q. What have you received in the way of compensation for your services rendered to the Des Moines Union Railway Co.?

A. I have never received any salary in all the 21 years that I have been its president.

125. Q. What payments have been made to you of any kind on account of those services?

A. Not anything.

413 127. Q. What has induced you to give this time to this property?

A. Because of my stockholding interest in the property.

128. Q. What is the fact as to whether you would have done this if you had not believed the Des Moines Union Railway Co. was the owner of the property?

A. I certainly would not have given up 21 years' time to it.

129. Q. Now, during this period, so far as you know, has there been any complaint by any one as to the way in which the property has been managed and developed? A. No sir.

130. Q. Has it been suggested by anyone at any time that the Des Moines Union has not been neutral between its various tenants where their interests were conflicting?

A. No, there has been no complaint that the company and its officers have not been neutral.

131. Q. What, if anything, has F. M. Hubbell & Son done in the way of making investments on reliance on their interests as stockholders in the Des Moines Union Railway Co.?

A. We have bought a very considerable amount of property adjoining the Des Moines Union and built and improved the property, establishing industries that would increase the shipping over the Des Moines Union.

132. Q. And what success have you had in establishing industries in Des Moines on the Des Moines Union track?

A. When I went with the Des Moines Union Railway Co. in 1892 there were scarcely any industries producing freight upon our tracks, the other roads having mostly all of the principal industries, and we have succeeded in changing this so that now the larger part of the shipping business is done on the Des Moines Union tracks.

414 133. Q. State whether or not you would have done this had it not been for your belief that the Des Moines Union owned this property and your stock in that company was of value? A. We certainly would not have done it.

134. Q. What has F. M. Hubbell & Son done with reference to acquiring real estate and holding it for the company and later turning it over to the company?

A. Whenever we have found opportunity to buy real estate adjoining the Des Moines Union at a low price we have bought it and carried it and whenever the Des Moines Union has needed it we have sold it to the Des Moines Union at cost and carriage.

135. Q. Now, there are some statements in the answer here with reference to the purchase by F. M. Hubbell & Son of this Des Moines Union stock; I wish you would state whether or not you would have purchased that stock if you had not believed that the Des Moines Union Railway Co. was the owner of this property and the stock had a present or potential value?

A. We certainly would not.

136. Q. I believe you have stated that it was in 1890 you first became a director? A. Yes sir.

137. Q. Now state whether or not at that time and thereafter you believed that the Des Moines Union was the absolute owner of the terminal property?

A. I believed then and believe now that it is.

138. Q. Now, we have referred to the Des Moines & St. Louis Railroad Co.; did that company ever operate a railroad? A. No, not to my knowledge.

139. Q. And has that company to your knowledge done any business since, say, 1899?

A. Not to my knowledge.

415 140. Q. Now take the Des Moines Northwestern Railway Co., state whether that company ever operated a railroad? A. No sir.

141. Q. And how long is it since the Des Moines & Northwestern Railway Co. has operated a railroad?

A. About 1891.

142. Q. How long is it since the St. Louis, Des Moines & Northern Railway Co. has operated a railroad?

A. Since 1889, or 1890.

At this point a recess was taken until 2 P. M. at which time the taking of depositions was resumed as follows:

416 Frederick C. Hubbell, in continuation of his deposition, testifies as follows:

Cross-Examination

By Mr. Minnis:

1X. Q. How many shares of stock do you own in the Des Moines Union Railway Co.?

A. Our firm, Hubbell & Son, owns 2500 shares.

2X. Q. Out of a total of how many?

A. Out of a total of 4,000. shares.

3X. Q. What interest do you have in the firm?

A. We are equal partners.

4X. Q. Do you hold any office in the Des Moines Terminal Co.? A. No sir.

5X. Q. Or the Des Moines Western? A. No sir.

6X. Q. Have you any interest in those companies?

A. I have an interest in both of them.

Defendants' counsel object to this as not cross-examination.

7X. Q. I am referring now to the part of your testimony in which you testified you had not received any compensation or salary from the Des Moines Union Railway Co. during the time you were its president. I understood you to say the reason why and the only reason why you did not ask anything for your services as an officer of the Des Moines Union Railway Co. was that you were interested in the stock of the company? A. Yes sir.

8X. Q. Did the company pay any dividends during the time you were president of it? A. No sir.

9X. Q. Did you or your father or together as a firm own and deal in real estate located near the lines of the Des Moines Union?

A. Yes sir, F. M. Hubbell has bought considerable
417 lands along the Des Moines Union and I have also. I am a trustee in his estate.

10X. Q. Well, didn't you and your father make a large sum of money in those real estate transactions?

A. The real estate which we have bought and held I think has gone up in value very considerably.

11X. Q. You have made plenty of money out of that that you have sold, haven's you?

A. I do not recall ever having sold any at a loss, because property has always advanced in Des Moines, I mean as a general rule.

12X. Q. It was of great advantage to you and your father to have control of the management of the company, was it not?

A. I presume it was some advantage, although I had never thought about it, certainly not enough to warrant one working for the company for love for 20 years, if that is the point you are trying to make.

13X. Q. It looks to me like you must have been working for love, because the contract of 1889 entitled the Wabash and St. Paul to use the facilities at cost, did it not?

A. I don't think it is that way; I would have to refer you to the contract.

14X. Q. As a matter of fact the ownership of stock in the company is no reason why you should not have a salary, if you had asked it?

A. I have asked it and they have said, what we were making out of the stock was sufficient compensation, and we ought not to ask that.

15X. Q. Who said it? A. The directors.

16X. Q. Tell me one? A. Mr. Hays and Mr. Ramsey.

17X. Q. When did you make a request of that kind?

A. I made it a great many times.

418. 18X. Q. Can you name anybody else to whom you made a request for salary?

A. No, I don't think of any one just now.

19X. Q. You mean to say that the mere circumstance that you and your father owned 2500 shares of stock was the cause of your working for the company without compensation?

A. Sure.

20X. Q. If you had been paid a salary by the Des Moines Union Railway Co. it would have been reimbursed by the railroad companies, would it not, under the contract?

A. I think so the way I would interpret the contract.

21X. Q. You stated that you did not hear any one set up the claim, either the complainants or their predecessors, to the right to use the Des Moines Union Railway Co.'s property under the contract of 1882; did you ever hear the rights of the complainants under the contract of 1882, discussed at any time?

A. No, not until they came into this suit.

22X. Q. Did you have any discussion or dispute with any one with respect to the ownership of the property that is operated by the Des Moines Union Railway Co.?

A. No sir.

23X. Q. That matter was never the subject of discussion was it? A. No, not in my presence.

24X. Q. Do you know who prepared what purports to be the record of the proceedings of the meeting of stockholders of the Des Moines Union Railway Co. held January 3rd, 1890?

A. This moment I do not know who prepared them.

25X. Q. I do not mean who actually wrote them—

A. I know who wrote them.

26X. Q. Do you know who prepared them?

A. I would only have a surmise, I did know at that time.

27X. Q. Did not A. B. Cummins prepare them?

A. That would be my surmise.

419 28X. Q. Do you know who prepared what purports to be the record of proceedings of the stockholders' meeting of the Des Moines Union Railway Co. held February 18th, 1890?

A. At this time I do not remember distinctly, but surmise that Mr. Cummins directed the different directors in the matter. He was present at the meeting.

29X. Q. Do you know who prepared what purports to be the record of the proceedings had at the meeting of the meeting of the stockholders of the Des Moines Railway Co. on April 8th, 1890 at which the articles of incorporation of the Des Moines Union Railway Co. are alleged to have been amended?

A. I can't remember at this time who prepared them; my surmise is they were prepared by Mr. Cummins.

30X. Q. Were you president or vice president of the Des Moines Union Railway Co. in 1894?

A. I was president in 1894.

31X. Q. Are the properties of the Des Moines Terminal Co. and Des Moines Western operated separate from the Des Moines Union Railway Co.?

A. Yes sir, separate corporations.

32X. Q. Who supervises the operation of those two companies? A. Mr. C. H. Hueston.

33X. Q. Who is president of those companies?

A. F. M. Hubbell.

34X. Q. Do you have separate motive power?

A. The Des Moines Western is handled by its own arrangement which it makes with its tenants; the Des Moines Terminal is handled by engines of the Des Moines Union Railway Company.

35X. Q. Who maintains the property of the Des Moines Terminal? A. The Des Moines Terminal Co.

36X. Q. Do you use the same employees?

A. No sir.

37X. Q. Do you use the same crews in switching?

A. Yes sir.

420 38X. Q. Who pays for those crews?

A. The Des Moines Union pays for all its employees, and, of course, when on the Des Moines Terminal tracks the Des Moines Terminal pays for those crews.

39X. Q. You really have charge of the management of the three terminals' property?

A. I have very little to do, have nothing to do with the Des Moines Terminal and Des Moines Western.

40X. Q. The Des Moines Union Railway Co. has a superintendent? A. Yes sir.

41X. Q. Who has active charge?

A. Mr. J. A. Wagner has charge of it.

42X. Q. And you mean by saying that the affairs of the company are conducted under your supervision that you are president of the company and that naturally the persons who are in active operation of the property are under your supervision?

A. I did not say that. I stated very clearly that I am in charge of that property, I know all about it, manage it, buy all the material, I decide on the location of every track, side tracks and main line, changing of the tracks, everything in reference to the details of this business.

43X. Q. Who employs and discharges employees?

A. Generally Mr. Wagner, although he generally refers to me before discharging a man.

44X. Q. Who directs the crews? A. The yard master.

45X. Q. Under whose immediate supervision is he?

A. The superintendent's.

46X. Q. You do not actively look after the operations?

A. I think I do.

47X. Q. The movements of engines and switches?

421 A. I do not switch cars or handle engines.

48X. Q. Nor do you direct the yardmaster?

A. Sometimes I have occasion to direct the yardmaster, not very often.

49X. Q. You do not manage the organization, go into great detail in its operation?

A. Yes, I am very familiar with the details of the company.

50X. Q. Your crews, you see they are out on time?

A. No sir.

51X. Q. I understood you did see the daily repairs, see what repairs are made? A. Yes sir.

52X. Q. Do you keep the time of employees?

A. No, I do not keep the time of employees.

53X. Q. You do not keep the books of the company, do you? A. No sir.

54X. Q. You have other important business interests that you devote time and attention to?

A. I have other business that takes some time, yes sir.

55X. Q. Do you recall signing a report to the Executive Council of the State of Iowa, for the year ending January 1st, 1892. A. No sir.

56X. Q. You do not recall whether you signed such a report or not? A. No sir.

Mr. Minnis: In connection with your testimony and the other map that you agreed to prepare when your father was on the stand I wish you would prepare a map of the property owned by you or your father, located in the vicinity of either one of the three terminal properties; could you prepare such a map as that?

The Witness: Would one of the city maps be correct enough?

Mr. Minnis: Yes.

Mr. Guernsey: I will prepare and submit some sort of a map that I think will be satisfactory.

422 Mr. Cook: With a list of the industries located on your property.

Mr. Minnis: I would like to have a list of the industries on each of the lines.

Redirect Examination

By Mr. Guernsey:

143. Q. You testified on cross-examination, that the Des Moines Union runs its switch engines with its own crews on to the tracks of the Des Moines Terminal Railway?

A. Yes sir.

144. Q. That is for the purpose of switching cars?

A. Yes sir.

145. Q. Who gets the pay for switching cars?

A. The Des Moines Union Railway Co. gets $2. and the Des Moines Terminal gets $1.

146. Q. Who built and who maintains the Des Moines Terminal?

A. The Des Moines Terminal Co. built it and maintained it.

147. Q. Does the Des Moines Union Railway Co. pay to the Des Moines Terminal Co. anything on account of this switching business that has been referred to or on any other account except the $1. a car? A. That is all.

148. Q. Do the engines or crews of the Des Moines Union go on the tracks or have anything to do with the business of the Des Moines Western? A. No sir.

149. Q. There has been some talk about the appreciation of real estate here, I wish you would state whether the Des Moines Union property has appreciated more rapidly than other real estate in the business part of Des Moines during the same period?

A. I don't think it had appreciated as rapidly as property in the business portion of Des Moines, covering this same period of time.

423

Deposition of A. B. Cummins, Filed April 24, 1911.

424 In the Circuit Court of the United States Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company, and Wabash Railroad Company, Complainants,

vs. In Equity.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, Defendants.

It is hereby stipulated that the deposition of Albert B. Cummins may be taken on behalf of the Defendants, at Des Moines, on March 23, A. D. 1911, before J. P. Blaise, a Notary Public in and for Polk County, Iowa, and that said deposition may be taken by him in short hand, and when so taken by him shall be transcribed, and when certified by him to be a full, true and correct transcript of the said deposition, shall be filed in the above entitled cause as the deposition of the said witness, both parties waiving informalties in the taking of the said deposition, and waive the signing of said deposition by said witness.

Cook, Hughes & Sutherland, and E. R. Mason, J. L. Minnis and Wells H. Blodgett, Attorneys for Complainants.

Guernsey, Parker & Miller, Attorneys for Defendants.

Deposition of witness, produced, sworn and examined, in pursuance of the above stipulation, at Des Moines, in the County of Polk and State of Iowa, before me, J. P. Blaise, a Notary Public in and for Polk County, Iowa, in the above entitled cause, on behalf of Defendants.

425 ALBERT B. CUMMINS, being duly sworn on the part of Defendants, examined in chief by N. T. Guernsey, Esq., testified as follows:

Int. 1. State your name, age, place of residence and occupation?

A. My name is Albert B. Cummins; I am 61 years of age; I live in Des Moines, Iowa, and by profession I am a lawyer, although I have not been engaged in the actual practice in recent years.

Int. 2. How long have you been a citizen of Des Moines, approximately?

A. Thirty-three years.

Int. 3. As shown by the records of the various corporations about to be referred to, it appears that you were a director of

the Des Moines Union Railway Company from 1885 until 1902, and that you were Vice-President of that Company from 1891 to 1897; that you were a director of the Des Moines & St. Louis Railroad Company in the years of 1890 and 1891, and that from the election in 1891, you held over until another election was held in January, 1897, there being no election in the mean time; that you were a director of the St. Louis, Des Moines & Northern Railway Company, in the years 1889 and 1890, and Vice-President of that Company during the same years; that you were a director of the Des Moines & Northwestern Railway Company, during the years, 1889 to 1892, and were Treasurer of that Company in 1892; and that you were a director of the Des Moines Northern & Western Railway Company from December, 1891, until January, 1896, and a director in the Des Moines Northern & Western Railroad Company, from 1896 until the election of Directors in 1899, including the year, 1898. Are you willing to accept this statement as a

426 substantially correct statement of the relations which you sustained to these various companies at the times mentioned?

A. I know in a general way that the statements you made are substantially correct. I cannot, of course, recall the dates of my promotion to office in these various companies; but I think it is correct.

Int. 3. Now, during the period that you were an officer or director of these various corporations, were you also counsel for each of them, practically the same period?

A. The firm of which I was a member at that time, were the local attorneys for, what in a general way may be called the Wabash companies, including the Des Moines & St. Louis Railroad Company. I was General Counsel for the Des Moines Union Railway Company, for the Des Moines & Northwestern Railway Company, for the St. Louis, Des Moines & Northern Railway Company, and sustained professional relations to others who were connected with those various companies.

Int. 4. The record of the Des Moines Union Railway Company shows, that at a stockholders' meeting that was held on the 8th of January, 1889, you, on behalf of the Wabash, St. Louis & Pacific Railway Company, and of the Wabash, Western Railway Company, nominated Chas. M. Hayes, W. H. Blodgett, James F. How, and A. B. Cummins, as directors of that Company, on behalf of the Wabash Western Railway Company; was that action on your part taken at your own instance, or at the suggestion of some one else, if so, can you tell us at whose suggestion?

A. It was taken at the suggestion or direction of the Wabash interests. I do not remember the person who gave me

the direction, or who asked me to do it. I know this, not from a distinct recollection with regard to the transac-
427 tion, but because of the fact that I seem to have nominated the directors who were to represent, under the old articles of incorporation, the Wabash interests.

Int. 5. A contract made between the Des Moines Union Railway Company, the Des Moines & Northwestern Railway Company, the Des Moines & St. Louis Railroad Company, and the St. Louis, Des Moines & Northern Railway Company, approved by the Wabash, St. Louis & Pacific Railway Company, dated May 10, 1889, has been identified as plaintiffs' exhibit No. "27", in the stipulation of the parties filed March 23, 1911. What, if anything, did you have to do with the negotiation of this contract?

A. As I remember it, I had nothing to do with the negotiation of the contract, which was prepared by Col. Blodgett. I remember of having become familiar with the contract before it was executed or approved finally.

Int. 6. This contract that you were familiar with before it was executed, was something that was constantly before you while you were connected with the Des Moines Union Railway Company; was it not?

A. Yes, sir; from the time it became a contract between these parties it was before me all the while in examining the affairs of the Company.

Int. 7. I wish you would state, whether so far as you know, either in connection with the execution of the contract, or in connection with the other matters which arose under it while you were connected with the Des Moines Union Railway Company, it was suggested by any one, that the Des Moines Union Railway Company was not the owner of the property which was the subject of this contract?

Mr. Minnis: We object to that question, first, for the reason that the Des Moines Union Railway Company, by
428 its president, Mr. Hubbell, filed, pursuant to the laws of Iowa, statements with the Secretary of State, verified by affidavits, that the Des Moines Union Railway Company did not own any property, but was an agency company, and by these statements to the state of Iowa, the defendant, Hubbells, and the Des Moines Union Railway Company are now estopped from asserting that the Des Moines Union Railway Company at that time owned the property. And for the further reason, that whether the Des Moines Union Railway Company owns property or did own property, is dependent upon the contracts and documents relating to the title of the property it has operated and those writings cannot be changed by oral testimony.

And further, that whether the witness heard any one assert that the Des Moines Union Railway Company did not own the property it has operated, is immaterial, and does not tend to prove any issue in the case.

A. I never heard any suggestion from anybody connected with the property or the proceedings, that the Des Moines Union Railway Company was not the owner of the property referred to. This, however, does not cover the suggestions that I myself made to persons who were interested in these companies concerning the title to the property at the time I was engaged in preparing certain amendments to the articles of incorporation, and before that time. My answer is intended only to relate to suggestions made by any other person with whom I was connected, than myself.

Int. 8. Passing to the matter of the amendment to the articles of incorporation, it appears that at a meeting of the stockholders of the Des Moines Union Railway Company, held January 3, 1890, this contract which I have just re-
429 ferred to as Exhibit "27" in the stipulation mentioned, was approved, and at the same time a motion was adopted at the suggestion of Mr. James F. Row, referring to yourself and Col. Blodgett the questions concerning the issue of stock for the purchase price of the terminal property, as well as amending the articles of incorporation. It is the amendments that were made as the result of this action that you refer to in your last answer, I assume? A. It is.

Int. 9. Will you state now what the suggestions were when you have referred to in the former answer, that you made relative to the title to this property in connection with this matter of amending the articles of incorporation of the Des Moines Union Railway Company, or leading up to it?

Mr. Minnis: I will object to the question, if it is complete, on the ground, that suggestions that he may have made, to be competent, would necessarily have to be made to somebody.

Mr. Guernsey: I will add this to the question: Also state to whom the suggestions were made?

A. The suggestions I made began very soon after I became the counsel for the Des Moines Union Railway Company, and while I cannot recall the dates or places, I know that I made them at the meetings of the directors, meetings of the stockholders, and individually to everybody who was connected with the Des Moines Union Railway Company, or those companies which were then called the tenant companies. In order to answer the question intelligently, it seems to me it would be necessary for me to state the situation as I recall

it, because that situation was the subject of repeated conferences and conversations with these various representatives of these several companies.

430 Mr. Minnis: We reserve the right, and it is understood that we shall have the right to move to strike out any part of the witness' testimony at the conclusion of the examination in chief.

Mr. Guernsey: Certainly.

Ans. Cont'd: In the first part of the year 1880, and before that but after I had become thoroughly familiar with the affairs of the Des Moines Union Railway Company, this is the way in which it was presented to me: first, as to the tenant companies, the Des Moines & St. Louis Railroad Company had practically passed out of existence. It was the owner of one-half of the capital stock of the Des Moines Union Railway Company at that time.

Mr. Hughes: Is this what you told the stockholders?

A. I am not pretending to repeat what I told the stockholders. I am stating the situation as it appeared then to me, and that situation I discussed with all the people connected with this company at various times, and it was that situation which led up to the proposition, on my part, to amend the articles of incorporation. I made that proposition, and the title to the property was one of the phases of the proposition. I have already said, the Des Moines & St. Louis Railroad Company was practically out of existence; it was the nominal owner of one-half the capital stock in the Des Moines Union Railway Company, except as that title had passed to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company; and the original articles of incorporation specifically provided that certain interests were to nominate a certain number each of directors. The Des Moines & Northwestern Railway Company had purchased, as I remember it, of the Purchasing Committee, at the time it became the owner of its road, a one-quarter interest
431 in the stock of the Des Moines Union Railway Company; it was in trouble; that is to say, it was finding great difficulty in making its revenue meet its expenses; nobody knew what was ahead for that company. The St. Louis Des Moines & Northern Railway Company was also the owner, from the beginning, as I remember it, of one-quarter interest in the stock of the Des Moines Union Company. It likewise was on the verge of bankruptcy; it was impossible to predict with any certainty what would become of it, or of its interest in the Des Moines Union Company. And this situation presented, as I thought, a very serious question, because the

original articles of incorporation provided, if I may be permitted to read from them, because I am very familiar with them, as follows:

"Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines, Northwestern Railway Company, and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholder shall be eligible for membership of the Board unless so nominated. The fact that a candidate has been duly nominated shall be certified to the stockholders meeting of this Company by the secretary of one of the respective Companies aforesaid, and such certification shall be conclusive. The provision herein with respect to nominations for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid."

I knew at that time that negotiations were pending between Mr. Hubbell and the Purchasing Committee for the purchase of a part of the one-half of the capital stock then held by the Purchasing Committee. The Purchasing Committee seemed to be anxious to dispose of a portion of this stock, and
432 looking forward to the conduct of the Company in the future, it seemed to me that a readjustment of that phase of the articles of incorporation I have referred to was absolutely necessary. More than that, it was discussed among all these people that, inasmuch as the project of the union depot had been brought into existence, it was hoped that all the railroads in Des Moines could be brought into these terminals; that it would be very wise to have it so arranged that each railroad that might come into the depot in the future might become the owner of one-eighth of the capital stock. I thought that hope or expectation could never be realized without an amendment to the articles of incorporation, as it is evident that it could not be. Moreover the original articles provided for a capital stock of one million dollars, and as I understood these articles, that stock was to be issued as a part of the purchase price of the property. The articles had been subsequently amended so as to increase the capital stock to two million dollars, and in that amendment it was specifically provided that the board of directors might receive in payment for this stock the property which had theretofore been conveyed—speaking of theretofore, at the time I made these suggestions to the Des Moines Union Railway Company.

I was always somewhat opposed to issuing capital stock without consideration and I did not believe that the property was

worth any such amount and that to issue it in that way would impose, if disaster should come, a liability upon its owners and would frustrate in a measure the hope [—] getting into this Des Moines Union Railway Company as stockholders as many of the railroads entering Des Moines as could be brought in. This was the standpoint as viewed, I thought, by the stockholders. But from the standpoint of the Des Moines
433 Union Railway Company the situation was even more complicated and unsatisfactory.

And now I come to the specific answer to the question that was put to me. The Des Moines Union Railway Company was ignoring entirely, as it seemed to me, both as to ownership and as to management, the contract out of which the Des Moines Union Railway Company grew, namely, the contract of 1882—I don't recall the exact date—it had abandoned the terms of the contract as to title of the property and as to method of operation and management.

Mr. Minnis: I object to the testimony of the witness because he is testifying to conclusions and not facts. Whether the Des Moines Union or anybody else violated a contract depends upon the terms and meaning of the contract and the act of the parties.

Answer continued: If I may be permitted to say, I am testifying to the substance of what I told these people and told all of them. The Des Moines Union was ignoring the articles of incorporation, which in themselves, as I thought then and said then, were inconsistent with the contract of January 1882. I told them that the contract provided for a title of the property in trust for the three companies which had signed it and for the joint use and occupation limited by Farnham Street in the west part of the city, and the Company was claiming to own and operate a property extending to the west border of the city, and in the contract the Des Moines and St. Louis Railroad Company, the Company that had really no active functions, was charged with certain management and control of the property, and the other companies were required to pay to it whatever sums they were obligated to pay for the use of the property. And furthermore the contract and the articles
434 seemed to contemplate in certain very important matters that there should be a formal preliminary approval by three independent companies before it could take action.

The substance of it was that I said, that in view of the original articles, in view of the conveyances that had been made to

the Des Moines Union Railway Company of the property which was originally in the names of Gen. Dodge and Mr. How, both individually and as trustee, and possibly some in the name of one of these other companies or both of them, and that the Des Moines Union Railway Company had paid in its bonds for the original outlay for this property and had provided in its articles for the issuance of capital stock for the remainder of the purchase price, if any, that it was imperative to clear up the title and get rid of any question of doubt respecting the ownership of the Des Moines Union Railway Company and its right to manage its own property. These were the reasons which led up to my suggestion that there ought to be an amendment to the articles of incorporation that would put this Company beyond any question in the ownership and the control of its property just as any other corporation would be, leaving the interests which had been created in favor of the Des Moines & St. Louis Railroad Company and the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company to be represented by the stock as in the case of other corporations, and the only suggestion that I ever heard from anybody in all my connection with any of these companies regarding the title to the property was the suggestion that I made myself arising out of the circumstances that I have stated.

Int. 10. Did you as a matter of fact prepare a draft of the proposed amended articles of incorporation that were
435 finally adopted April 8, 1890?

A. I did.

Int. 11. I wish you would state whether the following is a letter which you wrote to Col. Blodgett on January 22, 1890, after this first draft had been prepared by you, the letter being as follows:

"Jan. 22nd, 1890.

"Wells H. Blodgett,
Gen'l Sol'r Wabash Railroad Co.,
St. Louis, Mo.

Dear Sir,—

At the last annual meeting of the stockholders of the Des Moines Union Railway Company, I suggested to those present several matters, in which, in my opinion, the articles of incorporation of the Company ought to be amended. Upon this there was a resolution offered and adopted, appointing you and myself a Committee to re-draft these articles, and present our changes to a meeting of the stockholders on the 18th of February. I have made a draft of amended articles thinking it would save time to be able to present something tangible to you whenever we could get together. I regard the

matter as an important one, and a change as absolutely necessary for the proper conduct of the Company. We shall have to hold a consultation in regard to the matter within a short time, and I write to ask you when and where this consultation shall be held. If you desire me to come to St. Louis, I will endeavor to d so, if you can fix a day sometime three or four days in adv: e of the time you write. Be good enough to give me an early reply and oblige.

Yours very truly,

(Signed) A. B. CUMMINS."

436 A. This is a copy of a letter I wrote to Col. Blodgett on the 22nd of January, 1890. I only know it is a copy because I have recently, in order to prepare myself for this examination, read the copy as it appears in my letter-book of that date.

Int. 12. Now, can you say whether or not prior to this meeting of April 8, 1890, the draft of the amended articles of incorporation as it was adopted at that time was submitted to Col. Blodgett as the representative of the legal department of the Wabash interests, and can you say whether you had any conference with him or with the Wabash people with reference to it?

A. It was submitted to Col. Blodgett and I had a conference with him, possibly more than one. I also discussed the matter with Mr. Hays.

Int. 13. Was Gen. G. M. Dodge at that time interested in either of these railroads that were using this terminal; if so, which one?

A. Gen. Dodge was commonly supposed to be the owner substantially of the St. Louis, Des Moines & Northern. And I desire to say here I was his personal attorney in this part of the country, as well as the attorney for the St. Louis, Des Moines & Northern.

Int. 14. I ask you whether you wrote to him on January 27, 1890, a letter relative to this matter, which is as follows:

"Jan. 27th, 1890.

"Gen. G. M. Dodge,
No. 1 Broadway, New York.

Dear Sir,—

On account of Col. Blodgett's absence from home, I find that I will not be able to have a consultation with him, until shortly prior to the meeting of the stockholders of the Des Moines Union Railway Company called for February 18, therefore I enclose you a copy of the proposed amendments as they

have been prepared by me, and also a copy of a reso-
437 tion, which I have thought ought to be submitted to and passed by the stockholders after the amendments have been made.

You will observe that these amendments are directed to two purposes, first, to clear up the ambiguity and uncertainty with respect to the amount of stock to be issued on account of the original purchase of the property, second, to enable the Des Moines Union Railway Company to act in all matters without the previous authority of three corporations. I have endeavored to protect the interest of the minority as fully as it is protected in the present articles, that is to say under the amendments as now proposed the Company can not do anything of importance without the affirmative vote of the one quarter of the stock which your road will represent or the vote of one of the directors which you will always be able to control. By this arrangement you will have as effective a negative upon the conduct of the Company exerted directly by your stock, as you now have by requiring the previous formal action of the Des Moines & Northern Railway Company. I have given the matter the most careful attention, and while Mr. Hubbell was at first disposed to oppose the amendments which I have prepared, after a full explanation with him, I believe that he will support them. If this reaches you before he leaves New York, it will be well to talk the matter over with him. In any event give me your ideas as fully as you can, and particularly if you do not expect to be here.

Yours very truly,

(Signed) A. B. CUMMINS."

A. I have examined my letter book covering the date men-
438 tioned and I know that the paper that you now hand me is a copy of the letter that I wrote to Gen. Dodge on the 27th of January, 1890.

Int. 15. Referring to the latter part of this letter, the last two or three sentences, I wish you would state whether refreshing your recollection from that, you are able to say positively that this amendment to these articles was not suggested by Mr. F. M. Hubbell but in the first instance was something that he was disposed to oppose?

A. I do not need any memorandum to refresh my memory with regard to the first suggestion in the question. These amendments were not suggested by Mr. Hubbell. They were entirely my own suggestion and came about in the way that I have already related. With regard to Mr. Hubbell's position my recollection is that Mr. Hubbell—conservative then as now, never disposed to move very rapidly into the future—was op-

posed to my proposition, as I thought, without any good reason.

Int. 16. Now we have referred, I believe, to the representatives of the Wabash interests and Gen. Dodge and Mr. Hubbell showing that each of them had knowledge of this matter, of these amendments prior to this meeting of April 8, 1890. I wish you would state whether they represented or included all of the interests there were in this terminal property, so far as you know?

A. So far as I know every interest in the terminal property concurred in and was in favor of the adoption of the amended articles before the meeting was held at which they were adopted. I was not aware of any opposition at all at that time. In fact, I know that they had all consented to it.

Int. 17. The record of the meeting of the Des Moines Union Railway Company at which these articles were adopted which was held April 8, 1890, shows that you offered at that meeting certain preambles and resolutions relative to the issuance of the stock of the Des Moines Union Railway Company. I wish you would state whether prior to this meeting a draft
439 of those preambles and [and] resolutions had been prepared and had been submitted to each of the parties interested and had been assented to?

A. In connection with the proposed amendments I had prepared a resolution or series of resolutions carrying out my general proposition, which had been submitted to all, I believe, who were interested in the matter and was understood to be a part of the thing to be done at the meeting, just as we understood the amendments were to be adopted.

Int. 18. So far as I have been able to ascertain by an examination of the records of the Des Moines Union Railway Company these resolutions first fixed the amount of stock to be issued at four hundred thousand dollars. Do you remember why that amount was adopted?

A. I do not remember who suggested the exact amount of four hundred thousand dollars. I only know that I had suggested that it ought to be a great deal less amount than two million dollars and ought to be an amount that could fairly be said to represent, together with the bonds, the value of the Des Moines Union Railway Company property at the time the Company was organized in 1884.

Int. 19. Now, the record of this meeting of April 8, 1890, to which I have referred, this record being Exhibit # 28 to the stipulation already referred to filed March 23, 1911, shows there were present in person at this meeting Col. How, Mr. Hays, Mr. Hubbell, Mr. Martin, Mr. F. C. Hubbell and yourself, and that Gen. Dodge was represented by Mr. Martin as his proxy, and that Col. Blodgett was represented by Col. How

as his proxy, besides showing the presence of various railway companies by their presidents or vice presidents. During the discussion that preceded this meeting and at this meeting, I wish you would state whether it was suggested by anyone that the Des Moines Union Railway Company was not to acquire the absolute title for this property for which it was issuing this stock and these bonds, but that that title was to remain in somebody else?

440

A. There was no such suggestion by anybody. On the contrary, everybody there knew the very purpose, or one purpose, for adopting the amended articles of incorporation was to remove all doubt or any doubt on that subject and to abrogate the contract of 1882.

Mr. Minnis: I move to strike out the statement of the witness because if it is competent for the witness to tell what was said by any of the parties, it is incompetent for him to express his conclusion with respect to knowledge on the part of anybody.

Int. 20. The printed bill in this case on page 33—I refer to the amended and substituted bill—alleges that in furtherance of an alleged fraudulent conspiracy the defendants Frederick M. Hubbell and Frederick C. Hubbell caused the following statement to be inserted in the record of the meeting of the stockholders of the Des Moines Union Railway Company held April 8, 1890: "That the Des Moines and St. Louis Railroad Company was present at said meeting by J. F. How, President; that the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, was present at said meeting by Frederick M. Hubbell, President, and that the Des Moines and Northern Railroad Company, successor to the St. Louis, Des Moines & Northern Railway Company, was present at said meeting by A. B. Cummins, Vice President, thereby intending to imply and have it appear by said writing in said record book, that said Companies were each of them present as stockholders, at a meeting of the stockholders of said terminal company, held on said date, when in fact and in truth, neither of said railroad companies were present at said meeting as a stockholder, or otherwise, as made to appear in and by said sham or pretended record. But your orators state the truth to be that at the date of said pretended meeting of the stockholders of said terminal company, for the alleged purpose of amending the articles of incorporation of said terminal company, as stated in said pretended record book, no stock of said terminal company had been subscribed for by, or issued to anyone."

441

Please state whether or not you yourself prepared the record of this meeting of the stockholders of the Des Moines Union Railway Company referred to in the extract which is made from the bill, and if so, at whose suggestion you incorporated in it the references to the persons and the presence of the various railroad companies, and why, and state in this connection whether the said Hubbells or either of them caused said statements to be inserted in said record?

A. I prepared the preambles and resolutions at my own suggestion. I did it because it was the next step to be taken to clear up the matters that I was endeavoring to clear up in the amendments to the articles of incorporation. I recited that these people were present because they were present, and my understanding was that the eight directors and these three companies owned all the capital stock of the Des Moines Union Railway Company. Neither of the Hubbells had anything to do with the preparation of the resolution, nor the incorporation of any part of it, unless it were to furnish me with the information that was necessary in order to draft it. I recall in this connection that between the time that the resolution was passed for the preparation of amendments of the articles and this meeting to which you have just referred, the Purchasing Committee had sold a portion of the stock
442 of the Des Moines Union Railway Company to Mr. Hubbell, and as I remember, a portion of it to Gen. Dodge. I may be wrong about those dates, but that is my recollection.

Mr. Minnis: I move to strike out that part of the answer wherein the witness states it was understood that the eight directors and these three companies owned all the capital stock of the Des Moines Union Railway Company, because it is a conclusion of the witness and not a statement of a fact; and for the further reason that the stock books of the Des Moines Union show that no certificates of stock had at that time been issued to anybody.

Int. 21. It is alleged in the amended and substituted bill near the bottom of page 34 of the printed bill, as follows: "Your orators further represent and show that neither your orators nor their predecessors have at any time consented to the adoption of said alleged amended articles of incorporation, or ratified them, and that neither of them had any information or knowledge of or with respect to said alleged amended articles of incorporation, until the time said defendants Frederick M. Hubbell and Frederick C. Hubbell set up their claims as hereinafter stated." The reference being to the amended articles of incorporation adopted April 8, 1890. I wish you would state again whether there was anyone at that

time interested in this property in any way who did not have full and complete information as to these matters just referred to to whom you yourself did not give full and complete information as to these amended and substituted articles of incorporation?

Mr. Minnis: Objected to because the answer would be immaterial and not tend to prove or disprove the allegation of the bill read, because the question asks the witness to
443 state what he informed the officers of the Des Moines Union Railway Company. Any information received by the officers of the Des Moines Union Railway Company would not bind or be equivalent of knowledge of the Wabash Railroad Company or its predecessors and the other complainants and its predecessors.

A. All the persons who are recited to have been present upon that occasion had information from me with regard to the articles of incorporation, the amendments to the articles of incorporation, and the resolution to which reference has been made, and in addition to those who were present Col. Blodgett had information of these things from me, and Gen. Dodge had information of these things from me, and my recollection is that Mr. Ashley also had information from me.

Int. 22. It is alleged in the bill in substance that the statement contained in article three of the amended articles of incorporation to the effect that the capital stock of the Company should be issued, two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, was inserted or caused to be inserted by the defendants Hubbell and other confederates, knowing that the said statement was not and could not at the time be true. Please state who put this into this amended article; and if you say you did yourself, state whether or not the Hubbells had anything to do with it?

A. I put these things into the amendments to the articles of incorporation, and so far as any direction from the Hubbells to put them in, I had none. So far as their having knowledge that they were in, I think they had; I know they had, precisely as all the rest had knowledge of the statement or of the recitation; and I got my information from various sources, partly from the Hubbells and partly from the others interested in the subject. There had been no certificates of shares
444 of stock issued at that time, as I remember it, but my information derived from these various sources was that the Des Moines & St. Louis Railroad Company was originally entitled to a half, and the Des Moines & Northwestern to a quarter, and the St. Louis, Des Moines & Northern to a quar-

ter; this being the outcome of the purchase of the Des Moines & Northwestern from the Purchasing Committee.

Int. 23. The bill goes on to state that the statement that the Purchasing Committee was entitled to two thousand shares of this stock was made for the purpose of concealing the fact that Mr. Hubbell had acquired five hundred of these shares from the Purchasing Committee. In connection with this matter I call your attention to the fact that this same record of the meeting of April 8, 1890, shows that Mr. Hays, who was then I believe the general manager of the Wabash Railroad Company, offered a resolution approving the transfer of these five hundred shares of stock from the Purchasing Committee to F. M. Hubbell. What do you say as to whether in the statement referred to in the articles of incorporation or anything else there was any attempt to conceal this transaction?

A. There was no attempt to conceal the transaction. On the other hand, as far as I am concerned, I made every possible effort that everybody connected with the whole matter should be fully and completely informed and I drew the resolutions as specific as they are and as long as they are in order that there could be no possible controversy about it.

Int. 24. What reason was there for making the first resolution show that the stock was to be issued to the Purchasing Committee and then providing in a subsequent resolu-
445 tion for the transfer of the stock to Mr. Hubbell instead of putting Mr. Hubbell in the first resolution which consummated the purchase?

A. The amendments reciting the ownership of the stock in the Des Moines & St. Louis Railroad Company or the Purchasing Committee, the Des Moines & Northwestern, and the St. Louis, Des Moines & Northern, stated the original condition. There had been no transfer of stock from the Purchasing Committee to Mr. Hubbell. I mean now the fifty thousand dollars of stock which he bought between January and April, 1890. And the amendments provided how the consent or approval of the transfer of the stock should be made; and it seemed to me therefore that it was the proper way to transact the business, that the original condition as it was technically should be stated in the amendments and that then the approval or assent to the transfer should be made. As I remember it, although you have not referred to it, at this same meeting there was a similar resolution passed with reference to the sale of a similar amount of stock to Gen. Dodge. I prepared all these things. I parcelled them out among the members who were present at this meeting to be offered from time to time as we proceeded in the work of reorganizing this Company and every man who was there knew beforehand that all these things were to be done.

Int. 25. I wish you would look at the paper I now hand you, which is as follows:

"Meeting of the Directors of the Des Moines & St. Louis Railroad Company.

Des Moines, Iowa, April 8th, 1890.

The Directors of the Des Moines & St. Louis Railroad Company, met in regular monthly meeting: Present: Jas. F. How, C. M. Hays, A. B. Cummins, F. M. Hubbell, H. N. Prieu
446 and George S. Grover. Jas. F. How, presiding.

C. M. Hays offered the following resolution and moved its adoption:

Whereas, the purchasing committee of the Wabash, St. Louis & Pacific Railway Company, has sold to F. M. Hubbell one eighth and to G. M. Dodge one eighth of the stock of the Des Moines Union Railway Company, and

Whereas the entire capital stock of said Company owned by the company, insured as a part of the purchase price thereof has been fixed at $400,000.,

It Is Therefore Now Resolved that the said sale by the said Purchasing Committee, be and the same is hereby ratified, confirmed and approved by the Des Moines & St. Louis Railroad Company."

State whether that is the original draft which you prepared of the record of the meeting of the directors of the Des Moines & St. Louis Railroad Company held on the same day and relating to the transfer of this same stock. I refer now to the first page only of the papers I handed you.

A. I believe it is. I know that I prepared it. I recognize this particular paper because I had in my office at that time a typewriting machine that had the peculiarity shown in this paper, namely, instead of ordinary Roman letters, script type.

Int. 26. Now the contract under which Mr. Hubbell acquired this stock from the Purchasing Committee contained this provision: "The said Purchasing Committee hereby guarantees the approval by the Des Moines & St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days." This contract was dated February 11, 1890. Do you know whether those proceedings by the Des Moines & St. Louis Railroad Company and by the Des Moines Union Railroad Company for the approval of the transfer of
447 this stock were at the instance of the Purchasing Committee in order to comply with this guaranty, or whether they were suggested in the first instance by Mr. Hubbell?

A. I don't remember. I assume at the joint suggestion of both, although I cannot recall any definite suggestion by either.

Int. 27. I will call your attention to a contract marked Exhibit "A" to the deposition of Albert B. Cummins, dated June 2, 1890, (defendants' exhibit 524) between the Des Moines Union Railway Company and the Chicago, St. Paul & Kansas City Railway Company, and ask you whether you drafted this contract? A. I did.

Int. 28. You notice that the record of the meeting of the directors of the Des Moines Union Railway Company of April 8, 1890, added Mr. Charles M. Hays to a committe composed of F. M. Hubbell and yourself to adjust the controversy between the Des Moines Union Railway Company and the Chicago, St. Paul and Kansas City Railway Company respecting leases for the use of the terminal property. Please state whether the contract just called to your attention was the result of that adjustment? A. It was.

Int. 29. This contract contains various recitations relative to the ownership of the terminal property by the Des Moines Union Railway Company. I wish you would state whether this contract before it was executed was approved by Mr. Hays and what his relations were to the Wabash Railroad Company at that time?

A. It was approved by Mr. Hays. As I remember it, he was the general manager of the Wabash.

Int. 30. At a meeting of the board of directors of the Des Moines Union Railway Company held February 11, 1891, at which you were present, another resolution was passed approving the sale of an additional fifty thousand dollars
448 of stock of the Des Moines Union Railway Company by the Purchasing Committee to F. M. Hubbell and reciting the sale had been ratified by the Des Moines & St. Louis Railroad Company, and on the same day a resolution was adopted by the board of directors of the Des Moines & St. Louis Railroad Company at which you were present approving of this sale. Was there any concealment of anything in connection with this transaction, so far as you know?

A. None whatever. I desire to say here there never was a meeting of the stockholders or the board of directors at which everything done was not fully and completely discussed. I have never known any such careful and continuous scrutiny on the part of everybody as I knew with regard to the conduct of the affairs of the Des Moines Union Railway.

Int. 31. Now, passing to another subject, you remember what we call the ratification contract dated July 31, 1897, which was made between the Des Moines, Northern & Western

Railroad Company, Wabash, St. Louis & Pacific Railroad Company and the Des Moines Union Railway Company relative to this terminal property here?

A. I remember a contract that was made about that time as the outcome of long negotiations for the substitution of a new contract between the tenant companies and the Des Moines Union Railway Company. I don't remember its date.

Int. 32. The contract you refer to is the one set out as Exhibit "R" to the amended and substituted bill, is it not?

(Witness refers to amended and substituted bill).

A. This seems to be a copy of the contract to which I refer. I have no way of testing its accuracy.

Int. 33. Referring to these negotiations, about when did they commence, or when did you first personally do some work in connection with the attempt to agree upon a contract as a substitute for this agreement of May 10, 1889?

449 A. I will have to be referred to some contemporary writing to fix the date. I know the circumstance out of which the attempt arose.

Int. 34. What was that circumstance?

A. First there was in contemplation the enlargement of the Des Moines Union Railway Company property, and particularly the construction of a more suitable railway station. The Purchasing Committee, as I remember it, at that time owned largely the bonds that had been issued by the Des Moines Union Railway Company for the property it acquired. These bonds had not been listed upon the exchange in New York. The eagreement of the tenant companies to pay for the use of the property and for the service of the Des Moines Union Railway Company was the foundation for the value of these bonds. The companies which had signed the contract had all gone out of existence, and the obligation of these companies which had succeeded to the original companies was an inferential or implied obligation, and it seemed to be very essential that a new contract should take the place of the old in order that live, active companies should enter into an agreement to pay the monthly rental or sum for the use of the property and the services rendered by the Des Moines Union Railway Company, and therefore it was proposed to make a new contract.

Int. 35. You may assume that the matter was brought to your attention about the 31st day of December, 1896. Referring to the paper marked Exhibit "H" to your deposition, is that a draft of a proposed agreement you made in connection with these negotiations and early in them?

A. I think it is.

Int. 36. Now, in that contract or draft marked Exhibit "B", (defendants' exhibit 383) when it comes to the matter of what we call usually surplus earnings, there is, I think in
430 section 3 or 4, practically the language of the contract of May 10, 1889. I am right about that, am I not, about the deductions?

A. Section 3 covers the subject you just mentioned.

Int. 37. Is this paper I now hand you, which is marked Exhibit "C" to your deposition, a later draft of this proposed contract made by you?

A. It is another draft of a contract which was proposed to take the place of the contract of 1889. I prepared it. It contains a good many interlineations in my handwriting and there are also some slips attached to it which I prepared.

Int. 38. In this same connection I call your attention to a letter which you wrote to Mr. Hubbell, F. C. Hubbell, as President of the Des Moines Union Railway Company March 13, 1897, as follows:

"Des Moines, Iowa, Mch. 13, 1897.

"F. C. Hubbell, Pres.,
City.

Dear Sir:—

I hand you herewith a new draft of terminal contract. It accords substantially with the former draft, modified by the propositions that I made to Mr. Ramsey during our conferences of a day or two ago. I think it will meet his views in every respect, provided you can agree upon the retention by the Des Moines Co., of the revenue outside of that derived from railway companies as lessees. I have made this point perfectly clear, so that there will be no opportunity for disagreement hereafter. I have provided that so long as the Wabash Company uses the terminals it shall have a representative upon the executive committee; also that the wages and salaries paid to officers and employes shall not be greater than those ordinarily paid for like services in this locality;
431 also that any agent or employe shall be discharged upon the application of the tenant companies for good cause shown. I have also made the same provision with regard to any successor of the Des Moines, Northern & Western R. R. as was contained in the original draft respecting the Wabash R. R. I have left the provision in regard to repairs as it was in the old contract, except that I have added the word "cars"—I regard the language of the old agreement as more definite and certain than that which was proposed by Mr. Ramsey. I have substituted for Section XV a short section which provides that the tenant companies shall not be called

upon to contribute for interest upon bonds hereafter issued unless such bonds were issued by consent.

I think these changes meet Mr. Ramsey's suggestions in all respects save one, and that I have already mentioned.

Yours very truly,

(Signed) A. B. CUMMINS."

Is the draft that has been marked Exhibit "C" to your deposition defendants' exhibit 382 the draft referred to in that letter? A. It is.

Int. 39. Is this letter written by you to Mr. F. C. Hubbell, President, under date of February 24, 1897, a letter written by you to him as President of the Des Moines Union Railway Company about that time, it being as follows:

"Des Moines, Iowa, Feb. 24, 1897.

"F. C. Hubbell, Pres.,
City.

Dear Sir:—

I have your favor of the 22nd inst. with respect to the Des Moines Union contract. I have a telegram from Col. Blodgett asking me to send him a copy of the amended articles of
452 the Company, which will go to-day, and assume that when he has examined them he will reply to my letter in which I pointed out the protection his company would receive through them. When the draft is returned to me do not forget to make the suggestion with regard to putting in the gold clause.

Yours very truly,

(Signed) A. B. CUMMINS."

A. It is a letter I wrote to the President of the Des Moines Union Railway Company about the time it bears date.

Int. 40. This was during these same negotiations?

A. Yes.

At this time, 12: M, by agreement of the parties an adjournment was taken until two o'clock P. M. of this day.

Pursuant to adjournment above noted, at this time, two o'clock P. M. the deposition of Albert B. Cummins was resumed as follows:

Mr. Guernsey:

Int. 41. In this letter of March 13th you say this, among other things, referring to the revenue outside of that derived from railway companies lessees: "I have made this point perfectly clear, so that there will be no opportunity for disagreement hereafter." Will you please read into the record the addition

you made to which you refer in the extract I have read from your letter?

A. It is this: "And it is expressly understood and agreed that none of the revenues of the Des Moines Company whether derived from the rentals, switching service performed or otherwise, except the rentals from other railway companies using said terminals or a portion thereof, shall be deducted
453 for the purpose of ascertaining the fair monthly aggregate."

Int. 42. I will ask you to take Exhibits "D", "E", "F", "G", "H" defendants' Exhibit 384, "I" and defendants Exhibit 385 and "J" to your deposition as they have been marked, and in your own way give us the scope and duration of these negotiations and what the result was.

A. Several years before I prepared the proposed agreement between the Des Moines Union Railway Company and its tenant companies, which has been marked Exhibit "B", a question or dispute arose with regard to certain earnings which were called in that day—I don't know whether that designation is still in use—surplus earnings. It was contended, certainly by the Wabash people, that these earnings should be deducted from the monthly expenses of the Des Moines Union or credited upon the monthly bills which were rendered to the tenant companies, and I think that there had been some action taken by the board of directors on at least two different occasions with regard to these earnings, and I regarded the subject still in controversy so far as the Wabash was concerned, although personally I always took the position that the contract of 1889 gave these earnings absolutely to the Des Moines Union Railway Company. When it was thought advisable for the reason that I have already stated, that there should be a new contract between the tenant companies and the Des Moines Union Railway Company, and I was deputed to prepare the draft of the contract as seen in Exhibit "B", I made no change whatever upon that subject, for it will be observed that section three of the draft to which I have just referred, is identical with a similar provision in the contract of 1889; at least, I do not recall any change. When this was put before the companies that were interested in it, especially before the Wabash, it suggested, as I remember, several changes, and then the old dispute with regard to what
454 should be done with those surplus earnings came up and Mr. Ramsey, as it seems to me, was then the general manager of the Wabash; at least I seem to identify him with the transaction. He proposed to take up that subject again and somewhere along there I prepared the draft Exhibit "C" which put the matter in the light in which I viewed it from the standpoint of the Des Moines Union Railway Com-

pany and construed what I thought to be the correct interpretation of section three in the original contract. Then Col. Blodgett in correspondence with Mr. Hubbell—

Int. 43. You said construed. What do you refer to as section three of the original contract.

A. I mean section three of the contract of this draft. It is section four in the contract of 1889. It is section three in the drafts that I prepared. As I was saying, Col. Blodgett took up the matter and in a letter which has been marked Exhibit "D" defendants' exhibit 377 to Mr. F. M. Hubbell, presented two alternative substitutes for that section, the first being marked Exhibit "F", defendants' exhibit 378 and marked at the head No. 1; and the second being Exhibit "E", defendants' exhibit 379 and marked at the head No. 2. I had these proposed substitutes under consideration and I made certain interlineations—probably not very material—in the draft submitted by Col. Blodgett, and, as I understand it, with these interlineations, number two was satisfactory to Mr. Hubbell, and I think was also satisfactory to the Wabash. This substitute made a very material change in the section of the old contract which related to the same subject matter. I need not say what that change was, because it is apparent upon the face of the paper itself. Somewhere about this time—the exact date I do not recall—I was in St. Louis with Mr. Hubbell, as I remember it, and the whole matter was discussed pretty fully, and so far as this controversy was concerned, I
455 supposed it had been adjusted.

But then or about then, so far as my recollection goes, or my connection with it is concerned, there arose another controversy. Mr. Ramsey was of the opinion that it would be fairer if certain expenses which were being incurred monthly by the Des Moines Union Railway Company in the operation of its freight department or freight house should be divided not upon a wheelage basis, but upon a tonnage basis, and in the contract which was prepared, I think in St. Louis—by whom I do not know—the contract substantially as I had prepared it with the substitution of section three as Col. Blodgett had prepared it with my interlineations in that, was put into the form of a contract with the addition that I have just mentioned, namely, an addition relating to the division of the expenses of the freight house, which with your permission I will read: "The cost and expenses of operating and repairing the freight house including the cost of loading and unloading of freight handled at the request of either of the tenant companies herein named, and also the salaries and wages of all agents and servants there employed shall be borne by each of the tenant companies herein named in such proportion as the number of

tons of freight handled for each at said freight house during the period by which such cost and expenses are made up bears to the total number of tons of freight handled for all said tenant companies at said freight house during said period." I have read the extract as it was originally put into the paper that I have before me and have not given any attention to the interlineations that are now in the paper. The two Messrs. Hubbell, representing the Des Moines Northern & Western, believed, or at least claimed—and I have never attempted to determine the justice of the claim—that the provision I have read would be unfair to the Des Moines Northern &
456 Western in comparison with the Wabash, and it is my recollection that this was the classical straw that broke the camel's back and ended any attempt to enter into a new contract. The effort to do it was shortly thereafter—I do not remember just how soon— suspended and then in order to accomplish the purpose I spoke of this morning, namely, to give additional security and standing to the bonds that were outstanding by having a contract that was the obligation of the existing companies, the ratification or confirmatory contract of 1897 was entered into. If I have not answered your question fully, you can point out any other phases of it.

Int. 44. Passing this matter, several of the records of the directors meetings of the Des Moines Union Railway Company where you were present show that the Company resolved to purchase various specific pieces of property. I do not refer to the original purchase, but subsequent purchases. There was one particularly, I think, with which you were intimately connected, the Heath Oatmeal property, where the title was taken in your name as trustee. I wish you would state generally whether in any instance, so far as you know, there was any suggestion that the Company was not to acquire the absolute title to the property?

A. I never heard any suggestion of that kind from anybody.

Int. 45. At several meetings which you attended the record shows reports of the president and superintendent showing the amounts expended for permanent improvements to the property of the Company or for the acquisition of new property and resolutions adopted for the issuance of bonds to reimburse the tenant companies. What do you know as to the practice in this regard and what occasioned it?

A. The Des Moines Union Railway Company had very
457 little capital. I mean by that, money in hand, and as I remember it, when the board authorized the purchase of a property, or authorized the construction of additions to the

property, some of the tenant companies or all of them advanced the money necessary to make the purchase, with the understanding that they would be reimbursed by the issuance of bonds. So far as I remember they always were reimbursed by the issuance of bonds.

Int. 46. I will call your attention to the minutes of a meeting of the board of directors of the Des Moines Northern & Western Railway Company, held October 3, 1893, and to the minutes of an adjourned meeting of the board of directors of that company, held January 29, 1894, and I wish you would state in this connection what knowledge you have as to how F. M. Hubbell & Son acquired from the Des Moines Northern & Western Railroad Company twenty-five hundred shares of the capital stock of the Des Moines Union Railway Company?

A. As I stated in answer to a former question, the Des Moines Northern & Western Railway Company, as well as the company which preceded it, was usually in sore straits for money, and F. M. Hubbell & Son had advanced to the company a large sum of money in order to continue it in operation and to make what improvements were necessary, and this transaction recorded as a meeting of October 3, 1893 was to pledge certain bonds of the Des Moines Union Railway Company which were held by the Company, and its stock in the Des Moines Union Railway Company, to secure the indebtedness thus created.

Int. 47. Were the bonds pledged the bonds of the Des Moines Union or Des Moines Northern & Western?

A. I think the bonds were the Des Moines Union. That is the way I remember it and that is the way it is here.

Mr. Minnis: I object to the witness testifying verbally
458 to what is evidently in writing.

Mr. Guernsey: We will later on offer this record.

Mr. Minnis: You were stating there not from recollection but what you find in the book?

A. If I had not the book before me, all that I would be able to say, would be to secure a large indebtedness from the Des Moines Northern & Western Railway Company to F. M. Hubbell & Son it pledged the stock in the Des Moines Union Railway Company and certain other securities, as I remember. bonds of the Des Moines Union Railway Company. I would not be able to give the date or form or exact amount of indebtedness if the record was not before me.

Answer to Mr. Guernsey's interrogatory continued: You called my attention also to a later meeting which was a meeting at which the Des Moines Union Railway Company

stock which had been pledged to secure this debt was sold to F. M. Hubbell & Son in payment of the debt or portion of it, and as I remember, at the same time—I have not the record before me here—the other securities which had been pledged for the payment of the debt, namely, the bonds were also sold to F. M. Hubbell & Son under the direction and authority of the board of directors.

Int. 48. Now, there is, I believe, contained in every one of these drafts of the proposed contract which was executed, and also in the contract of July 31, 1897, which we call the ratification agreement, which was executed, a statement reciting that F. M. Hubbell & Son was the owner of these twenty-five hundred shares of stock. What was the occasion for putting this into these contracts?

A. In answering that question I can only recur to what
459 I always thought were the very peculiar provisions of the original articles of incorporation, as well as the amendments which involved consent of all parties in interest to the transfer and ownership of stock in this Company, and I do not remember any other reason than to make it clear and specific, so that everybody would know at all times precisely how this stock was held.

Int. 49. Do you remember a contract between the Des Moines Union Railway Company and the Chicago, Great Western Railway Company, dated July 1st, 1896, defendants' exhibit 526 under which the first named company occupied the terminal here until it was succeeded by the Chicago, Great Western Railroad Company?

A. I remember the contract.

Int. 50. That contract contains various recitals as to the ownership of these terminals by the Des Moines Union Railway Company. So far as you know, was any suggestion ever made that these recitals were incorrect or should be changed?

A. I never heard any.

Int. 51. The trust deed given by the Des Moines Union Railway Company to the Central Trust Company, which is Exhibit 23 to the stipulation filed in this case March 23, 1911, was dated in 1887, before the amendment of the articles of incorporation of the Des Moines Union Railway Company by the adoption of the amended and substituted articles. Some resolutions were passed by the stockholders of the Des Moines & Northwestern Railway Company on January 2, 1890, ratifying this trust deed; and like resolutions at or about the same time adopted by the Des Moines & St. Louis Railroad Company and by the Des Moines Northern Railway Company, were they not?

A. I would think the St. Louis, Des Moines & Northern,

Int. 52. At that time, in 1890?

A. Oh, yes; the Des Moines Northern.

460 Int. 53. I wish you would state whether these resolutions were adopted at your suggestion, and if so, why you regarded them as necessary or proper?

A. My recollection is that the original articles of incorporation which were in force in 1887 required the approval of the three companies which owned these three railroads, to the imposition of any charge or mortgage upon the Des Moines Union property. There may have been some other reason, but I don't recall it if there was.

Int. 54. The report of the Des Moines Union Railway Company, filed with the Executive Council, February 14, 1891, under the heading, "General Remarks", contained the following:

"The Des Moines Union Railway Company is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines & Northwestern Ry. Co. and the Des Moines & Northern Railway Company, performing all necessary work for them and charging each road at actual cost its due proportion for the expenses thereby incurred". This Report was verified by you as Vice-President. The Report filed February 16, 1894, for the year 1893, contained under the same heading the following:

"The Des Moines Union Railway Company is the owner of the property hereinbefore described, and in addition to leasing the same to the Wabash Railroad Company, the Des Moines Northern and Western Railway Company, and the Chicago Great Western Railway Company, performs certain services for these Companies and collects from them as rental and for such service the aggregate amount of its expense, which expenses are paid by the several railway companies in proportion to the use of the property and service rendered, as provided by contracts existing between this Company and

461 the said Wabash Railroad Company, Des Moines Northern & Western Railway Company and Chicago Great Western Railway Company". This last mentioned report was also verified by you as Vice-President.

I wish you would state, if you know, why the character of this general statement was changed; how the statement as it first appears came to be inserted in these reports?

A. I had nothing whatever to do with the operation of the Des Moines Union Railway Company; knew nothing about the details of its operation. At the time of the first report to which my attention was called, was presented to me, Mr. Hubbell, F. C. Hubbell, who I think then was President of the Company, was away from Des Moines, and I signed that report without even reading it. I think I ought to apologize to everybody for having done it; but I was a busy man, and

it came up to me in a perfunctory sort of a way, and I did it. When the other came on, in some way or other, I don't remember how it was, my attention was called to that subject, and I myself prepared and put on it, my recollection is, the slip pasted over; anyhow, it was put in as a substitute for the remarks that were in the report as it came to me, and which were probably identical with those contained in the previous report that I had signed.

Int. 65. A stipulation to which reference has been made, contains as a part of Exhibit No. "47" a supplemental mortgage, made October 2nd, 1889, by the St. Louis, Des Moines & Northern Railway Company, which was acknowledged before Mr. James P. Hewitt, and was just before the foreclosure proceedings. In the first place, will you state whether or not this supplemental mortgage was prepared by you?

A. It was.

Int. 66. This refers to all of the interest of the grantors
462 in the obligation or stock in the Des Moines Union Railway Company. Did you at that time understand that the interest of the St. Louis, Des Moines & Northern was in the property of the Des Moines Union?

A. I did not.

Int. 67. Or that it was represented by stock or something of that kind, to be issued?

A. As I understood it, it was represented by stock.

Int. 68. You had to do with the subsequent exhibits here, relating to the foreclosure of this trust deed, and the conveyance of the property to the new Company, the Des Moines & Northern Railway Company, without calling your attention to each one in detail?

A. I had; I foreclosed them all.

Int. 69. Without calling your attention to each one in detail, there are a number of resolutions adopted by the Des Moines & Northwestern Railway Company, and some articles of consolidation adopted by the Des Moines, Northern & Western Railway Company, which led up to the consolidation of the Des Moines Northwestern Railway Company, and the Des Moines & Northern Railway Company, into the Des Moines, Northern & Western Railway Company. Please state whether you had charge of all of these proceedings and prepared all of these resolutions and the articles of consolidation?

A. I had charge of the whole matter and did prepare all the instruments that carried the consolidation into effect.

Int. 70. Throughout this whole proceeding reference is made to the stock of the Des Moines Union Railway Company as a part of the property which was being acquired by the consolidated Company, and so far as I have been able to

learn, there is no reference to the acquisition of any
463 interest in the tangible property, the title to which stood in the Des Moines Union Railway Company. I wish you would state whether at this time you believed that what the two constituent companies owned, and what the consolidated company was acquiring, was this capital stock?

Mr. Minnis: We object to what he believed.

A. I did so believe. I knew it was; it wasn't a question of belief.

Int. 71. Do you remember that in one of the resolutions there is a provision for the issuance of a certain number of bonds to General Dodge for some of this stock, and for a certain number of bonds to Mr. F. M. Hubbell for some of the stock? A. I remember.

Int. 72. It is alleged in the bill in this case, that the stock of the Des Moines Union Railway Company never was intended by any one to be of or represent any value. You, as the record shows here, were a director, at least, and sometimes Vice-President of the St. Louis, Des Moines & Northern Railway Company, the Des Moines & Northwestern Railway Company, the Des Moines & Northern Railway Company, the Des Moines Northern & Western Railway Company, and the Des Moines Northern & Western Railroad Company, and were connected with the affairs of these Companies from 1889, down to the time that the property was acquired by the Chicago, Milwaukee & St. Paul Railway Company. I wish you would state, whether at any time, either of the companies that I have mentioned, in any way, so far as you know, assumed the attitude that this stock was not of value, or had not the ordinary characteristics of the capital stock of the corporation?

A. I never heard any such assumption, or statement or suggestion from anybody connected with any of these
464 companies. I must distinguish, however, between one sense of the word value, and another sense of the word value. From the time I became connected with the Des Moines Union Railway Company, and familiar with its affairs, I assumed, in common with everybody else, that the Des Moines Union Railway Company was the absolute owner of the property that had been conveyed to it, and that its stock represented in the hands of those who owned it, whatever value that property had, subject to its mortgages and its fixed charges. The value of the stock depended entirely upon the standpoint from which one loooked at the enterprise. It was known there was a contract outstanding, under which, aside from any surplus earnings, which in those days were so small as to be almost negligible, the Des Moines Union Railway Company

could not pay any dividends on this stock until the expiration of that contract. That condition, of course, affected the value in a sense, of the capital stock. But that it held the same relation to this corporation that ordinary stock holds to ordinary corporations, I never heard doubted or questioned, from the beginning to the end. The only difference between the articles of incorporation, and chief difference or characteristics of the amended articles of incorporation were, that it required practically unanimous action on the part of the stockholders and directors in order to do the important business of the company.

Mr. Minnis: I move to strike the answer, because the articles speak for themselves, and show, the original articles set out the contract of 1882, and states the object of the corporation was to carry out that contract; that the amended articles purport to expunge that contract, and various other differences, and if counsel insists upon the witness expressing his
465 opinion deliberately in the record, I shall take the liberty, by means of objections to state my opinions. The articles are different in most every feature of them, according to my view.

Int. 73. Do you remember any conversation, after the Chicago, Milwaukee & St. Paul Railway Company had acquired the Des Moines Northern & Western Railroad Company, with the officials of that company, or any of them, as to the value of this stock, any discussion of it?

A. I remember a great many converastions.

Mr. Hughes: We object to this as calling for incompetent testimony, and conversations with parties who would have no power or authority to bind the Chicago, Milwaukee & St. Paul Railway Company.

Int. 74. State as nearly as you can when the conversations occurred and with whom?

A. I do not remember the year. These conversations began shortly after the Chicago, Milwaukee & St. Paul acquired the interest in the stock of the Des Moines Union Railway Company, and they continued over a period of,—well, two or three or three or four years, and they arose during the attempt on the part of the Des Moines Union Railway Company, of which I was the professional representative, to secure a new contract or lease with the Chicago, Milwaukee & St. Paul Railway, and The Wabash Railroad Company. It is entirely within the limit to say, that I had a dozen conferences with Mr. Earling, who was then at least the president of the Chicago, Milwaukee & St. Paul Railway Company, upon this subject;

part of them in Des Moines, and part of them in Chicago. I also had two or three conferences or more, but less than I had with Mr. Earling, with Mr. Delano, after he became
466 president of the Wabash, and in all of these conversations, one of the subjects discussed, was the value of this stock, because I was proposing or insisting upon a contract which would be based upon payments from these companies, that would enable the Des Moines Union Railway Company to pay dividends upon this stock.

Int. 75. Now, in response to your suggestion of a basis to provide payment of dividends, did either of those gentlemen ever suggest that the stock was never intended to have any value, or shouldn't earn any dividends?

The same objection as last above is interposed on behalf of the defendants.

A. I never heard any such suggestion from either of them. On the contrary, I have heard Mr. Earling say on more than one occasion, that this stock should be owned by railway companies and not by private individuals, and that the thing for Mr. Hubbell to do was to sell his stock and get out of the enterprise entirely, and if I might add, I strongly advised Mr. Hubbell to do it.

Int. 76. I wish you would look at the bundle of papers marked Exhibit "K" to your deposition, and then at the papers marked exhibits "L" and "M", defendants' exhibits 319 to 322 inclusive, and with reference to exhibit "K", is that a copy of the petition and amendment to the petition, in the case of the Des Moines Northern & Western Railroad Company and the Des Moines Union Railway Company, vs. James F. Joy, O. D. Ashley, Thos. F. Hubbard and Edgar T. Wells?

A. I believe that the paper handed me is a copy of the petition which was filed by me or my firm in the suit to which reference has been made, and that the exhibits attached to it are copies of the exhibits that were attached to that petition. I also believe that the copy which purports to be a copy of an amendment to the petition, is a copy of the amendment that was filed by my firm.

Int. 77. Is the paper marked exhibit "L" the answer in that case, and the paper marked exhibit "M" a copy of the judge's opinion.

A. I believe the paper marked exhibit "L" is the original answer, and I believe exhibit "M" is a copy of the opinion of the court in deciding the case. But I am enabled to declare it is a copy only because it seems to convey the same idea to my mind, that the opinion of the court then did, which I thought was very unsound.

467 Cross-Examination

By J. L. Minnis, Esq.:

C-Int. 1. Senator, when did you become attorney for the Des Moines & St. Louis Railroad Company?

A. I don't remember the year. I only became attorney for the Des Moines & St. Louis in connection with the Wabash; first the Wabash, St. Louis & Pacific, and afterwards, whoever represented the Wabash interests at St. Louis. My recollection is, however, that it was two or three years before these occurrences.

C-Int. 2. Was it about the time the line was built?

A. No, sir.

C-Int. 3. Was it subsequent? A. Subsequent.

C-Int. 4. How many years subsequently?

A. I don't remember. Of course, an examination of our old books would disclose that.

C-Int. 5. Had the terminal properties been constructed here at that time?

A. Yes; that is to say, they had been partially constructed; not in their present condition, of course.

C-Int. 6. You were also attorney for the companies, predecessors in title to the Chicago, Milwaukee & St. Paul, were you not?

A. Yes, I became attorney for the Des Moines & Northwestern, oh, I would think, in 1888, possibly.

C-Int. 7. Mr. Hubbell was the active officer of those companies, was he not?

A. Mr. F. M. Hubbell was the active man in connection with the Des Moines & Northwestern, and afterwards, Mr. F. C. Hubbell, who was for a period general manager and superintendent of that Company.

468 C-Int. 8. Was Mr. F. M. Hubbell, Sr., connected with the Wabash or Des Moines & St. Louis?

A. I don't know; but my understanding always was, that he was only connected with the Wabash—first, in possibly being a director in the Des Moines & St. Louis at the time it was constructed, and afterwards being one of the purchasers from the Purchasing Committee of the Des Moines & Northwestern. I don't think he was connected with the Wabash in any other way.

C-Int. 9. Are you familiar with the contract of date, January 2, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company?

A. I am.

C-Int. 10. Did you draft that contract?

A. I did not. I was in no wise connected with any of these interests in 1882.

C-Int. 11. When you came in as counsel for any of these parties, they were operating and developing the terminals under that contract, were they not?

A. When I became connected with the Des Moines Union Railway Company, it was operating, so far as its paper authority is concerned, under the articles of incorporation of 1884, which incorporated the contract of 1882.

C-Int. 12. And the articles also stated that the business and purpose of the corporation was to carry out that contract?

A. I remember very well, there is that provision in the articles of incorporation.

C-Int. 13. It was the purpose of those parties, when you first were retained as counsel, to develop these properties in the interest of the railway companies, in order that they might economically handle their business, was it not?

469 A. I don't think so. That was the purpose when the contract of 1882 was made, evidently. I only know of the purpose by my familiarity with the contract itself. But I don't think that it was the purpose of the Des Moines Union Railway Company when I first became connected with it, to develop the property for the benefit or interest of the railroad companies, except as they would be benefited by the increase in the value of their stock holdings.

C-Int. 14. When you became counsel in any of these lines, there was no one interested in the projects, except the railroad companies, was there?

A. I think not, if you include the Purchasing Committee as within the term, railroad. I am not sure whether at that time there had been any negotiations; whether I knew of any negotiations between Mr. Hubbell and the Committee for the purchase of that stock or not.

C-Int. 15. That was later?

A. That purchase was made in 1890, about a year after I became a director in the Des Moines Union, and counsel for that company.

C-Int. 16. As I understand, there was nobody interested in that project, except the railroad companies, at the time you became counsel? A. I didn't know of anybody.

C-Int. 17. Senator, you will agree that it was to the interests of those companies to continue to use that property at the expense of its operations, don't you?

A. I couldn't affirm that proposition. If you will allow me, I will tell you just how it came to me.

C-Int. 18. If you will answer, my question, Senator, we will get along; I want you to have it all your way.

A. I simply want to be fully understood in the matter, because, in a sense, what I did, is under investigation, and I

am anxious that those who are interested in the sub-
470 ject matter shall understand precisely what I did and why I did it.

C-Int. 19. Senator, if you state that in your judgment, it is not to the interests of the several lines entering the City to have joint terminals, and to operate them simply at the expense of operation, please state your reasons for the opinion to the contrary?

A. I do not believe that the joint use, joint occupation of terminals in a city of any magnitude, doing very much business, is feasible at all. It was the original idea, evidently, that these three companies should jointly own and jointly use these terminals, and before I came into it—as I came into it, it was apparent that all the people interested in it had reached the conclusion, that these terminals ought to be made terminals for the whole city of Des Moines—a union depot; in other words; and it was the hope, and I heard it expressed often times, that every railroad in Des Moines could be brought into these terminals under a contract, paying for their use to the Des Moines Union Railway Company. That was the radical departure which had been made in this company, and the expectations of those interested in it, between the time the contract of 1882 was made, and the time I became connected with it.

C-Int. 20. Well, if new lines would be admitted, it would still be to the advantage of all the lines to operate the terminals at a common expense?

A. It would be to the interest of all the lines to have the terminals operated at the least possible expense, so far as they had to contribute to that expense.

C-Int. 21. Your position is, not that it would be to the interest of companies to pay, not only the expenses, but a high rental to some outside party for the use of the terminals?

471 A. Under certain circumstances, yes.

C-Int. 22. What circumstances?

A. The circumstances were these: Originally they expected to be joint owners of this property. Before I came into it, they had abandoned that entirely, and expected to be represented through the capital stock, and anything that would increase the capital stock, would be equivalent to the higher rentals of the Des Moines Union Company.

C-Int. 23. I am asking you now, whether you consider it to the interests of the railway companies to have common terminals, and operate those terminals at cost?

A. Abstractly, yes, of course.

C-Int. 24. Now, this contract of 1882, section 4, provides with respect to the property, that it was to be acquired for ter-

minal purposes, and that the title to said property shall be and remain in a trustee to be named by agreement of said companies, but subject to the joint use and occupation of all said railway companies, upon the terms herein described. The 6th paragraph, without reading all of it, in substance provides, that the expense of operating the property shall be borne between the three companies, in accordance with the use—and the expense thereof shall be borne between it and the other two companies, which is evidenced by the wheelage. The companies were using the property on that basis, were they not, when you came into their affairs? A. No.

C-Int. 25. They were paying each, their proportion of the common expense of operating the property? A. Yes.

C-Int. 26. They were? A. Yes.

C-Int. 27. Now, when was it that any outside party,
472 that is, any person besides the railway companies acquired any interest in the stock of the Des Moines Union Railway Company?

A. As I remember it, it was somewhere along the first of the year, 1890.

C-Int. 28. Were you also counsel for Mr. F. M. Hubbell? A. I was.

C-Int. 29. I will ask you if, when Mr. Hubbell began negotiations for the purchase of stock, wasn't the first time that anybody outside of the railway companies undertook to acquire any stock in the Des Moines terminals?

A. As far as I know.

C-Int. 30. Did you advise Mr. Hubbell with respect to the negotiations for the purchase of that stock? A. I did not.

C-Int. 31. Did you continue to act as counsel for the Wabash Company and for Mr. Hubbell personally after he acquired that stock? A. Yes, sir.

C-Int. 32. You were counsel for both companies, were you, for both Mr. Hubbell and the Wabash Company?

A. I was local attorney for the Wabash Company and counsel for Mr. Hubbell.

C-Int. 33. Was there any other legal counsel of the Wabash Company in Des Moines besides yourself?

A. I do not know; I think not.

C-Int. 34. You had charge of the Wabash Company's legal matters here, did you not?

A. Under the direction of Col. Blodgett, yes.

C-Int. 35. Col. Blodgett usually deferred to you, did he not, in handling legal matters in Des Moines?

A. Not after I became counsel for the Des Moines Union Railway Company, and when acting in its behalf. Col. Blodgett, I assume, exercised his own judgment in regard to the re-

lations the Purchasing Committee and the Wabash would
473 sustain to the Des Moines Union Railway Company. At least, I never did anything without full consultation with him.

C-Int. 36. Did Col. Blodgett have any knowledge that you were counsel for F. M. Hubbell? A. Yes, sir.

C-Int. 37. Senator, did you think it would be to the advantage of these companies for Mr. Hubbell to acquire stock in the Des Moines terminal?

A. I never considered the question.

C-Int. 38. At that time Mr. Hubbell was the active manager of the predecessor of the Chicago, Milwaukee & St. Paul, was he not? A. I think he was its president.

C-Int. 39. When was it with respect to the time that Mr. Hubbell purchased this stock that you suggested that the articles of association should be amended?

A. I suggested that months before I knew that Mr. Hubbell was negotiating for any stock, or that he had any idea of buying any part of the stock, as I now recall it. I don't know that Mr. Hubbell was engaged in buying the stock or attempting to buy the stock from the Purchasing Committee until after the resolution had been passed with regard to the amendments to the articles of incorporation.

C-Int. 40. Senator, you spoke a moment ago about admitting other companies and making a general terminal for all companies. I will call your attention to the tenth article of the contract of 1882, and I will ask you if that article did not provide for the admission? I will read it.

"In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either
474 of the parties hereto, such company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the companies hereto in the same proportion as the original outlay, and the sum due from such companies for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Railroad companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the companies parties hereto." It provides upon the agreement of those companies named here, that other companies may be admitted to the use of the terminals? A. Yes.

C-Int. 41. Well, then these three companies under that contract were at liberty to admit all companies that came to Des Moines to the use of the terminals?

A. On such terms, yes, and not upon stockholding terms.

C-Int. 42. But they were at Liberty to admit all other companies, were they not?

A. They were at liberty to make contracts with other companies for the common use of the terminals, yes.

C-Int. 43. Now, Senator, referring back to the fourth article of that contract of 1882, what do you understand that article to mean—this language to mean: "The title to said property shall be and remain in a trustee to be named by agreement of said companies"?

A. I understand it to have meant just exactly what it says.

C-Int. 44. That is, that the property was to be held in trust by a trustee?

A. That was my understanding of it; that is my understanding of that language.

475 C-Int. 45. What did you understand by the language which follows: But subject to the joint use and occupation of all of said Railway Companies upon the terms herein described?

A. I understand that means precisely what it says. Here was certain common property, which each of those companies could use to run their engines over—

C-Int. 46. In other words, Senator, the right of a railroad company to use property is defined in law as an easement?

A. Yes. I don't think it could be said every right of a railroad to use property is an easement.

C-Int. 47. But a right is here referred to, to use property and run their trains over it; isn't that an easement in law?

A. That would be an easement.

C-Int. 48. Now isn't the word subject, following the words of conveyance equivalent to burdened with?

A. I do not dissent from that construction. I see no difference between the use of the word subject and burden in that connection.

C-Int. 49. Then the trustee was to hold the title, burdened with an easement, in favor of the railway companies, under that clause.

A. Yes; this contemplated a naked title in the trustee, with the joint use by the beneficial owners, with a police control in the hands of the Des Moines & St. Louis Railroad Company.

C-Int. 50. This title held by the trustee was subject to this use; is that your understanding?

A. My understanding is that the title was a mere naked title; the property belonged to these three companies under that contract, and each of the companies was entitled to a common or joint use of their common property.

C-Int. 51. Now, to get at what I want: Suppose you
476 were to convey forty acres of land. and state in the deed that the conveyance was made subject to the right of way of a railroad over the land, do you understand you would convey the right of way of the railroad, or would you convey your interest, the entire interest except the right of way?

A. I would say it conveyed my interest.

C-Int. 52. If you said subject to the right of way—

A. That is to say, the grantee takes the same title the grantor had, subject to the easement of the railway company over the property.

C-Int. 53. Just the same as though you would take a special deed of trust? A. Yes.

C-Int. 54. Now, that being true, the trustee under this clause took the title as trustee, burdened with the right of these companies to use the property for railroad purposes, did he not?

A. I wouldn't express it that way. The trustee was a mere naked holder of the title, and the property itself belonged to the three railroad companies, and this agreement is simply to provide that they shall have a joint, common use of their own property.

C-Int. 55. Still, Senator, if the title to the property vested in the trustee, subject to the easement, then the trustee never took the easement at all, did he? A. No.

C-Int. 56. That remained in the companies?

A. I do not discriminate between the easement and the property itself; the companies owned the property itself with the naked title in the hands of some other person.

C-Int. 57. But the title to the right to use was reserved by the companies, that still remained with them; it was not in the trust at all?

477 A. Oh, I think there was nothing in the trust but the title, and the ownership of the property was in the companies, and this statement here, subject to the joint use and occupation of all said railroad companies, means simply that these three railroad companies, being the owners now of this property, agree between themselves that they shall have the joint use and occupation of it.

C-Int. 58. And the conveyance to the Trustee, was, you understand, subject to that right?

A. Yes, I think it can be said, subject to that right, or subject to the beneficial interests in the property, substantial ownership of the property as well.

C-Int. 59. Don't all the law books recognize there may be such an interest in property as an easement?

A. Certainly. If this property were being conveyed to a grantee who was to take a substantial interest in it, then your interpretation would be entirely accurate; that is, he

would take subject to this easement; but when the trustee takes nothing but a mere legal or naked title, I cannot discriminate between the beneficial and substantial ownership of the property of these railway companies and the easement.

C-Int. 60. Senator, if they had said merely that the title should be placed in the hands of a trustee, then we would have had the situation as you now describe it; would we not?

A. Practically.

C-Int. 61. The language, subject to the joint use and occupation of all of said railway companies upon the terms herein described, indicates that the trustee took whatever title he took burdened with the right of these companies to use the property?

A. In my view, the trustee did not take anything at
478 all, except the legal naked title.

C-Int. 62. How much did Mr. Hubbell give for his stock?

A. To whom?

C-Int. 63. To the Purchasing Committee?

A. I don't know.

C-Int. 64. Wasn't it about 10%?

A. If I ever knew, I have entirely forgotten. I didn't conduct the negotiation, wasn't present when the sale was made and I knew nothing about it. I suppose I knew at [at] the time, but I have no recollection now what he paid for it.

C-Int. 65. What was the property of the Company worth at the time he bought that stock?

A. To answer that question, of course, I must express my opinion. But there was a good deal of discussion about it when the articles were amended, and this resolution to which reference was made was passed. I came to the conclusion that I would be willing to see the property go in at the amount of the bonds and $400,000. of stock. I thought that was a fair value of the property at that time.

C-Int. 66. Can you state that in dollars and cents?

A. Well, it runs in the neighborhood of $800,000.

C-Int. 67. And the mortgage was how much?

A. Well, my recollection is, there were then, that the bonds then outstanding amounted to somewhere about $375,000.

C-Int. 68. That would leave an equity in the property worth about $425,000.

A. If you will allow me to refresh my memory, I can tell you exactly what I thought at the time. The sum then fixed, which represented my opinion at the time was $861,257.21 I desire to state, upon reference to this resolution, I find there were 461 bonds outstanding.

479 C-Int. 69. What would be your judgment of the value of the property above the mortgage?

A. I thought about $400,000; that is, I thought it would stand $400,000 without creating any liability upon the part of those who held it to make good for unpaid stock if the Company should get into trouble and fall into the hands of a receiver.

C-Int. 70. Would you think the equity was worth about $400,000?

A. Yes, my answer stands as given a moment ago. Of course, I understand it couldn't have been sold for $400,000 at that time; for a period of many years there was no possibility of paying a dividend.

C-Int. 71. Do you think it was a good trade to sell Mr. Hubbell 1/8 interest in that equity, for say, $10,000 or $12,000?

A. I do not know what the exigencies of the Purchasing Committee were. If anybody had asked me my view of what it would be at that time, I would have unhesitatingly said the stock was worth more than the sum you name.

C-Int. 72. The contract of January 2nd, 1882 was in force at the time Mr. Hubbell made his purchase?

A. I don't think it was in the respect which you have in mind.

C-Int. 73. Had the articles been amended then?

A. As I said in my direct examination, I looked upon them and do now, as being inconsistent with the contract of 1882.

C-Int. 74. I did not ask you that question.

A. You asked if the contract was in force; I do not think it was.

C-Int. 75. Had it been abrogated?

A. As far as I know, it had never been abrogated, except as in the original articles themselves, or the amendment which had been made, possibly three years later, increasing
480 the capital stock to two million dollars.

C-Int. 76. Assuming that it remained in force until the articles were amended, assuming that, at the time Mr. Hubbell purchased the stock of the Purchasing Committee, the stock could not have represented any value at that time, would it?

A. Well, that is a pretty difficult legal inquiry. That would depend entirely on whether Mr. Hubbell, having purchased a part of the stock of the Purchasing Committee, became one of the beneficiaries in the trust provided for in the contract. If he took a pro tanto share of that trust, why, of course, what he purchased would be valuable, just as the stock was valuable.

C-Int. 77. I thought we agreed that the trust was made subject to the easement in the railroads?

A. But the Purchasing Committee was one of the beneficiaries in the trust, and if the Purchasing Committee sold to Mr. Hubbell a part of its benefit under the trust, what he bought would be valuable, if the property itself was valuable.

C-Int. 78. Assuming now that all the title—that the title the trustee took was relieved of the trust, and that the trustee had the whole title to all that he took as trustee, still, what he would then have would be subject or burdened with the rights of these railroad companies to use this property?

A. The question never came up at all. I repeat, that the Purchasing Committee being a beneficiary in the trust, if it sold a part of its property to Mr. Hubbell, I would be inclined to say that in equity he would be entitled to share in the property, although I do not assert that as the result of any reflection upon the subject.

C-Int. 79. How could he share, as the property, according to your construction, was to be jointly used?

A. Because the Purchasing Committee would be com-
481 pelled to respond to Mr. Hubbell for that beneficial share it received from the use of the property.

C-Int. 80. If Mr. Hubbell took the shares with notice of the contract, he would take whatever the shares gave him?

A. I have expressed my opinion upon that subject.

C-Int. 81. Now, Senator, isn't it a fact, after Mr. Hubbell got hold of this stock, that you then concluded, as his counsel, that it would be to his interest to so amend the articles as to vest the whole title to the property in the Company?

A. It is not a fact.

C-Int. 82. But it is a fact, if your construction of the amendments is proper, that the amendments did vest in the Company the whole title to the property, is it not?

A. The whole title to the property had been vested in the Company before the amendments, but the contract of 1882, together with the fact of what had been done prior to my coming in, created a cloud on the title—uncertainty, if you please, with regard to it—and one of the objects of these amendments was to make absolutely sure that the contract of 1882 was abrogated and that the Des Moines Union Railway Company should be the absolute owner of this property and that the interests were to be represented solely in stock.

C-Int. 83. Well, the Wabash Company wasn't interested in clearing up the cloud, was it?

A. I don't know from what standpoint the Wabash Company looked at it; I only know that every view I held upon the matter was fully disclosed to everybody connected with it.

C-Int. 84. Did you ever disclose to anybody, or did you ever hear anybody discuss or say that the railroad companies after

the amendment of the articles would not have the right to use this property at the common expense of its use and operation?

A. I answer that question by saying, that the right of
482 the railroad companies to use this property was fully set forth in the contract Col. Blodgett drew, which was signed in 1889, before I had anything more than a nominal connection with it, and my understanding was that their rights to the use of this property—I am not speaking of their rights to the stock—their rights to the use of the property were entirely contained in the contract of 1889.

C-Int. 85. My question was, did you say to anybody, or did you hear anybody say, that after the amendments these companies would not have the right to use these terminals at cost?

A. I don't remember of ever hearing an expression put into that form. The whole purport of it was, to make the Des Moines Union Railway Company an independent corporation, that could contract with these tenant companies, or any other companies that might be admitted.

C-Int. 86. According to your construction of the amendments, they were to clear up the situation and to show that the Des Moines Union Terminal owned the property, and that the companies would not after the expiration of the contract of 1889, have the right to use the same at cost?

A. I have not stated that in those terms, because that question was not discussed. I had stated to all these people what the effect of the present situation was—of what had been done was; and, of course, the moment the trust was obliterated, and the absolute title to the property was fixed in the Des Moines Union, as I understood everybody agreed at that time, the right of these tenant companies to use this property after the expiration of the contract of 1889 ceased absolutely, unless another contract were made.

C-Int. 87. You never stated that to anybody?

A. I don't remember ever stating it in that way, but
483 there are a great many things that are assumed. I may have stated it in just that way; I don't recall.

C-Int. 88. Well, Senator, if we assume that the railroad companies had the right to use the property perpetually under the contract of 1882, at cost, you will not say that the Wabash Railroad Company knowingly intended to surrender that right, and thereby vest in Mr. Hubbell an equivalent of 1/8 interest in that property, will you?

A. You are asking me to express my opinion upon what the Wabash Company would have done under conditions which did not exist, and it is impossible for me to say what the Wabash Company would have done.

C-Int. 89. You say the contract of 1882, was not in force, up, at least, until the amendment to the articles?

A. In my opinion, it was not in force, so far as the title to this property is concerned and the ownership of the Des Moines Union Railway.

C-Int. 90. You were of the opinion they owned it all the while?

A. I was of that opinion then, and I haven't considered it since.

C-Int. 91. If it be true that the articles were amended upon that supposition, and that supposition was erroneous, then the amendments were based upon a mistake, were they not?

A. Again, you know you are asking an opinion upon a state of facts, which, so far as I know, did not exist.

C-Int. 92. Senator, I have to assume facts. I want to get at your views; I have some views as to what these things amount to; if you don't answer my questions when I assume, and then only in accordance with your own assumption, we cannot make much headway.

A. If you ask my opinion as a matter of law on the question, I will give it to you with great diffidence. I haven't practiced law for ten years. If you will repeat that question I will endeavor to answer it.

484 (C-Int. 91 repeated)

A. Yes, if anybody supposed that the amendments to the articles of incorporation did not proceed upon the hypothesis that the absolute title to all this property was to be in the Des Moines Union Railway Company, he proceeded upon that mistake.

C-Int. 93. I am speaking at the time the amendments were made; you have said, in your opinion, the Des Moines Union owned the whole title at all times; now I ask you—

A. I didn't so state.

C-Int. 94. You said, the contract of 1882, you thought was destroyed by the articles of incorporation?

A. In part. The contract of 1882 was made two years prior to the incorporation of the Des Moines Union Railway Company, and it was my opinion then, and it is now, that that part of the contract which contemplated the title in the trustee and the joint use and occupation of this property by these three companies under the police control and supervision of the Des Moines & St. Louis Railroad Company was abrogated in the original articles of incorporation; but there still remained what every lawyer understands, and you will understand, as a doubt with regard to the effect of those articles and the conduct of the Company under them during the period of 1884 to 1889. The company, it seemed to me, was

proceeding upon the theory that it was the owner of this property and had absolute control of it, except as governed by its directors, and I proceeded to act upon the situation as it then existed, and with the full knowledge and understanding of everybody interested.

C-Int. 95. The amended articles were adopted upon the assumption that the Des Moines Union at that time held title to the property, were they not? A. Yes.

485 C-Int. 96. Now, Senator, if we assume that until the adoption of the amended articles the contract of 1882 was in effect, and that the amended articles abrogated and destroyed that contract, then Mr. Hubbell, by the amended articles became entitled to the proportion that his share acquired from the Purchasing Committee bore to all the shares of the value of the Des Moines Company, did he not?

A. No.

C-Int. 97. What, on that assumption, what would he have acquired by the amended articles?

A. Mr. Hubbell acquired by the amended articles precisely what every other stockholder acquired, the right to manage the corporation in the way set out in the amended articles, and his share of the value of the property as represented in his stock, and every other stockholder acquired exactly the same right and privilege.

C-Int. 98. Well, I asked you though, Senator, my question, on the assumption that the contract of 1882, was in effect until the amended articles were adopted?

A. I recur to what I said a few moments ago. Mr. Hubbell's individual interest was not in contemplation, or within my knowledge, and I did not know it existed at the time the work began on these amended articles, and if the amended articles had not been adopted, and if it be assumed that the contract of 1882 was in full force and effect, then, in my judgment, Mr. Hubbell would have acquired from the Purchasing Committee the proportion of the beneficial interest in this property, that the $50,000 stock which he bought, bore to the entire amount of stock at any time outstanding.

C-Int. 99. But if it be true that the stock was of no value prior to the amended articles, then Mr. Hubbell did
486 acquire considerable value by the amended articles, did he not?

A. I don't fully understand the import of that question.

C-Int. 100. It is this: I am putting my theory into the question—assuming that the stock sold by the Purchasing Committee to Mr. Hubbell, did not entitle Mr. Hubbell directly or indirectly to claim any interest in the property of the Des Moines Union Company, and that the amended articles vested all the title to the property in the company, in the Des Moines

Union Company, the amended articles did give to Mr. Hubbell stock of great value that it didn't before have?

A. Unquestionably it gave value, upon the assumption you state.

C-Int. 101. On that assumption, would the Wabash Company get any return by the amended articles?

A. Do you mean any return for the purchase of the stock of the Purchasing Committee, or do you mean what general benefit accrued to the Wabash Company through the amendment?

C-Int. 102. I will explain it. On my assumption, the stock at the time it was purchased by Mr. Hubbell from the Purchasing Committee, had no value and did not represent any interest in the property of the Des Moines Union, the property being owned by the three companies. Now, if the amended articles vested in the Des Moines Union the whole title to the property, and took that title away from the railroad companies, then Mr. Hubbell's gain by the amended articles would have represented the Wabash Company's loss by the amended articles? A. I don't think so.

C-Int. 103. Why not?

A. Upon the assumptions you have stated, which of course, I must assume in answering the question, although it is difficult for me to do it,—the gain to the Wabash would have been a workable corporation for the operation of these ter-
487 minals, and an opportunity for the Purchasing Committee of the Wabash St. Louis & Pacific to sell the stock or interest it had to some advantage, which without it it could only sell in connection with the sale of the Des Moines & St. Louis Railroad Company.

C-Int. 104. Do you understand the Wabash Railroad Company would ever, under any circumstances, sell its right to use the Des Moines terminals, unless it sold the railroad?

A. No, I understand that it intended to preserve ⅛, at least, of the capital stock, which gave it in the amended articles an influential voice in the affairs of the Company with respect to many things—a veto upon anything that was proposed, and that when the Des Moines & St. Louis Railroad was sold ⅛ of the capital stock was to go with it.

C-Int. 105. If the contract of 1882 was in effect until the articles were amended, the Wabash Company had at least a third interest in the property, did it not?

A. It had a one-half interest in the property, under the assumption of the contract of 1882, assuming that things just remained in that form until it sold a one-quarter interest, being ⅛ to Mr. Hubbell, and one-eighth to General Dodge.

C-Int. 106. So that if the contract of 1882 remained in effect under the amended articles, until the articles were amend-

ed, and the Wabash Company up to that time had one-half interest in all the property, did it not?

A. That is the way I understood it; under the original arrangement it had one-half interest in the property.

Mr. Guernsey: I think it ought to be understood that the Wabash Company and the Purchasing Committee, are terms used indiscriminately.

488 C-Int. 107. If the amended articles for the first time vested the whole title of the property in the Des Moines Union Terminal, the Wabash thereafter only had a ¼ interest, did it not?

A. As I understand it, taking into account the sale of stock to Mr. Haldell and General Dodge, the Wabash or Purchasing Committee had at the conclusion of these proceedings a one-quarter interest.

C-Int. 108. Did you understand that the effect of striking out of the original articles of incorporation the contract of January 2nd, 1882, by the amended articles, had any effect on the title to the terminal property?

A. I thought it had the effect of removing a cloud from the title.

C-Int. 109. You regarded it as a mere cloud?

A. And preventing disputes.

C-Int. 110. You regarded that as merely a cloud?

A. Yes; in view of the provisions of the original articles, the first amendment to the articles, and the conveyances to the Des Moines Union and the conduct of the Company, I regarded it as a mere cloud upon the title.

C-Int. 111. It was not the intention of anybody, was it, Senator, to radically affect in any way the relationship of the different parties to the terminal property by the amended articles?

A. That had been effected before. The purpose of the amended articles in that respect was simply to give effect to what everybody, as I understood it, had agreed upon before, namely, that the interests in this property were to be represented by stock, and not by ownership.

C-Int. 112. That was only agreed at the time of the amended articles, was it not?

489 A. I don't know when it was agreed; it seemed to be the whole atmosphere of the Company in all the meetings.

C-Int. 113. Did anybody understand that by the amended articles the relationship of any of the interested parties to the Terminal Property would be substantially or radically changed by the amended articles?

A. As compared with the contract of 1882, yes; everybody understood it.

C-Int. 114. What did they understand the change would be?

A. They understood the change would be that the interests of these companies, or the interests in the property that remained after the mortgage, would be represented by stock, and not by ownership. They understood that the management of the property would be in the Des Moines Union Railway Company, without any other supervision than the supervision of the board of directors of that Company. They understood that all payments for the use of the property were to be made to the Des Moines Union Railway Company, and not the Des Moines & St. Louis Railroad Company.

C-Int. 115. Still, Senator, I understood you to say, you thought the contract of 1882 was abrogated by the articles?

A. In some respects. Do you want me to point out why I thought so?

C-Int. 116. I will not burden you with that now; I want to get it clear into my mind. I understood it was your opinion, notwithstanding the contract of 1882 in the articles, the whole title of the property vested at that time in the Des Moines Union?

A. No; I stated, notwithstanding the contract of 1882, by the original articles, by the first amendment to these articles, and by the conveyances that had been made to the Des
490 Moines Union, and by the conduct of the companies themselves, and of all the persons interested, that part of the contract of 1882 that provided that the title to this property should be vested in a trustee, and that the Des Moines & St. Louis should have supervision over it, had been abrogated.

C-Int. 117. Now, I understand your position, that all these things together did result in vesting the whole title in the property to the Des Moines Union? A. Precisely.

C-Int. 118. These things all occurred prior to the adoption of the amended articles?

A. All but the last had occurred, and the last was occurring every day.

C-Int. 119. What was that?

A. Namely, the management of the property by the Des Moines Union Railway Company.

C-Int. 120. But all the deeds had been delivered, and all contracts and everything of that kind, upon which you relied to show that the Des Moines terminal had acquired the whole title, had been executed and delivered before the amended articles?

A. I don't remember that all the conveyances had been made to the Des Moines Union, but the bulk of them had been made. Aside from that, all these things had occurred before the amended articles came in.

C-Int. 121. So that at the time the amended articles were amended, you regarded merely the contract of 1882 as a cloud?

A. I regarded it as a cloud. I looked at it, that in some future time, upon inspection of these records, these contracts and articles, it might be claimed this property was in the hands of a trustee, or was held by the Des Moines Union Railway Company as a trustee.

491 C-Int. 122. It was understood, as you know, by all the parties, that the supposed striking out of the original articles the contract of 1882 by the amended articles, was merely to clear up that cloud?

A. I cannot recall any distinct and separate conversation upon that point, for as I told you, everybody acted upon that hypothesis. I do not remember any objection made by anybody to that phase of the matter.

C-Int. 123. Then, I understand, Senator, that aside from removing the cloud, you did not understand that the amended articles affected the title to the terminal property?

A. It was my opinion that the title was in the Des Moines Union, and I intended that these amended articles should make it absolutely sure and beyond any future controversy.

C-Int. 124. But you did not intend to otherwise affect the title; that you say was not discussed?

A. I do not remember any specific discussion upon that question. You know, I had stated all these things to these people—the difficulties in their articles of incorporation, in their preceding history—and I was proceeding to carry out what I understood to be the unanimous desire of all these people. Mr. Hubbell was the only man among all of them who objected to this proposition.

C-Int. 125. I do not see why he would object, because on any theory he was benefitted. I could see every reason why the Wabash Railroad should have objected, if I had any conception at all of its rights at the time. But now, Senator, I understand you advised these parties and that you did it honestly, but we do not agree with your conclusions of law.

A. They have often been different from, and sometimes successfully.

492 C-Int. 126. I have confidence in your judgment, but we differ from it, and that is why we have a law suit on hand. What I wish to do is to get your knowledge of the situation?

A. I have not a particle of interest in the law suit, but I have an interest in the allegation that is made, that substan-

tially charges me with having committed a fraud upon these people.

C-Int. 127. I didn't know your name was mentioned in the bill?

A. My name is not mentioned in the bill, but I did those things which it is alleged in the bill constitute a fraud upon the people interested in this property. I never did anything more openly, more specifically and more carefully in all my life than I did these things.

C-Int. 128. Was there any discussion in connection with the amendment of the articles in respect to whether the companies would in the future have the right to use the property of the Des Moines Union?

A. You mean, after the expiration of the contract of 1889?

C-Int. 129. Yes?

A. I don't recall any discussion of that question, because it was obvious. Any person who would read these papers and amendments, would know their rights would terminate at the expiration of that contract, and then there would be a new contract made, if possible; if not, they would have to cease the use of this property.

C-Int. 130. Of course, you had examined all these things; you had it in mind, and that is why I am asking you what these other people discussed.

A. I don't recall any specific discussion on that subject. Col. Blodgett would probably better remember than I; he drew the contract of 1889.

493 C-Int. 131. Senator, you verified the report made by the Des Moines Union to the Council of State, in the year 1890, wherein you state that the Des Moines Union Railway Company is a representative Company, acting as an agency at Des Moines, for the Wabash Railroad Company, the Des Moines Northwestern Railway Company and the Des Moines Northern Railway Company, performing all necessary work for them and charging each at actual cost its due proportion of the expenses thereby incurred. I understand you did, but didn't read the report?

A. Yes, sir, I acknowledge that with some humiliation. I remember the occasion very well when the auditor of this company brought it in.

C-Int. 132. But I find that in the report of the previous year, for the year ending December 31, 1889, Horace Seely, General Superintendent of the Company verified the report, and that report contained precisely the same language. I ask you, whether as counsel of the Des Moines Union you were not called upon by Mr. Seely to prepare a statement with respect to the nature of the Des Moines Union, in order that he might incorporate it in his report? A. No.

C-Int. 133. What other attorney was consulted by the officials of the Des Moines Union at that time?

A. I don't know; I don't believe anybody was; for that I cannot speak.

C-Int. 134. You were the counsel of the Company?

A. I was vice-president of the Company.

C-Int. 135. You cannot undertake to state from memory every conversation you had every time you gave advice, can you, to the officers?

A. No, sir; I do not pretend to do it. I remember
494 the chief transactions of the Company, but not the details.

C-Int. 136. If this statement which is contained in the report of 1889, and the one you signed for the year 1890, correctly describes the Des Moines Union Railway Company, the amended articles did radically change the relationship of the interested parties to the terminal property, did it not?

A. I repeat. In my opinion, the change had been effected before.

C-Int. 137. I ask you this question: Assuming that the reports I have referred to properly describe the nature of the Des Moines Union Railway Company, didn't the amended articles, in your judgment, radically change the relationship of the interested parties to the Terminal property?

A. If it be assumed that the Des Moines Union Railway Company up to the time of the amendments of the articles was a mere agency for these railroad companies, then the amendments did radically change the situation.

C-Int. 138. You will appreciate that I have to assume some of these facts? A. Oh, yes, I understand that.

C-Int. 139. The report made to the Council of State by the Des Moines Union for the year 1892, was signed by F. C. Hubbell, President of the Company, and Horace Seely, Superintendent, and that report contains the same statement with respect to the nature of the Des Moines Union Railway Company. A. I do not recall those dates.

C-Int. 140. Do you remember signing one February 28, 1893?

A. I don't remember the dates of any of them. I remember that on two or more occasions I signed the annual report of this Company to the executive council, in the absence of Mr. Hubbell, the president.

C-Int. 141. Why, was it, Senator, when you signed the
495 report for the following year, that you placed in lieu of the former general remarks, the statement that the Des Moines Union is the owner of the property hereinbefore described, etc.

A. These reports, as I remember it—I don't remember how many of them were brought into my office. If you know

what the reports are; they are voluminous, composed of large sheets of paper and many of them. And I remember, on one occasion, I would not have known whether the first or the last, my attention was in some way called, or I caught that statement, and I knew that wasn't true.

C-Int. 142. Did you dictate the statement?

A. My recollection is I did.

C-Int. 143. The one in 1894?

A. I don't remember the year, but the circumstance.

C-Int. 144. You knew these reports were important and had to be verified by oath? A. I did.

C-Int. 145. You must have read them?

A. I did not read them. They contained a great number of statements and statistics of which I knew nothing whatsoever.

C-Int. 146. Do you know who did first insert the statement that I read a while ago, in these reports? A. I do not.

C-Int. 147. You don't recall of being called upon on that signed about the year 1889?

A. I don't remember ever being called upon to advise with regard to those annual reports. They are made on blanks furnished by the executive council, and they are prepared usually by the auditing department of the Company that makes them.

C-Int. 148. Now, you stated in your direct examination that the Des Moines Union Railway Company was ignor-
496 ing the contract of 1882 with respect to the title to the property and also in the management of the property.

A. Yes, sir.

C-Int. 149. In what way was it ignored?

A. What I stated, if I remember correctly, is that the provisions in the contract of 1882 with regard to the ownership of the property, it was ignored. They were ignored, first, in the conveyances that had been made to the Des Moines Union Railway Company by Mr. How, and Mr. How, Trustee, by General Dodge, and I think possibly by the Des Moines & St. Louis. I am not sure it held title to a part of the property, but I think it did. These provisions were ignored in the payment to the Wabash road and to General Dodge, for the original purchase price of the property. The Des Moines Union Railway Company had issued its bonds and with those bonds it had paid the persons who originally advanced the money to buy its property.

C-Int. 150. Wasn't that in accordance with the contract of 1882? A. I think not.

C-Int. 151. In what other respect was it ignored?

A. I think it was ignored by entirely dispossessing the Des Moines & St. Louis Railroad Company from the supervision

and control of this property. It was managed absolutely by the Des Moines Union Railway Company. There had ceased to be any common use or occupation of the property. That was true originally; at the time I am mentioning, the Des Moines Union Railway Company was transacting the business through these terminals; it was taking the freight trains of these tenant companies and was disposing of these freight trains, in part, at least, unless they were going through. Although I can not recall the exact detail of it, at any rate,
497 the Des Moines Union Railway Company was using this property, and the tenant companies were paying every month the sums which the contract of 1889 provided should be paid for the services rendered by the Des Moines Company and the use of the property. In all these respects, the original idea that this property was to be held as a naked trust for the use and benefit of these three companies, and that the Des Moines & St. Louis was to be the manager or supervisor of the joint use, had been ignored and abandoned; the business was not done in that way at all.

C-Int. 152. That contract of 1882 provided that a terminal company might be formed?

A. It provided that a depot company might be formed, that should have charge of the property.

C-Int. 153. Management, didn't it say?

A. I think it used the word management. That a depot company may be organized and take permanent charge of the property; that is in the contract, upon the terms herein set forth.

C-Int. 154. The Des Moines Union was afterwards organized, and it stated in the articles of association organizing that company, that its business was to carry out that contract, isn't that true?

A. You have stated it with reasonable accuracy, but in order to be entirely accurate, I would rather read one of the preambles to the articles, which reads this way: Whereas, it was provided in the contract aforesaid that a depot company might be organized to take permanent charge of the property and it was the understanding of the parties that such company might acquire, operate and maintain the said property in such manner as best serves the interests of the parties thereto. I
498 may remark in that connection, that the use of the words, "it was the understanding that such company might acquire, operate and maintain said property", indicated to me that understanding wasn't an understanding in the terms of the contract of 1882.

C-Int. 155. What section did you read from?

A. From the preamble that precedes article 1 of the articles.

C-Int. 156. It states, the understanding was; that would indicate, they were interpreting what they meant by the former contract?

A. It indicated to me there was an understanding between these parties that was not contained in the contract of 1882, because there is no such provision in the contract of 1882.

C-Int. 157. Well, that was their construction of it, I would say; but be that as it may, the company was organized with that recital in its articles, was it not; the recital that you have read?

A. It was organized with that as one of the preambles; precisely as the contract was one of the preambles.

C-Int. 158. And the contract is set out? A. Yes.

C-Int. 159. Now, the Des Moines Union Company did manage the property in the manner set out in the articles, did it not, it operated the property?

A. No, it operated the property itself.

C-Int. 160. It itself operated the property?

A. The joint owners contemplated in the contract did not operate the property or use it.

C-Int. 161. But the Des Moines terminal did operate it for them?

A. I would say it operated it for itself.

499 C-Int. 162. Whose cars did it haul?

A. The cars that were brought in by the Wabash, by the Des Moines & Northwestern, and by the St. Louis, Des Moines & Northern.

C-Int. 163. It certainly pulled those cars for those companies? A. Yes.

C-Int. 164. Did you see it doing anything else than pulling cars for these railroad companies?

A. You mean, so far as its operation of the tracks is concerned?

C-Int. 165. Yes.

A. No. I saw it enlarging its tracks; I saw it acquiring new property; I saw it trying to reach new industries all the while; I saw it, of course, serving the predecessor of the Chicago Great Western Railway Company; which was not in this arrangement originally.

Mr. Hughes: What was there detrimental in doing these things?

A. I don't think there was anything detrimental to anybody. On the contrary, I thought it was doing its business properly, but its business did not seem to me to be in har-

mony with the original articles, if the contract of 1882 was to be considered.

C-Int. 166. You are not familiar as to how the terminals are managed in the various cities of the United States, such as Chicago, St. Louis and Kansas City?

A. Well, I was for 23 or 24 years attorney for a good many railroad companies. I have had a good deal of negotiation with various people about this company, and I became somewhat familiar with the management of terminal companies.

C-Int. 167. But from the fact, Senator, that all these other companies, terminal companies, like the Terminal Rail-
500 road Association of St. Louis, and in Chicago, and the Kansas City Union Depot Company, are all mere agents for the proprietary companies and handling the business the same way as this one does here, I assume, from my knowledge of these companies, that you are not acquainted with the situation, because that is the only way I have any knowledge of handling the terminal business?

A. I think you are right about that. That is the reason the contract of 1882 was absolutely unworkable.

C-Int. 168. There is no contract to be found that has not the features of the contract of 1882. Other terminals, such as in Chicago, St. Louis and the Kansas City Union Depot Company, they all give to the proprietary lines the use for that and the company is merely an agency. It does operate and push cars and keeps their accounts and bills on them for their expenses.

The defendants object to the question as being testimony as to the way this business is transacted.

C-Int. 169. Senator, in what way did the deeds made by How to others ignore the Des Moines Union Terminal?

A. I have not examined these conveyances for 20 years or something like that. I do not recall what they contained. I only know that my recollection is that there was not in these conveyances the terms which one would naturally have expected if it had been intended to make the Des Moines Union Railway Company the naked holder of the title to this property. You can have recourse to those deeds and determine for yourself whether my recollection in that respect is accurate or not.

C-Int. 170. The deeds state, do they not, that the property is conveyed to the Des Moines Union pursuant to the contract?

A. I think there is a recitation in some of the deeds of the circumstances under which Mr. How, and possibly Mr.

Dodge acquired that title, but my recollection is that
501 they are not conveyed to the Des Moines Union Railway Company in trust to hold for these three companies. You know better than I whether my recollection is right.

C-Int. 171. Don't you know as a lawyer that a conveyance may be absolute in the party to whom it is made, either through the issuance of a declaration of trust or receive his title under contract which makes a trustee, that he holds as Trustee.

A. I know the general principle of law to which you refer; but the Des Moines Union Railway never did issue a declaration of trust and had undoubtedly paid for this property full price, and I never heard of that in connection with any conveyance of a naked trust.

C-Int. 172. Now, here is what the deed of Mr. James F. How, Trustee, to the Des Moines Union recites: Whereas, certain property was conveyed to me in trust, and whereas, it was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company,—and then goes on and recites the other companies—you will find that recital near the top of page 33 of the bill. A. Yes.

C-Int. 172. In the second paragraph you will find the further recital: It was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions? A. I see that.

C-Int. 173. Can you mention, Senator, any other acts whereby the Des Moines Union was ignored?

502 A. Following the suggestion you just made about the deed from James F. How, Trustee, to the Des Moines Union Railway Company, it will be remembered that after the contract of 1882 was made, and before this deed was made, the original articles had been adopted, and it was recited in those articles that the Des Moines Union Railway Company might acquire, operate and maintain said property in such manner as best served the interests of the parties thereto. And you will remember the second article provided: The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in and around and about the City of Des Moines; and then that article 3 provides, that the capital stock of this corporation shall be one million dollars, divided into shares of one hundred dollars each, and the Board authorized to receive in payment therefor the property and franchises in the City of Des Moines; then when it is remembered, that the Des Moines Union Railway Company had paid to the persons advancing this money,

the purchase price in their bonds, I do not believe you would differ with me very much in assuming that this deed conveyed the property to the Des Moines Union Railway Company absolutely, and not as the trustee named in paragraph 4 of the contract, which says: The title to said property shall be and remain in the trustee to be named by agreement of said companies.

C-Int. 174. I won't agree to that. Senator, you ignore the vitality of the contract of 1882 in saying that the Des Moines terminal was ignored, do you not?

A. I mean that the Des Moines Union Railway Company and those who made it up had ignored the contract of 1882.

503 C-Int. 175. Who paid the expenses of the Des Moines Union Terminal at that time? A. In 1889?

C-Int. 176. Yes, along there?

A. If you mean now, the period before the admission of the Chicago, St. Paul & Kansas City, afterwards the Chicago, Great Western—

C-Int. 177. Well, the companies using the property paid the expenses?

A. The companies using the property and for which the Des Moines Union Company rendered its service, paid for that service and that use, in proportion to the wheelage of each of those companies over the property.

C-Int. 178. Who complained of the Des Moines Union Company being ignored?

A. Nobody. There was no basis for any complaint; everybody was agreed on what ought to be done.

C-Int. 179. There was no complaint about it?

A. I never heard any.

C-Int. 180. There has been no change, since the amendment of the article in the manner of operation?

A. I could not answer that broadly, no, although I think it can be said, the management and operation have continued practically since that time as before, with the admission of new companies and new contracts, and other things modifying the rights of the several parties.

C-Int. 181. Did you know of the contract of May 10, 1889, when you suggested that the articles be amended?

A. Oh, yes.

Col. Blodgett:

C-Int. 182. Governor, was it your understanding at the time, or is it your understanding now, that any clause inserted or any clause stricken out of the articles at the time they

were amended, had any effect on the title to the terminal
504 property or upon the right of the several railroad companies to the permanent use of the property, on the terms stated in the contract of January 2, 1882, and if so, will you state, what clause inserted, or what clause stricken out had that effect?

Objected to on the part of defendants as assuming that this right under the contract of 1882 was existing at that time.

A. I can't answer the question categorically. I can only say, in my opinion, as it was then, and as it is now, the Des Moines Union Railway Company was, in January, 1890, the absolute owner of the property of which it was in possession, and that the only interest which these railroad companies or their successors, or assignees or grantees had in it was a stock interest; that is, interest in the stock of the corporation which owned it. However, I realized then as I realize now, that there were ambiguities, uncertainties in the prior records and proceedings of the corporation and various parts that made it up, and just exactly as I would file a bill to quiet the title to property upon which I might think there was a cloud, which however could not be sustained, I proposed these amendments to the articles of incorporation, to clear up all those doubts and uncertainties.

C-Int. 183. Did you understand that would have an effect upon the disputed title, those amendments?

A. Yes, in this sense: If the dispute had arisen, then I believe the Des Moines Union Railway Company could have maintained its absolute title to this property, and the tenant railroad companies would have been held to have no other interest
except their interest in the stock of that company. But
505 as I said before, if my opinion upon that subject was unsound, then the amendments to the articles of incorporation removed all question about it.

C-Int. 184. What article in the amendment, what clause in the amended articles, would you say had an effect on the title or the right of the railroad companies to use the property?

A. The first article, in my opinion, that would have that effect, if I am wrong in regard to the construction of the preceding contracts and articles and transactions, is article 3, which provides: "The capital stock of the corporation shall be two million dollars ($2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred

thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, constituted the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions:"

I need not read further, because I have already indicated what section would affect that question. Second: I think that article 4 would contribute to that effect, wherein it states: "The board of directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into con-
506 tracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other things as may be proper or necessary for the corporation to do."

I think that article 15 would contribute to the result, namely: "The proceedings of a meeting held December 10th, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged."

C-Int. 185. Assuming that the railroad companies had an estate in the property or interest in it, or right to use it before these articles were amended, would those articles to which you have referred, in your opinion, have deprived them of that right.

A. Except in so far as they were entitled to right under the contract of 1889, and except in so far as they protected their rights through their ownership of stock.

C-Int. 186. Then you think resolutions passed or amendments adopted by the board of directors or stockholders of the Des Moines Union Railway Company, would affect the interest or estate of the railroad companies in the terminal property, do you?

A. Assuming that it had not been done before, it would have affected the rights of these railroad companies, because each of these railroad companies joined in the amendment of these articles and assented to what was done

507 Mr. Minnis:

C-Int. 187. By what act?

A. By their votes as stockholders in the Des Moines Union Railway Company.

C-Int. 188. Did the Wabash Railroad Company pass any resolutions or authorize anybody to act for you?

A. I never inquired with regard to the preliminaries, I acted upon the assumption that Mr. Hays and Mr. Blodgett had authority to do what they were purporting to do.

C-Int. 189. You were acting as an officer of the Des Moines Union Railway Company, were you not?

A. You mean, I individually?

C-Int. 190. Yes, as director?

A. I was acting as a director of the Des Moines Union Railway Company. However, the act of the directors did not amend those articles of incorporation; they were amended by the acts of the stockholders.

Mr. Blodgett:

C-Int. 191. I understand you exactly, if all the stockholders of the Des Moines Union were there, and for instance, we will say that the Des Moines & St. Louis had an estate or interest in the terminal, assuming that it did, that the Des Moines Northwestern had an interest, and the Des Moines Northern & Western had an interest, and they owned all the stock, and they went there and voted for these amendments, that would change or effect the estate which their respective companies had in the Terminal?

A. I don't want to express an opinion as to what the effect was. It is sufficient to say, if the amended articles of incorporation had any effect whatever, so far as these companies were concerned, it was given effect by their participation as stockholders in the amendments. I do not know now
of any authority given. I was not general advisor of
508 the Des Moines & St. Louis or Purchasing Committee or Wabash.

Mr. Hughes: You were a stockholder of the Des Moines Union?

A. Only in this sense: It was assumed I held one share of stock, which belonged to the Wabash Railroad Company or the Purchasing Committee, to qualify me as a Director.

C-Int. 192. They transferred that to you to qualify you as a Director?

A. My recollection is there had been no certificates of shares of stock issued until this general clearing up in April, 1890, and that immediately following that, the stock book was opened, and those individual shares were issued to the persons who were to be qualified as directors, and the remainder to the persons and corporations named in the resolution.

Mr. Blodgett: Would you say now, governor, would you understand that if a corporation owned this property, and Mr. Guernsey owned all of the stock of that corporation, that he owned the property; if we should sit down and make a deed to A. B. it would pass that title, do you?

A. I did not assert that. I do not exactly understand you.

C-Int. 192. You say here people were stockholders in the Des Moines Union, and the companies of which they were officers had stock in the Des Moines Union; now they went there and attended a meeting and voted, and now that vote would not have any greater effect than if they had sat down to sign their name to a paper, releasing the interest that their respective companies had in the property; I mean the terminal property of the Union Terminal Company.

A. My opinion was then and is still, that if the Des Moines & St. Louis Railroad Company, treating it now as a going concern, and the Des Moines and Northwestern Railway Company, and the St. Louis Des Moines & Northern Railroad Company, owned jointly certain property, and if they
509 had consented to transfer all that property to a corporation, and if they had consented to receive bonds and stocks as the purchase price of their interest in that property, through their participation as stockholders in the corporation, that that would surrender any interest that either of the companies might have in the property itself.

Excused.

510 In the Circuit Court of the United States, Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company, and Wabash Railroad Company, Complainants,

vs.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, Defendants.

Notary's Certificate.

I, J. P. Blaise, a Notary Public in and for Polk County, Iowa, hereby certify:

That pursuant to the stipulation hereinbefore set forth, I caused to come before me at Des Moines, Polk County, Iowa, on the 23rd day of March, 1911, the witness Albert B. Cummins.

That said witness was then and there duly sworn by me, and his testimony taken down in short hand by me. That thereafter I transcribed said short hand notes into longhand, and

that the translation of my said short hand notes so taken, is a full, true and complete translation thereof.

Witness my hand and official seal hereto affixed, this 3rd day of April, A. D. 1911.

.....,
Notary Public, in and for Polk County, Iowa.

511

Deposition of Joseph Ramsey, Jr., Filed April 22, 1911.

512 Deposition of Mr. Joseph Ramsey, Jr., Taken by Agreement Before George A. Knes, Notary Public, New York County, New York, on April 19, 1911, at No. 42 Broadway, New York City.

Present: Col. Wells H. Blodgett and James L. Minnis, solicitors for Complainants, and N. T. Guernsey, solicitor for defendants.

It is hereby stipulated that the deposition of Mr. Joseph Ramsey, Jr., may be taken by agreement at the time and place aforesaid before the said George A. Knes, Notary Public, as aforesaid, the said deposition to be taken in shorthand by Mr. H. E. Blanchard and to be by him transcribed and
513 certified to be an accurate and correct transcript of the testimony of the said witness, and when so transcribed and certified to be returned by the said notary as the deposition of the said witness.

Mr. Joseph Ramsey, Jr., being duly sworn as a witness on behalf of the defendants testified as follows:

Direct Examination

1. Q. Give the notary your name and address.

A. Joseph Ramsey, Jr., Residence, No. 157 Raymond Avenue, South Orange, N. J.

2. Q. You were at one time connected with the Wabash Railroad Company, one of the complainants?

A. I was—from December 1, 1895, to October, 1905.

3. Q. Your first connection was in what capacity, what offices did you hold?

A. I was Vice President and General Manager until 1901, when I was elected President.

4. Q. And you continued to be President until—

A. Until our annual meeting October, 1905.

5. Q. While you were with the Company and before you were elected President, that is, while you were Vice
514 President, who was President of the Wabash Railroad Company? A. Ossian D. Ashley, New York City.

6. Q. During the time that you were connected with the Wabash Railroad Company, or about the same period, were you one of the directors of the defendant, the Des Moines Union Railway Company?

A. I was from a short time after my going with the Wabash until I left it in 1905.

7. Q. During that period from 1895 until 1905 was your office in St. Louis? A. It was.

8. Q. During that period who had charge of the transactions between the Wabash Railroad Company and the Des Moines Union Railway Company?

A. I practically had charge of all the operative matters—attended the meetings of the board of directors, etc.

9. Q. There are set out here as exhibits to the bill a contract made between the Des Moines Union Railway Company, the Des Moines & St. Louis Railway Company, the Des Moines Northern & Western Railroad Company and the St. Louis & Northern Railway Company, dated May 10, 1899, relating to the use of the terminal property in Des Moines, this con-

315 tract being marked "Exhibit P," and also a contract which is dated July 31, 1897, between the Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines Northern & Western Railroad Company, called "an agreement of ratification and confirmation," confirming with a few slight modifications the agreement of May 10, 1899. Were you during the period that you were connected with the Wabash Railroad Company familiar with these contracts?

A. Yes, I was familiar with them in the general terms and also with the new contract that was entered into after the 1899 contract.

10. Q. By the new contract you mean the one that I referred to, dated July 31, 1897, which is Exhibit R to the bill, I presume. That is the ratification agreement.

A. Yes, I am familiar with that, that is, it is the one I had reference to.

11. Q. Now, Mr. Ramsey, I wish you would state whether at the time you were president, or at the time you were vice-president, of The Wabash Railroad Company, so far as you know, you or anyone else claimed in behalf of that Company any right to the use of the terminals of the Des Moines Union Railway Company in Des Moines, except the rights conferred by these contracts that have been referred to.

316 Objection by Mr. Minnis: I object to that for the reason that it is immaterial and would not tend to negative any of the allegations of the complaint or support any of the

allegations of the answer, and besides the testimony of the witness would be incompetent to disprove the rights of the Wabash Railroad Company and the St. Paul Company which are fixed by contracts.

A. I have no recollection of any such question being directly raised.

12. Q. Have you any recollection of any claim being made to any rights during that period other than the rights that were given by these contracts?

A. Well, there were some questions up between myself and the Des Moines Union Railway Company, that is, Mr. Hubbell, president, as to the right of the companies to the distribution of surplus and so on, and which was questioned by them but asserted on the part of the Wabash, but the actual use of the properties, as far as I remember it, was governed by the contract so far as I understood it.

13. Q. By that you mean the contracts that have been referred to?

A. Yes, the operative contracts referred to.

517 Cross-Examination

14. Q. You say, Mr. Ramsey, that no question was ever raised with respect to the extent of the Wabash Company's rights to the use of the tracks of the Des Moines terminals?

A. As to the extent of their rights, I don't quite understand what you mean. We always claimed full rights to the use of the properties jointly with the other lines as per contract of 1889.

15. Q. Was there any question ever raised with respect as to whether the Wabash would have the right to use the tracks of the Des Moines terminal, independently of the two contracts referred to.

A. I can't say as to whether that question was ever raised or not. Of course, we claimed the absolute right to use them in accordance with the conditions of operating and maintaining the property, as set forth under the contract.

16. Q. You found the contract of 1889 in force when you went with the property? A. Yes sir.

17. Q. Did you hear either of the defendants, the Hubbells, at any time set up a claim that the Wabash would not have the right to use that property after the expiration of the contract of 1889?

518 A. I never heard any such claim set up.

18. Q. Were the rights of the properties with respect to the use of the Des Moines property after the expira-

tion of that contract ever discussed during the time you were connected with the Company?

A. The only discussion that I remember in regard to that was when it was proposed that the Great Western should come in under a contract covering a period of fifty years, and I objected to that on the ground that it would give to the Chicago & Great Western Company superior rights to those of the Wabash and the so-called tenant lines at that time, and we had considerable correspondence regarding that, and I think that was what led up to the ratification contract so-called.

19. Q. But no one set up any claim or discussed the question with respect to whether the Wabash would have the right to use the properties of the Des Moines terminals after the contract of 1889?

A. I have no recollection of any such question being raised.

Redirect Examination

20. Q. The questions that were discussed, so far as you recollect, were discussed by correspondence?

A. Principally, yes. Of course we met frequently at St. Louis, Des Moines and some times in New York. The
519 principal arguments were made in correspondence, that is my recollection of it.

JOSEPH RAMSEY, JR.

I, H. B. Blanchard, hereby certify that on the 19th day of April, 1911, I took in shorthand the deposition of Mr. Joseph Ramsey, Jr., in the above entitled cause, taken before George Fues, Notary Public, for New York County, New York, and that the foregoing is a full, true, correct and accurate transcript of the said deposition as so taken by me in shorthand.

Witness my hand on this 20th day of April, A. D. 1911.

H. B. BLANCHARD.

State of New York,
County of New York—ss.

I, George A. Kues, hereby certify that I am a Notary Public in and for New York County, New York, and that on the 19th day of April, 1911, at eleven o'clock A. M. there appeared before me at No. 42 Broadway, New York City, Mr. Joseph Ramsey, Jr., who was by me first duly sworn and who thereupon gave his deposition in the above entitled cause, the said

deposition being taken in shorthand by H. B. Blanch-
520 ard and transcribed by him, and that the foregoing transcript of the said deposition is now returned by me as the deposition of the said witness, pursuant to the stipulation of the parties.

Witness my hand and notarial seal on this 20th day of April, 1911.

(Notarial Seal)

GEORGE A. KUES,
Notary Public, New York County.

CLERK'S COPY.

Vol. IV

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1

No. 2[illegible]

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

THE BOSTON UNION RAILWAY COMPANY, F. M. RUSSELL, ET AL.

No. 2[illegible] 67

THE BOSTON UNION RAILWAY COMPANY, F. M. RUSSELL, ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

[illegible] OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

[illegible] FILED [illegible]

[illegible] AND ENTERED [illegible]

(26,906)

(26,906)

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OCTOBER TERM, 1919.

No. 278.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL.

No. 279.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

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EXHIBITS.

IN THE

District Court of the United States

AND FOR THE SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, AND THE WABASH RAILROAD COMPANY, COMPLAINANTS,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK O. HUBBELL AND F. M. HUBBELL & SON, DEFENDANTS.

DEPOSITION TESTIMONY.

PARKER, PARRISH & MILLER,
Solicitors for Respondents.

a In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company and The Wabash Railroad Company, Plaintiffs,

vs.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Defendants.

Stipulation of Counsel Respecting the Admission of Copies of Certain Documentary Evidence on the Part of the Defendants.

It is hereby stipulated and agreed by and between counsel for the plaintiffs and defendants in the above entitled cause that copies of the records, resolutions, contracts, letters, memorandum, deeds and other writings, a list of which is hereunto attached, may be considered as offered and admitted in evidence in said cause on the part of the defendants; subject, however, to all and every objection thereto on the part of the complainants that might be made or urged against the originals. It is the intention that said copies shall be given the same effect as evidence as would be given to the originals of said several writings. A list of the said writings, copb ies of which are above mentioned and referred to, is hereto attached and marked exhibit "A" and copies of said writings are also attached hereto.

Said copies shall be designated as "Defendants' Exhibits", and shall be numbered consecutively from 100 to 644 inclusive.

It is further stipulated that pursuant to the terms of the contract (plaintiffs' exhibit No. 2) a lease was made by the Des Moines Northwestern Railway Company to the Wabash, St. Louis & Pacific Railway Company in the year 1881, under which the last named company operated the Des Moines Northwestern Railway until receivers for the Wabash, St. Louis & Pacific Railway Company were appointed in 1884.

It is further stipulated that the records of the Des Moines Northern & Western Railroad Company do not show any meet-

ings of either the stockholders or directors of that company between May 27, 1899 and June 11, 1907.

It is further stipulated that under the mortgage by The Wabash Railroad Company entitled "Des Moines Division First Mortgage, January 1, 1899" that company deposited with the Continental Trust Company as trustee its copy of the contract of May 10, 1889 (plaintiffs' exhibit No. 27), and a certified copy of the contract and ratification thereof dated July 31, 1897 (plaintiffs' exhibit No. 37), the original of said exhibit No. 37 having been lost, and that The Wabash Railroad Company also so delivered to the said Continental Trust Company, Trustee, the paper headed "Assignment of contracts The Wabash Railroad Company to Continental Trust Company of the City of New York", defendants' exhibit No. 447.

That each of the deeds, defendants' exhibits Nos. 438, 439, 531 to 543 inclusive, 546 to 549 inclusive, 551 to 555 inclusive, 558 to 573 inclusive, 576 to 578 inclusive, 582 to 584 inclusive, 588 to 591 inclusive and 594 to 608 inclusive in the attached stipulation was at or shortly after its date, duly filed for record, indexed and recorded in the office of the recorder of Polk county, Iowa.

Dated May 31, A. D. 1911.

WELLS H. BLODGETT,
J. L. MINNIS,
J. C. COOK,
Solicitors for complainants.

PARKER, PARRISH & MILLER,
N. T. GUERNSEY,
Solicitors for defendants.

Exhibit A.

Matters Mentioned and Referred to in Stipulation of Counsel Hereto Attached.

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Proxy of G. M. Dodge, one share stock D M U. October, 1887 741

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Proxy of James How, two shares D M U. October 27, 1887 741

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Notice of amendment of articles of incorporation of D M U. Dated April 23, 1890. Signed by G. M. Dodge, president 742

DEFENDANTS' EXHIBIT No. 615.

Affidavit of publication of above notice. Dated May 21, 1890 743

DEFENDANTS' EXHIBIT No. 616.

Proxy of Purchasing Committee to Hays for meeting of Jan. 6, 1893 743

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Proxy of Chas. M. Hays, for meeting of directors on November 14th, 1894. Dated November 12, 1894 744

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Proxy of Purchasing Committee, dated January 25, 1895 for meeting of stockholders of D M U on January 30, 1895 745

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Telegram Blodgett to Cummins, dated February 26, 1897 745

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Proxy of Henry L. Magee to Cummins, dated Sept. 16, 1897 for meeting of directors September 20, 1897 746

DEFENDANTS' EXHIBIT No. 622.

Proxy, Ramsey to Cummins, dated Sept. 16, 1897 for meeting of directors D M U to be held September 20, 1897 746

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Letter Ramsey to Hubbell, dated Feb. 9, 1898 747

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Proxy Ramsey and Magee to Hubbell for meeting of directors on January 29, 1898. Dated Jan. 28, 1898 748

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Proxy Purchasing Committee for stockholders meeting of January 6, 1898. Dated December 31, 1897 748

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Proxy Purchasing Committee for stockholders meeting of January 6, 1898. Dated December 31, 1897. 749

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Proxy Ramsey and Magee, dated March 29, 1898 for directors' meeting to be held March 31st, 1898 749

DEFENDANTS' EXHIBIT 629.

Proxy Ramsey to Hubbell dated March 11, 1899 for meeting of D M U. on March 14th, 1899 750

DEFENDANTS' EXHIBIT 630.

Proxy of Magee to Hubbell, dated March 11, 1899 for meeting of D M U. on March 14, 1899 750

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DEFENDANTS' EXHIBIT 631.

Proxy Continental Trust Company of the City of New York to Ramsey for meeting to stockholders on October 3, 1899, proxy dated September 27, 1899 731

DEFENDANTS' EXHIBIT 632.

Proxy of Chicago, Milwaukee & St. Paul Railway Company to C. A. Goodnow for stockholders meeting on Jan. 4, 1900, dated December 30, 1899 732

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Letter Ramsey to Hubbell, dated Jan. 2, 1900 733

DEFENDANTS' EXHIBIT 634.

Proxy Continental Trust Company to Hubbell for stockholders meeting on January 4, 1900. Dated December 30, 1899 733

32-c DEFENDANTS' EXHIBIT No. 635.

Proxy C. M. & St. P. R. Co. to McKenna and Underwood, dated Jan. 4, 1906 for meeting of stockholders on January 4, 1906 734

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Proxy New York Trust Company, dated Jan. 8, 1906 to Pryor for stockholders meeting to be held on Jan. 4, 1906 734

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Letter Hubbell to Ashley, dated August 11th, 1899 735

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Letter Ashley to Hubbell, dated August 15, 1899 735

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Letter Hubbell to Ashley, dated August 19th, 1899 736

DEFENDANTS' EXHIBIT No. 640.

Letter Ashley to Hubbell, dated August 22-25, 1899 736

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Letter Hubbell to Ashley, dated August 28, 1899 736

DEFENDANTS' EXHIBIT No. 642.

Letter Ashley to Hubbell, dated September 2, 1899 736

DEFENDANTS' EXHIBIT No. 643.

Letter Hubbell to Ashley, dated May 17, 1895 736

DEFENDANTS' EXHIBIT 644.

Endorsements on back of stock certificate number 9 737

DEFENDANTS' EXHIBIT No. 645.

Endorsements on back of stock certificate number 17 737

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Defendants' Exhibit 100.

Offices held by F. M. Hubbell.

Des Moines, Adel & Western
Director 1880
Treasurer 1880

Des Moines, Northwestern Railway Co.
Director 1881-1886
Treasurer 1881-1883, 1885-1886.
Asst. Treasurer 1884.

Des Moines & North Western Railway Co.
Director 1887-1892
President 1887-1892

Des Moines, Northern & Western Railway Co.
Director 1891-1895.
President 1891-1895

Des Moines, Northern & Western Railroad Co.
Director 1895-1899
President 1895-1899

St. Louis, Des Moines & Northern Ry. Co.
Director 1881-1890
Treasurer 1881-1883

Secretary & Ass't. Treas. 1884.
Vice Pres. 1885-1888
Asst. Sec'y & Treas. 1889.
Secretary 1890.

Des Moines Union Railway Co.
Director 1884-present time
Secretary 1884-present time.

54 Narrow Gauge Railway Construction Co.
Director 1879-1886
Treasurer 1879-1880
President 1880-1886

Des Moines and St. Louis Railroad Co.
Director 1880-1891
Secretary 1880-1891

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55 **Defendants' Exhibit 101.**

Des Moines Union Railway Company.

Stockholders Meeting. November 1st, 1887.

The stockholders met this day, pursuant to the call of the President, made by direction of the Board of Directors at its regular session held October 8, 1887 for the purpose of considering the question of amending the Articles of Incorporation of this Company, and issuing bonds of the Company for the purpose of raising money to purchase, construct and improve its railway and property; and it appearing that notice of such meeting had been duly given—by publication three successive weeks in the "Iowa State Register", a newspaper published in the city of Des Moines, Iowa, a copy of which is as follows:

(There is here inserted the notice to the stockholders of this meeting, which notice was in proper form.)

56 And it further appearing that the stock held by A. A. Talmage, he having deceased, had been assigned by his

executor, Mary R. Talmage, to James F. How, and that all of the stock of said Company was present and represented in the person of the stockholder, or by proxy, as follows:

C. F. Meek represented one share in person; F. M. Hubbell represented one share in person; John S. Runnells represented one share in person; J. S. Polk represented one share in person; C. F. Meek, as attorney for G. M. Dodge, represented one share; J. S. Polk, as attorney for James F. How, represented two shares of stock held by him, and F. M. Hubbell, as attorney for A. L. Hopkins, represented one share.

J. S. Polk, was, on motion, elected chairman of the meeting and called the meeting to order.

The minutes of the last meeting of the stockholders were read and approved.

The president then stated the object of the meeting, and had the records of the proceedings of the Board of Di-
57 rectors, passed at its meeting on October 8th, 1887, read.

C. F. Meek thereupon moved that Article three (3) of the Articles of Incorporation of this Company be amended so as to read as follows:

Article 3.

The capital stock of this corporation shall be two million ($2,000,000.00) dollars, which shall be divided into shares of one hundred dollars each, and shall be paid in at such times, and in such manner as the Board of Directors may determine, and the Board is also authorized to receive, in payment therefore, the property and franchises in the City of Des Moines—now held by the Des Moines & St. Louis Railroad Company, the Des Moines North-Western Railway Company, the St. Louis, Des Moines & Northern Railway Company, James F. How, Trustee, James F. How and Grenville M. Dodge.

Which motion, having been considered, was adopted, all the stock of the Company being represented and voting therefor.

F. M. Hubbell thereupon moved the adoption of the following resolution, to-wit:

Resolved,

That the Board of Directors of this Company are hereby authorized and directed to issue, or cause the same to be issued by the officers of this Company, not to exceed eight hundred thousand dollars of the bonds of this Company, drawing

not to exceed six per cent, principal and interest pay-
58 able in gold in the city of New York; said Bonds to be for one thousand dollars each, and secured by mortgage or deed of trust on the property of this Company, and the same or the proceeds thereof to be used in purchasing and paying for its property and improving the same, and building its railways, depots, round-houses and shops, and making other improvements.

Which motion, after being duly considered, was unanimously adopted.

Whereupon the meeting adjourned.

F. M. HUBBELL, Secy.

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59 **Defendants' Exhibit 102.**

Des Moines Union Railway Company.

Directors' Meeting, November 8th, 1887.

The Board met this day in regular session;

Present; James F. How, John S. Runnells, F. M. Hubbell and J. S. Polk.

The meeting being called to order by the Vice President, and the death of A. A. Talmage being suggested, Charles M. Hays was unanimously elected to fill the vacancy caused by his death, and said Hays, being present took his seat on the Board.

On motion of Charles M. Hays it was unanimously—

Resolved,

That this Company be authorized to purchase from Messrs. Polk & Hubbell two lots described as follows, to-wit; Lots numbered two (2) and three (3) in block thirty-three (33) of Keene & Pointdexter's addition, in the city of Des Moines, at such price as may be agreed upon between Messrs. Polk & Hubbell & O. D. Ashley, Secretary of the Purchasing Committee, and the Wabash, St. Louis & Pacific Railway Company. Said lots to be paid for in the bonds of this Company at par."

James F. How offered the following preamble and resolution, to-wit:

Whereas the Des Moines and Northwestern Railway Company, the Des Moines & St. Louis Railway Company, the St. Louis, Des Moines & Northern Railway Company, have adopted resolutions as follows; (These notices are omitted as they

are already set out as plaintiff's exhibits Nos. 13, 14 and 15 in complainant's evidence.)

60 Therefore It Is Resolved, That on receipt from the Des Moines & North-Western Railway Company and the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railway Company and from James F. How, Trustee, and G. M. Dodge, of deeds to this Company of the property standing in their name in the city of Des Moines, that the officers of this Company be authorized to issue to said James F. How and G. M. Dodge, respectively, an agreement to deliver to them, as soon as prepared, bonds for the amount of money, with interest and taxes added, which will be shown by them, at that time, to have been expended by or through them for or on the property referred to.

The agreement for the delivery of bonds to be turned over to James F. How, Trustee, to state that the same are for the benefit of the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company; also that the agreement issued by the officers of this Company shall state that certificates can be prepared, and the officers of the Company will issue to the St. Louis, Des Moines & Northern Railway Company certificates for one-fourth of the stock of the Company, and to James F. How, Trustee, to be delivered to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, certificates for three-fourths of the stock of the Company.

Resolved, That the officers of the Company, on receipt of deeds referred to in the foregoing resolution, shall place the same on record, and prepare mortgages upon all the

61 property of this Company then owned or to be hereafter acquired, to secure not to exceed eight hundred thousand dollars of bonds, principal and interest payable in gold, to be issued by this Company.

Said bonds to be for one thousand dollars each, dated November 1, 1887, and falling due fifty years from date, and bearing interest at the rate of five per cent per annum, payable semi-annually.

Resolved, That the officers of this Company be authorized, on the execution of said mortgage, to cause to be prepared and executed, bonds in conformity with the same, the amount required to be used in payment for the property, as provided in the foregoing resolution.

Said Resolutions having been duly considered were unanimously adopted.

There being no other business before the Board, it adjourned.

F. M. HUBBELL, Secy.

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62 **Defendants' Exhibit 103.**

Des Moines Union Railway Company.

Board of Directors Meeting, March 31st, 1888.

The newly elected Board of Directors met at the Company's office for the purpose of electing officers of this Company for the current year.

There were present:

G. M. Dodge,	Jefferson S. Polk,
Charles M. Hays,	F. M. Hubbell,
L. M. Martin,	John S. Polk,
James F. How, and	W. H. Blodgett.

The President, G. M. Dodge, called the Board to order.

On motion of James F. How the Board proceeded to the election of officers.

G. M. Dodge was nominated for President.

James F. How for	Vice President.
& F. M. Hubbell for	Secretary & Treasurer.

A ballot being had, G. M. Dodge received the unanimous vote of the Board for President; James F. How received the unanimous vote of the Board for Vice President, and F. M. Hubbell received the unanimous vote of the Board for Secretary and Treasurer, and they were respectively declared duly elected to fill such offices.

It was Resolved, That the Executive Committee be authorized to appoint a Superintendent for the Company's property.

63 Upon motion of Mr. How it was Resolved, that the officers of the Company be requested to secure estimates for a new Depot, the purchase of the elevator in Des Moines, and other required expenditures here and to report the same to the Board at their next meeting, and also what the possibility is of disposing of sufficient bonds to pay for such expenditures so authorized.

On motion of Mr. How it was Resolved, that the officers of the Company be authorized to execute the bonds provided to

be issued, by resolution of the stockholders, adopted this day, in conformity with the provisions of the mortgage.

Whereupon the Board of Directors adjourned.

F. M. HUBBELL,
Secy.

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64 **Defendants' Exhibit 104.**

Des Moines Union Railway Company.

Meeting of Executive Committee, April 26, 1888.

All the members were present.

Mr. J. B. Van Dyne was appointed Superintendent at a salary of two hundred dollars per month to take effect May 1, 1888 with his son as a Clerk who shall also act as Auditor of this company at seventy-five dollars per month.

R. A. Patchen was appointed Surgeon; his pay to be on same schedule of prices as per arrangement now existing between him and the Wabash Western Railway Co.

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65 **Defendants' Exhibit 105.**

Des Moines Union Railway Company.

Special Meeting of the Board of Directors, September 10, 1888.

The Board met this day, pursuant to the call of the President, due notice of such meeting having been given to each member of the Board.

The meeting being called to order by the President, G. M. Dodge.

The following members of the Board were present, viz:

G. M. Dodge, J. S. Polk, F. M. Hubbell, L. M. Martin, C. M. Hays, J. F. How and W. H. Blodgett.

It was Resolved, that the bills for rental against the Chicago St. Paul & Kansas City Railway be made out at five hundred (500) dollars per month commencing with the month of August 1888, which was carried.

On motion of Mr. How it was

Resolved, That the officers of this Company be authorized to settle with the Wabash Western Railway Company, and with other companies from whom they obtained supplies, machinery &c on or about May 1st 1888 by paying for same in bonds of the Company, if they can so arrange.

On motion of W. H. Blodgett the following resolutions were unanimously adopted, to-wit:

1st. Resolved, That the contract presented for consideration be so modified as to provide that the capital stock of the Company be divided into four equal parts; a certificate
66 for one fourth of which shall be issued to each of the parties of the second part to said contract, and the other fourth shall be retained and held by the Des Moines Union Railway Company, and when the same or any part thereof is issued or disposed of it shall be for the equal benefit of the three parties of the second part.

2nd. Resolved, That the proper officers of the Company take such steps and give such notices as may be necessary to secure such an amendment to the Articles of Incorporation of this Company as will provide for the nomination of an equal number of directors by each of the parties of the second part in said contract and for such other changes in said Articles as are rendered necessary under said contract as hereby amended.

On motion of Jefferson S. Polk it was

Resolved, That W. H. Blodgett prepare a contract in accordance with the suggestions made in the resolutions heretofore passed, and if satisfactory, the parties sign, if not, that the Board of Directors be called together immediately.

On motion of J. F. How it was

Resolved, That the Superintendent estimate the wheelage for October 1888 in order to collect his interest on the basis of an average of the preceding five months and to be adjusted as soon as actually known.

G. M. Dodge moved the adoption of the following resolution, to-wit:

Resolved, That the Company proceed to build the Union Depot here at Des Moines as soon as they can obtain the necessary ordinances vacating and opening necessary streets and provide the Executive Committee shall complete the ne-
67 gotiations with the owners of the Oat Meal property, for the purchasing of that property.

Which motion after being duly considered was unanimously adopted.

It was

Resolved, That the term wheelage as used in contracts made by this Company shall be construed to cover not only the cars

of roads composing this Company, but all cars switched into or over said terminals from roads that do not participate in the use of said terminals. And such wheelage for switched cars shall be charged to the wheelage account of the railroad company for whose benefit or use said foreign cars shall have been brought on to said terminal tracks and in making said charges such foreign cars shall be charged one wheelage in and one wheelage out, the same as cars of the roads which participate in the use of said terminals.

Whereupon, the meeting adjourned.

F. M. HUBBELL, Secy.

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Defendants' Exhibit 106.

Des Moines Union Railway Company.

Stockholders Meeting, January 8, 1889.

The Stockholders met this day, pursuant to adjournment, at the office of the Company in Des Moines, Iowa.

There were present: and represented at the meeting, the following named Stockholders of said Company, to-wit:

L. M. Martin, F. M. Hubbell, A. B. Cummins (to whom the share of stock owned by John S. Polk, was assigned) and A. N. Denman (to whom the share of stock owned by Jefferson S. Polk was assigned) and G. M. Dodge, whose stock was represented by L. M. Martin holding a proxy.

No other stock was represented.

On motion, L. M. Martin was elected Chairman and F. M. Hubbell Secretary of the meeting.

The Chairman then requested the reading of the minutes of the Board of Directors and Executive Committee for the past year, which was done and after consideration of the same, the action of the Board of Directors and of the Executive Committee as therein indicated was approved.

On motion, the meeting proceeded to the election of a Board of Directors for the ensuing year.

A. B. Cummins on behalf of the Wabash, St. Louis & Pacific Railway Company and of the Wabash Western Railway Company, nominated Charles M. Hays, W. H. Blodgett, James F. How and A. B. Cummins, to be voted for as directors to

69 represent said Company: it having been certified to this meeting by the Secretary of the Wabash Western Rail-

way Company, that the above named gentlemen had been duly nominated as candidates for Directors in this Company, on behalf of said Wabash Western Railway Company.

F. M. Hubbell on behalf of the Des Moines and North Western Railway Company, nominated A. N. Denman and F. M. Hubbell to be voted for as Directors to represent said Company,—their nomination as candidates having been certified to the meeting by the Secretary of the said Company.

L. M. Martin, on behalf of the St. Louis, Des Moines & Northern Railway Company nominated L. M. Martin and G. M. Dodge to be voted for as Directors to represent the interests of said Company; it having been certified to the meeting by the Secretary of the St. Louis, Des Moines & Northern, that the aforesaid gentlemen had been duly appointed as candidates for such position.

A ballot was then taken for the election of said Board of Directors, and it appearing that each of the above persons so named received the unanimous vote of the stock present and represented for such office were each declared Directors of this Company for the ensuing year.

On motion, Chas. M. Hays was appointed as member of the Executive Committee for the Wabash Western Railway Company.

F. M. Hubbell for the Des Moines & North Western Railway Company and

L. M. Martin for the St. Louis, Des Moines and Northern Railway Company.

Whereupon the Stockholders meeting on motion of A.
70 B. Cummins adjourned.

F. M. HUBBELL, Secy.

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71 **Defendants' Exhibit 107.**

Des Moines Union Railway Company.

Meeting of the Stockholders of the Des Moines Union Railway Co.

Des Moines, Iowa, January 3, 1890.

The Stockholders of the Des Moines Union Railway Company met in an adjourned meeting pursuant to adjournment at eleven o'clock A. M., at the office of the Company.

There were present:

G. M. Dodge,	representing	one (1) Share
J. F. How,	representing	one (1) Share
C. M. Hays,	representing	one (1) Share
F. M. Hubbell,	"	one (1) Share
L. M. Martin,	representing	one (1) Share
F. C. Hubbell,	"	one (1) Share

(the share represented by F. C. Hubbell having been transferred to him by A. N. Denman) and

A. B. Cummins, representing one (1) Share

The President, G. M. Dodge presiding.

The President stated the first business of the meeting to be the reading of the minutes of the previous meeting of the Stockholders held during the year 1889 and the minutes of the Directors meeting and of the Executive Committee and thereupon called upon the Secretary to read the same, which was done.

Mr. A. B. Cummins moved that the proceedings of the Stockholders meeting and the meeting of the Board of Directors, and of the Executive Committee be approved.

72 Motion was seconded and carried. The President stated the next business in order to be the election of Directors for the ensuing year, whereupon J. F. How on behalf of the Wabash Railroad Company operating the Des Moines & St. Louis Railroad Company, nominated Jas. F. How, C. M. Hays, W. H. Blodgett and A. B. Cummins to be voted for as Directors of the Des Moines Union Railway Company to represent the said Wabash Railroad Company, it having been certified to this meeting by the Secretary of the Wabash Railroad Company and Des Moines & St. Louis Railroad Company that the above named gentlemen had been duly nominated as candidates for Directors in this Company on behalf of the Wabash Railroad Company, and the Des Moines & St. Louis Railroad Company.

G. M. Dodge on behalf of the Des Moines & Northern Railway Company, successor to the St. Louis Des Moines & Northern Railway Company, nominated G. M. Dodge and L. M. Martin to be voted for as Directors of the Des Moines Union Railway Company to represent the said Des Moines & Northern Railway Company, it having been certified to this meeting by the Secretary of the Des Moines & Northern Railway Company that the above named gentlemen had been duly nominated as candidates for Directors in this Company on behalf of the Des Moines & Northern Railway Company.

F. M. Hubbell on behalf of the Des Moines & North Western Railway Company nominated F. M. Hubbell and F. C. Hubbell to be voted for as Directors of the Des Moines Union Railway Company to represent the said Des Moines & North Western Railway Company, it having been certified to this meeting by the Secretary of the Des Moines & North Western Railway Company, that the above named gentlemen had been duly nominated as candidates for Directors in this Company on behalf of the Des Moines & North Western Railway Company.

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The ballot being taken resulted in the unanimous election of the persons nominated as Directors, and thereupon the President declared such persons duly elected to hold their respective offices for one year, or until their successors are duly elected and qualified.

The President then laid before the Stockholders a contract executed between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & North Western Railway Company and the St. Louis Des Moines & Northern Railway Company executed on the tenth day of May A. D. 1889, respecting the use of the terminal property and the payment of charges therefor which contract had been executed on behalf of the Des Moines Union Railway Company by its President and attested by its Secretary, for approval.

James F. How moved that the action of the officials of this Company in executing the contract be approved.

Motion was seconded and carried.

James F. How moved that the question of amending the Articles of Incorporation of this Company as well as the question concerning the issuing of stock for the purchase price of the terminal property be referred to Attorneys W. H. Blodgett & A. B. Cummins for their investigation and recommendation.

Motion was seconded and carried.

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The President then had the following report of the Treasurer of the Company read.

Des Moines, Iowa, January 3, 1890.

Gen. G. M. Dodge, President,
Des Moines Union Railway Company,
Des Moines, Iowa.

Dear Sir:—

Below please see statement of bills rendered and unpaid to date.

Due from C. St. P. & K. C. R. R. on account of personal injuries	$82 20
Due from C. St. P. & K. C. R. R. on account of November bills	9241 88
Due from D. M. & N. W. Ry. on account of September and October bills	$131 20
Due from Wabash Railroad Co. on account of November rental	250 27
Due from Des Moines Rapid Transit Co	$182 20
Due from D. E. Garrison & Co. on account of old rails	$60 15
Total	$[illegible]

Bills Payable.

Due D. M. & N. W. Ry. Co	$[illegible]
Due Wabash Railroad	$60 31
Miscellaneous	$120 00

Yours truly,
Signed. Horace Seely,
Treasurer.

75 James F. How moved that this meeting adjourn to meet upon the eighteenth day of February A. D. 1890 at eleven o'clock A. M.

Motion was seconded and carried.

F. M. HUBBELL, Secy.

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76 **Defendants' Exhibit 108.**

Des Moines Union Railway Company.

Meeting of the Directors of the Des Moines Union Railway Company.

Des Moines, Iowa, January 3, 1890.

Upon the adjournment of the meeting of the Stockholders of this Company, G. M. Dodge, J. F. How, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell and A. R. Cummins of the persons chosen as Directors for the ensuing year, met at the office of the Company, whereupon G. M. Dodge was elected Chairman of the meeting.

He stated the first business before the meeting to be transacted, was the election of a President, Vice President, Secretary and Treasurer to hold their offices for the ensuing year, and until their successors were duly elected and qualified.

Upon ballot

G. M. Dodge was elected	President.
James F. How was elected	Vice President.
F. M. Hubbell was elected	Secretary.
Horace Seely was elected	Treasurer.

The directors then proceeded to the election of the Executive Committee and the following gentlemen were placed in nomination: James F. How nominated C. M. Hays on behalf of

the Wabash Railroad Company. F. C. Hubbell nominated F. M. Hubbell on behalf of the Des Moines & North Western Railway Company.

G. M. Hodge nominated L. M. Martin on behalf of the
77 Des Moines & Northern Railway Company, successor to the St. Louis Des Moines & Northern Railway Company.

No other nominations being made the meeting proceeded to ballot, whereupon it was found that the persons placed in nomination had all been duly elected and they were declared to be the Executive Committee for the ensuing year, or until their successors are elected and qualified.

It being one o'clock P. M. the meeting took a recess until two o'clock.

Meeting reconvened at two o'clock P. M., being called to order by the President.

Mr. C. M. Hays offered the following resolution:

Resolved, that Messrs. Hubbell and Cummins be appointed a committee to call upon Mr. A. B. Stickney, President of the Chicago, St. Paul & Kansas City Railway, personally, and endeavor to have him carry out the terms of agreement which was practically consented to by General Manager Egan, in May last, and under which the other Companies have been working and if they are unable to do this, to report what recommendation they have to make to the Executive Committee in the matter.

Resolution was unanimously adopted.

Mr. C. M. Hays also offered the following resolution:

Resolved, that a deed from J. S. Polk made in pursuance of a contract between himself and the President of this Company respecting the purchase of lot eight (8) in block four (4) in the Original Town of Fort Des Moines be accepted and
78 that bonds be issued to said J. S. Polk in accordance with the contract, and that the Trustee in the mortgage be requested to certify the same.

The resolution was unanimously adopted.

Mr. J. F. How offered the following resolution.

Resolved, That the Executive Committee as a body, or a portion of it confer with the officers of the Chicago, Burlington & Quincy Railroad, and the Chicago & North Western Railway and see if any arrangements can be made with the said Companies to enter into the joint use of the terminal facilities of this Company.

The resolution was unanimously adopted.

Mr. J. F. How also offered the following resolution.

Resolved, that the matter of renewing, replacing or rebuilding the bridge across the Des Moines River be left to the President and the Executive Committee with power to contract for the same.

The resolution was unanimously adopted.

Mr. A. B. Cummins offered the following resolution.

Resolved, that the President be authorized to enter into contract with F. M. Hubbell for the purchase of a strip of ground one hundred (100) feet wide off from the west side of Official Plat Lot two (2) of the southwest quarter of Section nine (9) and off the west side of Official Plat lot eight (8) in the northwest quarter of section nine (9) all in Township seventy eight (78) Range twenty-four (24) in the city of Des Moines, Iowa, the purchase price to be four thousand dollars ($4000) payable in the bonds of the Company, the Company to build bank on right of way to be as high as high water mark, to
79 the intersection with the Des Moines & Kansas City Railroad and to be built as soon as practicable. One bond of one thousand dollars ($1000) to be delivered to Hubbell at time of execution of contract and deed to be executed when bank is built. If bank is not built within two years, the contract to be void and the one thousand dollar bond to be forfeited to Hubbell. The bank to the river to be built whenever that part of right of way is used by the Company. And that the Trustee be requested to certify the above mentioned bond. The resolution was unanimously adopted.

There being no further business before the meeting, Mr. C. M. Hays moved that this meeting adjourn.

Motion was seconded and carried.

F. M. HUBBELL, Secy.

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80 **Defendants' Exhibit 109.**

Des Moines Union Railway Company.

Meeting of the Stockholders of the Des Moines Union Railway Company. Des Moines, Iowa, February 18, 1890.

The Stockholders of the Des Moines Union Railway Company met in an adjourned meeting pursuant to adjournment at ten o'clock A. M. at the office of the Company in Des Moines, Iowa.

There were present in person:

F. M. Hubbell representing	one (1) share
L. M. Martin, representing	one (1) share
F. C. Hubbell, representing	one (1) share
A. B. Cummins, representing	one (1) share.

There were present by proxy:

G. M. Dodge, by L. M. Martin,	representing one (1) share
J. F. How, by A. B. Cummins,	representing one (1) share
C. M. Hays, by A. B. Cummins	representing one (1) share
W. H. Blodgett, by A. B. Cummins	representing one (1) share.

The meeting was called to order by the selection of L. M. Martin as Chairman, both President and Vice President being absent.

81 The secretary reported that notice of the meeting had been duly published and also reported that he had pursuant to the articles of incorporation notified each stockholder of the time place and object of this meeting, which notice contained the amendments proposed to be offered to the articles of incorporation.

Upon motion of A. B. Cummins the report of the Secretary was adopted and this meeting declared to be duly and legally called, for the purpose of considering and adopting or rejecting amendments to the Articles of Incorporation.

Thereupon A. B. Cummins presented certain amendments to the Articles of Incorporation.

Thereupon F. M. Hubbell moved that the meeting of stockholders do now adjourn for the purpose of having further opportunity to examine said amendments, to meet on Tuesday the 8th day of April 1890 at ten o'clock A. M., which
82 motion being seconded, was unanimously carried and thereupon the meeting of stockholders adjourned to meet as aforesaid.

Attest.

F. M. HUBBELL, Secy.

83

Defendants' Exhibit 110.

Des Moines Union Railway Company.

Meeting of the Directors of the Des Moines Union Railway Company. Des Moines Iowa, April 8th, 1890.

The Board of Directors of the Des Moines Union Railway Company met in the regular monthly meeting.

Present in person:

Jas. F. How, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell and A. B. Cummins.

Present by proxy duly filed with the Secretary:

G. M. Dodge, by L. M. Martin. H. D. Thompson by F. M. Hubbell.

C. M. Hays offered the following resolution.

Resolved, That the shares of the capital stock of this corporation of the par value of fifty thousand dollars sold by the Purchasing Committee of the Wabash St. Louis & Pacific Railway Company to F. M. Hubbell which sale has been ratified by the Des Moines & St. Louis Railroad Company, be approved and the transfer thereof to said Hubbell upon the books of the Company be and the same is hereby ordered.

C. M. Hays moved the adoption of said resolution and it was thereupon adopted by the vote of all the Directors.

A. B. Cummins offered the following resolution and moved its adoption.

Resolved, That the sale of fifty thousand dollars of the stock of this Company by the Purchasing Committee
84 of the Wabash St. Louis & Pacific Railway Company to G. M. Dodge, ratified by the Des Moines & St. Louis Railroad Company be approved and the transfer thereof to said Dodge upon the books of the Company be and the same is hereby ordered.

The resolution was adopted by the vote of all the Directors of the Company.

Upon motion of C. M. Hays, the President and Secretary of the Company were authorized to execute contracts between the Chicago Rock Island & Pacific Railway Company, and the Des Moines and Fort Dodge Railroad Company and this Company respecting crossings about to be made between Eleventh and Twelfth Streets in the city of Des Moines such contract to be upon not less favorable terms than the drafts submitted to the meeting.

Upon motion it was ordered that C. M. Hays be added to the Committee composed of F. M. Hubbell and A. B. Cummins to settle existing controversy with the Chicago St. Paul & Kansas City Railway Company respecting the execution of a lease for the use of terminals.

Upon motion it was ordered that the Secretary be authorized to serve notice upon the Chicago St. Paul & Kansas City

Railway Company that the existing contract between it and this Company respecting the use of terminals be canceled at the expiration of the period named in it for such notice.

Upon motion it was ordered that inasmuch as J. S. Polk was not able to make a good title to Lot eight (8) in Block four (4) in the Original Town of Fort Des Moines that
85 the deed tendered by him for such Lot be rejected and the contract for such purchase canceled and the bonds certified and to be used as the purchase price of said Lot be delivered to the Secretary of the Company.

Upon motion it was ordered that the Company purchase lot Eleven (11) in Block thirty three (33) in Keene & Poindexter's Addition to the city of Des Moines for the sum of three thousand dollars payable in bonds of the Company said bonds to be delivered whenever it is shown that the title is free and clear of incumbrances and a good and sufficient deed tendered therefor.

Upon motion the Board adjourned.

F. M. HUBBELL, Secy.

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86 **Defendants' Exhibit 110a.**

Know All Men By These Presents, That I, Chas. M. Hays, the undersigned, Stockholder (Director) in the Des Moines Union Railway Company of Des Moines, Iowa, do hereby constitute and appoint A. B. Cummins of Des Moines, Iowa, of my true and lawful attorney, with power of substitution, for me and in my name, to vote at a meeting of the Stockholders in said Company, due notice of which has been given, to be held at Des Moines, Iowa on the 24th day of June A. D. 1890, or at any adjournment thereof on all matters which may properly come before it, with all the powers I shall possess if personally present.

In Testimony Whereof, I have hereunto set my hand and seal this 23rd day of June, 1890.

CHAS. M. HAYS. (Seal)
(Seal)

Witness

R. S. Logan.

..... hereby appoint, irrevocably, ...
as ..... substitute with all the powers above given.

Witness ..... hand ..... seal ..... this .....
day of ..... 188...

..... (Seal)
..... (Seal)

Witness

.....

87 **Defendants' Exhibit 111.**

Des Moines Union Railway Company.

Des Moines, June 24th, 1890.

The Board of Directors of the Des Moines Union Railway Company met pursuant to call at its office.

Present:

G. M. Dodge represented by L. M. Martin. L. M. Martin, F. M. Hubbell, F. C. Hubbell, H. D. Thompson. J. F. How represented by A. B. Cummins, Chas. M. Hays represented by A. B. Cummins, and A. B. Cummins.

Upon motion it was ordered that A. B. Cummins act as Chairman of the meeting.

The several proxies above named having been submitted to the Board they were approved and ordered to be filed with the Secretary.

The Chairman presented to the Board the contract signed in duplicate between the Des Moines Union Railway Company and the Chicago St. Paul & Kansas City Railway Company dated June 1st, 1890 signed on behalf of the Des Moines Union Railway Company by F. M. Hubbell and A. B. Cummins Committee and on behalf of the Chicago St. Paul & Kansas City Railway Company by A. B. Stickney President, said contract being one providing for the use of the terminal property by the Chicago St. Paul & Kansas City Railway Company and the compensation to be paid therefor.

Mr. Hubbell moved that the execution of the contract presented by the Chairman on behalf of the Des Moines Union
88 Railway Company be ratified and approved, and the same declared to be the contract of the Des Moines Union Railway Company and that the Secretary be directed to attest the same, and affix the seal of the Company thereto.

The motion was unanimously carried all the directors voting.

The Chairman presented a supplemental agreement between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, Des Moines & North Western Railway Company and Des Moines & Northern Railway Company dated and executed May 15th 1890 providing for a different method of computing wheelage upon certain coal traffic of the Des Moines & Northern Railway Company.

Mr. Hubbell moved that the execution of the last named contract on the part of the Des Moines Union Railway Company, be ratified and approved.

The motion was unanimously adopted, all the directors voting.

The Chairman presented a contract between the Des Moines Union Railway Company and the Des Moines Street Railway Company, providing for a crossing on West First or Front Street, Des Moines, Iowa.

Upon motion of Mr. Hubbell it was unanimously ordered that said contract be approved, and the officers of the Company directed to execute the same.

The meeting then adjourned sine die.

F. M. HUBBELL, Secy.

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89 **Defendants' Exhibit 112.**

Des Moines Union Railway Company.

Directors' Meeting. Des Moines, Iowa, September 10, 1890.

The Board of Directors of the Des Moines Union Railway Company met in special session, pursuant to a call duly issued and served.

There were present in person.

James F. How, Charles M. Hays, A. B. Cummins, L. M. Martin, H. D. Thompson and F. C. Hubbell.

There were present by proxy:

F. M. Hubbell represented by F. C. Hubbell, and G. M. Dodge represented by L. M. Martin.

The written proxies authorizing the said F. C. Hubbell and the said L. M. Martin to act respectively for the said F. M. Hubbell and G. M. Dodge, having been laid before the meeting, were approved and ordered to be filed with the Secretary.

Jas. F. How, Vice President Presiding.

Upon motion A. B. Cummins was elected temporary Chairman: Whereupon Charles M. Hays offered the following resolution:

Resolved, that the Executive Committee composed of F. M. Hubbell, Charles M. Hays and L. M. Martin, be and it is hereby authorized to secure, either by purchase or condemnation, whatever additional property and right-of-way, in its discretion, be necessary or convenient for the improvement and operation of the terminal station, depot freight houses and tracks with full power to do whatever may be necessary to complete such purchases or condemnation.

And the said Committee is further empowered and authorized to secure and approve plans and specifications for
90 a new Union Passenger Station and freight house, with all supplemental buildings, to receive bids and award contracts for the erection and construction of the same, and to take whatever measures are necessary or convenient to the completion of the Terminal property in such respects.

Upon motion of A. B. Cummins said resolution was adopted by the affirmative votes of all the Directors of the corporation, and the same declared by the presiding officer to be adopted.

Upon motion of H. D. Thompson the Executive Committee was also empowered and authorized to approve or disapprove the proposed contract between the Des Moines Union Railway Company and the Des Moines & Kansas City Railway Company.

The motion was duly seconded and carried by the affirmative votes of all of the Directors of the corporation.

Upon motion of L. M. Martin the meeting of the Board of Directors adjourned.

F. M. HUBBELL, Secy.

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91 **Defendants' Exhibit 113.**

Des Moines Union Railway Company.

Meeting of the Executive Committee of the Des Moines Union Railway Company.

St. Louis, October 25, 1890.

Present:

Chas. M. Hays, L. M. Martin and F. M. Hubbell.

There was presented to the meeting a letter from Horace Seely, asking to have his salary as Superintendent, raised to two hundred ($200) per month.

On motion, it was ordered that the salary of Mr. Seely be fixed at $2,000 per annum, commencing November 1st, 1890.

On motion of C. M. Hays, the following resolution was unanimously adopted, viz:

Resolved, That Lots 4 and 5, Block 20, Original Town of Des Moines, be purchased from H. R. Heath for forty five thousand dollars ($45,000) and the contract for such purchase now presented, be approved and executed: Also that the Company purchase Lot 10, the south third of Lot 4, all of Lot 3, Block 35, and the south third of Lot 9 Block 30 all in Original Town of Fort Des Moines: And Lot 1 of Getchell's sub-division of Lot 8, and part of Lot 7, in Block 18 of Hoxie's Addition; all now included in the city of Des Moines, Iowa.

The Chairman of the Executive Committee is authorized to make the purchases of above property, not already made, upon the most favorable terms possible: and if the same can-
92 not be secured at reasonable prices, he is authorized to institute and carry forward proceedings to condemn the same, or any part thereof.

Resolved, further, that the title to all said property to conveyed to and vested in A. B. Cummins as Trustee, and that as much of the purchase price thereof as can be obtained in that manner shall be raised by a mortgage upon said premises, payable in not less than five years, with interest not exceeding six per centum and that the remainder thereof be procured by a temporary loan, with interest at six per centum, with the bonds of the Company as collateral security.

On motion of L. M. Martin, the following resolution was unanimously adopted, to-wit:

Resolved, that the Chairman be authorized to take the necessary proceeding to secure the vacation of Sixth, Seventh and Eighth Streets, from the South line of Cherry Street to the South line of the alley running East and West between Cherry and Vine Streets: Also the vacation of the alleys between fifth and Sixth, Sixth and Seventh, Seventh and Eighth and Eighth and Ninth Streets, between same points, and the east and west alley running between Cherry and Vine Streets, from the West line of Fourth Street to the center of Block 32, Keene & Poindexter's Addition. Also, so much of Thirteenth Street as lies south of the South line of Cherry Street, and so much of

Cherry Street as lies west of the West line of Thirteenth Street, all in the city of Des Moines.

On motion the Committee adjourned.

F. M. HUBBELL, Secy.

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93 **Defendants' Exhibit 114.**

Des Moines Union Railway Company.

Meeting of the Executive Committee.

November 21st, 1890.

Whereas, it has been found impossible to borrow money to pay for the property purchased and authorized to be purchased by the Resolution adopted at a meeting of the Executive Committee held in St. Louis, October 20th, 1890, at less than eight (8) per centum payable semi-annually, it is therefore

Resolved, that the said money be borrowed with interest not to exceed eight (8) per centum payable semi-annually, instead of six (6) per centum as provided in said Resolution.

Resolved, that in pursuance of a resolution adopted by the Executive Committee, October 25th, 1890, the Company purchase from F. M. Hubbell, Lot one (1) of Getchell's sub-division of Lot eight (8) and part of Lot seven (7) Block Eighteen (18) Hoxie's Addition, for the sum of ten hundred and ninety five dollars ($1095) and from A. B. Thompson, the south one-third of lot three (3) in Block thirty five (35) for twenty six hundred dollars ($2600) and Lot ten (10) in Block thirty five (35) all in the original town of Fort Des Moines, for two thousand and eighty dollars ($2080) and assume a mortgage of six thousand and seven hundred dollars ($6700) and interest thereon, dated May 10th, 1890, all of said property being now included in the city of Des Moines, Iowa.

94 On motion the Committee adjourned.

F. M. HUBBELL,
Secretary.

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95 **Defendants' Exhibit 115.**

Des Moines Union Railway Company.

Meeting of the Stockholders of the Des Moines Union Railway Company.

February 11, 1891.

Pursuant to adjournment of the stockholders' meeting, the stockholders of this Company met at the office of the Company in Des Moines on this date. There were present,

G. M. Dodge,	Representing	500	shares
Jas. F. How,	"	1	"
C. M. Hays,	"	1	"
F. M. Hubbell,	"	999	"
L. M. Martin,	"	1	"
F. C. Hubbell,	"	1	"
A. B. Cummins,	"	1	"
The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, Were represented by Jas. F. How.	holding	498	"
The D. M. & N-W Railway Co. was represented by F. C. Hubbell, Vice-Prest.	holding	998	"
The Des Moines & Northern Ry. Co.	"	998	"

Was represented by G. M. Dodge, President.

Making the Total amount of shares represented, 3998.

The President, G. M. Dodge, Presiding.

The President stated the first business of the meeting to be the reading of the minutes of the previous meeting of the stockholders held during the year 1890, and the minutes of the directors' meetings and of the Executive Committee, and
96 thereupon called upon the Secretary to read the same, which was done.

Mr. A. B. Cummins moved that the proceedings of the stockholders' meeting and the meetings of the board of directors and of the Executive Committee be approved. The motion was seconded and carried.

The President stated the next business in order to be the election of directors for the ensuing year.

Jas. F. How, G. M. Dodge, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell, A. B. Cummins and H. D. Thompson were nominated as directors, and it was ordered that the Secretary of this Company cast the vote of all the stock here represented, Viz: 3998 shares, for the gentlemen above named, which was accordingly done and the gentlemen nominated as above were declared elected as directors for the ensuing year.

Thereupon the meeting adjourned until Feb'y 12th, at 10 A. M.

F. M. HUBBELL,
Secy.

97 **Defendants' Exhibit 116.**

Des Moines Union Railway Company.

Portion of record of directors' meeting, Des Moines Union Railway Company, February 11, 1891, not set out in plaintiff's exhibit No. 29.

It was ordered that the Executive Committee acquire the right of way across Lot 54 in Brooks & Company's Addition, upon which this Company is now paying $100 per year rental for the use thereof.

It was ordered that the Treasurer furnish a detailed statement of the expenses properly chargeable to construction and to be paid for by the bonds of this Company which are included in the items as follows;

July, 1890, ...$5560.42
Aug. 1890, ... 3729.55
October, 1890, ... 1459.62

And report to the directors at their next meeting.

The following resolutions were then offered:

"Resolved that the purchase of lot eight (8) in block four (4), in the Original Town of Ft. Des Moines, from J. S. Polk, consummated during the month of ..... for which the Des Moines Union paid twelve thousand dollars ($12,000.00) in bonds of the Des Moines Union Railway Company, be and the same is hereby approved by the Board of Directors.

98 "Resolved that the shares of the capital stock of this corporation of the par value of fifty thousand dollars sold by the purchasing committee of the Wabash St. Louis & Pacific Railway Company to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Railroad Company, be approved and the transfer thereof to said Hubbell upon the books of the company, be and the same is hereby ordered. Said stock after the transfer, is represented by stock certificates 2, 16, 17 and 18."

"Resolved that this company enter into a lease with F. M. Hubbell, for the use of so much of lots five (5) and six (6) in block forty-two, J. Lyon's addition, which it is now occupying with its terminals, the consideration being the payment of the taxes upon the property, the lease to be terminated upon three months notice by either party."

"Resolved that the purchase of lots seven (7) and eight (8) in block forty-nine (49), J. Lyon's addition, be left to the Executive Committee.

"Resolved that the report of Mr. F. M. Hubbell, Secretary under date of January 20th, 1891, in regard to the purchase of property authorized by the Board of Directors amounting to fifty-seven thousand four hundred and seventy-five dollars ($57,475.00) is received and approved, and that in the event of the inability of the company to sell its bonds in time to take care of the interest and payment due on notes for pur-
99 chase of property, as shown in letter of Mr. Hubbell of January 20th, 1891, the amount shall be apportioned between the three companies on the same basis as their wheelage expense during the month in which the same is made". The letter herein referred to is recorded on Page 117 of this Record.

"Resolved that the Executive Committee and the President be authorized to purchase the north one third (1/3) of lot nine (9) block twenty-five (25) in the Original Town of Ft. Des Moines; that they are also authorized to make such alterations and renewals as they may decide on the bridge over the Des Moines River in the city of Des Moines, and to construct a freight depot on block thirty-five (35) Original Town of Ft. Des Moines, coal chutes and double track. That the expenditure for this work and for the three lots already authorized to be purchased by resolutions adopted at preceding meetings of the Directors, but yet remaining to be purchased, shall not exceed sixty thousand dollars ($60,000.) and that the officers of the company are authorized to dispose of bonds to pay this sum, the bonds to be disposed of at not less than ninety cents (90 cts.) on the dollar; also resolved that the amount to be expended in reconstructing the bridge, fifteen thousand dollars ($15,000.) of it shall be charged to maintenance account."

All of the foregoing resolutions and orders were adopted by the unanimous vote of all of the directors.

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100 **Defendants' Exhibit 117.**

Des Moines Union Railway Company.

Meeting of the Board of Directors of the Des Moines Union Railway Company.

February 12, 1891.

Present, G. M. Dodge, L. M. Martin, C. M. Hays, F. C. Hubbell, H. D. Thompson, F. M. Hubbell, A. B. Cummins, by G.

M. Dodge, who held his Proxy, and Jas. F. How, by F. M. Hubbell who held his Proxy.

It was resolved that the Executive Committee is authorized as soon as a satisfactory ordinance is passed by the City Council of the City of Des Moines, to proceed with the construction of the union passenger station as soon as the plans are approved by the Committee, and if required, by the Board of Public Works.

Resolved, That Mr. Hays be authorized to procure plans for freight and union passenger station and pay such sum for them as he deems necessary therefor.

The above resolutions were passed by the unanimous vote of all the directors.

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101 **Defendants' Exhibit 118.**

Des Moines Union Railway Company.

Des Moines, Iowa, June 6th, 1891.

Meeting of the Board of Directors of the Des Moines Union Railway Company.

The Board of Directors met at the office of the Company in Des Moines, Iowa, on the 6th. day of June, 1891, at 12 o'clock M., pursuant to call regularly issued and served upon each of the Directors.

Present in person: F. C. Hubbell, H. D. Thompson and A. B. Cummins.

Present by Proxy, duly filed with the Secretary before the meeting convened: F. M. Hubbell, G. M. Dodge, L. M. Martin, Charles M. Hays and James F. How.

The Vice President presiding.

Upon motion F. C. Hubbell was chosen Secretary of the meeting.

The Vice President laid before the meeting a copy of the ordinance relating to a new passenger station at Des Moines, passed by the Council of the City of Des Moines on the 5th day of June, 1891, for their consideration, and thereupon H. D. Thompson moved that the Des Moines Union Railway Company, accept the said ordinance and its provisions, and that the Vice President be authorized to prepare, sign and file, with the City Clerk, Mayor and Council, the acceptance by the said Company of the ordinance as soon as the same has

received the approval of the Mayor of the City, or as
102 soon as it shall otherwise become a legal ordinance of the City of Des Moines. The motion was seconded by F. C. Hubbell and received the affirmative votes of all the directors. Whereupon the Presiding Officer declared said motion to be adopted.

Upon motion the Board of Directors adjourned.

F. M. HUBBELL,
Secy.

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103 **Defendants' Exhibit 119.**

Des Moines Union Railway Company.

Minutes of the Regular Annual Meeting of the Des Moines Union Railway Company, held at its office in Des Moines, on the 7th day of January, 1892.

The Stockholders of the Des Moines Union Railway Company met at its office in the City of Des Moines on the 7th day of January 1892."

There were present:

G. M. Dodge, by L. M. Martin, his proxy, representing,	7400	shares
C. M. Hays,	1	"
F. M. Hubbell,	9999	"
H. D. Thompson,	1	"
L. M. Martin,	1	"
F. C. Hubbell,	1	"
A. B. Cummins,	1	"
A. N. Denman,	1	"
J. F. How, by C. M. Hays, his proxy, representing.	1	"
The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, by C. M. Hays, their proxy, representing	498	"
Des Moines, Northern & Western Railway Company, by its President, F. M. Hubbell, representing the stock formerly owned by the Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company, representing	1996	"

(The said 1986 shares not having been transferred upon the books of the Company, the Des Moines & Northwestern Railway Company, by its President, F. M. Hubbell, and the Des Moines & Northern Railway Company, by its Vice President, A. B. Cummins, consented to the appearance and representation above stated.)

Total, ... 4000 Shares

A. B. Cummins, Vice President, presiding.

104 The minutes of the last Stockholders' meeting, to-wit: that held on January 7, 1891, and Feby. 11th, 1891, and the minutes of all subsequent Directors' meetings and meetings of the Executive Committee were read, and upon motion, approved.

The Vice President stated the next business in order to be the election of eight directors for the ensuing year.

Thereupon G. M. Dodge, F. M. Hubbell, C. M. Hays, F. C. Hubbell, L. M. Martin, A. B. Cummins, H. D. Thompson, and A. N. Denman were nominated as directors, and upon motion, the Secretary of the Company was directed, by the unanimous vote of all the stock and stockholders present and represented, to cast the vote of all such stock, to-wit: 4000 shares, for the persons so nominated, which was accordingly done and thereupon said persons were declared to be the Directors of the Company for the ensuing year, and until their successors were elected and qualified.

Upon motion, the Meeting of the Stockholders adjourned to meet at three o'clock in the afternoon of said 7th day of January, 1892.

F. M. HUBBELL, Secy.

The Stockholders met at three o'clock on said day, pursuant to adjournment.

Present as before.

There being no further business to transact, on motion the meeting adjourned sine die.

F. M. HUBBELL, Secy.

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105 **Defendants' Exhibit 120.**

Des Moines Union Railway Company.

Meeting of the Executive Committee of the Des Moines Union Railway Co., held at the office of the President on the 7th day of January, 1892. Present F. C. Hubbell, C. M. Hays and L. M. Martin.

A letter was read from Mr. Seely setting forth the requirements for the ensuing year upon which the following action was had.

It was ordered that a shop for the repairing of cars be constructed, to cost not to exceed $1500, the same to be charged to construction account.

It was further ordered that all Narrow Gauge material on hands be disposed of at once.

It was also ordered that blue prints and estimate of cost of coal chutes be prepared and the same be submitted to Mr. Hays before any further action be taken in the matter.

On the question of a lathe for the Des Moines Union coming up it was decided that the D. M. Union would not purchase the same, but that the Des Moines Northern & Western Ry Co. would purchase one and place it in the D. M. Union shops and that when the lathe was used by either the D. M. Union or for the repairing of Wabash engines, that a charge for such usage would be made by the D. M. N. & W. against the Company for whom the service was rendered.

It was ordered that a payment for the property already purchased, including notes which were given for the
106 same, which will fall due the coming year, shall be paid and charged to the constituent companies on the wheelage basis as heretofore.

It was ordered that only 6000 ties be purchased for renewals for the year 1892 and one mile of steel rail.

It was further ordered that the President take charge of the purchasing department for the ensuing year.

On motion the Committee adjourned.

F. C. HUBBELL,
Secy. Pro Tem.

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107 **Defendants' Exhibit 121.**

Des Moines Union Railway Company.

Des Moines, Aug. 2, 1892.

Minutes of the Regular Monthly Meeting of the Directors of the Des Moines Union Railway Company.

The Directors of the Des Moines Union Railway Company met in regular monthly meeting.

Present—L. M. Martin, F. C. Hubbell, H. D. Thompson, A. N. Denman and A. B. Cummins.

President F. C. Hubbell, presiding.

Minutes of the last meeting were read and approved.

The Superintendent of the Des Moines Union Railway Co., Horace Seely, laid before the meeting his report, showing expenditures charged to permanent improvements, and which enter the construction account for the period beginning May 1, 1891, and ending Apr. 1, 1892, as follows:

Yr. & Month.	Item	Wabash	D.M.&N.W.	D.M.&N.	Total	No.
1891						
May	Purchase Lot 10 Bl'k 35	$1,379.46	$ 495.19	$ 804.95	$2,679.60	1
June	Purchase Lots 7 and 8, Bl'k 49	$ 480.00	$ 99.38	$ 170.62	$ 759.00	2
July	Purchase N 2/3 Lot 3, Bl'k 35	$3,100.86	$1,446.71	$1,715.85	$6,263.42	3
Aug.	Purchase N 1/3 Lot 9, Bl'k 25	$3,467.10	$1,342.25	$1,690.65	$6,500.00	4

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Yr. & Month.	Item	Wabash	D.M.&N.W.	D.M.&N.	Total	No.
Aug.	Costs paid in condemnation suits	$ 88.41	$ 20.21	$ 36.38	$ 145.00	5
Oct.	Bld'g New Fr't Hs	$ 877.41	$ 294.04	$ 401.81	$1,573.26	6
Nov.	" " " "	$1,150.89	$ 381.05	$ 523.12	$2,055.06	7
Dec.	" " " "	$ 251.86	$ 81.55	$ 112.31	$ 445.72	8
1892						
Jan.	Rep'rs Bridge #3017	$6,560.43	$5,029.83		$11,590.26	9
		$17,428.36	$9,214.32	$5,488.64	$32,131.32	

Whereupon, A. B. Cummins offered the following preamble and resolution—

Whereas, the Des Moines Union Railway Company has expended for construction from May 1, 1891 to Apr. 1, 1892, the sum of $32,131.32, of which sum the Wabash Ry. Co. has contributed $17,428.36, and the Des Moines Northern & Western, or its predecessors, the Des Moines & Northwestern and Des Moines & Northern, have contributed $14,702.96.

Now Therefore, Be it Resolved, that bonds of this Company be issued and delivered as follows:

Seventeen (17) bonds to the Wabash Railway Company, and fourteen (14) bonds to the Des Moines, Northern & Western Railway Company.

Be it further Resolved, that the President of the Company be authorized to withdraw twenty two (22) bonds from the Central Trust Company, Trustee, for the purpose indicated, and that the Trustee be requested to certify and deliver such bonds to the President.

109 Be it further Resolved that the President deliver said twenty two (22) bonds to the Treasurer, and that the Treasurer shall use the nine bonds now in his possession, and shall dispose of the entire number, to-wit, thirty one (31), as heretofore directed, to-wit: Seventeen (17) thereof shall be delivered to the Wabash Railway Co., and fourteen (14) thereof to the Des Moines Northern & Western Railway Co.

Upon motion, the meeting of the Board of Directors adjourned.

F. M. HUBBELL, Secretary.

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110 **Defendants' Exhibit 122.**

Des Moines Union Railway Company.

November 4, 1892.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company.

Present—F. M. Hubbell, F. C. Hubbell, H. D. Thompson and A. N. Denman.

President F. C. Hubbell, presiding.

Minutes of the regular August meeting were read and approved.

H. D. Thompson, Treasurer, reported that he had withdrawn from the Trustee and sent to Col. J. F. How, Vice-President of the Wabash Railway Company, $17,000.00 of the 5% bonds of the Des Moines Union Railway Company, being Nos. 585 to 601, both inclusive, in payment to the Wabash R'y. Company for money expended by them in construction in accordance with a resolution passed by the Board on August 2, 1892.

He also reported that he had withdrawn from the Trustee, and delivered to the Des Moines, Northern & Western R'y. Company in accordance with said resolution, Des Moines Union bonds to the amount of $14,000.00, being Nos. 562, 563, 570, 571 and 575 to 584, both inclusive.

Thereupon, the action of the Treasurer was approved.

On motion, the Board adjourned.

F. M. HUBBELL, Secretary.

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111 **Defendants' Exhibit 123.**

Des Moines Union Railway Company.

Janaury 6th, 1893.

The Stockholders of the Des Moines Union Railway Company met at its office in the city of Des Moines, on this day, pursuant to adjournment.

There were present and represented—

G. M. Dodge, by his proxy, L. M. Martin, representing,	1	share
F. C. Hubbell,	1	"
F. M. Hubbell,	1	"
C. M. Hays,	1	"
L. M. Martin,	1	"
A. B. Cummins,	1	"
H. D. Thompson, by his proxy, F. M. Hubbell,	1	"
A. N. Denman,	1	"
James F. How, by his proxy, C. M. Hays,	1	"
Pur. Com. Of Wabash, St. L. & Pac. R'y. Co. By its proxy, C. M. Hays,	498	"
D. M. N. & W. R'y. Co. by its President, F. M. Hubbell, stock owned by it, viz:,	3493	"
Total,	4000	shares.

On motion, C. M. Hays was elected Chairman of the meeting and F. M. Hubbell, Secretary.

On motion, the minutes of all of the meetings of the Board of Directors, Stockholders, and Executive Committee, held during the year 1892, were read and approved, and all of the acts of the officers confirmed and ratified.

The Chairman stated the next business in order to be
112 the election of eight (8) Directors for the ensuing year.

All of the stock of this company being represented, on motion, it was ordered, that the Secretary cast the vote of all of the stockholders and stock, for the following named persons as Directors for the ensuing year, viz: G. M. Dodge, C. M. Hays, L. M. Martin, H. D. Thompson, F. M. Hubbell, F. C. Hubbell, A. B. Cummins, and A. N. Denman, which vote having been duly cast by the Secretary, the above named persons were declared unanimously elected as Directors of the Company for the ensuing year and until their successors are elected and qualified.

It was ordered that A. B. Cummins prepare an amendment to the Articles of Incorporation looking to an increase of the

capital stock and execution of a new Trust Mortgage, and that the Secretary furnish each stockholder with a copy thereof, ten days before the second Wednesday in February, 1893; and that when this meeting adjourns, it shall adjourn to meet the second Wednesday in February next, to consider the proposed Articles of Incorporation, or amendments, whereupon the meeting adjourned until that date.

F. M. HUBBELL, Secretary.

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113 **Defendants' Exhibit 124.**

Des Moines Union Railway Company.

Meeting of the Board of Directors, Jany. 6th, 1893.

The Board of Directors of this Company met at the office of the Company January 6th, 1893, after adjournment of the regular annual meeting of the Stockholders of this Company.

There were present and represented:

C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell, A. B. Cummins, and A. N. Denman,—Director G. M. Dodge being represented by a written proxy to L. M. Martin, duly filed, and Director H. D. Thompson by a written proxy to F. M. Hubbell, duly filed.

On motion, C. M. Hays was elected Chairman of the meeting, whereupon he stated the next business of the meeting to be the election of a President, Vice President, Secretary and Treasurer, to hold their offices during the ensuing year, and until their successors were duly elected and qualified.

It was moved that F. C. Hubbell be elected President, A. B. Cummins Vice President, F. M. Hubbell, Secretary, and H. D. Thompson, Treasurer.

These nominations being submitted to a vote of the Directors, each of the persons above named received the unanimous vote of all of the Directors, and were declared duly elected as follows:

F. C. Hubbell, ... President.
A. B. Cummins, ... Vice President.
F. M. Hubbell, ... Secretary.
H. D. Thompson, ... Treasurer.

114 F. C. Hubbell, President, presiding.

On motion of A. B. Cummins, duly seconded, F. C. Hubbell, C. M. Hays, and L. M. Martin were elected as members of the Executive Committee for the ensuing year.

Upon motion it was unanimously resolved that the Company build a passenger depot at a cost not to exceed $40,000, provided that an ordinance can be procured vacating Sixth Street between Cherry and Vine Streets, and if necessary to procure such vacation, the President of the Company is authorized to purchase Lots 5 and 6 in Block 9 Fort Des Moines.

It was ordered that the Secretary of this Company give notice to the Chicago, St. Paul & Kansas City R'y Co., or its successors, the Chicago, Great Western R'y. Co., terminating the contract said Company has for the use of this Company's terminals, as soon as by its terms and provisions, it can be legally done.

The Superintendent of this Company, Horace Seely, laid before the meeting his report showing the expenditures charged to permanent improvements, and which enter into the construction account for the period beginning April 1st 1892 and ending December 31st 1892, to-wit:

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STATEMENT

Month	Description	Wab. Pro.	D.M.N.&W.Pro.	Total
February	Cash in Hart case.	$ 134.09	$ 102.78	$ 237.47
March	Purchase Lots 10 & 11 Block 30	$ 194.72	$ 156.03	$ 350.75
April	Cutting down bluff	$ 232.02	$ 188.13	$ 420.15
April	Legal Expense	$ 176.72	$ 143.28	$ 320.00
April	Sheriff's Fees	$ 9.86	$ 7.99	$ 17.85
April	Purchase Lot 10 Blk 35 Pattee & Bechtel notes	$1304.60	$1045.40	$ 2350.00
May	Legal expense	$ 11.90	$ 10.10	$ 22.00
June	Ex. bldg. new track	$ 86.28	$ 77.52	$ 163.80
July	Cost condemn. & Pur. S ½ Lot 4 Block 35	$1852.97	$1664.98	$ 3517.95
July	Legal Expense	$ 64.63	$ 63.88	$ 128.51
August	Engineering	$ 10.00	$ 11.00	$ 21.00
September	Legal Expense	$ 36.25	$ 38.75	$ 75.00
October	Legal Expense	$ 10.20	$ 11.40	$ 21.60
November	Legal Expense	$ 16.67	$ 18.58	$ 35.25
December	Pur. Cypher Lot	$ 702.23	$ 782.77	$ 1485.00
		$4843.74	$4322.59	$ 9166.33
	Balance from last year	428.36	$ 702.96	$ 1131.32
	Total.....	$5272.10	$5025.55	$10297.65

Whereupon, A. B. Cummins offered the following preamble and resolution:

Whereas, the Des Moines Union Railway Company has expended for construction from April 1st 1892 to Decem-
116 ber 31st 1892, the sum of ten thousand two hundred ninety seven and 65/100 dollars ($10,297.65) which includes the balance due on the settlement ordered to be made August 2nd 1892, of $428.36 due the Wabash and $702.96 due the Des Moines Northern & W. R'y Companies) of which sum the Wabash has contributed, ...$5,272.10

the Des Moines Northern & Western, ..$5,025.55 $10,297.65

Now Therefore, Be it Resolved, that bonds of this Company be issued and delivered as follows: to-wit, Five (5) bonds to the Wabash Railway Company, and Five (5) bonds to the Des Moines, Northern & Western Railway Company.

Be it further Resolved that the President of this Company be authorized to withdraw Ten (10) bonds from the Central Trust Company Trustee, for the purpose indicated, and that the Trustee be requested to certify and deliver said bonds to the President of this Company.

Be it further Resolved, that the President shall deliver the said Ten (10) bonds to the Treasurer, and the Treasurer shall dispose of the entire number, to-wit, Five (5) bonds thereof shall be delivered to the Wabash R'y Co., and Five (5) bonds thereof shall be delivered to the Des Moines, Northern & Western R'y Co.

On motion, the Board adjourned.

F. M. HUBBELL,
Secretary.

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117 **Defendants' Exhibit 125.**

Des Moines Union Railway Company.

Des Moines, Iowa, Feb'y. 8, 1893.

The Board of Directors of the Des Moines Union Ry. Co. met pursuant to adjournment.

Present: A. B. Cummins, F. M. Hubbell, F. C. Hubbell, and H. D. Thompson. President F. C. Hubbell, presiding.

H. D. Thompson, Treasurer, reported that he had withdrawn from the Trustee and sent to Col. J. F. How, Vice Pres't. of the Wabash Ry. Co. five thousand dollars $5,000, of the five (5) per cent bonds of the Des Moines Union Ry. Co., being No's. 602 to 606 both inclusive, in payment to the Wabash Ry. Co. for money expended by them in construction, in accordance with a resolution passed by the Board on January 6th, 1893.

He also reported that he had withdrawn from the Trustee, and delivered to the Des Moines, Northern & Western Ry. Co., in accordance with said resolution, Des Moines Union bonds to the amount of five thousand dollars, $5,000, being Nos. 607 to 611 both inclusive.

On motion duly seconded the action of the Treasurer was approved.

Mr. Cummins not being prepared to report the Amended Articles of Incorporation.

On motion the Board adjourned to meet on the second Wednesday in March, 1893.

F. M. HUBBELL,
Sec'y.

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118 **Defendants' Exhibit 126.**

Des Moines Union Railway Company.

Des Moines, April 18, 1893.

Adjourned meeting of the Board of Directors of the Des Moines Union Railway Company.

Present, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, and L. M. Martin. President F. C. Hubbell presiding.

H. D. Thompson, Treasurer, presented a letter from Hollenbeck Bros. offering to move the Darby Gill brick building across the alley south on to the lot lately purchased of Luke O'Brien, and place same in as good condition as it now is, for one thousand dollars, $1,000.00.

On motion, duly seconded, it was ordered that the Treasurer accept the offer of Hollenbeck Bros. and that the building be moved as soon as possible.

H. D. Thompson, Treasurer, stated there was no money in the treasury to pay Hollenbeck Bros. for moving the building as above provided, and that the firm of F. M. Hubbell & Son had offered to furnish the money, one thousand dollars, $1,000.00, and receive payments in the rents of the building until the above amount was repaid, together with interest at eight per cent, 8%.

On motion duly seconded, the above proposition of F. M. Hubbell & Son was accepted and the Treasurer was ordered to

turn over the rents until said debt of $1,000.00 was discharged in the manner provided.

On motion, the Board adjourned.

F. M. HUBBELL, Secy.

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119 **Defendants' Exhibit 127.**

Des Moines Union Railway Company.

Des Moines, Iowa, Oct. 4th, 1893.

Minutes of Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company.

The Board was called to order by the President F. C. Hubbell.

There were present, F. C. Hubbell, L. M. Martin, A. N. Denman, F. M. Hubbell, A. B. Cummins, and H. D. Thompson.

The Des Moines, Northern & Western Railway Company, by its President F. M. Hubbell, stated that they had found it necessary to transfer twenty-five hundred, 2500, shares of their stock in the Des Moines Union Ry. Co. to F. M. Hubbell & Son, by stock certificate No. 26, dated Oct. 4th, 1893, and asked that the Directors of this Company consent to the transfer above mentioned.

Whereupon it was moved by L. M. Martin that the Board of Directors of this Company hereby consent to the transfer of twenty-five hundred, 2500, shares of the stock of this Company to the said F. M. Hubbell & Son, as represented by stock certificate #26.

Said motion was seconded by H. D. Thompson, whereupon a vote was taken which resulted in the adoption of said resolution by the unanimous vote of all of the Directors present.

Whereupon the Board adjourned.

F. M. HUBBELL, Sec'y.

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120 **Defendants' Exhibit 128.**

Des Moines Union Railway Company.

Des Moines, Ia., Jan. 25, '94.

Minutes of Adjourned meeting of Stockholders of the Des Moines Union Railway Company.

The Stockholders of the Des Moines Union Railway Company met at the office of the Secretary, in the City of Des Moines, on this day pursuant to adjournment.

There were present and represented;

F. M. Hubbell, holding	1	Share.
H. D. Thompson "	1	"
F. C. Hubbell, by his proxy F. M. Hubbell, holding	1	"
L. M. Martin, holding	1	"
J. F. How, by his proxy, C. M. Hays, holding	1	"
Chas. M. Hays holding	1	"
A. B. Cummins, by his proxy F. M. Hubbell, holding	1	"
G. M. Dodge, by his proxy L. M. Martin, holding.	1	"
A. N. Denman, holding	1	"
Pur. Com. Wab. St. L. & Pac. Ry. by its Proxy C. M. Hays,	498	"
D. M. N. & W. Ry. by its Prest. F. M. Hubbell, holding	993	"
F. M. Hubbell & Son, holding	2500	"
Total,	4000	"

On motion Mr. C. M. Hays was elected Chairman of the meeting and F. M. Hubbell was elected Secretary.

On motion the minutes and proceedings of all of the
121 meetings of the Board of Directors, Stockholders, and Executive Committee, held during the year 1893, were read and approved and all of the acts of the Board of Directors and Officers done during the year, 1893, were confirmed and ratified.

The Chairman stated the next business in order to be the election of eight (8), Directors for the ensuing year. All of the stock of this Company being represented. On motion it was ordered that the Secretary cast the vote of all of the stockholders and stock for the following named persons as Directors for the ensuing year, viz.,

G. M. Dodge, C. M. Hays, L. M. Martin, H. D. Thompson, F. M. Hubbell, F. C. Hubbell, A. B. Cummins, and A. N. Denman, which vote having been duly cast by the Secretary, the above named persons were declared unanimously elected as Di-

rectors of this Company for the ensuing year and until their successors are elected and qualified.

On motion the Stockholders meeting adjourned sine die.

F. M. HUBBELL, Sec'y.

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122 **Defendants' Exhibit 129.**

Des Moines Union Railway Company.

Des Moines, Iowa, Jan'y. 25, 1894.

Minutes of the Meeting of the Board of Directors of the Des Moines Union Railway Company.

The Board of Directors of this Company convened at the office of the Secretary of the Company on January 25th, 1894, immediately after adjournment of the regular annual meeting of the Stockholders.

There were present and represented;

C. M. Hays, F. M. Hubbell, L. M. Martin, A. N. Denman, H. D. Thompson, Director G. M. Dodge by written proxy to L. M. Martin, duly filed, Director A. B. Cummins by written proxy to F. M. Hubbell duly filed, and Director F. C. Hubbell by written proxy to H. D. Thompson, duly filed.

On motion C. M. Hays was elected Chairman of the meeting, whereupon he stated the first business of the meeting to be the election of a President, Vice President, Secretary, and Treasurer, to hold their offices during the ensuing year and until their successors are duly elected and qualified.

It was moved that F. C. Hubbell be elected President, A. B. Cummins Vice President, F. M. Hubbell Secretary, and H. D. Thompson Treasurer. These nominations being submitted to a vote of the Directors, each of the persons above named received the unanimous vote of all of the Directors, and were declared duly elected as follows:

123 F. C. Hubbell, President,
A. B. Cummins, Vice President,
F. M. Hubbell, Secretary,
H. D. Thompson, Treasurer.

On motion of H. D. Thompson, duly seconded, F. C. Hubbell, C. M. Hays, and L. M. Martin, were elected as members of the Executive Committee, for the ensuing year.

The Superintendent of this Company, J. A. Wagner, laid before the meeting his report of expenditures charged to per-

manent improvement, and which enter into the construction account for the period beginning Jan'y. 1st., 1893 and ending December 31st, 1893, as follows:

Month.	Description	Wab. Pro.	D.M.N.&W. Pro.	Total
Jan'y	Cost in Hart case	$ 1 71	$ 1 99	$ 3 70
April.	Pur. N.1-3, Lot 8, Blk 30, O'Brien.	1279 04	1520 96	2800 00
April.	Pur. S.1-3, Lot 9, Blk. 30, Darby Gill.	4659 36	5540 64	10200 00
April.	Right Way across Jacks. Plat, Lots 6 & 7 inc Blk. 6, W 50' Lots 1 & 17 inc. in 7 W 50' in Lots 1 & 16 inc. Blk. 8.	808 22	556 78	1365 00
April.	Recondition deed from Hubbell N. 1-3 Lot 8, S. 1-3 Lot 9, Blk. 30.	63	87	1 50
May.	Notice M. Sypher property.	5 23	6 05	11 28
June.	Side track Starch Wks.	1809 66	1380 22	3189 88
Nov.	New car repair shops	293 82	409 81	703 63
	Total	$8777 06	$9397 30	$18174 36
Balance ford. from 1892		272 10	72 65	344 75
	Grand Total	$9049 76	$9469 35	$18519 11

Whereupon A. B. Cummins offered the following preamble and resolution;

Whereas the Des Moines Union Railway Company has expended for construction from January 1st., 1893 to December 31st, 1893, the sum of seventeen thousand five hundred nineteen and 11-100 dollars, $17,519.11, which sum in-
124 cludes the balance due on the settlement ordered to be made January 6th, 1893, of which sum the Wabash Ry. Co. has contributed, ... $ 8049.76,
D. M. N. & W. Ry. Co. has contributed.... 9469.35,

Total, ... $17519.11.

Now Therefore Be It Resolved that bonds of this Company be issued and delivered as follows; Eight bonds to the Wabash Ry. Co. and nine ,9, bonds to the Des Moines, Northern & Western Ry. Co.

Be it further Resolved that the President of this Company be authorized to withdraw seventeen bonds from the Central Trust Company, Truster, for the purpose indicated, and

that the Trustee be requested to certify and deliver said bonds to the President of this Company.

Be it further Resolved, that the President shall deliver said seventeen, 17, bonds to the Treasurer and the Treasurer shall dispose of the entire number, to-wit; Eight bonds thereof shall be delivered to the Wabash Ry. Co., and Nine 9, bonds thereof shall be delivered to the Des Moines, Northern & Western Ry. Co. The Secretary then presented to the meeting a communication signed by O. L. F. Browne, Secretary of the Commercial Exchange, asking that this Company make a proposition to build a Union Passenger station in Des Moines, setting forth exactly what this Company asks to have done in the vacation and widening of streets and what this Company will do in return therefor; the cost of the proposed building finished, and the approximate terms upon which other Companies will be permitted to join in its erection and use.

123 Whereupon the following resolution was offered by C. M. Hays.

"Resolved that this Company make a proposition to the Committee of the Commercial Exchange having in charge the subject of the Union Passenger Railway Station, as follows:

First. The Company will require for such station, a continuous strip of ground from Fifth St. to Ninth St., unbroken by either streets or alleys crossing the same. It therefore will require the vacation of all streets and alleys lying between Fifth St. and Ninth St., running north and South, in so far as they cross the ground owned by the Company and which it proposes to use as a Union Passenger Railway Station; also the vacation and donation of the east and west alley between Cherry and Vine Sts., from Fifth to Ninth Sts.

Second. It will require the widening of Cherry St. by the addition of a strip of ground thirty-three, 33, feet wide upon the north side thereof from Fifth to Eighth Streets. This is absolutely essential in order to accommodate the business that will concentrate upon Cherry St. by reason of such passenger station.

Third. It will require that all damages, if any, caused by the vacation of said streets and alleys and the widening of Cherry St. be settled and adjusted without expense to the Company.

If the City or its citizens will cause the above changes to be made and things to be done, this Company will build a Union Passenger Depot sufficient to accommodate all of the

roads now doing business in Des Moines and con-
126 structed on a plan that will permit of future enlargement when necessary to meet the demands of the public. Such depot and train sheds shall cost presently not less than one hundred and fifty thousand dollars, $150,000.00 and shall be commenced within three months from the time that said streets have been vacated and widened and the damages, if any, thereto, settled and adjusted, and shall be completed within eighteen, 18, months from the date of the commencement of the work. All the railroads not now occupying said terminal property, but entering the city of Des Moines, as well as all railroads hereafter entering Des Moines, shall be allowed to occupy said Union Passenger Station upon equitable terms respecting rental, maintenance, and operation; the basis of said equitable terms being the payment of such sum of money as will on the whole pay a fair interest upon the value of the property after the payment of all costs of maintenance and operation."

Having offered said resolution, said C. M. Hays moved its adoption, which motion, being duly seconded, was unanimously carried.

Whereupon the Board adjourned.

F. M. HUBBELL,
Secretary.

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127 **Defendants' Exhibit 130.**

Des Moines Union Railway Company.

Des Moines, Iowa, May 26, 1894.

Minutes of the Meeting of the Board of Directors of the Des Moines Union Railway Company, held at the Company's office this day in pursuance to a call issued by the President.

There were present and represented

F. M. Hubbell, L. M. Martin, A. N. Denman, F. C. Hubbell and A. B. Cummins, in person and Director H. D. Thompson by written proxy to F. M. Hubbell, duly filed with the Secretary, and Director G. M. Dodge by written proxy to A. B. Cummins, duly filed with the Secretary.

The meeting having been called to order by the President, the following preamble and resolution was offered by L. M. Martin, to-wit:

Whereas, lot number seven (7) in block number fifteen (15) of the Original Town of Fort Des Moines, Iowa, upon which

is situated this Company's passenger depot, is incumbered by a mortgage made by its former owner, to M. L. P. Hill for four thousand dollars ($4,000) bearing interest at ten (10) per cent, and

Whereas, said mortgage is long past due and is about to be foreclosed unless payment is made, it is hereby

Resolved that the Treasurer of this Company is hereby directed to pay the amount of said mortgage and accrued interest, out of any funds in his hands, realized from rents of real estate, or from switching cars, and have said mortgage cancelled of record.

The above Resolution having been duly seconded and put to a vote was carried by the affirmative vote of the seven
128 Directors present and represented.

F. M. Hubbell offered the following resolution, viz:

Resolved that the lease made by this Company for the east sixty (60) Feet of the south one-thigd (1/3) of lot number three (3) in block number twenty (20) of the Original Town of Fort Des Moines to the Des Moines Steam Heating Company, be and is hereby ratified and approved.

This resolution having been seconded, was carried by the affirmative vote of all of the Directors present and represented.

Thereupon, A. B. Cummins offered the following resolution:

Resolved that the lease made by this Company to Edward F. Swift for the south one-third (1/3) of lot number three (3) in block number twenty (20) in the Original Town of Fort Des Moines, Iowa, except the east sixty (60) feet thereof heretofore leased to the Des Moines Steam Heating Company, be and the same is hereby ratified and approved, and moved its adoption. Thereupon, the resolution was adopted by the affirmative vote of A. B. Cummins, F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. N. Denman, H. D. Thompson, and G. M. Dodge.

A telegram was read from Charles M. Hays, suggesting that he could be present at a meeting of the Board of Directors of the Des Moines Union Railway Company, if held on Wednesday, May 30th.

On motion of F. M. Hubbell, the Board of Directors adjourned to meet at the office of the Secretary at ten
129 o'clock a. m. on Wednesday May 30th, 1894.

F. M. HUBBELL, Secretary.

130 **Defendants' Exhibit 131.**

Des Moines Union Railway Company.

Des Moines, Iowa, May 30, 1894.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company held at the office of the Company at ten o'clock a. m. May 30th, 1894.

The Board of Directors met pursuant to adjournment, F. C. Hubbell, President, presiding.

There were present and represented: F. C. Hubbell, A. B. Cummins, L. M. Martin, A. N. Denman, and F. M. Hubbell, in person, and Directors G. M. Dodge and H. D. Thompson by written proxies duly filed with the Secretary.

A telegram having been received from Chas. M. Hays, stating that he could not be present at this meeting, but that he could be present at a meeting of the Board of Directors of the Des Moines Union Railway Company if held on June 7th, on motion of A. B. Cummins, duly seconded, the Board of Directors adjourned to meet on June 7th at ten o'clock a. m.

F. M. HUBBELL, Secretary.

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131 **Defendants' Exhibit 132.**

Des Moines Union Railway Company.

Des Moines, Iowa, June 7, 1894.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company, held at the office of the Company at 10 o'clock on Jnue 7th, 1894.

The Board of Directors met pursuant to adjournment, F. C. Hubbell President, presiding.

There were present in person, F. C. Hubbell, A. B. Cummins, L. M. Martin, A. N. Denman, F. M. Hubbell, and Charles M. Hays, and Directors G. M. Dodge and H. D. Thompson by written proxies duly filed with the Secretary.

The records of the meeting held May 26th, 1894, were read and the proceedings therein set forth were, on motion, unanimously approved and agreed to with the exception of the Resolution to pay the mortgage upon lot seven (7) in block fifteen (15) of the Original Town of Fort Des Moines amounting to $4,000.00, out of the funds on hand realized from rents of real estate and from switching cars. On motion to approve this part of the record, Mr. Hays wanted further time.

The amendment to the contract existing between the Des Moines Union Railway Company, and the Chicago, St. Paul & Kansas City Railway Company, assumed by the Chicago Great Western Railway Company, entered into June 1st, 1890, was presented for approval. The terms thereof being substantially that the contract be extended after June 1,
132 1894 indefinitely, to be terminated upon three months' notice given by either party. The Chicago Great Western R'y Company to participate in the amount required to pay 5% interest on $569,000 of mortgage bonds, and also 8% interest on $50,775 of floating debt.

The contract was ratified and approved, and ordered to be recorded in the contract book of this Company.

F. M. HUBBELL,
Secretary.

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133 **Defendants' Exhibit 133.**

Des Moines Union Railway Company.

Directors' Meeting. Des Moines, Iowa, July 10th, 1894.

Minutes of the Regular Monthly Meeting of the Directors of the Des Moines Union Railway Company, held at the office of the Company at 10 o'clock a. m. July 10th, 1894.

The Board of Directors met in regular session, F. C. Hubbell, President, presiding.

There were present and represented: F. C. Hubbell, A. B. Cummins, A. N. Denman, F. M. Hubbell and H. D. Thompson, in person, and Directors L. M. Martin and G. M. Dodge by written proxies to A. B. Cummins, duly filed with the Secretary.

H. D. Thompson, Treasurer, reported that in accordance with a resolution of the Board of Directors adopted at their meeting held January 25th, 1894, he had withdrawn from the Central Trust Company Trustee, seventeen (17) of the Des Moines Union R'y Co. bonds,—being bonds Nos. 612 to 628 both inclusive, with November 1st 1894 and subsequent coupons attached, and delivered eight (8) bonds thereof, Nos. 612 to 619, to the Wabash R'y Co. and nine (9) bonds thereof, Nos. 620 to 628 both inclusive, to the Des Moines Northern & Western R'y Co.

On motion of F. M. Hubbell, the Treasurer was directed to pay the Abbie Bechtel mortgage of two thousand dollars ($2,000) with accrued interest thereon, upon the south forty-

four (44) feet of lot ten (10) in block thirty-five (35) Fort Des Moines, Iowa, upon which is situated in part, the Freight House of this Company; and upon payment of same to have the mortgage cancelled of record, provided, however, that the written consent of Chas. M. Hays could be procured. Carried unanimously.

F. M. HUBBELL, Secretary.

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134 **Defendants' Exhibit 134.**

Des Moines Union Railway Company.

Des Moines, Iowa, August 14, 1894.

Minutes of the Regular Monthly Meeting of the Board of Directors of the Des Moines Union R'y Co. held at the office of the Company Aug. 14, 1894.

The Board of Directors met in regular session, F. C. Hubbell, President, presiding.

There were present and represented—F. C. Hubbell, A. B. Cummins, A. N. Denman, F. M. Hubbell, and H. D. Thompson, in person, and Directors L. M. Martin and G. M. Dodge by written proxies to A. B. Cummins, duly filed with the Secretary.

The Treasurer reported that Chas. M. Hays had given his written consent, dated June 19th 1894 to the payment of the M. L. P. Hill mortgage of four thousand dollars ($4,000) and accrued interest, and that he had paid said mortgage in accordance with a resolution passed by the Board of Directors at their meeting held May 26th, 1894,—the amount of principal and interest being forty one hundred and eighty dollars ($4,180) and that the mortgage had been duly satisfied of record.

The Treasurer also reported that he had the written consent of Chas. M. Hays, dated Aug. 9th, 1894, for the payment of the Abbie Bechtel mortgage, and that he had paid same in accordance with a resolution of the Board of Directors adopted at their meeting held July 10th 1894. The amount paid was two thousand and fifty six and 44/100 dollars ($2,056.44), and that he had the mortgage duly cancelled of record.

These letters of consent from Mr. Hays have been attached to the original vouchers.

F. M. HUBBELL, Secretary.

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135 **Defendants' Exhibit 135.**

Des Moines Union Railway Company.

Des Moines, Ia., Nov. 14, 1894.

Minutes of the Adjourned Meeting of Board of Directors of the Des Moines Union Railway Company, held at the office of the Company November 14, 1894.

The Board of Directors met pursuant to adjournment. F. C. Hubbell, President, presiding.

There were present and represented: F. C. Hubbell, A. B. Cummins, A. N. Denman, F. M. Hubbell, and H. D. Thompson, in person, and Directors L. M. Martin and G. M. Dodge, and Chas. M. Hays by written proxies to A. B. Cummins, duly filed with the Secretary.

On motion of A. B. Cummins the following resolution was passed, viz:

Whereas, lots four (4) and five (5) in block twenty (20) and lot ten (10) and the south one-third of lot three (3) in block thirty-five (35) of the Original Town of Fort Des Moines; and lot one (1) of Getchell's Sub-Division of a part of lot seven (7) and all of lot eight (8) in block eighteen (18) in Hoxie's Addition to Fort Des Moines, was ordered to be purchased by the Executive Committee of this Company, by a resolution passed October 25, 1890 and the title thereof was ordered to be conveyed to A. B. Cummins as Trustee, and he was authorized to execute a mortgage upon said property to secure $20,000 of the purchase price of said lots. The remainder of the purchase price of said lots, to-wit, $30,775.00 being secured by a pledge of sixty bonds of this Company as collateral to said debt.

136 And Whereas, it is desirable to renew said indebtedness at a lower rate of interest, Now Therefore, Be It Resolved by the Board of Directors of this Company that the Treasurer is hereby authorized and directed to pay out of the "Surplus Earnings" of this Company $10,775.00 of the principal of said debt, leaving exactly $40,000 still unpaid.

It is Further Resolved that A. B. Cummins as Trustee, be authorized and requested to obtain a satisfaction of any mortgage or mortgages given by him to secure the original indebtedness herein mentioned and to execute a new mortgage as Trustee, to the Commercial Bank of St. Louis upon the real estate above described, standing in his name as Trustee, to secure notes to the amount of $40,000, as follows, all to be dated November 15th 1894:

1 Note for $ 3,000 at six months.
1 Note for $ 3,000 at twelve months
1 Note for $ 3,000 at eighteen months
1 Note for $ 3,000 at twenty-four months
1 Note for $ 3,000 at thirty months
1 Note for $ 3,000 at thirty-six months
1 Note for $22,000 at thirty-six months

which the President and the Secretary of this Company are directed to execute, and with the money thus obtained to pay to the Equitable Life Insurance Company of Iowa the remainder of the above described debt held by that Company.

It is further Resolved that the Treasurer of this Company shall receive from the Equitable Life Insurance Company of Iowa the sixty (60) bonds of this Company held by it as
137 collateral, and pledge them as collateral security to the renewal notes above mentioned, placing as far as practicable, $4500 of bonds behind each $3,000 of indebtedness.

It is further Resolved that the Treasurer of this Company is directed to pay the principal of the six notes of $3,000 each at maturity, out of the future "Surplus Earnings" of this Company.

The words "Surplus Earnings" as herein used, mean that fund arising from the rentals of real estate and from switching charges.

Whereupon, the Board adjourned until November 19th 1894.

F. M. HUBBELL, Secretary.

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138 **Defendants' Exhibit 136.**

Des Moines Union Railway Company.

Des Moines, Iowa, Nov. 19, 1894.

Minutes of the Adjourned Meeting of Board of Directors of the Des Moines Union Railway Company, held at the office of the Company November 19th, 1894.

The Board of Directors met pursuant to adjournment. F. C. Hubbell President, presiding.

There were present and represented F. C. Hubbell, A. B. Cummins, A. N. Denman, F. M. Hubbell and H. D. Thompson, in person, and Directors L. M. Martin, G. M. Dodge, and Chas. M. Hays by written proxies to A. B. Cummins, duly filed with the Secretary.

On motion of A. B. Cummins, the following resolution was adopted:

Whereas, in pursuance of a Resolution passed by the Board of Directors of this Company on the 14th day of November, 1894, the President of this Company has negotiated with the Equitable Life Insurance Company of Iowa to extend and renew the remainder of this Company's indebtedness held by said Insurance Company, at six (6) per cent interest, the renewal notes to bear date, be in the denomination of and to run the length of time set out in the resolution above mentioned and

Whereas, the President and the Secretary of this Company in pursuance of the foregoing, have executed said notes amounting to forty thousand dollars ($40,000) and have entered into an agreement with said Insurance Company to the effect
139 that the notes last above mentioned are renewal and extension notes, for and on account of the old notes of this Company aggregating forty thousand dollars ($40,000) and that said notes are not taken as payment of the old indebtedness represented by said old notes; that the mortgage and security given to secure the old notes and indebtedness shall stand as security for the new notes; that said old notes were given for the purchase money of said property described in said mortgages; and providing that this Company shall pledge to said Insurance Company as further security for said notes, sixty (60) bonds of one thousand dollars ($1,000) each, Numbered 498 to 557 inclusive, of the Des Moine Union Railway Company, with the coupons attached,—it being a part of the issue of eight hundred thousand dollars ($800,000) of bonds secured by mortgage on all of the property of said Railway Company; and that said bonds shall be delivered with said notes to said Insurance Company and be held by it as security in the same manner as held by said Company to secure the old notes herein mentioned; that the Railway Company may withdraw at the date of payment of each of said notes, a pro rata amount of said bonds, in value; that in case either of said notes shall not be paid when it matures, the holder of said notes may declare all of said notes at once due and payable and may at once foreclose said mortgage.

Now Therefore, be it Resolved by the Board of Directors of this Company that the Acts and doing of the Officers of this Company in the execution and delivery of the renewal notes above mentioned, and the agreement between this Com-
140 pany and said Insurance Company above referred to, and the pledge of the sixty (60) bonds herein referred to, are ratified and confirmed in every respect.

Whereupon the Board adjourned until Nov. 30, 1894.

F. M. HUBBELL,
Secy.

141 **Defendants' Exhibit 137.**

Des Moines Union Railway Company.

Des Moines, Ia., Novr. 30, 1894.

Minutes of the Adjourned Meeting of Board of Directors of the Des Moines Union Railway Company held at the office of the Company November 30, 1894.

The Board of Directors met pursuant to adjournment. F. C. Hubbell President, presiding.

There were present and represented: F. C. Hubbell, A. B. Cummins, A. N. Denman, F. M. Hubbell, and H. D. Thompson, in person, and Directors L. M. Martin, G. M. Dodge, and Chas. M. Hays by written proxies to A. B. Cummins, duly filed with the Secretary.

On motion of A. B. Cummins the following resolution was adopted:

Whereas, The Equitable Life Insurance Company of Iowa has requested that the note of this Company for $22,000.00 executed as a renewal of this Company's floating debt and dated November 15, 1894, be cancelled and in lieu thereof, that notes of same date, one for $20,000 and one for $2,000, both running 36 months at 6% be executed and delivered to it,

And that the numbers of this Company's bonds pledged as collateral to each particular note be designated by this Board,

Therefore, Be it Resolved, that the President and the Secretary of this Company are hereby directed to make, execute and deliver to said Insurance Company, two notes of this Company each dated November 15, 1894, one for $20,000 and one for $2,000, both running 36 months at 6% and receive from said Company the $22,000 note above referred to, and cancel the same, and

142 That our Treasurer is hereby directed to pledge as collateral in the following manner the 60 Des Moines Union Railway Company bonds now standing as security for said floating debt as follows:

For Note of $3,000 at 6 months, Bonds Nos. 498, 499, 500, 501 and 502.
For Note of $3,000 at 12 months, Bonds Nos. 503, 504, 505 and 506.
For Note of $3,000 at 18 months, Bonds Nos. 507, 508, 509, 510 and 511.
For Notes of $3,000 at 24 months, Bonds Nos. 512, 513, 514 and 515.
For Notes of $3,000 at 30 months, Bonds Nos. 516, 517, 518, 519 and 520.
For Note of $3,000 at 36 months, Bonds Nos. 521, 522, 523 and 524.
For Note of $2,000 at 36 months, Bonds Nos. 525, 526 and 527.
For Note of $20,000 at 36 months, Bonds Nos. 528 to 557, both inclusive.

Making a total of 60 Bonds of par value $60,000.00, which are hereby pledged according to the above schedule, as collateral security for the $40,000 of notes as above set out.

It is further Resolved, that the contract entered into November 14th, 1894, between this Company and the Equitable Life Insurance Company of Iowa, renewing and securing said indebtedness, be set aside and cancelled, and that the contract this day entered into between said above described parties, in relation to the renewal and securing of said debt is hereby ratified and confirmed in every respect, and is recorded in this book Pages 168 to 170.

Whereupon the Board adjourned sine die.

F. M. HUBBELL,
Secretary.

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143 **Defendants' Exhibit 138.**

Des Moines Union Railway Company.

Stockholders' Meeting.

Des Moines, Ia. February 14th, 1895.

Minutes of the Adjourned Meeting of the Stockholders of the Des Moines Union Railway Company.

The Stockholders of the Des Moines Union Ry. Company met at the office of the Secretary, in the City of Des Moines, on this day, pursuant to adjournment.

There were present and represented—

F. M. Hubbell, holding	1 Share
H. D. Thompson, holding	1 "
F. C. Hubbell, by his proxy, F. M. Hubbell, holding	1 "
L. M. Martin, by his proxy, H. D. Thompson, holding	1 "
H. L. Magee, holding	1 "
Chas. M. Hays, holding	1 "
A. B. Cummins, by his proxy, F. M. Hubbell, holding	1 "
A. N. Denman, by his proxy, F. M. Hubbell, holding	1 "
Pur. Com. Wabash, St. L.&P. Ry. Co., By its proxy, Chas. M. Hays, holding	498 Shares
D. M. N. & W. Ry. Co., By its President, F. M. Hubbell, holding	994 "
F. M. Hubbell & Son, holding	2500 "
Total	4,000 Shares.

On motion, C. M. Hays was elected Chairman of the meeting, and F. M. Hubbell was elected Secretary.

On motion, the minutes and proceedings of all meetings of the Board of Directors and Stockholders held during the year 1894, were read and approved and all of the acts of
144 the Board of Directors and Officers done during year 1894, were confirmed and ratified.

The Chairman stated the next business in order to be the election of eight (8) Directors for the ensuing year. All of the stock of this Company being represented, on motion, it was ordered that the Secretary cast the vote of all of the stockholders and stock, for the following named persons as Directors for the ensuing year, viz:

Chas. M. Hays, L. M. Martin, H. D. Thompson, F. M. Hubbell, F. C. Hubbell, A. B. Cummins, A. N. Denman, and H. L. Magee, which vote having been duly cast by the Secretary, the above named persons were declared unanimously elected as Directors of this Company for the ensuing year, and until their successors are elected and qualified.

On motion, the Stockholders Meeting adjourned, subject to call of the President.

F. M. HUBBELL, Secretary.

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145 **Defendants' Exhibit 139.**

Des Moines Union Railway Company.

Directors' Meeting.

Des Moines, Ia., February 14th, 1895.

Minutes of the Board of Directors Meeting,—Des Moines Union Railway Company.

The Board of Directors of this Company convened at the office of the Secretary of the Company, February 14th 1895, immediately after the adjournment of the Adjourned annual Meeting of the Stockholders.

There were present and represented—

Chas. M. Hays, F. M. Hubbell, A. N. Denman, H. D. Thompson, H. L. Magee, A. B. Cummins and F. C. Hubbell, in person, and Director L. M. Martin by written proxy to A. B. Cummins, duly filed.

On motion, C. M. Hays was elected Chairman of the meeting, whereupon he stated the first business of the meeting to be the election of the following officers, viz: President, Vice President, Secretary, and Treasurer, to hold their office during the ensuing year, and until their successors are duly elected and qualified.

It was moved that F. C. Hubbell be elected President, A. B. Cummins Vice President, F. M. Hubbell, Secretary, and H. D. Thompson, Treasurer. These nominations being submitted to a vote of the Directors, each of the above named persons received the unanimous vote of all of the Directors, and were declared elected as follows:

F. C. Hubbell, President,
F. M. Hubbell, Secretary,
A. B. Cummins, Vice President,
H. D. Thompson, Treasurer.

On motion of F. M. Hubbell, duly seconded, F. C. Hubbell, Chas. M. Hays and H. D. Thompson were elected as members of the Executive Committee for the ensuing year.

146 Whereupon, the Board adjourned.

F. M. HUBBELL, Secretary.

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147 **Defendants' Exhibit 140.**

Des Moines Union Railway Company.

Stockholders' Meeting.

January 2, 1896.

Minutes of the Annual Meeting of Stockholders of the Des Moines Union Railway Company, held at the office of the Secretary of the Union Railway Company, held at the office of the Secretary of the Company, January 2, 1896.

There were present and represented—

D. M. N. & W. R. R. Co., By its President, F. M. Hubbell, holding	998	Shares
F. M. Hubbell & Son, holding	2495	"
F. C. Hubbell, by F. M. Hubbell, his proxy	1	"
H. D. Thompson, holding	1	"
L. M. Martin, holding	1	"
A. B. Cummins, holding	1	"
A. N. Denman, holding	1	"
H. L. Magee, holding	1	"
Jas. Ramsey, Jr., holding	1	"
C. Hatteploeher, holding	1	"
Pur. Com. Wabash, St. L. & Pac. R. R. Co., By its proxy, Jas. Ramsey, Jr. holding	498	"
Total	4,000	Shares

constituting all of the stock of the Company.

On motion duly seconded, Joseph Ramsey, Jr., was elected Chairman and F. M. Hubbell Secretary of the meeting.

On motion, duly seconded, all of the minutes of all of the meetings of the Board of Directors and Stockholders of the Company held during the year 1895, were read and
148 approved and all of the acts and doings of the Executive Committee, Board of Directors, and officers done during the year 1895, were confirmed and ratified.

The Chairman stated the next business in order to be the election of eight (8) Directors for the ensuing year.

All of the stock of the Company being represented, on motion it was ordered that the Secretary cast the vote of the stockholders and stock for the following named persons as Directors for the ensuing year, viz: Joseph Ramsey, Jr., H. L. Magee, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, A. B. Cummins, A. N. Denman, and C. Huttenlocher, which vote having been cast by the Secretary, the above named persons were declared unanimously elected as Directors of this Company for the ensuing year, and until their successors are elected and qualified.

On motion the Stockholders' Meeting adjourned sine die.

F. M. HUBBELL, Secty.

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149 **Defendants' Exhibit 141.**

Des Moines Union Railway Company.

Thursday.

Directors' Meeting.

Des Moines, Iowa, January 2, 1896.

Minutes of the Meeting of the Board of Directors of the Des Moines Union Railway Company.

The Board of Directors of this Company convened at the Office of the Secretary of the Company January 2, 1896, immediately after the adjournment of the Annual Meeting of the Stockholders.

There were present and represented.

Joseph Ramsey, Jr., F. M. Hubbell, A. N. Denman, H. D. Thompson, H. L. Magee, A. B. Cummins and C. Huttenlocher in person, Director F. C. Hubbell, being represented by written proxy to F. M. Hubbell duly filed.

On motion Jos. Ramsey Jr. was elected Chairman of the meeting. Whereupon he stated the first business of the meeting to be the election of the following officers, viz: President, Vice President, Secretary and Treasurer, to hold their offices during the ensuing year and until their successors are duly elected and qualified.

It was moved that the following named persons be elected: F. C. Hubbell, President; A. B. Cummins, Vice President, F. M. Hubbell, Secretary and H. D. Thompson, Treasurer. These nominations being submitted to a vote of the Directors, each of the above named persons received the unanimous vote of all of the Directors, and were declared elected as follows:

F. C. Hubbell President
A. B. Cummins Vice President
F. M. Hubbell Secretary
H. D. Thompson, Treasurer.

150 On motion of F. M. Hubbell, duly seconded, F. C. Hubbell Jos. Ramsey, Jr. and H. D. Thompson were elected as members of the Executive Committee for the ensuing year.

The following resolution was offered by Jos. Ramsey, Jr., seconded by F. M. Hubbell, and adopted, to-wit:

"Resolved, that the Executive Committee of this Company be authorized to submit a proposition to the Des Moines & Kansas City Railway Company for the building of a bridge across the Raccoon River at the south end of this Company's right of way, together with the tracks approaching said bridge, extending southwardly to the crossing of the Des Moines & Kansas City Railway, said bridge to be used jointly by this Company and its tenants, to-wit: This Company will sell to the Des Moines & Kansas City Railway Company its 30-year, 5% First Mortgage Bonds for a sum sufficient to pay for said bridge and tracks. This Company to proceed immediately to build the bridge and tracks above mentioned and the Des Moines & Kansas City Railway Company to have the right to use said bridge and tracks by paying interest at the rate of five (5) per centum upon one-half of the cost thereof, and one-half of the maintenance, repairs and taxes. This contract to be binding on the Des Moines Union Railway Company for twenty (20) years, and the Des Moines & Kansas City Ry. Company to have the right to elect to cancel the contract at the end of ten (10) years."

But before the contract shall be entered into, it shall be approved by the Board of Directors or the Executive Committee.

The following resolution was offered by Mr. Ramsey, seconded by Mr. Hubbell, and passed unanimously.

151 "Resolved that the President of this Company be authorized to continue negotiations with the Chicago Great Western Railway Company for a permanent lease of this Company's terminals in accordance with the suggestions made at this meeting, and when the Companies have proceeded so far as to make it seem desirable, that the Executive Committee be called together to consider the contract formulated by the President."

No contract to be entered into until approved by the Board of Directors or the Executive Committee.

The Secretary presented to the Board the following leases, contracts, etc., for the examination of the Board, to-wit:

1. A contract dated May 16, 1895, between the Des Moines & Kansas City Ry. Co. and this Company in regard to the use by the Des Moines & K. C. Ry. Co. of this Company's track in block seven (7) of Hoxie's Addn., known as the "Elevator Switch."

2. A crossing contract dated June 10, 1895, authorizing the Des Moines City Ry. Co. to cross this Company's tracks on East Fourth Street.

3. A trackage contract dated August 31st, 1895, between the Wabash R. R. Co. and this Company authorizing this Company to use the Wabash tracks as far east as to a connection with the switch tracks of the Carbondale Coal Company a distance of ..... miles.

4. A contract dated September 7th 1895 between J. F.
152 Vincent and this Company whereby he agrees to deed to this Company a strip of ground 26 feet wide across the north side of lots two (2) and four (4) of the Official Plat of lots fifteen (15) sixteen (16) seventeen (17) and eighteen (18) of Younts Addn. for the purpose of reaching said Vincent's Stock Yards.

5. A crossing contract dated October 4, 1895 between the Des Moines & Kansas City Ry. Co. and this Company, authorizing this Company to cross the Des Moines & K. C. Ry. tracks in official Plat lot eight (8) of the northwest quarter (¼) of Section nine (9) Township seventy-eight (78) Range twenty-four (24).

6. A lease dated October 10, 1895 made by the C. R. I. & P. Ry. Co. to this Company for a strip of ground about one

thousand (1000) feet long in the East half (½) of the northwest quarter (¼) of Section Eight (8) Township seventy-eight (78) Range twenty-four (24) upon which is laid this Company's main track and which is south of and adjoining the 18 ft. strip of ground sold by the C. R. I. & P. Ry. Co. to this Company on the date last above named.

7. A crossing contract and agreement dated December 2nd, 1895 between this Company and the C. B. & Q. Ry. Co. for the crossing of its main line, to reach the Stock Yards, etc.

8. A contract dated December 11th, 1895 between the Des Moines Union Ry. Co. and J. F. Vincent, whereby the said Vincent agrees that in case the C. B. & Q. Ry. crosses our tracks on the north side of the 26 ft. strip of ground
153 north of the Stock Yards, he will pay the expense of the crossing and maintenance of the same.

9. A contract dated December 11th, 1895 between this Company and the Des Moines City Ry. Co. authorizing the latter Company to cross this Company's tracks on Scott Str. near 17th Street.

Said contracts, leases, etc., having been examined by the Board, they were all of them unanimously approved, whereupon the Board adjourned sine die.

F. M. HUBBELL, Secretary.

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154 **Defendants' Exhibit 142.**

Des Moines Union Railway Company.

Directors' Meeting, Des Moines, Iowa, November 11th, 1896.

The Board of Directors of this Company convened at the office of the Secretary of the Company, on this 11th day of November, 1896 pursuant to call duly issued and served.

There were present and represented the following Directors: F. M. Hubbell, H. D. Thompson, F. C. Hubbell, A. N. Denman, A. B. Cummins and C. Huttenlocher, in person, and Directors J. Ramsey, Jr., and H. L. Magee by written proxies to F. M. Hubbell, duly filed,—

F. C. Hubbell, President, presiding.

The contract entered into between this Company and the Chicago Great Western Railway Company, dated July 2nd 1896, for the use of this Company's terminals, was presented to the Board of Directors for approval, and therepuon, H. D. Thompson offered the following resolution, viz:

"Resolved, by the Board of Directors of the Des Moines Union Railway Company, that the contract bearing date July 2nd, 1896 entered into by and between the Des Moines Union Railway Company and the Chicago Great Western Railway Company, which contract has been signed by their respective Presidents and Secretaries, and which consists of 22 sections covering 18 pages, be and the same is hereby ratified, approved, and in all respects confirmed on part of the Des Moines Union Railway Company, and the Secretary of this Company is hereby authorized to attach to said contract a certified copy of this resolution," and moved its adoption, which was seconded by A. N. Denman, and thereupon the President put said resolution on its passage, calling for the ayes and nays. The vote resulted in all of the Directors (eight in number) voting aye, and the resolution was declared unanimously adopted.

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There was then presented to the Board of Directors, the Supplemental contract bearing date July 2nd, 1896, between the Des Moines Union Railway Company and the Chicago Great Western Railway Company, specifying particularly when possession of lots #1 and #8 in block #4 of the Original Town of Fort Des Moines, should be given, and as to the time the main contract should take effect, whereupon, F. M. Hubbell offered the following resolution:

"Resolved, by the Board of Directors of the Des Moines Union Railway Company, that the supplemental contract bearing date July 2nd 1896, entered into by and between the Des Moines Union Railway Company and the Chicago Great Western Railway Company which contract has been signed by their respective Presidents and Secretaries be and the same is hereby ratified, approved, and in all respects confirmed on part of the Des Moines Union Railway Company, and the Secretary of this Company is hereby authorized to attach to said contract a certified copy of this resolution."

and moved its adoption, which was seconded by A. B. Cummins, and thereupon the President put said resolution on its passage, calling for the ayes and nays. The vote resulted in all of the Directors (eight in number) voting aye, and the resolution was declared unanimously adopted.

Whereupon the meeting adjourned.

F. M. HUBBELL, Secretary

156 **Defendants' Exhibit 143.**

Des Moines Union Railway Company.

Stockholders' Meeting, Wednesday, March 10th, 1897.

Annual Meeting of Stockholders adjourned from January 7th, 1897 to March 10th, 1897.

Minutes of the Annual Meeting of Stockholders of the Des Moines Union Railway Company, held at the office of the Secretary of the Company, March 10th, 1897.

There were present and represented:

D. M. N. & W. R. R. Co., By its Prest. F. M. Hubbell, holding	998 Shares
F. M. Hubbell & Son, holding	2495 Shares
F. M. Hubbell, holding	2 Shares
F. C. Hubbell, holding	1 Share
H. D. Thompson, holding	1 Share
A. B. Cummins, holding	1 Share
A. N. Denman, holding	1 Share
C. Huttenlocher, holding	1 Share
H. L. Magee, holding	1 Share
Jos. Ramsey, Jr., holding	1 Share
Purchasing Com. Wab. St. L. & Pac. Ry. Co., By its proxy, Jos. Ramsey, Jr., holding	498 Shares
Total	4000 Shares

constituting all of the stock of the Company.

On motion duly seconded, Jos. Ramsey, Jr., was elected Chairman and F. M. Hubbell Secretary of the meeting.

Thereupon, the reading of the minutes of the meetings of the stockholders and directors for the year 1896 was
157 called for, and said minutes having been read,

On motion duly seconded, the minutes of all of the meetings of the stockholders and directors, held during the year 1896 were approved and all of the acts and doings of the Executive Committee Board of Directors and Officers done during the year 1896, were confirmed and ratified.

The Chairman stated the next business in order to be the election of eight Directors for the ensuing year.

All of the stock of the Company being represented, on motion duly seconded, it was ordered that the Secretary cast a vote of the stockholders and stock for the following named persons as Directors, for the ensuing year, viz: Jos. Ramsey, Jr., H. L. Magee, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, A. N. Denman, A. B. Cummins and C. Huttenlocher, which vote having been cast by the Secretary, the above named per-

sons were declared unanimously elected as Directors of the Company for the ensuing year, and until their successors are duly elected and qualified.

On Motion, the Stockholders' Meeting adjourned sine die.

F. M. HUBBELL, Secretary.

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158 **Defendants' Exhibit 144.**

Des Moines Union Railway Company.

Directors' Meeting, Des Moines, Iowa, March 10, 1897.

Minutes of the Meeting of Board of Directors of the Des Moines Union Railway Company.

The Board of Directors of this Company convened at the office of the Secretary of the Company March 10th, 1897, immediately after adjournment of the Adjourned Annual Meeting of the Stockholders.

There were present and represented:

Jos. Ramsey, Jr., H. L. Magee, F. M. Hubbell, F. C. Hubbell, A. N. Denman, A. B. Cummins, H. D. Thompson, and C. Huttenlocher.

On motion duly seconded, Jos. Ramsey, Jr., was elected Chairman of the meeting, whereupon he stated the first business to be the election of the following officers, viz, President, Vice President, Secretary and Treasurer to hold their offices during the ensuing year and until their successors are duly elected and qualified.

It was moved that the following persons be elected, F. C. Hubbell President, A. B. Cummins, Vice President, F. M. Hubbell Secretary, and H. D. Thompson, Treasurer.

These nominations being submitted to a vote of the Directors all of the above named persons received the unanimous vote of all of the Directors and were declared elected as follows:

F. C. Hubbell, President. A. B. Cummins, Vice President.
F. M. Hubbell, Secretary H. D. Thompson, Treasurer.

159 On motion of F. M. Hubbell duly seconded, F. C. Hubbell, Jos. Ramsey, Jr., and H. D. Thompson, were elected as members of the Executive Committee for the ensuing year.

The Secretary presented a contract dated May 9th, 1895, entered into between the Des Moines Union Railway Company

and the Des Moines Elevator Company, and Lamoine Mott, and asked that the same be ratified and approved.

On motion duly seconded, said contract was approved by the unanimous vote of the entire Board of Directors.

Whereupon, the Board of Directors adjourned, sine die.

F. M. HUBBELL, Secretary.

160

Defendants' Exhibit 145.

Des Moines Union Railway Company.

Directors' Meeting, Des Moines, Iowa, July 21, 1897

At a called meeting of the Board of Directors of the Des Moines Union Railway Company July 21st 1897 there were present F. C. Hubbell, F. M. Hubbell, A. N. Denman, J. Ramsey, Jr., H. L. Magee, H. D. Thompson, A. B. Cummins, and C. Huttenlocher.

The following Resolution was offered by Mr. Cummins, viz:

Resolved, that the President and Secretary be authorized and directed to sign such ratification of the contract between this Company, the Des Moines & St. Louis R. R. Co, the Des Moines & Northwestern Ry. Co, and the St. Louis, Des Moines & Northern Ry. Co., bearing date May 10th 1889, as may be necessary to make the said contract binding upon the Wabash R. R. Company so long as it operates the Des Moines & St. Louis R. R., and upon any successor of the last named Railroad Company and upon the Des Moines, Northern & Western R. R. Co, and any successor of said last named Company.

Upon being submitted to vote, the above Resolution was adopted by the unanimous vote of all the Directors.

The following Resolution was also adopted by the unanimous vote of all the Directors, viz:

Resolved, That the President of this Company shall cause to be prepared plans for a Passenger Depot to be located between Fifth and Sixth Streets, the cost of said structure not to exceed $20,000.

Upon motion the Board adjourned sine die.

F. M. HUBBELL, Secretary.

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161 **Defendants' Exhibit 146.**

Des Moines Union Railway Company.

Directors' Meeting, November 10, 1897.

Special Meeting of Directors of the Des Moines Union Railway Company, held at the office of the Company in Des Moines, Iowa, November 10, 1897.

There were present: J. Ramsey, Jr., H. L. Magee, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, C. Huttenlocher, A. B. Cummins, and A. N. Denman.

F. C. Hubbell, President, presiding.

A. B. Cummins offered the following resolution, to-wit:

Resolved, That this Company immediately proceed to construct a new passenger station in Des Moines, upon the following conditions:

If the City Council of Des Moines vacates Sixth Street from Cherry Street to the south line of the east and west alley which runs between Cherry and Vine Streets on the west side of Sixth Street and to a point twenty-two feet south of said alley on the east side of Sixth Street, and conveys said vacated portion of said street to this Company, then the cost of such passenger station, together with the necessary expenditure for a strip of land forty-four feet in width extending from Fifth to Sixth Street and immediately south of the said east and west alley, shall not exceed Sixty-five Thousand Dollars; and in the event that Sixth Street is so vacated the officers of the Company are authorized and directed to dedicate in the proper manner as a public street the south twenty-two feet of said forty-four foot strip.

162 If, however, within thirty days from this date the said City Council of Des Moines does not vacate the portion of Sixth Street as aforesaid, and convey said vacated portion to this Company, then the Company shall immediately proceed to construct a passenger station upon its property lying between Fifth and Sixth Streets at a cost not exceeding Fifteen Thousand Dollars.

The above resolution was adopted by the unanimous vote of all the Directors.

Whereupon the meeting adjourned.

F. M. HUBBELL, Secretary.

163

Defendants' Exhibit 147.

Des Moines Union Railway Company.

Stockholders' Meeting. Jan. 6, 1898.

Minutes of the Annual Meeting of the Stockholders of the Des Moines Union Railway Company held at the office of the Secretary of the Company, January 6, 1898.

There were present and represented:

D. M. N. & W. R. R. Co.	
By its President F. M. Hubbell, holding	998 Shares
F. M. Hubbell & Son, holding	2495 "
F. M. Hubbell, holding	2 "
F. C. Hubbell, holding	1 "
H. D. Thompson, holding	1 "
A. B. Cummins, holding	1 "
C. Huttenlocher, holding	1 "
Cyrus Kirk, holding	1 "
Present by Proxy	
Pur. Com. Wab. St. L. & P. Ry. Co. by its proxy to F. M. Hubbell duly filed with the Secretary, holding	498 Shares
Total	3998 Shares

being all of the stock of the Company, except two shares owned by Jos. Ramsey, Jr., and H. L. Magee.

On motion duly seconded F. C. Hubbell, was elected Chairman of the meeting and F. M. Hubbell Secretary.

Thereupon all of the minutes of the Stockholders' and Directors' meetings held during the year 1897 were called for.

164 Said minutes having been read, they were upon motion duly seconded, approved, and all of the acts and doings of the Executive Committee, Board of Directors, and Officers, done during the year 1897, were confirmed, ratified, and approved.

The chairman stated the next business in order to be the election of eight Directors for the ensuing year. All of the stock of the Company being represented save two shares, it was ordered that the Secretary cast the vote of the stockholders and stock for the following named persons as Directors for the ensuing year; viz: Jos. Ramsey, Jr., H. L. Magee, F. M. Hubbell, F. C. Hubbell, A. B. Cummins, C. Huttenlocher, H. D. Thompson, and Cyrus Kirk, which vote having been cast by the Secretary, viz: 3998 shares, for the above named persons, they were declared unanimously elected Directors of the Company for the ensuing year and until their successors are elected and qualified.

On motion duly seconded, the Stockholders' Meeting adjourned, sine die.

F. M. HUBBELL,
Secretary.

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165 **Defendants' Exhibit 148.**

Des Moines Union Railway Company.

Directors' Meeting.

Des Moines, Iowa, Janry. 29, 1898.

Minutes of the Adjourned Meeting of Directors of the Des Moines Union Railway Company, held January 29, 1898.

The Board of Directors of this Company convened at the office of the Secretary, on the day above named.

There were present and represented: F. M. Hubbell, F. C. Hubbell, A. B. Cummins, H. D. Thompson, C. Huttenlocher, and Cyrus Kirk, in person, and Jos. Ramsey, Jr., and H. L. Magee, by proxies to F. M. Hubbell duly filed with him as Secretary of the Company.

On motion duly seconded, A. B. Cummins was elected Chairman of the meeting, whereupon he stated the first business to be the election of the following officers viz: A President, Vice President, Secretary and Treasurer, to hold their offices during the ensuing year and until their successors are elected and qualified.

It was moved and seconded that the following named persons be elected to these respective offices, to-wit: F. C. Hubbell, President. F. M. Hubbell, Secretary. H. D. Thompson, Vice President and Treasurer.

These nominations being submitted to a vote of the Directors, all of the above named persons received the unanimous vote of the Directors and were declared elected as follows:

F. C. Hubbell, President
F. M. Hubbell, Secretary
H. D. Thompson, Vice Prest. & Treasurer.

166 On motion of F. M. Hubbell, duly seconded, F. C. Hubbell, Jos. Ramsey, Jr. and H. D. Thompson were elected members of the Executive Committee for the ensuing year.

The Superintendent, J. A. Wagner, laid before the meeting a statement of expenditures charged to "Permanent Improvements" which enter into the construction account for the period commencing January 1, 1894, and ending December 31,

1897, amounting to forty-seven thousand, two hundred twenty and 02/100 dollars ($47,220.02) the details of which are as follows:

STATEMENT.

Date '94		'97 Wabash R.R.	D.M.N.&W.R.R.	Total
	Balance frd from year 1893	$ 49.76	$ 469.35	$ 519.11
(Omitted in December 1892)	Legal Expenses a/c "Sypher" Lot	21.70	24.80	46.50
January 1894	Filing Condemnation proceedings account "Jacks" Plat	1.62	1.63	3.25
March "	Building "Getchell" side track	161.23	178.77	340.00
May "	Do Do	1.97	2.28	4.25
" "	Miscellaneous Legal Expenses	51.87	73.13	125.00
" "	Balance Payment "Jacks"	88.17	124.33	212.50
November "	Court Expenses "Luke O'Brien" case	12.70	12.70	25.40
December "	Expense a/c deed to 13th Street property	1.95	2.30	4.25
January 1895	Recording deed to 13th Street property	.39	.36	.75
April "	Transcript & Recording title to "Hart" Lot	3.32	3.63	6.95
June "	Purchase "Tuttle" property	564.05	635.95	1200.00

167	Date '94		'97 Wabash R.R.	D.M.N.&W.R.R.	Total
August	1895	Purchase "E. Whitworth" property,	$ 229.87	$ 270.98	$ 500.85
October	"	Purchase 18 ft. strip from C.R.I.&P.Ry. Co.	897.74	1102.26	2000.00
"	"	Purchase of Right of Way across D.M.&K.C.Ry.	180.72	221.90	402.62
November	"	Purchase "Harry West" property; strip 15 ft. wide off north side of Lot 3 Official Plat Lots 55 & 56 Brook's & Co.'s addn. and miscellaneous Court expenses	253.80	218.45	472.25
December	"	New side track to Union Stock Yards	777.24	1011.38	1788.62
January	1896	Condemning Lot 3 O.P. Lots 55 & 56 Brooks & Co.'s Adn Whitworth property	11.87	16.13	28.00
February	"	Legal Exp. in case D.M. & K.C.&C.B.&Q. vs D.M. Union Ry. Co.	68.01	88.09	156.10
August	"	Legal Expense a/c "Harry West" property & Purchase,	2.91	3.19	6.10
"	"	Purchase of Lot 1 Blk 4 Original Town Fort Des Moines "Matilda K. Sypher" property	5750.00	5750.00	11,500.00
November	"	Purchase Lot 4& E½ Lot 5 Blk 9, Hoxies Addn.	6075.00	6675.00	12,750.00
Aug.	"	Paving with brick between the 2 unloading tracks from 7th Str. to alley bet. 10 & 11 Sts. leased to Chicago Great Western Ry. Co.	1202.36	1202.36	2405.12
		New Chicago Great Western Freight House	6250.00	6250.00	12,500.00
		Totals.....	$23,018.45	$24301.57	47320.02

168 Whereupon H. D. Thompson offered the following preamble and resolution which were unanimously adopted to-wit:

Whereas, the Des Moines Union Railway Company has expended for construction from January 1st, 1894, to December 31st, 1897, the sum of forty-seven thousand two hundred twenty and 02/100 Dollars ($47,220.02) which sum includes the balance due on the settlement ordered to be made January 25,

1894, of which amount the Wabash R. R. Co. has contributed twenty-three thousand, eighteen and 45/100 dollars ($23,018.45) and the Des Moines Northern & Western R. R. Co. has contributed twenty-four thousand two hundred and one and 37/100 ($24,201.37)

Now, Therefore, Be It Resolved, that bonds of this Company be issued at par to said respective Companies in payment of the above described expenditures, and delivered as follows, to-wit:

23 Bonds to the Wabash R. R. Co.

24 Bonds to the Des Moines, Northern & Western R. R. Co.

Be It Further Resolved, that the President of this Company be authorized to comply with this order of the Board of Directors by delivering to the Wabash Railroad Company Bonds Nos. 499 to 521, both inclusive, making 23 bonds of One Thousand Dollars each, and to the Des Moines, Northern & Western Railroad Company Bonds Nos. 522 to 545, both inclusive, making 24 bonds of One Thousand Dollars each.

This leaves a balance of Eighteen and 45/100 dollars (18.45) due the Wabash Railroad Company and two hundred one and 37/100 dollars ($201.37) due the Des Moines
169 Northern & Western Railroad Company, to be hereafter adjusted.

Upon motion the Board of Directors adjourned sine die.

F. M. HUBBELL, Secretary.

Mr. Ramsey acknowledged receipt of Bonds Nos. 499 to 521 inc. by letter dated Apr. 2nd, 1898.

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170 **Defendants' Exhibit 149.**

Des Moines Union Railway Company.

Directors' Meeting.

March 31st, 1898.

Minutes of the Adjourned Meeting of Directors of the Des Moines Union Railway Company, held March 31st, 1898, at the office of the Secretary of the Company.

There were present and represented: F. M. Hubbell, F. C. Hubbell, A. B. Cummins, H. D. Thompson, C. Huttenlocher, and Cyrus Kirk in person, and Directors Jos. Ramsey, Jr. and H. L. Magee, by written proxy to F. M. Hubbell, duly filed with him as Secretary of the Company.

Cyrus Kirk offered the following resolution, viz:

Resolved, that this Company purchase the north forty-four (44) feet of Lot three (3) and the north forty-four (44) feet of Lot six (6) in Block fifteen (15) of the Original Town of Fort Des Moines, Iowa, for the purpose of increasing the width of station grounds upon which the new Passenger Depot is to be erected, and to facilitate the closing of a portion of Sixth Street by opening a street thirty (30) feet wide running from Fifth Street to Sixth Street, along the south side of the property above described. The price to be paid therefor shall be twenty-five thousand dollars ($25000.00) in the First Mortgage Bonds of this Company; and that the President of this Company be authorized to use the twelve thousand dollars ($12,000.00) of bonds now in the hands of the Treasurer of the Company, and to draw from the Trustee thirteen (13) more bonds for the purpose of completing payment of the purchase price of said ground. The bonds to be paid over
171 upon delivery to this Company, of a warranty deed for the above described property, with a perfect title thereto.

Said resolution was adopted by the unanimous vote of all of the Directors.

F. M. HUBBELL,
Secretary.

H. D. Thompson Treasurer, reports that on March 21st, 1898, he forwarded to the Wabash Railroad Company at St. Louis, Des Moines Union Railway Company bonds Nos. 499 to 521, both inclusive, 23 bonds via U. S. Express and on the same day delivered to the Des Moines, Northern & Western Railroad Company Des Moines Union Railway Company bonds Nos. 522 to 545, both inclusive, 24 bonds, in accordance with the resolution passed January 29, 1898.

F. M. HUBBELL,
Secretary.

H. D. Thompson reports that he has delivered to F. M. Hubbell & Son twenty-five (25) Des Moines Union Railway Company bonds Nos. five hundred and forty-six to five hundred and fifty seven (546 to 557) both inclusive and six hundred twenty-nine to six hundred forty-one (629 to 641) both inclusive in full payment for the north forty-four (44) feet of lot
172 three (3) and the north forty-four (44) feet of lot six (6) in block fifteen (15) of the Original Town of Fort Des Moines, Iowa, in accordance with a resolution adopted by the Board of Directors on March 31st, 1898.

F. M. HUBBELL,
Sec'y.

173

Defendants' Exhibit 150.

Des Moines Union Railway Company.

Executive Committee, July 16, 1898.

It was ordered by the Executive Committee that the President be authorized to withdraw from the Central Trust Company, Trustee, thirty First Mortgage Bonds Nos. six hundred and forty-two (642) to six hundred seventy-one (671) both inclusive, and sell the same at the price of ninety-seven cents (97c) flat, for the purpose of raising money with which to commence the construction of the Union Passenger Station, and that he report his action in the matter.

F. M. HUBBELL,
Secretary.

174

Defendants' Exhibit 151.

Des Moines Union Railway Company.

Executive Committee Meeting.

July 26, 1898.

The President now reports that on the 26th day of July 1898 he withdrew from the Trustee Bonds Nos. Six hundred and forty-two (642) to Six hundred and Seventy-one (671) both inclusive as heretofore authorized, and that the best offer he received for the same is contained in a telegram received from J. Ramsey, Jr., of which the following is a copy:

"St. Louis, Mo. July 16th, 1898. F. M. Hubbell—We will take half of the thirty thousand at ninety-seven flat and if you wish to dispose of the entire amount at ninety-seven flat I think I can find a purchaser but will not pay more than that. J. Ramsey, Jr."

And he further reports that he sold said bonds at ninety-seven cents (97c) flat, viz: for Twenty-nine Thousand One Hundred Dollars ($29,100.) and that he has paid said sum over to the Treasurer of this Company.

F. M. HUBBELL, Secretary.

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175 **Defendants' Exhibit 152.**

Des Moines Union Railway Company.

Directors' Meeting.

February 14th, 1899.

Minutes of the Regular Meeting of the Directors of the Des Moines Union Railway Company, held February 14th, 1899.

The Board of Directors of this Company convened at the office of the Secretary on the day above named.

There were present and represented—F. M. Hubbell, A. B. Cummins, H. D. Thompson, C. Huttenlocher and Cyrus Kirk in person, and J. Ramsey, Jr., H. L. Magee and F. C. Hubbell by proxies to F. M. Hubbell, duly filed with him as Secretary of the Company.

H. D. Thompson Vice President, presiding.

Thereupon Cyrus Kirk offered the following resolution which was adopted by the unanimous vote of all the Directors to-wit:

Resolved, that for the purpose of enabling this Company to extend its side tracks for the accommodation of the new Passenger Station, this Company purchase a strip of ground fourteen (14) feet wide off from the north side of lots three (3) and six (6) in block nine (9) and a strip of ground fourteen (14) feet wide off from the north side of lot six (6) in block four (4), all in the Original Town of Fort Des Moines, Iowa, for the sum of sixty-three hundred dollars ($6300).

Thereupon F. M. Hubbell offered the following resolution which was also adopted by the unanimous vote of all of the Directors, to-wit:

176 Resolved by the Board of Directors of the Des Moines Union Railway Company that the contract bearing date January 5th 1899 entered into by and between the Des Moines Union Railway Company and the Iowa Central Railway Company, which contract has been signed by their respective Presidents and Secretaries, with the seals of their respective Companies hereto attached, be and the same is hereby ratified, approved and in all respects confirmed on the part of the Des Moines Union Railway Company, and the Secretary of this Company is hereby authorized to attach to the said contract a certified copy of this resolution.

There being no other business before the meeting, the Directors adjourned sine die.

F. M. HUBBELL,
Secretary.

177 **Defendants' Exhibit 153.**

Des Moines Union Railway Company.

Directors' Meeting, March 14, 1899.

Minutes of the Regular Meeting of Directors of the Des Moines Union Railway Company, held March 14th, 1899.

The Board of Directors of this Company convened at the office of the Secretary on the day above named.

There were present and represented,

F. M. Hubbell, A. B. Cummins, H. D. Thompson, C. Huttenlocher, and Cyrus Kirk in person, and J. Ramsey, Jr., H. L. Magee, and F. C. Hubbell by proxies to F. M. Hubbell, duly filed with him as Secretary of the Company.

H. D. Thompson, Vice President, presiding:

Thereupon A. B. Cummins offered the following resolution which was adopted by the unanimous vote of all the Directors, to-wit:

Resolved that the President and Secretary of the Company are hereby authorized to consent in writing to any assignment that has been made or that may be hereafter made by the Wabash Railroad Company or its interest in the contracts dated respectively May 10th 1889 between the Des Moines Union Railway Company and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the contract dated July 31st, 1897, between the Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines, Northern & Western Railroad Company and of its rights under the same, to the Continental Trust Company of the City of New York, as provided
178 for in the mortgage dated on or about January 1st 1899, made by the Wabash Railroad Company to the Continental Trust Company of the City of New York, and to consent for the Des Moines Union Railway Company to all assignments or conveyances that have been made or that may be hereafter made by the Wabash Purchasing Committee to the Wabash Railroad Company, or that have been made or may be hereafter made by the Wabash Railroad Company to the Continental Trust Company of the City of New York, of five hundred (500) shares of the capital stock of the Des Moines Union Railway Company, in accordance with the terms of said mortgage and in order to give effect to its provisions.

Thereupon the Board adjourned.

F. M. HUBBELL, Secretary.

179 **Defendants' Exhibit 154.**

Des Moines Union Railway Company.

Stockholders' Meeting. October 3, 1899.

Special Meeting of Stockholders, October 3, 1899, held at the office of the Company.

Minutes of the Special Meeting of Stockholders of the Des Moines Union Railway Company, October 3, 1899, pursuant to a notice of said Meeting served upon the Stockholders more than ten days previous to this date.

There were present and represented in person:

F. M. Hubbell, holding	1 Share
F. C. Hubbell, holding	1 Share
H. D. Thompson, holding	1 Share
H. L. Magee, holding	1 Share
Jos. Ramsey, Jr., holding	1 Share
F. M. Hubbell & Son, holding	2495 Shares
Cyrus Kirk, holding	1 Share
C. A. Goodnow, holding	1 Share
A. B. Cummins, holding	1 Share
A. J. Earling, holding	1 Share
Chicago, Milwaukee & St. Paul Railway Co. represented by A. J. Earling, President, holding	998 Shares
Continental Trust Company of New York represented by Jos. Ramsey, Jr. holding	498 Shares
Total	4000 Shares.

being all of the stock of this Company.

180 F. C. Hubbell, President, presented the resignations of C. Huttenlocher and H. L. Magee as Directors, whereupon, on motion, said resignations were accepted and C. A. Goodnow and A. J. Earling were nominated as Directors to fill the vacancies created by said resignations and upon the roll of Stockholders being called, it was found that all of the stock to-wit, four thousand (4000) shares, had been voted in favor of those persons as Directors, and said C. A. Goodnow and A. J. Earling were thereupon declared duly elected Directors of this Company.

Thereupon, all the minutes of the Stockholders' and Directors' meetings held during the years 1898 and 1899, up to this date, were called for. Said minutes having been read, they were, upon motion of A. J. Earling, duly seconded, approved, and all the acts and doings of the Executive Committee, Board of Directors, and Officers done during the year 1898 and up to October 1899, were confirmed, ratified, and approved.

On motion duly seconded, the Stockholders' Meeting adjourned sine die.

F. M. HUBBELL, Secretary.

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181 **Defendants' Exhibit 155.**

Des Moines Union Railway Company.

Directors' Meeting, October 3, 1899.

Minutes of the Meeting of the Board of Directors of the Des Moines Union Railway Company, held at the office of the President of the Company in Des Moines, October 3, 1899.

F. C. Hubbell, President, presiding.

There were present, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, A. B. Cummins, Cyrus Kirk, Jos. Ramsey, Jr., C. A. Goodnow and A. J. Earling.

H. D. Thompson resigned as a member of the Executive Committee and on motion of A. B. Cummins, C. A. Goodnow was elected a member of the Executive Committee.

Mr. Cummins moved that the contracts prepared by this Company and the C. B. & Q. Ry. Company, and the Keokuk & Western R. R. Company, be approved, and that the Officers of this Company be authorized to sign the same. No action taken.

F. M. Hubbell stated to the Directors that the Des Moines City Railway Company, in consideration of four hundred dollars ($400) to be paid by this Company to the Des Moines City Railway Company, said last named Company would go to the expense of removing six feet in width of the side-walk on the north side of Cherry Street, between 5th and 6th Streets, move the curb six feet north and put it in place, lay its track upon said strip of ground from which the sidewalk was removed, and operate its loop in front of the Union Station, and that
182 in the event this Company was not willing to contribute the said four hundred dollars ($400) toward the expense of said work, said City Railway Company would build its track along Cherry Street in the middle of the roadway. It was moved by Mr. Earling and carried that the above proposition be referred to the Executive Committee, with power to pay $400 if they thought best.

The contract between this Company and the Des Moines City Railway Company for the crossing of this Company's tracks of Maury Street, was presented and approved.

Mr. Hubbell offered the following resolution which was adopted.

Whereas, it seems desirable to enter into a new terminal contract with the Wabash R. R. Company and the Chicago, Milwaukee & St. Paul Railway Company, if the terms thereof can be agreed upon, it is therefore,

Resolved that a committee consisting of A. J. Earling, Jos. Ramsey, Jr. and F. M. Hubbell, be appointed to consider the subject and report to this Board.

On motion duly seconded, the Board of Directors adjourned sine die.

F. M. HUBBELL,
Secretary.

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183 **Defendants' Exhibit 156.**

Des Moines Union Railway Company.

Stockholders' Meeting, Des Moines, Iowa, Jany. 4, 1900.

Minutes of the Annual Meeting of the Stockholders of the Des Moines Union Railway Company, held at the Office of the President on January 4th 1900.

There were present and represented:

F. M. Hubbell, holding	1 Share
F. C. Hubbell, holding	1 Share
H. D. Thompson, holding	1 Share
F. M. Hubbell & Son holding	2495 Shares.
Cyrus Kirk, holding	1 Share
A. B. Cummins, holding	1 Share
C. A. Goodnow, holding	1 Share
A. J. Earling, holding	1 Share
By proxy – Chicago, Milwaukee & St. Paul Railway Company, by A. J. Earling, President, holding	998 Shares.
" " – Continental Trust Company of New York, by F. M. Hubbell, holding	498 Shares
Total Stock represented	3998 Shares.

being all of the stock of the Company except two (2) shares owned by Jos. Ramsey, Jr. and H. L. Magee.

On motion duly seconded, F. C. Hubbell was elected Chairman of the meeting and F. M. Hubbell, Secretary.

Thereupon, all the minutes of the Stockholders and Directors meetings held since the first day of October 1899, were called for and read by the Secretary.

184 Thereupon, there was laid before the meeting and read by the Secretary, the report of J. A. Wagner, Superintendent, in words and figures as follows, to-wit:

Statement.

Statement of Expenditures charged to "Permanent Improvements" which enter into the construction account for the period commencing January 1, 1898 and ending December 31, 1899, amounting to $115,712.93, the details of which are as follows:

Paid purchase price of N. 44 ft. of lots 3 and 6 Blk 15 Ft. Des Moines to enlarge Passenger Station grounds		$ 25,000.00
Paid total cost of Union Station		$ 79,182.91
Paid for sidetracks as follows:		
For the Paragon Refining Company, S. 9th Street		222.22
For the Nichols & Shepard Co. E. 4th and Vine Sts	$	320.00
For Kingman Galbraith Implement Co. bet. W. 6th & 8th Sts	$	721.62
For Perkins & Perkins, bet. 10th and 11th Sts	$	385.53
For first sidetrack to D. M. Elevator Co., E. 18th and Market Sts	$	925.00
For second Do Do Do	$	918.51
For D. M. Poultry Co. and Longshore's Saw Mill S. 9th Str	$	502.18
For E. W. Crellin & Co. bet. 9th and 11th St	$	425.66
For Stoner Wall Paper Co., S. 9th Str	$	239.48
For Iowa Walnut Lumber Co. W. 12th Str	$	569.82
Paid for strip of ground 14 ft. wide off north side of lots 3 and 6, Blk. and off north side of lot 6 in Blk 4, Ft. Des Moines, including the right to lay tracks in the alley adjacent thereto	$	6,300.00
Total Disbursements		$115,712.93

185 **The above disbursements were provided for as follows:**

Paid by issue and sale of First Mortgage bonds at par		$ 55,000.00
Paid by appropriation of surplus earnings on hand January 1, 1898.	$	7,647.30
Paid by appropriation of net amount of surplus earnings for the year 1898	$	4,402.95
Paid by appropriation of surplus earnings for the year 1899	$	17,211.40
Total	$	84,261.65

The remainder of expenditures, to-wit, $ 31,451.28 for "Permanent Improvements" is carried in the form of a floating debt.

NOTE. The surplus earnings for the year 1898, amounted to			$ 10,825.92
There was disbursed from this amount, payment on the Heath notes	$2000.00		
Paid the C. G. W. amount of award in arbitration proceedings	$4422.97	$	6,422.97
Leaving net amount of surplus earnings for 1898		$	4,402.95

J. A. WAGNER, Supt.

Thereupon, on motion of A. J. Earling, all of the acts and doings of the Executive Committee, Board of Directors, and Officers, as reported to this meeting of the Stockholders, were confirmed, ratified and approved by the affirmative vote of all of the stock represented, to-wit, 3998 shares.

The Chairman stated the next business in order to be the election of eight (8) Directors for the ensuing year. All of stock of the Company being represented, save two shares, it was ordered that the Secretary cast the vote of the stockholders and stock for the following named persons as
186 Directors for the ensuing year, viz: Jos. Ramsey, Jr., A. J. Earling, C. A. Goodnow, F. M. Hubbell, F. C. Hubbell, A. B. Cummins, H. D. Thompson, and Cyrus Kirk, which vote having been cast by the Secretary, to-wit, 3998 shares, for the above named persons, they were declared unanimously elected Directors of the Company for the ensuing year, and until their successors are elected and qualified.

On motion duly seconded the Stockholders Meeting adjourned sine die.

F. M. HUBBELL,
Secretary.

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187 **Defendants' Exhibit 157.**

Des Moines Union Railway Company.

Directors' Meeting, Des Moines, Jany 30th 1900.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company, held at the President's Office in Des Moines.

The Board met pursuant to adjournment.

F. C. Hubbell, President, presiding.

There were present: F. M. Hubbell, F. C. Hubbell, Cyrus Kirk, H. D. Thompson, and C. A. Goodnow, Director A. B. Cummins was represented by F. M. Hubbell, by virtue of a written proxy, and Director A. J. Earling was represented by C. A. Goodnow, by virtue of a written proxy, making seven (7) Directors represented. Director Jos. Ramsey, Jr., having been duly notified of the meeting was not present nor represented.

The President stated the object of the meeting was to consider a contract of lease between the Des Moines Union Railway Company and the Keokuk & Western Railroad Company; also a contract of lease between the Des Moines Union Railway Company and the Chicago, Burlington & Quincy Railroad

Company, for the use of certain portions of this Company's property.

Thereupon, the reading of the contracts was called for and said contracts having been read, F. M. Hubbell offered the following resolution, and moved its adoption, to-wit:

Resolved, that the contract of lease dated January 1st 1900 between this Company and the Keokuk & Western Railroad Company for the use of a portion of the Des Moines Union Railway Company's terminals therein described, now under
188 consideration, a copy of which contract of lease is now presented to the Board of Directors, be and is hereby adopted and ratified, and the President and the Secretary of this Company are hereby authorized and directed to sign and execute said contract of lease, in duplicate, and attach this Company's seal thereto.

And be it further Resolved, that the contract of lease dated January 1st, 1900, between this Company and the Chicago, Burlington & Quincy Railroad Company for the use of a portion of the Des Moines Union Railway Company's terminals therein described, now under consideration, be and is hereby adopted and ratified, and the President and the Secretary of this Company are hereby authorized and directed to sign and execute said contract of lease, in duplicate, and attach this Company's seal thereto.

Said motion was seconded by H. D. Thompson and after a very lengthy discussion, was put upon its passage. The ayes and nays being called for, the Directors cast their votes as follows:

A. B. Cummins, Aye. A. J. Earling, No. C. A. Goodnow, No
F. M. Hubbell, Aye. F. C. Hubbell, Aye.
H. D. Thompson, Aye. Cyrus Kirk, Aye.

Five Directors voting Aye, and two voting No.

Thereupon, the President declared the resolution carried.

On motion, duly seconded, the meeting of the Board of Directors adjourned.

F. M. HUBBELL,
Secretary.

189 **Defendants' Exhibit 158.**

Des Moines Union Railway Company.

Directors' Meeting.

Des Moines, Iowa, June 12, 1900.

Copy of resolution and its adoption as follows:—

F. M. Hubbell offered the following resolution and moved its adoption, to-wit:

"Resolved, That the President be authorized to purchase for the Company the East twelve (12) feet of the West two-thirds (W. 2/3) of lots seven (7) and eight (8) in block ten (10) of Hoxie's addition to Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa, at the price of Eight Hundred and Four Dollars ($804.)"

Said motion was seconded by H. D. Thompson, and was put upon its passage. The Ayes and Nays being called for, the Directors cast their vote as follows:

A. B. Cummins, Aye; F. M. Hubbell, Aye; H. D. Thompson, Aye; F. C. Hubbell, Aye; Cyrus Kirk, Aye; A. J. Earling, Aye; C. H. Goodnow, Aye; J. Ramsey, Jr., Aye. Eight Directors voting, Aye.

Thereupon, The President declared the resolution carried by a unanimous vote.

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190 **Defendants' Exhibit 159.**

Des Moines Union Railway Company.

Directors' Meeting.

Des Moines, Iowa, February 14, 1901.

Minutes of the adjourned meeting of the Board of Directors of the Des Moines Union Railway Company held at the office of the President in Des Moines, Iowa, February 14, 1901.

The Board met pursuant to adjournment, F. C. Hubbell, President, presiding:

There were present in person, A. J. Earling, C. A. Goodnow, F. M. Hubbell, F. C. Hubbell, and A. B. Cummins. Directors Cyrus Kirk and H. D. Thompson were represented by F. M. Hubbell by virtue of written proxies. Director Jos. Ramsey, Jr., was represented by E. B. Pryor, by virtue of a written proxy.

Mr. Earling moved that the Company lease lot eight (8) and the north fifteen (15) feet of lot seven (7) in block thirty-

five (35) Original Town of Fort Des Moines, including the buildings thereon, for the period ending May 1st, 1918, at the annual rate of five hundred and fifty dollars ($550) to be paid monthly in advance, also, all taxes, special rates and assessments that may be levied thereon during the term of said lease, with the right, however, to the lessors, F. M. Hubbell, Son & Co., and their tenants, to use the south twenty-five (25) feet of said leased premises in common with the lessees for the purpose of access by teams to the factory now existing upon the south side of said lot seven (7), and that the President and Secretary be authorized to sign the necessary lease for said premises. Said motion having been seconded,
191 was carried by the unanimous vote of all the Directors.

Mr. Earling moved that the President be instructed to negotiate with Messrs. Schmidt & Henry for as early a vacation of the property on lots seven (7) and eight (8) block thirty-five (35) as possible. Said motion having been seconded was carried by the unanimous vote of all the Directors.

Mr. Earling also moved that the Company rent a switch engine from the Chicago Milwaukee & St. Paul Railway Company and the Wabash Railroad Company at eight dollars ($8) per day of twenty-four hours, renting from the Wabash Company substantially one-third of the time and from the Chicago, Milwaukee & St. Paul Company two-thirds of the time, as it may be arranged by the said two companies. Said motion was seconded by F. M. Hubbell, and carried by the unanimous vote of all the Directors.

Resolved, that the President is authorized to purchase lots one (1) and two (2), seven (7) and eight (8), block nine (9); lots one (1) two (2) and the East one-half of lots seven (7) and eight (8) block fourteen (14), all in H. M. Hoxie's Addition to Fort Des Moines, Ia., at a price not exceeding thirty-six thousand dollars ($36,000.00). Said resolution was adopted unanimously.

Resolved, that the President is authorized to purchase the west one-half of lots seven (7) and eight (8) block fourteen (14) of H. M. Hoxie's Addition, at forty-five hundred dollars ($4500). Said resolution was adopted unanimously.

Resolved, that the President is authorized to pay one thousand dollars ($1000) for the right of way across lot
192 eleven (11) block "I" of Scott & Dean's Addition to Fort Des Moines, provided, the right can be obtained to lay a track in the alley between lots seven (7) and eight (8) block "I" and a release obtained from all the abutting property owners. Said resolution was adopted unanimously.

Resolved, that the President is authorized to arrange with the Chicago, Rock Island & Pacific Railway Company for the joint use of tracks at the Liverpool & Des Moines Packing Company plant. Said resolution was adopted unanimously.

On motion duly seconded, the Board of Directors adjourned until two o'clock p. m.

F. M. HUBBELL,
Secretary.

The Directors met pursuant to adjournment, thereupon it was.

Resolved, that the President be and he is hereby directed to acquire by purchase the south-two-thirds (S. 2/3) of lot five (5) and the north one-third (N. 1/3) of lot six (6) all in block thirty-five (35) of the Original Town of Fort Des Moines, now a part of the City of Des Moines, Iowa, for the purpose of increasing our freight facilities, and if necessary he is authorized to institute the necessary proceedings to ascertain by condemnation the damage that the owner of the property will sustain by reason of its being taken for railroad purposes.

F. M. HUBBELL, Secretary.

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193 **Defendants' Exhibit 160.**

Des Moines Union Railway Company.

Directors' Meeting.

Des Moines, Iowa, March 31, 1902.

Minutes of the Adjourned Meeting of Board of Directors of the Des Moines Union Railway Company, held at the Office of the President in Des Moines, Iowa, March 31st, 1902.

The Board met pursuant to adjournment.

F. C. Hubbell, President presiding: There were present in person, F. M. Hubbell, F. C. Hubbell, Cyrus Kirk, and H. D. Thompson. Directors Jos. Ramsey, Jr., A. J. Earling and C. A. Goodnow were represented by F. C. Hubbell, by written proxy dated March 17, 1902.

On motion it was Resolved that the President be and he is hereby authorized to institute the necessary proceedings to ascertain by condemnation the damages sustained by the Getchell & Martin Manufacturing Company by reason of the occupation by this Company with its tracks of the alley on the north side of lot three (3) in block four (4) of the Original Town of Fort Des Moines, and lot two (2) in block nine (9) of H. M. Hoxie's Addition to Fort Des Moines, Iowa.

The above Resolution was adopted by the unanimous vote of all the Directors.

On motion the meeting adjourned.

F. M. HUBBELL, Secretary.

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194 **Defendants' Exhibit 161.**

Des Moines Union Railway Company.

Stockholders' Meeting.

Des Moines, Iowa, August 22, 1902.

Special Meeting of the Stockholders of the Des Moines Union Railway Company held at the office of the Secretary on August 22nd, 1902.

Present in person:

F. M. Hubbell, holding	1 share
H. D. Thompson, holding	1 share
Cyrus Kirk, holding	1 share
C. Huttenlocher, holding	1 share
F. M. Hubbell & Son, holding	2995 shares

Present by proxy duly filed with the Secretary.

F. C. Hubbell, by his proxy, F. M. Hubbell, holding	1 share
A. J. Earling, by his proxy, F. Horton, holding	1 share
H. R. Williams, by his proxy, F. Horton, holding	1 share
Chicago, Milwaukee & St. Paul Railway Company by its proxy, F. Horton, holding	999 shares
J. Ramsey, Jr., by his proxy, F. M. Hubbell, holding	1 share
H. L. Magee, by his proxy F. M. Hubbell, holding	1 share
Continental Trust Company of the City of New York, Trustee, by its proxy, F. M. Hubbell, holding	999 Shares
Total stock represented	4000 Shares

being all of the stock of the Company.

On motion duly seconded, F. Horton was elected Chairman of the meeting and F. M. Hubbell, Secretary.

195 Thereupon, it was stated to the stockholders that the Hon. A. B. Cummins and Mr. C. A. Goodnow had resigned their offices as directors of this Company, thus leaving two vacancies in the Board.

It was thereupon ordered that the secretary cast the vote of the stockholders and stock in favor of H. R. Williams and C. Huttenlocher as directors to fill said two vacancies, which vote having been cast by the Secretary, to-wit; four thousand (4000)

shares of stock, for the above named persons, they were declared unanimously elected directors of the Company for the ensuing year and until their successors are elected and qualified. On motion duly seconded, the Stockholders' meeting adjourned sine die.

F. M. HUBBELL, Secretary.

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196 **Defendants' Exhibit 162.**

Des Moines Union Railway Company.

(Friday) Directors' Meeting. September 26, 1902.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company, held at the office of the Vice President, in Des Moines, September 26, 1902.

The Board met pursuant to adjournment.

Present in person: F. M. Hubbell, Cyrus Kirk, H. D. Thompson, C. Huttenlocher, Director Jos. Ramsey, Jr., was represented by J. A. Wagner, by a written proxy dated August 27, 1902. Directors A. J. Earling and H. R. Williams were represented by written proxies to F. Horton, dated September 24, 1902. Director F. C. Hubbell was represented by written proxy to F. M. Hubbell dated July 1, 1902, all of the Directors being present or represented.

H. D. Thompson, Vice President, presiding.

The Vice President stated the object of the meeting was to consider a contract between this Company and the Chicago, Burlington & Quincy Railroad Company dated September 3d 1901 for passenger facilities, also a contract between this Company and the Des Moines, Iowa Falls & Northern Railway Company for passenger facilities. Whereupon, C. Huttenlocher offered the following resolution and moved its adoption, viz:

"Resolved that the contract of lease dated September 3d 1901 between this Company and the Chicago, Burlington & Quincy Railroad Company for the use of a portion of the Des Moines Union Railway Company's terminals therein described,
now under consideration,—a copy of which contract of
197 lease is now presented to the Board of Directors—Be and the same is hereby ratified and approved, and the President and Secretary of this Company are hereby authorized and directed to sign and execute said contract of lease in duplicate, and attach this Company's seal thereto."

Said motion was seconded by A. J. Earling, by his attorney, F. H. Horton, whereupon the Ayes and Nays were demanded.

H. J. Earling voted Aye. H. R. Williams voted Aye.
Jos. Ramsey, Jr. voted Aye. F. C. Hubbell voted Aye.
F. M. Hubbell voted Aye. H. D. Thompson voted Aye.
C. Huttenlocher voted Aye. Cyrus Kirk voted Aye.

All of the Directors having voted in favor of the adoption of the resolution the Vice President declared the same to be adopted.

F. Horton, Attorney for H. R. Williams, offered the following resolution and moved its adoption, viz:

"Be it fruther Resolved, that the contract of lease dated July 22, 1882, between the Des Moines Union Railway Company and the Des Moines Iowa Falls & Northern Railway Company for the use of a portion of the Des Moines Union Railway Company's terminals therein described, now under consideration, a copy of which contract of lease is now presented to the Board of Directors—be and the same is hereby ratified and approved, and the President and Secretary of this Company are hereby authorized and directed to sign and execute said contract of lease, in duplicate, and attach this Company's seal thereto."

Said motion was seconded by Jos. Ramsey, Jr. by his attorney, J. A. Wagner, whereupon the Ayes and Nays were demanded.

198 A. J. Earling voted Aye.
H. R. Williams voted Aye.
Jos. Ramsey, Jr., voted Aye.
F. C. Hubbell voted Aye.
F. M. Hubbell voted Aye.
H. D. Thompson voted Aye.
C. Huttenlocher voted Aye.
Cyrus Kirk voted Aye.

All of the Directors having voted in favor of the adoption of the resolution, the Vice President declared the same to be adopted.

There being no other business before the meeting the Board adjourned sine die.

F. M. HUBBELL,
Secretary.

199 **Defendants' Exhibit 162a.**

Know All Men by These Presents: That we, A. J. Earling, H. R. Williams, and Jos. Ramsey, Jr., directors of the Des Moines Union Railway Company do hereby constitute and appoint J. A. Wagner of Des Moines, Iowa, our lawful agent and attorney for us and in our names to appear at a meeting of the board of directors of said Company to be held at the office of the Company in Des Moines, Iowa, between the hours of 10 o'clock A. M. and 4 o'clock P. M. on the 17th day of March, 1903, for the purpose of voting on the passage of the annexed resolution authorizing the exchange of real estate between this Company and the Des Moines Western Railway Company and the execution of a warranty deed to the Des Moines Western Railway Company to carry out the terms of said resolution, and for the transaction of no other business coming before said meeting, and then and there for us and in our names to cast the vote to which each of us are entitled and which we might cast if present.

Witness our hands this 7th day of January, 1903.

A. J. EARLING
H. R. WILLIAMS
J. RAMSEY, JR.

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200 **Defendants' Exhibit 163.**

Des Moines Union Railway Company.

Directors' Meeting.

Des Moines, Iowa, Mar. 17, 1903.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company, held at the Secretary's office in Des Moines, Iowa, on March 17th, 1903.

The Board met pursuant to adjournment.

Present in person, F. C. Hubbell, H. D. Thompson, Cyrus Kirk and C. Huttenlocher, Directors A. J. Earling, H. R. Williams and Jos. Ramsey, Jr., were represented by proxy to J. A. Wagner, duly filed with the Secretary. Director F. M. Hubbell was represented by his proxy, F. C. Hubbell.

President F. C. Hubbell in the chair:

H. D. Thompson offered the following Resolution and moved its adoption:

"Whereas, the Des Moines Western Railway Company is the owner of certain lots and parts of lots in the City of Des

Moines, described as follows: viz—The south seventeen (17) feet of lots seven (7) and sixteen (16) in block fourteen (14); All that part of lot seven (7) in block thirteen (13) which lies within 50 feet of the center line of the north main track of the Des Moines Union Railway Company as now located and constructed; all that part of lot fifteen (15) in block twelve (12) which lies within 50 feet of the center line of the north main track of the Des Moines Union Railway Company as now located and constructed; all of lot twelve (12) in block twelve (12) and all of lot eleven (11) of the Official Plat of lots one (1) two (2) nine (9) and ten (10) in block twenty (20) all in the Town of Des Moines to which lots and
201 parts of lots this Company desires to acquire the title, and

Whereas, the Des Moines Union Railway Company is the owner of sundry fractional parts of lots described as follows: the north thirty-nine (39) feet of lot sixteen (16) in block thirteen; all that part of lots nine (9) ten (10) and fourteen (14) in block twelve (12) north of and 50 feet distant from the center line of the north main track of the Des Moines Union Railway Company as now constructed; all of lots twelve (12) and thirteen (13) in block eleven (11) except the following described triangle: Beginning at the southwest corner of lot twelve (12) in block eleven (11); thence north along the west line of said lots twelve (12) and thirteen (13) 62 feet; thence southeasterly across lots thirteen (13) and twelve (12) to a point on the south line of lot twelve (12) 116.5 feet east of the southwest corner of said lot twelve (12); thence west to place of beginning. Also the following described triangle off from the northeast corner of lot ten (10), block twenty-one (21)—Beginning at the northeast corner of said lot ten (10); thence westerly along the north line of said lot, 31.8 feet, thence southeasterly to a point on the east line of said lot, 17 feet south of the northeast corner thereof; thence northerly to the point of beginning. Also, all of lot two (2) in block twenty-two (22) except the following described triangle—Beginning at the southwest corner of said lot two (2); thence northerly along the west line of said lot 52 feet; thence southeasterly to a point on the south line of said lot which is 98.5 feet east of the southwest corner; thence westerly to point of beginning. Also the following described triangle off from the northeast corner of lot eleven (11) of the Official Plat of lots three (3)
202 four (4) five (5) six (6) seven (7) and eight (8) block twenty-two (22) viz: Beginning at the northeast cor-

ner of said lot eleven (11); thence westerly along the north line of said lot, 167 feet; thence southeasterly to a point on the east line of said lot 85.5 feet south of the northeast corner of said lot; thence northerly to point of beginning. All of lots three (3) four (4) five (5) six (6) and seven (7), block twenty-three (23), included in the strip of land 50 feet in width parallel to and the south line being 7½ feet distant northerly from the center line of the north main track of the Des Moines Union Railway Company as now located and constructed—all of the foregoing being in the Town of Des Moines. Also, all of lot eleven (11) except the following described triangle—beginning at the southeast corner of said lot eleven (11); thence north along the east line of said lot, 2.7 feet; thence southwesterly 88.5 feet to the south line of said lot; thence easterly 88.4 feet to the point of beginning. Also, the following described part of lot ten (10);—Beginning at the northwest corner of said lot ten (10); thence south along the west line of said lot, 45.7 feet; thence northeasterly to a point on the east line of said lot, 16 feet north of the southeast corner thereof; thence north 34 feet to the northeast corner thereof; thence west to the point of beginning. Said last two described tracts of land being in D. Reese's Sub-Division of lot thirty (30) of Brooks & Co's Addition to the City of Des Moines, which this Company desires to convey to the Des Moines Western Railway Company in even exchange for the lots and fractional parts of lots first described, as be-
203 ing owned by the Des Moines Western Railway Company, and

Whereas, said fractional parts of lots owned by this Company are of about equal value to the lots and fractional parts of lots above described, owned by the Des Moines Western Railway Company,

Now Therefore, Be it Resolved, that the President and the Secretary of this Company are hereby authorized and directed to make said exchange of real estate and execute and deliver to the Des Moines Western Railway Company a warranty deed for said fractional parts of lots herein described, belonging to this Company, upon receiving from the Des Moines Western Railway Company a warranty deed for the lots and fractions of lots herein described, belonging to said Des Moines Western Railway Company."

J. A. Wagner as attorney for A. J. Earling seconded the motion to adopt the foregoing resolution which received the unanimous affirmative vote of all the Directors, as follows:

F. C. Hubbell voted Aye; F. M. Hubbel, by F. C. Hubbell, voted Aye; A. J. Earling, H. R. Williams and Jos. Ramsey,

Jr. by J. A. Wagner, voted Aye; H. D. Thompson voted Aye; Cyrus Kirk voted Aye; C. Huttenlocher voted Aye.

There being no further business before the Board, the meeting adjourned.

F. M. HUBBELL,
Secretary.

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204 **Defendants' Exhibit 164.**

Des Moines Union Railway Company.

Stockholders' Meeting, Des Moines, Ia. January 5th, 1906. (Friday)

The Stockholders met at the office of the President, pursuant to adjournment.

There were present and represented the following stockholders:

F. M. Hubbell, holding	1	Share
F. C. Hubbell, "	1	"
H. D. Thompson, by his proxy, F. M. Hubbell, holding	1	"
F. M. Hubbell & Son, holding	2495	Shares
Chicago, Milwaukee & St. Paul Railway Company, holding	998	"
C. Huttenlocher, holding	1	"
G. C. Hubbell, "	1	"
E. W. McKenna, "	1	"
W. J. Underwood, "	1	"
F. A. Delano "	1	"
E. B. Pryor, "	1	"
Total	3502	Shares

It was moved and seconded that the Secretary be authorized to cast the vote of all of the shares of stock present for the following directors, viz:

F. M. Hubbell to succeed himself.

F. C. Hubbell to succeed himself

C. Huttenlocher to succeed himself

205 G. C. Hubbell to succeed Cyrus Kirk

E. W. McKenna to succeed A. J. Earling

W. J. Underwood to succeed H. R. Williams

E. B. Pryor to succeed Jos. Ramsey, Jr., leaving

H. D. Thompson to hold his office as director without redection.

Thereupon, the Secretary cast the vote of the stock which was present and represented, to-wit—thirty-five hundred and two (3502) shares for the following named directors, viz: F. M. Hubbell, F. C. Hubbell, C. Huttenlocher, G. C. Hubbell, E. W. McKenna, W. J. Underwood, and E. B. Pryor, and those persons were declared elected as directors of this Company for the ensuing year and until their successors are elected and qualified.

Thereupon, the Secretary read the reports of J. A. Wagner Superintendent, for the years 1900, 1901, 1902, 1903, 1904, and 1905, as follows:

Report for 1900

(showing $9564.11 charged to "Permanent Improvements" in Constr. Acct.

The Superintendent, J. A. Wagner, laid before the meeting a statement of expenditures charged to "Permanent Improvements" which enter into the "Construction" Account for the year ending December 31, 1900 amounting to $9564.11; the details of which are as follows;

	Paid for east twelve (12) feet of west two-thirds (W. 2/3) of lots seven (7) and eight (8) in block ten (10) Hoxie's Addn. to the City of Des Moines, Iowa, for sidetrack purposes to "Luthe Hardware Co" Bldg. at Ninth and Cherry Sts		$ 804.00
206	Paid for lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) and ten (10) of Capital Addition to the City of Des Moines		$ 336.55
	Paid for sidetrack to "Luthe Hdw. Co." Bldg., at 9th & Cherry Sts		$ 324.07
	Paid cost of erecting so called "Cudahy" Bldg. bet. 6th & 7th Sts. on Cherry Street		$ 5498.86
	Paid cost of erecting new D. M. Union "coal chute"		$ 2610.63
	Total disbursements for the year 1900		$ 9564.11
	The above disbursements were provided for as follows:		
	Total amount of "surplus earnings" year 1900		$21333.60
	Less amount disbursed account of improvements during yr. 1900 as per statement above		9564.11
	Leaving net amount of "Surplus Earnings", year 1900		$11769.49
	The balance to debit of "Surplus Earnings" on Janry. 1, 1900 amounted to		$31451.28
	Paid by appropriation of net amount of "Surplus Earnings" for year 1900	$11769.49	
	Amount applied from "Rental Suspense" account, December 31st 1900	$ 3782.30	$15551.79
	Leaving a debit balance of		$15899 9

which is carried forward to January 1st 1901 in form of a floating debt.

J. A. WAGNER.

207

Report for 1901.

(Showing $3649.28 charged to "Permanent Improvement" in Construction Acct.)

The Superintendent J. A. Wagner, laid before the meeting a statement of expenditures charged to "Permanent Improvements" which enter into the "Construction" account for the year ending December 31st 1901, amounting to $3649.28, the details of which are as follows:

Paid for sidetrack to Globe Machinery & Supply Co. and Hawkeye Transfer Co. buildings from connection at the Paragon Refining Co. track to south line of Elm Street bet. Seventh & Eighth Sts. West Des Moines	$ 2153.73	
Paid for sidetrack to Des Moines Clay Manufacturing Company's building, located on South Seventh Street	$ 479.17	
Paid for sidetrack to Schmidt & Henry Manufacturing Company's building, located on Seventh and Elm Streets	$ 430.80	
Paid for sidetrack located in alley south of Warfield, Pratt Howell & Co. building, bet. First & Second Sts. W. Des Moines	$ 546.58	
Paid for serving notice of condemnation of Tyrrell property, S. 2/3 of lot five (5) and N. 1/3 of lot six (6) block thirty-five (35) Town of Des Moines (new Freight Hs. property).	$ 5.00	
Paid J. W. Henry for abstract #11696, lot three (3) block four (4) Fort Des Moines, Also lots two (2) and seven (7) block nine (9) and lot two (2) and E. ½ of lot seven (7) block fourteen (14) H. M. Hoxie's Addn. and abstract #11698 lot six (6) and S. 2/3 of lot five (5) block thirty-five (35) Fort Des Moines, (New Freight Hs. property)	$ 34.00	
		$ 3649.28
The above disbursements were provided for as follows:		
Total amount "Surplus Earnings", year 1901		$25643.10
less amount disbursed account of improvements during the year 1901 as per statement above		3649.28
208 Leaving net amount of "Surplus Earnings" year 1901		$21993.82
The balance to debit of "Surplus Earnings" on January 1st 1901 amounted to		$15899.49
Adjustment of "Materials and Supplies" account December 31st 1901	$ 208.68	
		$16108.17
Paid by appropriation of net amount of "Surplus Earnings" for year 1901	$21993.82	
Amount applied from "Suspense Acct." December 31, 1901	$ 4.15	21997.97
Balance to credit of "Surplus Earnings, December 31," 1901		$ 5889.80

J. A. WAGNER.

209 **Report for 1902.**

The Superintendent, J. A. Wagner, laid before the meeting a statement of Expenditures charged to "Permanent Improvement" which enter into the Construction Account for the year ending December 31, 1902 amounting to $28462.77 the details of which are as follows:

Amount refunded Wabash and C. M. & St. P. a/c Old "Permanent Improvement" Account		$ 173.52
Paid C. R. I. & P. Ry. Co. for sidetrack in "A" Street in East Des Moines		$ 301.51
Paid F. M. Hubbell for right of way over N. 32 feet of Lot 2, Block 18 Hoxie's Addition (a/c Getchell & Martin settlement)		$ 3000.00
Paid miscellaneous expenses in Getchell and Martin Lumber & M'f'g Co. condemnation proceedings		$ 191.90
Paid F. M. Hubbell for part lots 5 and 6, block 42, J. Lyon's Addition for side track purposes		$ 1000.00
Paid Keokuk & Western R. R. Co. for one dirt unloader		$ 265.00
Paid Baldwin Locomotive Works for one switch engine known as #4		$ 9607.00
Paid the Pond Machine Tool Co. for one Planer		$ 1598.80
Paid for constructing sidetrack to Continental Biscuit Company, Building located on West Tenth Street		$ 812.25
Paid for constructing sidetrack to "The Brown Hurley Hardware Co." building located on First Street		$ 1118.00
Paid for constructing C. B. & Q. connection in October 1902		$ 5324.79
Paid Equitable Life Insurance Co. of Iowa note for $5000 dated July 18, 1902, to apply on purchase price of Getchell & Martin Lumber & M'f'g Co. property, viz: N. 38 feet lots 2 and 7 Block 9 N. 38 feet lots 2 and 7 Block 14 all in H. M. Hoxie's Addition		$ 5000.00
		$28482.77

210

The above disbursements were provided for as follows:		
Total amount of "Surplus Earnings" for 1902		$29922.67
Less amount disbursed account of improvements, during year 1902 as per statement above		$28482.77
Leaving net amount of "Surplus Earnings" year 1902		$ 1439.90
The balance to credit of "Surplus Earnings" on January 1, 1902 amounted to		$ 5889.80
Adjustment of "Suspense Account"		$ 10.99
"Surplus Earnings" for year 1902		$29922.67
Paid by appropriation of "Surplus Earnings" for year 1902	$28482.77	$35823.46
Adjustment of "Material & Supplies" account for year 1902	$ 476.59	$28959.36
Balance to credit of "Surplus Earnings" January 1st 1903		$ 6864.10

J. A. WAGNER.

211 **Report for 1903.**

The Superintendent J. A. Wagner, laid before the meeting a statement of expenditures charged to "Permanent Improvements" which enter into the "Construction" account for the year ending December 31, 1903, amounting to $20,264.70: the details of which are as follows:

Paid Burnham Williams & Co. for one switch engine		$ 9689.63
Paid amount to apply on note for $8250 given in purchase of Daniel Tyrell property, viz: S 2/3 lot 5 and N 1/3 lot 6, block 35, Town of Fort Des Moines	$ 2250.00	
Paid Niles Bement Co. for one Nut Tapper		418.00
Paid Hill, Clarke & Co. for one pipe machine		383.00
Paid freight charges on above two machines		61.12
Paid Light Inspection Car Co., for one motor car		250.00
Paid for completing west end of "Union Passenger Station"		2399.90
Paid for N - 11 ft. of following property: Lots 7, 8, 9, 10, and 11, block 39, J. Lyon's Add. and Lot 4 of O. P. Of Keen & Poindexter's Addition		1000.00
Paid for lot 2 of the O. P. of lot 20 Brooks & Co.'s Add		500.00
Paid B. F. Parker & Co. for building located on lot 7, Block 16 Town of Des Moines, now a part of the City of Des Moines.		150.00
Paid for constructing sidetracks to J. I. Case Threshing Machine Company's building		2335.30
Paid for constructing sidetrack north of Mulberry Street		827.75
		$20264.70

212 The above disbursements were provided for as follows:

Total amount of "Surplus Earnings" year 1903		$35570.78
Less amount disbursed account of improvements during year 1903 as per statement above		$20264.70
Leaving net amount of "Surplus Earnings" year 1903		$15306.08
The balance to credit of "Surplus Earnings" on January 1, 1903 amounted to		$ 6864.10
Total amount of "Surplus Earnings" for year 1903		$35570.78
		$42434.88
Paid by appropriation of Surplus Earnings for year 1903	$20264.70	
Adjustment of Material & Supplies account for year 1903	$ 270.16	$20534.86
Balance to credit of "Surplus Earnings" January 1st 1904		$21900.02

J. A. WAGNER.

213 **Report for 1904.**

The Superintendent, J. A. Wagner, laid before the meeting a statement of expenditures charged to "Permanent Improvements" which enter into the "Construction" account for the year ending December 31, 1904, amounting to $36,623.67: the details of which are as follows:

Paid for erecting new "Freight House" West Second Street		$ 4483.34
Paid miscellaneous Court Costs in case of "Getchell & Martin Lumber & M'f'g Co. vs Des Moines Union Ry. Co."		$ 280.33
Paid for the Minneapolis & St. Louis R. R. connection in West Des Moines		$ 596.00
Paid balance of "Heath" note		$20000.00
Paid balance on note for $8250 given in purchase of Daniel Tyrrell property, viz: S. 2/3 lot 5 and N. 1/3 lot 6, block 35 Town of Fort Des Moines		$ 6000.00
Paid Equitable Life Insurance Co. of Iowa note for $5264.00 dated July 18, 1902 to apply on purchase price of Getchell & Martin Lumber & M'f'g Co. property viz: N. 38 ft. lots 2 & 7 Block 9 } all in H. M. N. 38 ft. " 2 & 7 " 14 } Hoxie's Addition		$ 5364.00
		$36623.67
The above disbursements were provided for as follows:		
Total amount of "Surplus Earnings" year 1904		$46752.94
Less amount disbursed account of improvements, etc. during year 1904, as per statement above		$36623.67
Leaving net amount "Surplus Earnings," year 1904		$10129.27
214 The balance to credit of "Surplus Earnings" on January 1, 1904 amounted to		$21900.02
Total amount Surplus Earnings" for year 1904		$46752.94
		$68652.96
Paid by appropriation of "Surplus Earnings" for year 1904		$36623.67
Balance to credit of "Surplus Earnings" January 1st 1905		$32029.29

J. A. WAGNER.

215 **Report for 1905.**

The Superintendent J. A. Wagner, laid before the meeting a statement of expenditures charged to "Permanent Improvements" which enter into the "Construction" account for the year ending December 31st 1905, amounting to $10,000.00 the details of which are as follows:

Paid Equitable Life Insurance Company of Iowa, note for $10000.00 dated July 18th 1902, balance on purchase price of Getchell & Martin Lumber & Mfg. Company property viz:
N. 38 ft. lots 2 and 7 block 9
N. 38 ft. " 2 and 7 " 14
all in H. M. Hoxie's Addition $10000.00

The above disbursements were provided for as follows:
Total amount "Surplus Earnings" year 1905 ..... $54763.68
Less amount disbursed account of improvements etc. during year 1905, as per statement above $10000.00

Leaving net amount of "Surplus Earnings" year 1905 ..... $44763.68

The balance to credit of "Surplus Earnings" on January 1st 1905 amounted to $32029.29
Total amount of "Surplus Earnings" for year 1905 ..... $54763.68

$86792.97
Paid by appropriation of "Surplus Earnings" for year 1905. $10000.00

Balance to credit of "Surplus Earnings" January 1st 1906. $76792.97

Yours truly,
J. A. WAGNER.

216 A resolution authorizing the issue of one million six hundred thousand dollars ($1,600,000) of the capital stock representing the value of this Company's property, over and above all its liabilities, was submitted to the meeting, and after considerable discussion action upon it was postponed until the adjourned meeting of the stockholders to be held January 18th 1906.

Whereupon the stockholders meeting adjourned to meet at the office of the President January 18th 1906, at ten o'clock A. M.

F. M. HUBBELL,
Secretary.

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217 **Defendants' Exhibit 165.**

Des Moines Union Railway Company.

Directors Meeting, Des Moines, Iowa, Janry. 5, 1906.

The Board of Directors met immediately after adjournment of the Stockholders meeting.

There were present: F. M. Hubbell, F. C. Hubbell, C. Huttenlocher, G. C. Hubbell, E. W. McKenna, W. J. Underwood, E. B. Pryor, and H. D. Thompson, by his proxy, F. M. Hubbell.

The President stated the first business to come before the meeting was the election of officers for the ensuing year.

F. M. Hubbell put in nomination

F. C. Huldell for President

H. D. Thompson for Vice President & Treasurer

F. M. Hubbell for Secretary.

There being no other nominations the above named persons received the affirmative vote of all of the Directors present and represented, and were declared unanimously elected as officers of this Company for the ensuing year, and until their successors are elected and qualified.

A proposition to extend this Company's tracks to the Army Post was taken up and discussed, but no action taken.

Mr. McKenna moved that the President of this Company be authorized to subscribe and pay for sixty (60) shares at one hundred dollars per share ($100) of the stock of the Iowa Transfer Railway Company. Seconded by F. M. Hubbell and carried by the unanimous vote of the eight (8) directors present and represented.

218 Mr. Pryor moved that the President and Secretary be authorized to sign a lease with the Iowa Transfer Railway Company, dated January 4th, 1906, and attach this Company's seal to same, which upon being put to vote, carried unanimously.

It was then moved and seconded that the Board of Directors adjourn until January 18th 1906.

F. M. HUBBELL,
Secretary.

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219 **Defendants' Exhibit 166.**

Des Moines Union Railway Company.

Directors' Meeting, Des Moines, Iowa, Dec. 13, 1906.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company, held at the office of the Secretary in Des Moines, December 13th 1906.

There were present, F. C. Hubbell, President, presiding. F. M. Hubbell, H. D. Thompson, C. Huttenlocher and G. C. Hubbell in person, and Directors E. W. McKenna and W. J. Underwood by their attorney in fact, J. T. Gillick, and Director E. R. Pryor by his attorney in fact, F. C. Hubbell.

The following preamble and resolution was offered by H. D. Thompson and seconded by J. T. Gillick as attorney in fact for E. W. McKenna and W. J. Underwood, as follows:

Whereas, the President of this, the Des Moines Union Railway Company, did on the 21st day of November A. D. 1906, by written contract, lease in the name of this Company to Charles Hewitt for a term of one hundred (100) years from and after January 1st A. D. 1907 all of the South one-third of lot ten (10) in block twenty (20) of the Original Town of Fort Des Moines, now a part of the City of Des Moines, Iowa, except that part of the north four (4) feet of said South one-third which lies west of the east thirty-six (36) feet of said lot ten (10) and

Whereas, said Lease as executed has been presented to, considered and approved by this Board,

Now Therefore, Be It Resolved that said lease and the action of the President of this Company in executing the same in the name of and on behalf of this Company, be and the same
220 are hereby fully ratified and confirmed and said lease is hereby declared to be the act and deed of this Company."

"We, E. W. McKenna and W. J. Underwood, Directors of the Des Moines Union Railway Company hereby authorize J. T. Gillick to attend the regular monthly meeting of the Board of Directors of said Company on December 11th 1906, and cast our vote in favor of the above Resolution.

E. W. McKENNA,
W. J. UNDERWOOD."

"I, E. R. Pryor, a Director of the Des Moines Union Railway Company hereby authorize F. C. Hubbell to attend the regular monthly meeting of the Board of Directors of said Company, on December 11th, 1906, and cast my vote in favor of the above Resolution.

E. R. PRYOR."

Thereupon, the lease to Charles T. Hewitt, dated November 21, 1906, for all of the south one-third of lot ten (10) in block twenty (20) O. T. of Fort Des Moines, Iowa, except that part of the north four (4) feet of said south one-third, which lies west of the east thirty-six (36) feet of said lot ten (10)—all now included in the corporate limits of the City of Des Moines, Iowa, was read by the Secretary and the Resolution being put to a vote, the motion to adopt said Preamble and Resolution received the unanimous affirmative vote of all the Directors, as follows:

F. C. Hubbell, H. D. Thompson, F. M. Hubbell, C. Huttenlocher, G. C. Hubbell, voted Aye. E. W. McKenna and W. J. Underwood, by their proxy, J. T. Gillick, voted Aye. E.
221 B. Pryor, by his proxy, F. C. Hubbell, voted Aye.

Thereupon, the Resolution was declared adopted.

There being no further business before the Board, the meeting adjourned.

F. M. HUBBELL,
Secretary.

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222 **Defendants' Exhibit 167.**

Des Moines Union Railway Company.

Stockholders' Meeting, Des Moines, Iowa, January 18, 1907.

(Friday)

The Stockholders of the Des Moines Union Railway Company met at the office of the President of the Company in Des Moines, this day, pursuant to adjournment.

There were present the following Stockholders in person, viz:

F. M. Hubbell, holding	1 share
F. C. Hubbell, holding	1 share
F. M. Hubbell & Son, holding	295 shares
C. Huttenlocher, holding	1 share
G. C. Hubbell, holding	1 share
H. D. Thompson, holding	1 share
New York Trust Co. Trustee.	
By E. B. Pryor Atty. & Agt. holding	998 shares
E. B. Pryor, holding	1 share
E. W. McKenna, holding	1 share
Chicago, Milwaukee & St. Paul Railway Company	
By E. W. McKenna, Vice President, holding	998 shares
Chas. E. Vroman, holding	1 share
Total	2299 shares

F. C. Hubbell, President, presiding.

The minutes of the meeting of the Directors held December 13th 1906, at which the lease to Chas. T. Hewitt was ratified & approved, were read and approved.

Mr. Pryor moved and it was carried, that the Stockholders proceed to the election of eight (8) Directors.

223 Mr. McKenna nominated Charles E. Vroman and E. W. McKenna.

Mr. Pryor nominated himself, and Mr. Thompson nominated F. C. Hubbell, F. M. Hubbell, H. D. Thompson, C. Huttenlocher and G. C. Hubbell.

On motion of Mr. McKenna seconded by H. D. Thompson, the Secretary was instructed to cast the vote of all of the stock represented, viz: 3999 shares, for the eight persons above nominated as Directors. The motion was carried and the Secretary cast the 3999 votes in accordance with said motion and E. W. McKenna, Chas. E. Vroman, E. B. Pryor, F. C. Hubbell, F. M. Hubbell, H. D. Thompson, C. Huttenlocher and G. C. Hubbell were declared duly elected as Directors for the ensuing year. Whereupon the Stockholders meeting adjourned.

F. M. HUBBELL,
Secretary.

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224 **Defendants' Exhibit 168.**

Des Moines Union Railway Company.

(Directors Meeting) Des Moines, Iowa, January 18, 1907.

Immediately upon the adjournment of the Stockholders' Meeting the newly elected Directors, viz: F. C. Hubbell, E. B. Pryor, E. W. McKenna, Chas. E. Vroman, F. M. Hubbell, H. D. Thompson, C. Huttenlocher and G. C. Hubbell, convened as a Board of Directors.

The first business being the election of officers, H. D. Thompson nominated F. C. Hubbell as President. The nomination was seconded by F. M. Hubbell and on the question being put, F. C. Hubbell was elected President.

Mr. McKenna moved that H. D. Thompson be elected as Vice President & Treasurer. Seconded by Mr. Pryor, and thereupon H. D. Thompson was elected Vice President & Treasurer.

Mr. McKenna moved that F. M. Hubbell be elected Secretary which was seconded by H. D. Thompson, and thereupon F. M. Hubbell was elected Secretary.

The President read his annual report, together with the annual report of Superintendent Wagner, and his letter accompanying same, which are as follows:

"To the Directors of the Des Moines Union
Railway Company.

Herewith I submit a brief report of the operation of this Company for the year ending December 31st, 1906.

At the last annual meeting the President was authorized to make an exchange of property with the Chicago, Rock Island & Pacific Railway Company of real estate in East Des Moines.

I attach hereto a blue print made from an accurate sur-
225 vey of the premises showing the proposed new boundary lines between the properties of the two Companies, and am able to report that the matter is now in the hands of the Second Vice President of the Rock Island Company for final decision, with the recommendations of the several Departments through which the negotiation has passed during the year 1906, and we confidently expect to consumate the exchange at an early date.

In accordance with the authority of the Board the President subscribed for sixty shares of stock of the Iowa Transfer Railway Company, to which stock the following Railroads have also subscribed for equal amounts:

Chicago Rock Island & Pacific Ry.

Chicago, Burlington & Quincy Ry.

Chicago, Great Western Ry.

Des Moines Western Ry.

The transfer was completed and put in operation on October 1st 1906 and I am glad to say, is giving entire satisfaction to all the Companies using the same. The final cost of the yard, office and other accessories was $30,862.41 and the Board of Directors of the Iowa Transfer Railway Company authorized the issuing of one thousand dollars additional capital stock, to be divided among the five companies. Therefore, our Company should subscribe for two hundred dollars more of this stock.

The Des Moines Union Railway Company expended $1026.66 in building a connecting track from its main line to a connection with the Iowa Transfer Railway, as is shown by the Superintendent's report hereto attached.

The only additional tracks constructed by the Des
226 Moines Union during the past year are those mentioned in the Superintendent's report which are located west of the Water Works building. This construction was necessary in order that we might handle trains into and out of Des Moines. Owing to the increase in business, we were frequently without a single clear track in our west yard excepting the main line.

I again desire to call to the attention of the Directors to the necessity for a double main line from the east end of the Des Moines River bridge to East Fifth Street from which point we have double track to Chicago Great Western Junction.

The question of the Des Moines river bridge has been discussed with the Engineering Department, of the St. Paul and Wabash Companies, all of which correspondence is now in the President's office, and I shall be glad to have this question further discussed in view of the position taken by Mr. Cunningham of the Wabash Railroad Company.

During the past year this Company has been subjected to more litigation than in any previous year of its history, the Chicago Great Western Railway Company having brought suit in the Iowa District Court involving some eighty thousand dollars. At the hearing of this case the Great Western were defeated. Instead of appealing, they dismissed the case and have brought a new action in the Federal Court at Des Moines.

The County of Polk through its Tax Ferrets, brought action against this Company for mulct taxes on properties which we had permitted Anheuser-Busch, Schlitz and other Breweries to occupy with storage for handling their beers. The amount involved with the penalties was about Sixteen
227 Thousand dollars. I am glad to report that we have also won this case.

The case of Chas. Clark, switchman, killed December 20th 1905, which was referred to in report of last year, was settled in January 1906, for $200.00.

R. D. McMannus, Switchman, killed January 8th, 1906 for which the liability of our Company was beyond question, was settled at a total expense of $3108.70; this being the only expensive personal injury claim our Company has ever had.

The case of Wm. Froah, Trespasser, killed on our tracks by switch engine May 23d 1903, was disposed of during the year 1906 by dismissal at the cost of plaintiff.

At this moment we have no pending claims for personal injuries. Total amount paid for all personal injuries during the year 1906 was $3540.41.

This Company has loaned the sum of $75,404.59; some of the money at 4%, some at 5%, 5½% and 6%. All of the loans are amply secured. Schedule of loans hereto attached.

Our Company has recently ordered of the Baldwin Locomotive Works two switching engines, to be the same as our en-

gines Nos. 4 and 5. These engines will be delivered to us in June 1907, and will cost $9700. each F. O. B. Des Moines.

I desire to add, in closing, my concurrence in the several recommendations made in the report of the Superintendent hereto attached.

Respectfully submitted,

F. C. HUBBELL, President."

228 Loans made during year 1906.

Des Moines Clay Manufacturing Co. on demand, Interest at 5% per annum, April 24, 1906		$13,000.00
May 1st, Ida and Henry Reigleman, 5 notes, Nos. 1, 2, 3, 4, and 5 due May 1, 1916, interest 5½% per annum		$10,000.00
May 11th. Judgment John Hawk, Trustee vs. the City of Des Moines No. 15530 Law, at 6% per annum		$ 9,888.86
Mar. 1st, Frank Tassler, Farm Loan 5% per annum, due March 1st, 1912		$ 4,500.00
Mar. 1st, Wm. Nelson, Farm Loan due Mar. 1, 1912, 5% per annum		$ 6,000.00
Nov. 26th, Polk County warrants as follows:		
No. 49053, 5% annual interest	$1664.40	
No. 49054, " " "	$ 130.36	
No. 49055, " " "	$ 122.17	
No. 49056, " " "	$ 42.00	
No. 49057, " " "	$ 24.00	
No. 49058, " " "	$ 32.80	$ 2,015.73
Decr. 29th, Des Moines Savings Bank, Certificate of deposit		$30,000.00
Interest for six months 3%		
" " twelve " 4%		
		$75,404.59

"Des Moines January 3d, 1907.

Mr. F. C. Hubbell, President D. M. U. Ry. Des Moines.

Dear Sir:—

Referring to the close of the year 1906, I have to report the completion of the connection of our tracks with the Iowa Transfer Railway Company in East Des Moines at a cost of $1,026.66.

We have also constructed 4540 feet of side track west of the Water Works, with a capacity of Seventy-four (74)
229 cars, at a cost of $5,692.55.

We are greatly in need of additional repair tracks. The number of bad order cars, which came to us from our tenants, the Wabash and the C. M. & St. P., are far in excess of our rip track capacity, on this account we are unable to place as many cars on repair tracks as the prompt movement and

shortage of cars demand. I therefore recommend that we build additional Repair Tracks to accommodate at least thirty (30) more bad order cars.

On account of increase in business, our present Round House is entirely too small and we need at least five (5) additional stalls, to properly care for the engines, which come to us from our tenant companies.

We have but one boiler to furnish steam to operate the machinery, heat the Round House and fire up engines. This is not sufficient for all these purposes, during cold weather, necessitating our using an engine, frequently, to assist in furnishing steam to take care of our requirements, this also being true when our one boiler requires repairs, an engine is expensive and not always available. I therefore recommend that an additional boiler be installed in the Boiler Room, so we may properly take care of our needs.

The past year has shown a large increase in our wheelage, and the indications are that the coming year of 1907 will surpass that of 1906.

Yours truly,

J. A. WAGNER."

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230 Des Moines Union Railway Company.

Report for Year 1906.

The Superintendent, J. A. Wagner, laid before the meeting a statement of the expenditures for the year ending December 31st 1906, amounting to $12,579.64; the details of which are as follows:

Pd. for constructing new side tracks west of Water Works	$ 5,570.98
Pd. for constructing connection with Iowa Transfer Railway Company	$ 1,026.66
Pd. for sixty shares of the capital stock of the Iowa Transfer Railway Company	$ 6,000.00
	$ 12,597.64
The above disbursements were provided for as follows:	
Total amount of "Surplus Earnings year 1906	$ 61,081.45
Less amount disbursed account of improvement etc. during year 1906, as per statement above	$ 12,597.64
Leaving net amount of "Surplus Earnings" year 1906	$ 48,483.81
The balance to credit of "Surplus Earnings" on January 1st 1906, amounted to	$ 76,792.97
Total amount of "Surplus Earnings" for year 1906	$ 61,081.45
	$137,874.42
Paid by appropriation of "Surplus Earnings" for year 1906	$ 12,597.64
Balance of credit of "Surplus Earnings" Jany 1st, 1907	$125,276.78

231 Mr. Vroman offered the following Resolution in regard to exchanging Real Estate with the Chicago, Rock Island & Pacific Railway Company, which having been seconded, was passed by the unanimous vote of all the directors, viz:

"Resolved, that the officers of this Company be authorized and empowered to effect an exchange of real estate with the Chicago Rock-Island & Pacific Railway Company as per recommendation of the President of this Company, of this date, and that the said officers are hereby authorized, empowered and directed to that end, to convey to the Chicago, Rock Island and Pacific Railway Company the following described parcels of land.

All that part of Block Twelve (12) Town of Des Moines described as follows: Commencing at the south-east corner of lot twelve (12) of said Block, thence westerly along the south line of said Lot twelve (12) to the south-west corner thereof; thence northerly along the west line of Lots twelve (12) and thirteen (13) of said Block, seventy (70) feet; thence southeasterly in a direct course to a point in the east line of Lot twelve (12) of said Block, thirty-two (32) feet northerly from the place of commencement; thence southerly thirty-two (32) feet to the place of commencement.

Also, commencing at the south-west corner of Lot Eleven (11) of said Block Twelve (12) thence northerly along the westerly line of said Lot Eleven (11) twenty-five and nine-tenths (25.9) feet; thence southeasterly in a direct course to a point in the south line of said Lot Eleven (11), Seventy-six (76) feet easterly from the place of commencement; thence west-
232 erly aloag the southerly line of said Lot Eleven (11) Seventy-six (76) feet to the place of commencement.

All that part of Block Twenty-one (21) Town of Des Moines, described as follows: commencing at the south-east corner of Lot One (1) of said Block, thence westerly along the southerly line of said Lot one (1) to the southwest corner thereof; thence northerly along the westerly line of said Lot One (1) to the northwest corner thereof; thence easterly along the northerly line of said Lot One (1) forty-three and one-tenth (43.1) feet; thence southeasterly in a direct course to a point in the east line of said Lot One (1) eleven and nine-tenths (11.9) feet northerly from the place of commencement; thence southerly eleven and nine-tenths (11.9) feet to the place of commencement.

Also commencing at the southwest corner of Lot Nine (9) of said Block Twenty-one (21), thence northerly along the westerly line of Lots Nine (9) and Ten (10) of said Block fifty-

nine (59) feet; thence south-easterly in a direct course to a point in the south line of Lot Nine (9) of said Block, one-hundred twenty-nine and five tenths (129.5) feet easterly from the place of commencement; thence westerly one hundred twenty-nine and five-tenths (129.5) feet to the place of commencement.

All of Lots Eleven (11) and Eighteen (18) of the Official Plat of Lots two (2) three (3) four (4) five (5) six (6) seven (7) and eight (8) of Block Twenty-one (21) Town of Des Moines.

All of Lots nine (9) and eleven (11) of the Official Plat of Lots One (1) Two (2) nine (9) and ten (10) Block Twenty (20) Town of Des Moines.

All that part of the Official Plat of Lots three (3) four
233 (4) five (5) six (6) seven (7) and eight (8) of Block Twenty-two (22) Town of Des Moines, described as follows: Commencing at the southwest corner of Lot thirteen (13) of sand Official Plat, thence northerly along the westerly line of said Lot fourteen and eight-tenths (14.8) feet; thence south-easterly in a direct course across Lots thirteen (13) and twelve (12) of said Official Plat to a point in the southerly line of said Lot twelve (12) sixty-eight and four-tenths (68.4) feet south-easterly from the place of commencement; thence northwesterly along the southerly line of lots twelve (12) and thirteen (13) sixty-eight and four-tenths (68.4) feet to the place of commencement.

All of said property now being included in and forming a part of the City of Des Moines, Polk County, Iowa. The land contained in the above described property is twenty-eight thousand six hundred and nine (28,609) square feet; upon receiving from the said Chicago, Rock Island and Pacific Railway Company a deed, duly executed by the officers of said Company, for the following described pieces and parcels of land;

The north twenty-five (25) feet of lots fourteen (14) and nine (9) Block Sixteen Town of Des Moines;

The north fourteen (14) feet of Lots nine (9) ten (10) eleven (11) twelve (12) thirteen (13) and fourteen (14) Block fifteen (15) Town of Des Moines;

All that part of Block fourteen (14) Town of Des Moines described as follows: Commencing at the north-west corner of lot fourteen (14) of said Block, thence easterly along the northerly line of said lot fourteen (14) to the northeast corner
234 thereof; thence southerly along the easterly line of said lot fourteen (14) fifteen and eight-tenths (15.8) feet;

thence westerly in a direct course to a point in the west line of said lot fourteen (14) fourteen (14) feet southerly from the place of commencement, thence northerly fourteen feet to the place of commencement.

Also commencing at the northwest corner of lot nine (9) of said Block fourteen (14), thence easterly along the northerly line of said lot nine (9) to the northeast corner thereof; thence southerly along the easterly line of said lot nine (9) thirty-seven (37) feet; thence westerly in a direct course to a point in the west line of said lot nine (9) Sixteen and five-tenths (16.5) feet southerly from the place of commencement; thence northerly sixteen and five-tenths (16.5) feet to place of commencement.

All that part of Block thirteen (13) Town of Des Moines described as follows: Commencing at the northwest corner of lot fourteen (14) of said Block, thence easterly along the northerly line of said lot fourteen (14) to the northeast corner thereof; thence southerly along the easterly line of lots fourteen (14) and thirteen (13) of said Block; sixty-one (61) feet; thence westerly in a direct course to a point in the west line of lot fourteen (14) of said Block, forty seven and nine-tenths (47.9) feet southerly from the place of commencement; thence northerly forty-seven and nine-tenths (47.9) feet to the place of commencement.

Also commencing at the northwest corner of lot ten
235 (10) of said Block thirteen (13) thence easterly along the northerly line of said lot ten (10) to the northeast corner thereof; thence southerly along the easterly line of said lot ten (10) twenty-five and nine-tenths (25.9) feet; thence westerly in a direct course to a point in the west line of said lot ten (10) six and three-tenths (6.3) feet southerly from the place of commencement; thence northerly six and three-tenths (6.3) feet to the place of commencement.

All of said property now being included in and forming a part of the City of Des Moines, Polk County, Iowa.

The land contained in the above described property is twenty-eight thousand six hundred and six (28,606) square feet.

Resolved Further, that the Central Trust Company of New York, Trustee, under the General Mortgage of this Company, dated November 1st, 1887, be requested to release from the lien of said mortgage the several pieces of real estate herein mentioned, which are to be conveyed to the Chicago Rock Island and Pacific Railway Company.

Mr. Pryor offered the following Resolution which was seconded by Mr. McKenna, viz:

Resolved that the amount paid for the sixty (60) shares of the capital stock of the Iowa Transfer Railway Company and the amount expended in building the track connection with the Iowa Transfer Railway Company be carried on the books of the Company in suspense."

The Ayes and Nays were called for, Those voting Aye were Messrs. McKenna, Pryor and Vroman. Those voting Nay were Messrs. F. C. Hubbell, F. M. Hubbell, H. D. Thompson,
236 C. Huttenlocher and G. C. Hubbell. The vote resulting three for and five against it, the Resolution was declared lost.

Mr. Thompson moved that the Company subscribe and pay for two shares of stock of the Iowa Transfer Ry. Co.

Mr. Vroman moved to amend by adding to the motion "that the amount to be paid be carried in a suspense account."

On the amendment Messrs. McKenna, Pryor and Vroman voted Aye. Messrs. F. C. Hubbell, F. M. Hubbell, H. D. Thompson, C. Huttenlocher and G. C. Hubbell voted Nay. The vote resulting three for and five against it, the amendment was lost.

Upon the original motion Messrs. F. C. Hubbell, F. M. Hubbell, H. D. Thompson, C. Huttenlocher, and G. C. Hubbell, voted Aye. Messrs. McKenna, Pryor and Vroman voted Nay,—five Ayes and three Nays, and the motion was lost.

Mr. Thompson moved, and Mr. McKenna seconded that the Des Moines Union Ry. Co. subscribe and pay for two shares additional of the capital stock of the Iowa Transfer Ry Co. Carried unanimously.

Mr. Pryor moved that the amount paid for the two shares of the capital stock of the Iowa Transfer Railway Co. be carried on the books of the Company, in suspense. Messrs. McKenna, Pryor, and Vroman voted Aye. Messrs. F. C. Hubbell, F. M. Hubbell, H. D. Thompson, C. Huttenlocher and G. C. Hubbell voted Nay,—Three Ayes and five Nays, and the motion was declared lost.

Mr. McKenna offered the following resolution—

"Resolved that the action of the Officers of this Company in building a track, or tracks, west of the Water Works and the payment for the same, be not approved." Seconded by Mr. Vroman.

237 Upon the Resolution Messrs. McKenna, Pryor and Vroman voted Aye. Messrs. F. C. Hubbell, F. M. Hubbell, H. D. Thompson, C. Huttenlocher and G. C. Hubbell voted Nay,—three Ayes and five Nays, Resolution lost.

"Resolved that the action of the President in ordering two new switching locomotives to be purchased, be and the same is hereby approved." Carried unanimously.

Mr. Pryor offered the following resolution—

"Resolved that the amount to be paid for the two new switching locomotives, when paid, be carried on the books of this Company in Suspense."

Upon this Resolution Messrs. McKenna, Pryor and Vroman voted Aye. Messrs. F. C. Hubbell, F. M. Hubbell, H. D. Thompson, C. Huttenlocher and G. C. Hubbell voted Nay, three Ayes and five Nays,—Resolution lost.

Mr. Pryor filed a protest as follows:—

"The Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company hereby again enter formal protest against the action of the Officers of the Company in making charges or payments of any kind, against or from the so called "Surplus Earnings" account and request that this protest be entered in the records of this meeting."

The building of a new bridge across the Des Moines River was discussed but was laid over, awaiting a conference and agreement between the Chief Engineers of the Wabash Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company, as to whether a new bridge be erected or the present bridge strengthened.

238 That part of the President's report as to the loaning of $75,404.59 was discussed and it was agreed that the Treasurer shall convert the loans into money without loss to the Company and that it be then loaned to solvent Banks, or other financial institutions at 3% interest payable on call.

On motion duly seconded, the Board of Directors adjourned.

F. M. HUBBELL,
Secretary.

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239 **Defendants' Exhibit 169.**

Des Moines Union Railway Company.

Stockholders' Meeting, Des Moines, Iowa Janry 3d, 1908.

The Stockholders of the Des Moines Union Railway Company met at the office of the Company in the City of Des

Moines at 10 o'clock A. M. January 3d 1908, pursuant to adjournment.

There were present the following stockholders viz:

F. C. Hubbell, holding	1 share
F. M. Hubbell, holding	1 "
F. M. Hubbell & Son, holding	2495 shares
G. C. Hubbell, holding	1 share
H. D. Thompson, holding	1 "
N. T. Guernsey, holding	1 "
New York Trust Company, Trustee, By E. B. Pryor, proxy, holding	498 shares
E. B. Pryor, holding	1 share
E. W. McKenna, holding	1 "
Chicago, Milwaukee & St. Paul Railway Company, by E. W. McKenna, Vice Prest. holding	998 shares
Chas. E. Vroman, holding	1 share
Total	3999 shares.

Upon motion E. W. McKenna was elected Chairman of the meeting and F. M. Hubbell Secretary thereof.

There were read to the meeting the minutes of the meetings of the board of directors and of the meetings of the stockholders held during the year 1907.

Thereupon, the meeting proceeded to the election of a board of directors, and the following nominations were made.

Mr. McKenna nominated Chas. E. Vroman & E. W. McKenna.

240 Mr. F. C. Hubbell nominated E. B. Pryor.

Mr. E. B. Pryor nominated F. M. Hubbell, F. C. Hubbell, H. D. Thompson, G. C. Hubbell and N. T. Guernsey.

On motion of N. T. Guernsey, seconded by Chas. E. Vroman, the following resolution was unanimously adopted—

Be It, and it is hereby resolved that the Secretary be and he is hereby instructed to cast the unanimous vote of all the stock represented at this meeting, viz: three thousand nine hundred and ninety-nine (3999) shares, for the persons who have been nominated for directors of this Company as shown by the records of this meeting.

Thereupon, the Secretary proceeded to cast three thousand nine hundred and ninety-nine (3999) votes pursuant to the foregoing resolution for each of the following named persons as directors of this Company, viz: E. W. McKenna, Chas. E. Vroman, E. B. Pryor, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, G. C. Hubbell and N. T. Guernsey, and an-

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nounced that the said vote had been so cast, and thereupon they and each of them were declared to be duly elected as members of the board of directors of this Company.

Thereupon, upon motion, the meeting adjourned.

F. M. HUBBELL,
Secretary.

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241 **Defendants' Exhibit 170.**

Des Moines Union Railway Company.

(Directors Meeting) Des Moines Iowa January 3d, 1908.

Minutes of the annual meeting of the Board of Directors of the Des Moines Union Railway Company.

Immediately upon the adjournment of the Stockholders' meeting the newly elected directors, viz: E. W. McKenna, Chas. E. Vroman, E. H. Pryor, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, G. C. Hubbell and N. T. Guernsey, convened as the board of directors.

The first business being the election of officers the following officers were elected by the unanimous vote of all of the directors.

F. C. Hubbell President

H. D. Thompson Vice President & Treasurer

F. M. Hubbell, Secretary.

Thereupon, the president read his annual report, including the annual report of J. A. Wagner, Superintendent, which are as follows:—

Des Moines Iowa January 1st 1908.

To the Directors of the Des Moines Union Railway Company:

Gentlemen:

Herewith a report from the Superintendent of this Company respecting business for the year 1907, which I will include and make a part of my report for the year 1907.

I desire especially to call the attention of the Directors to the necessity of a stronger bridge over the Des Moines River.

The bridge at present is overloaded as follows:

242 Compression members 15%
Tension " 16%
Flanges of stringers 25½%

Therefore, it is imperative that a stronger bridge be constructed at once, to take the place of the present structure, and in view of the necessity for a double track bridge, to accommodate the business of the Company, together with the obvious economy of building a double track bridge at this time instead of two single track bridges, I am taking preliminary steps toward the construction of a new double track bridge.

At a meeting in January 1907, authority was given to the President to subscribe for sixty shares of the capital stock of the Iowa Transfer Railway Company. It afterward developed that additional funds were necessary to complete the tracks and office and each of the companies, owners of the stock of the Transfer Company, subscribed for two additional shares, making the total increase, in the capital stock of the Iowa Transfer Railway Company, One thousand dollars.

Litigation has grown to be one of the principal features of the Des Moines Union Railway Company. The action brought by the Chicago Great Western Railway Company, for an accounting, has not progressed owing to the fact that that Company has delayed taking any evidence.

Since the last annual meeting the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company have brought action in the Federal Court, asserting that they are the beneficial owners of the Company's property, and asking for an accounting.

243 The Chicago, Milwaukee & St. Paul Railway Company has also brought action in the State Courts attacking the title to the west mile of track of the Des Moines Union Railway Company.

The Minneapolis & St. Louis Railroad Company has also served us with notice for an accounting on their bills, but the same has not yet reached the point of litigation.

The Des Moines Iowa Falls & Northern Railway Company's lease for the use of the Union Passenger Station expired December 31st, 1907, and that Company desires an extension of its lease, but asks for a modification of the rental charge. They are continuing to use the station subject to the action of the board of directors of this Company, at its meeting on January 24, 1908.

The year 1907 was fortunate in respect to personal injuries. The total expense for the year in settlement for injuries, including Surgeon's and Hospital fees, amounts to $1027.15.

I cannot close this report without again referring to the necessity for the fourteen hundred feet of second main line

in East Des Moines, additional boiler capacity in the Round House, and additional stalls to the Round House in order to properly house the engines of our tenants.

Respectfully submitted,

F. C. HUBBELL, President.

244 Superintendent's Report for the Year 1907.

The Superintendent, J. A. Wagner, laid before the meeting a statement of expenditures for the year ending December 31st, 1907, amounting to $24,074.08 the details of which are as follows:

Paid for two new switch engines	$ 23,650 00
Paid for constructing new sidetrack to Iowa Glue Company Building	$ 284 08
Paid for two additional shares of the Capital stock of the Iowa Transfer Ry. Co.	$ 200 00
	$ 24,074 08
The above disbursements were provided for as follows:	
Total amt. "Surplus Earnings" for year 1907	$ 75,343 12
Less amt. disbursed account improvements etc. during year 1907, as per statement above	$ 24,074 08
Leaving net amt. "Surplus Earnings" year 1907	$ 51,269 04
The balance to credit "Surplus Earnings" on January 1st, 1907, amounted to	$125,226 78
Total amount of "Surplus Earnings" for year 1907	$ 75,343 12
forward	$200,569 90
(New page) Forward	$200,569 90
Paid by appropriation of "Surplus Earnings" for year 1907	$ 24,074 08
Balance to credit of "Surplus Earnings" January 1st 1908	$176,715 82

J. A. WAGNER.

245 The Treasurer reported orally, showing in detail how he had invested funds of the Company held by him.

On motion of Mr. Vroman, seconded by Mr. Pryor, the following resolution was unanimously adopted:—

Resolved, that the Treasurer of this Company be and he is hereby authorized and directed, until the further action of this board in the premises, to deposit all funds of this Company coming into his hands, in the Des Moines Savings Bank and the Iowa National Bank of Des Moines, Iowa; and the action of said Treasurer in heretofore depositing said funds is hereby approved ratified and confirmed.

Mr. Guernsey brought up the matter of the President's salary, and after a general discussion it was the sense of the meeting that the President is entitled to a reasonable compensation for the services rendered by him to the Company. At the request of Mr. McKenna this matter was passed for the determination of the amount of the President's salary to be taken up at the next meeting of the board.

On motion of Mr. Guernsey, seconded by Mr. Vroman, the following resolution was unanimously adopted:

Resolved that the president of this company be and he is hereby directed to, as soon as practicable, cause plans to be prepared for a new double track bridge across the Des Moines River, together with an estimate of its cost, and to submit the same to a meeting of this board to be called for that purpose;
246 and that in this connection the engineer of this company consult with the chief engineers of the Chicago, Milwaukee & St. Paul Railway Company and Wabash Railroad Company.

The President reported a proposition looking to the construction of a track from a connection with the present tracks of the Company to the plant of the Iowa Portland Cement Company. After discussion of the matter the President was directed to cause a survey to be made and an estimate of the probable cost of this work, and pending this information the matter was passed.

The President reported to the meeting the pending differences with the Minneapolis & St. Louis Railroad Company as to the proper construction of that portion of the contract with the Des Moines & Fort Dodge Railroad Company, fixing the amount of rent to be paid by it.

Thereupon, it was determined that a brief upon the proper construction of this portion of the lease be prepared by N. T. Guernsey, the company's counsel, and the President was directed to adjust the matter upon the basis of making a minimum charge of four hundred dollars ($400) per month for two trains and in addition charging the Minneapolis & St. Louis Railway Company only for the actual days upon which trains in excess of the minimum two are run, and readjusting the account up to this time upon that basis.

Upon motion of Mr. Vroman, seconded by Mr. Thompson, the following resolution was unanimously adopted:—

Resolved, that the President and Secretary of this Company be and they are hereby authorized and directed to execute in behalf of this Company an extension of the present lease from

this Company to the Des Moines Iowa Falls & Northern
247 Railway Company, such extension agreement to be attached to the original lease and to be in substantially the following form:—

The within contract, with all of its covenants and conditions, except as to compensation, is hereby extended to continue and remain in force for a term of six months, and thereafter until sixty days written notice of cancellation thereof by either party thereto.

The compensation to be paid by the second party hereunder shall be two hundred dollars per month, payable on the first day of the next succeeding month.

Executed in duplicate on this ..... day of January A. D. 1908.

DES MOINES UNION RAILWAY COMPANY,
By ..... President.

Attest:
Secretary.

The following protest was read to the meeting and filed;

"Des Moines, Iowa, Jany. 3, 1908. As the representatives of the Wabash Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, and also as Directors in the Des Moines Union Railway Company Board of Directors, we again make formal protest against the practice of charging expenditures of any description against the so called "Surplus Earnings" Account. It being claimed by us at all times that the revenues accruing from Rental, Switching, Earnings, etc. should be applied monthly to the reduction of the expenses of the Des Moines Union Railway Company and the balance of the expenses be collected from the companies.

248 We further protest against that part of the Superintendent's report, just submitted, in which he states that a part of the earnings for the year 1907 has been appropriated toward the payment of two switching engines $23,050.00

2 shares of the capital stock of the Iowa Transfer Railway Company, ...$ 200.00

and a siding to the Iowa Glue Company.....$ 824.00

Total $24,074.08

We do not protest against these improvements but against the application of earnings toward the payment therefor.

THE WABASH RAILROAD COMPANY,
By E. B. Pryor, Vice President.

THE CHICAGO MILWAUKEE & ST. PAUL RY. CO.,
By E. W. McKenna 2nd Vice President.

E. B. Pryor
E. W. McKenna
Chas. E. Vroman
Directors.

Upon motion the meeting adjourned to meet at the call of the President.

F. M. HUBBELL,
Secretary.

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249 **Defendants' Exhibit 171.**

Des Moines Union Railway Company.

Stockholders Adjourned Meeting.

The Stockholders of the Des Moines Union Railway Company met at the office of the Company in the City of Des Moines, Iowa, at ten o'clock A. M. January 8th, 1909, pursuant to adjournment.

There were present the following stockholders:

F. C. Hubbell, holding	1 share
F. M. Hubbell, holding	1 share
F. M. Hubbell & Son, holding	2495 shares
G. C. Hubbell, holding	1 share
H. D. Thompson, holding	1 share
N. T. Guernsey, holding	1 share
New York Trust Company, Trustee, By E. B. Pryor, proxy, holding	498 shares
E. B. Pryor, holding	1 share
E. W. McKenna, holding	1 share
Charles E. Vroman, holding	1 share
Chicago, Milwaukee & St. Paul Ry. Co. By E. W. McKenna, Vice President, holding	998 shares
Total	3999 shares

Upon, motion F. C. Hubbell was elected Chairman of the meeting and F. M. Hubbell Secretary thereof.

There were read to the meeting the minutes of the meetings of the Board of Directors and of the stockholders held during

the year 1908. On motion, the minutes of such meetings for the year 1908 were approved.

250 Thereupon the meeting proceeded to the election of the Board of Directors and the following nominations were made;—E. W. McKenna nominated the following persons, F. M. Hubbell, F. C. Hubbell, G. C. Hubbell, H. D. Thompson, N. T. Guernsey, as members of the Board of Directors for the ensuing year.

N. T. Guernsey nominated E. B. Pryor, E. W. McKenna and Charles E. Vroman for membership in the Board of Directors for the coming year.

Upon motion of N. T. Guernsey, seconded by E. B. Pryor, the following resolution was unanimously adopted.

"It is hereby resolved that the Secretary be and he is hereby instructed to cast the unanimous vote of all stock represented at this meeting, viz, three thousand nine hundred and ninety-nine (3999) shares for the persons who have been nominated for Directors of this Company, as shown by the records of this meeting."

Thereupon, the Secretary proceeded to cast three thousand nine hundred and ninety-nine (3999) votes, pursuant to the said resolution, for each of the following named persons as Directors of this Company, E. W. McKenna, Charles E. Vroman, E. B. Pryor, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, G. C. Hubbell, N. T. Guernsey, and announced that such votes had been so cast. Thereupon, they and each of them, were declared to be duly elected as members of the Board of Directors of this Company.

Upon motion the meeting adjourned.

F. M. HUBBELL,
Secretary.

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251 **Defendants' Exhibit 172.**

Des Moines Union Railway Company.

Directors' Meeting Des Moines Iowa, Jany. 8, 1909.

Minutes of the Annual Meeting of the Board of Directors of the Des Moines Union Railway Company.

Immediately upon the adjournment of the Stockholders' Meeting, the newly elected Directors

E. W. McKenna
E. B. Pryor,
H. D. Thompson,
Charles E. Vroman
F. M. Hubbell,
F. C. Hubbell
G. C. Hubbell,
N. T. Guernsey.

convened as a Board of Directors.

The minutes of the meeting of the Board of Directors held January 3rd, 1908, were read, and no objections being made thereto, the same stand approved.

Thereupon the meeting proceeded to the election of officers for the ensuing year and the following officers were elected by the unanimous vote of all the Directors.

F. C. Hubbell, President
H. D. Thompson, Vice President & Treasurer
F. M. Hubbell, Secretary.

Thereupon, the President read his annual report including the annual report of J. A. Wagner Superintendent, which are as follows:

(For the sake of brevity, this report is omitted.)

Report of the Superintendent
for the Year 1908.

The Superintendent, J. A. Wagner, laid before the meeting a statement of Surplus Earnings for yr. 1908 as follows:

252 Balance credit of "Surplus Earnings" account January 1st 1908. $176,615.82
Total amount Surplus Earnings for year 1908 ..... $ 74,902.48

Balance to credit of Surplus Earnings Account January 1st 1909. $251,618.30

(Signed) J. A. WAGNER Superintendent.

The following resolution proposed by Mr. E. B. Pryor and seconded by Mr. E. W. McKenna, was, upon motion, unanimously adopted.

"It is hereby resolved that the salary of the Superintendent of this Company be fixed at the sum of Three Hundred Dollars per month, to be effective January 1st 1909."

Mr. E. W. McKenna offered the following resolution and moved its adoption, such motion being seconded by Mr. E. B. Pryor. Said resolution being as follows:

"Resolved, That the President of this Company be, and is hereby authorized, in conjunction with the proper officers of the Chicago, Rock Island & Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, and the Des

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Moines & Fort Dodge Railroad Company, or the Minneapolis & St. Louis Railroad Company, lessee thereof, to enter into a contract with the City of Des Moines, for the construction of a viaduct over and along West Seventh Street from a point at or near Mulberry Street to a point at or near fifty feet north of the north line of Tuttle Street, substantially in accordance with the negotiations in reference thereto evidenced by a form of Ordinance presented to the meeting."

253 Said Resolution was unanimously adopted by vote of all Directors.

Upon motion of Mr. E. B. Pryor, seconded by Mr. E. W. McKenna, the following resolution was unanimously adopted.

"It is hereby Resolved that the President of this Company shall erect a passenger station in East Des Moines in conformity with the order of the Board of Railway Commissioners of the State of Iowa, after conferring with the representatives of the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company as to the kind of station needed to fulfill the traffic requirements of East Des Moines."

The following resolution was offered by Mr. E. B. Pryor, seconded by Mr. E. W. McKenna, and was unanimously adopted.

"Resolved, That the President be and is hereby authorized to enter into an agreement with the Chicago & Northwestern Railway Company, giving the last named company the right to use a certain piece of the track of this Company to enable the Chicago & Northwestern Railway Company to reach the yards of the Iowa Transfer Company, such agreement to be subject to cancellation, upon sixty days written notice. The rental for the use of said track to be not less than fifty ($50) dollars per month."

On motion of Mr. C. E. Vroman, seconded by Mr. E. B. Pryor, the following Resolution was unanimously adopted.

"Resolved, That it is the sense of this Board that the contract between this Company and the Des Moines & Fort Dodge Railroad Company, as properly construed, requires said last named Company to pay a minimum of Four Hundred
254 Dollars ($400) per month for two trains, and that the compensation for additional trains be computed without reference to whether the first two trains be daily or not, and that therefore the President of this Company be directed to adhere to this construction of said contract in his negotia-

tions with said Des Moines & Fort Dodge Railroad Company as to bills not already paid by it."

Upon motion, the following resolution, offered by Mr. E. B. Pryor, and seconded by Mr. E. W. McKenna was unanimously adopted.

Resolved, That the Chief Engineers of the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company, be requested to make a joint examination of this Company's Des Moines River bridge and to make a report of their findings to the President of this Company at as early date as possible.

Upon motion the meeting adjourned.

F. M. HUBBELL, Secretary.

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255 **Defendants' Exhibit 172a.**

#15, 16 & 17

Issued for this as follows:

#15 Pur. Com.	4.98
#16 F. M. H.	2.50
#17 F. M. H.	2.48
	9.96

$99600.00

No. of Certificate 9

No. of Shares 996

To whom issued: The Purchasing Committee of the Wabash St. Louis & Pacific Railway Co.

Residence. New York
Date April 8th 1890

Received Certificate No.....
For ..... Shares of Capital Stock.

In the
Des Moines Union Railway Company.

(New York)
Des Moines, Iowa, Apr. 26, 1890
Sent to O. D. Ashley Aug. 7" 1890 by mail

Witness F. M. Hubbell.

256 Authorized Capital $2,000,000.00. Shares $100.00

Des Moines Union Railway Company.

Des Moines, Iowa.

No. 9 996 Shares.

This Certifies, That The Purchasing Committee of the Wabash St. Louis & Pacific Railway Co. is the owner of nine hundred ninety-six shares of the capital stock of the

Des Moines Union Railway Company,
Des Moines, Iowa,

for which shares said Company has received the par value in payment thereof. Transferable only on the books of the Company in person or by attorney upon surrender of this Certificate, and by and with the consent of three-fourths of the Directors of said Company.

Signed at Des Moines, Iowa, this eighth day of April 1890.

(Seal) ~~F. M. HUBBELL~~, Secretary. ~~G. M. DODGE~~ President.

Cancelled.

Incorporated under the laws of the state of Iowa Stock fully paid and unassessable.

See Nos. 15, 16, & 17.

257 For Value Received we hereby sell, transfer and assign to F. M. Hubbell, four hundred and ninety-eight shares, and to James F. Joy, T. H. Hubbard, Edgar T. Welles, O. D. Ashley, Purchasing Committee, Trustees, four hundred and ninety-eight, the shares of stock within mentioned, and authorize.....to secure the necessary transfer on the books of the Company.

Witness our hands and seals this 22 day of August 1890.

J. C. Otteson as to O. D. Ashley (Seal)
J. C. Otteson as to Thos. H. Hubbard (Seal)
by O. D. Ashley, Atty.
Witnessed by
J. C. Otteson as to Edgar T. Welles (Seal)
James F. Joy (Seal)
Henry B. Joy, witness as to signature of James F. Joy.

Purchasing Committee Wabash St. Louis & Pacific R. Co.

August 28" 1890. The following certificates issued in lieu hereof pursuant to above assignment.

To Jas. F. Joy
T. H. Hubbard
Edgar T. Wells
O. D. Ashley
} Purchasing Committee Trustees Ctf. No. 15 for 498 shares

To F. M. Hubbell — Ctf. No. 16 for 250 shares
To F. M. Hubbell — Ctf. No. 17 for 248 shares

Total shares 996

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258 **Defendants' Exhibit 172b.**

Issued pursuant to assignment for part of Ctf. No. 9 Bal. of Ctf. No. 9 assigned to F. M. Hubbell, See No. 16 to 17.

$49800

No. of Certificate 15.
No. of Shares 498

To whom issued: Jas. F. Joy, Edgar T. Welles, T. H. Hubbard & O. D. Ashley, Purchasing Committee Trustees.

Residence .....
Date Aug. 28th, 1890.

Received Certificate No. .....
For .....Shares of Capital Stock
In The
Des Moines Union Railway Company,
Des Moines, Iowa 189

Sent by mail to Jas. F. Joy, Detroit Mich. Aug. 28, '90
.....
Mar. 21, '99 Ctf. assigned to Continental Trust Co. of the city of New York as Trustee & Ctf. No. 35 issued Mar. 23, '99.

259 See Certificate No. 34 in lieu hereof.

Authorized Capital, $2,000,000.00 Shares $100.00

(Cancelled March 23, 1899
and Ctf. No. 35 issued in lieu hereof)

Des Moines Union Railway Company,
Des Moines, Iowa.

No. 15 498 Shares

This Certifies, That James F. Joy, T. H. Hubbard, Edgar T. Welles & O. D. Ashley, Purchasing Committee Trustees, are the owners of four hundred ninety-eight shares of the Capital Stock of the

Des Moines Union Railway Company,
Des Moines, Iowa,

for which shares said Company has received the par value in payment thereof. Transferable only on the books of the Company in person or by attorney upon surrender of this Certificate, and by and with the consent of three-fourths of the Directors of said Company.

Signed at Des Moines, Iowa, this 28th day of August 1890.

(Seal) ~~F. M. HUBBELL,~~ Secretary. ~~H. M. HOXIE,~~ President.

Incorporated under the laws of the State of Iowa Stock fully paid and unassessable.

260 For Value Received .....
hereby sell, transfer and assign to Continental Trust Co. of the City of New York, as Trustee, the Shares of Stock within mentioned, and authorize.....
to secure the necessary transfer on the books of the Company.

Witness our hands and seal this 21st day of March, 1899.

THOS. H. HUBBARD : Surviving members Purchasing
O. D. ASHLEY : Committee, Trustees.
EDGAR T. WELLES :

Witnessed by
J. C. Otteson.

Mar. 23, 1899, Certificate No. 35 issued as per above assignment

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261 **Defendants' Exhibit 172c.**

No. 35 was

Issued in lieu of Ctf. No. 15, issued to Jas. F. Joy, T. H. Hubbard, Edgar T. Welles & O. D. Ashley, Purchasing Com. Trustees.

No. 49,800.00

No. of Certificate 35.

No. of Shares Mar. 23rd, 1899.
498 shares

To whom issued Continental Trust Co. of the city of New York Trustee.

Residence .....

Date March 23rd, 1899.

Received Certificate No. 35.

For 498 Shares of Capital Stock

IN THE
DES MOINES UNION RAILWAY COMPANY

Des Moines, Iowa, Mar. 23, 1899. sent to Willard V. King, Secy. Continental Trust Co. of City of New York.

See No. 46.

262 Authorized Capital, $2,000,000.00 Shares $100.00

(Cancelled Jany. 27, 1906
New Ctf. No. 46 issued in
lieu thereof.)

Des Moines Union Railway Company,

Des Moines, Iowa.

No. 35 498 Shares.

This Certifies, that Continental Trust Co. of the city of New York as Trustee is the owner of four hundred ninety eight Shares of the Capital Stock of the

Des Moines Union Railway Company,
Des Moines, Iowa,

for which shares said Company has received the par value in payment thereof. Transferable only on the books of the Company in person or by attorney upon surrender of this certificate, and by and with the consent of three-fourths of the Directors of said Company.

Signed at Des Moines, Iowa, this 23rd day of March, 1899.

(Seal) ~~F. M. Hubbell,~~ Secretary. ~~H. D. THOMPSON,~~ Vice President.

Incorporated under the laws of the state of Iowa.

Stock fully paid and unassessable.

(No. 46 issued in lieu of this Certificate.)

263 For Value Received .....hereby sell, transfer and assign to The New York Trust Company as Trustee the Shares of Stock within mentioned, and authorize ..... to secure the necessary transfer on the books of the Company.

Witness ..... hand and seal this 22nd day of January, 1906.

(Seal) CONTINENTAL TRUST CO. OF THE CITY OF NEW YORK, As Trustee
By the New York Trust Company,
Successor.

Witnessed by
Henry E. Ahearn, Secretary. William King, Vice President.

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264 **Defendants' Exhibit 173.**

Des Moines & St. Louis Railroad Company.

Directors' Meeting, March 23, 1881.

Present, J. S. Clarkson, J. S. Runnells, J. S. Polk, F. M. Hubbell, the entire board of directors.

Record of resolution adopted as follows:

J. S. Polk presented the following preamble and resolution, to-wit, which was unanimously adopted by the Board:

Whereas the City of Des Moines by its Council did on the 22" day of March, 1881, pass an ordinance entitled

"An Ordinance granting the right of way to the Des Moines & St. Louis Railroad Company and its assigns, over, across along and upon certain streets and alleys in the City of Des Moines, Polk County, Iowa, and the right to bridge the Des Moines river on the South alley in said City between Court Avenue and Vine Streets".

And Whereas it was provided in such ordinance that the same shall operate as a contract between the City of Des Moines and this Company if the grant therein made shall be accepted by this Company.

And Whereas it is to the interest of this Company to accept the same,

Now therefore be it

Resolved That the Des Moines & St. Louis Railroad Company does hereby accept all the rights, privileges and obliga-

tions contained in said grant as fully as the same are set out and contained therein and the President and Secretary of this Company are directed at once to certify to the City
265 Council of the City of Des Moines a copy of this Resolution of acceptance and when so done said Ordinance and this acceptance shall be and become a contract between the City of Des Moines and the Des Moines St. Louis Railroad Company as provided for in said ordinance.

The President and Secretary certified to the City Council of the City of Des Moines Iowa, The above resolution on the 23rd day of March 1881 as will appear from the certificate of W. D. Christy City Clerk, now on file in the office of the Company.

J. S. CLARKSON, President.

Attest: F. M. Hubbell, Secy.

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266 **Defendants' Exhibit 174.**

Des Moines & St. Louis Railroad Company.

Directors' Meeting, May 10, 1881.

The Board met this day in regular session, all the members of the Board being present. The minutes of the previous meeting having been read the same were approved.

The President then called the attentions of the Board to the proposition of James F. How, Agent, to subscribe for the entire capital stock of this Company, except four shares and to locate, provide right of way and grounds for, construct, complete and reasonably equip this companies roads from Des Moines to Albia, which proposition is fully and at length set out in a proposed contract between said James F. How Agent and this Company which is in words & figures following to-wit:

This Agreement made this ..... day of February 1881 by and between the Des Moines & St. Louis Railroad Company, a corporation organized under and in accordance with the laws of the State of Iowa, party of the first part, and James F. How of St. Louis, State of Missouri, Agent, party of the second part, Witnesseth

Whereas J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells did on the 8th day of December 1880, enter into an agreement with the Wabash, St. Louis and Pacific Railway Company, to incorporate themselves under the laws of Iowa, as a railroad corporation, with a capital stock of Two Millions of Dollars, and authorized to construct a railroad

from Des Moines, Iowa, to Albia in said State, and in
267 accordance with such agreement they have duly organized themselves into a corporation by the name and style of the Des Moines, St. Louis Railroad Company, with the powers, and for the purpose, contemplated in said agreement, which agreement in so far as the same may be applicable is hereby referred to and made a part hereof.

Now Therefore, the said second party, being the person designated under said agreement by this Wabash, St. Louis & Pacific Railway Company for the consideration hereinafter expressed, hereby agrees to subscribe to the entire capital stock of the first party with the exception of four shares, hereinafter provided, and agrees that he will with all reasonable dispatch, locate, provide right of way and grounds for, construct, complete, and reasonably equip the railroad aforesaid from Des Moines, Iowa, to a connection with the railroad of the Wabash, St. Louis and Pacific Railway Company at Albia, Iowa, all of which location and construction shall be done to the approval of the said Wabash, St. Louis & Pacific Railway Company.

All expenses of survey and other expenses, made by said first party, up to the date of this contract, and all contracts for ties entered into by it are hereby assumed by the second party.

And the second party further agrees in accordance with said agreement of December 8 to pay to said J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells, as compensation for their services as officers and agents of the said first
268 party, and in procuring subsidies and other aid from the execution of said contract of December 8th to the time of the completion of said railroad the sum of Ten Thousand Dollars in money, and the further sum of Five per cent of the amount of all of said subsidies, which shall be actually paid, and Five per cent of the value of all lands, donated for right of way or station purposes, and Five per cent of the value of all other aid to the construction of the railroad of said first party, which may be expressly accepted by the second party.

In the event that more ground is donated in consideration of the location of a station at any point, than is required upon a liberal construction for those purposes, the surplus shall belong absolutely to the said J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells.

The value of the property donated for right of way shall be estimated at Four Hundred Dollars per mile;

The said sum of Ten Thousand Dollars shall be paid on the completion of the first five miles of said railroad and the commission of Five per cent on the completion of said railroad.

It is expressly understood that the expenses of the parties above named as officers and directors of the said first party hereto, and while personally engaged in procuring subsidies or right of way, and their office and clerical expenses, and the legal expenses of said first party, for condemnation and other proceedings, shall be defrayed from funds of said first
269 party and not at their personal cost, and shall be deducted from the amt. due the second party under this contract.

In consideration of said agreements by the second party hereto, and in payment for such location, right of way construction and equipment of said railroad, the first party agrees to issue to the second party the entire amount of its capital stock, with the exception of four shares by him subscribed as above, and in addition thereto to deliver to him for each mile of said railroad Fifteen Thousand Dollars in bonds of the Wabash, St. Louis & Pacific Railway Company of the issue secured by its General Mortgage, and further secured by special mortgages on the railroad and equipments of the said first party, and all appurtenances thereto.

As fast as each section of five miles of said railroad is completed there shall be issued to said second party the entire amount of Fifteen Thousand Dollars per mile of said bonds and One Hundred and Twenty-Five Thousand Dollars of said Capital Stock, the remainder of said Capital Stock to be issued and delivered when this contract of subscription is completely performed by said second party.

In addition to the payment above set forth, the first party shall transfer to the second party all sums of money or all monied obligations which said first party may receive in consideration of the construction of said railroad from persons
or private and municipal corporations not reserved by
270 said agreement of Dec. 8" aforesaid to said Polk, Clarkson, Hubbell and Runnells, and so much of the Capital Stock of the first party as the laws of Iowa may require said first party to transfer to persons or corporations, in consideration of such local aid, shall be by it so transferred and deducted from the amount of said Capital Stock otherwise, payable to the said second party.

In Witness Whereof, the parties have this 18" day February 1881 signed the same and the party of the first part has caused its corporate seal to be affixed thereto.

Agent

(Seal) DES MOINES & ST. LOUIS RAILROAD CO.
Attest By ..... Prest.

Secy.

After due consideration of such proposed contract it was on motion of John S. Runnells unanimously approved and adopted and the President and Secretary were directed to execute the same on the part of the Company and notify said How thereof and request him to proceed with the execution of the same.

There being no other business before the Board it adjourned until June 14" 1881 the date of the regular meeting.

Attest
F. M. Hubbell, Secy. J. S. CLARKSON, Prest.

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271 **Defendants' Exhibit 175.**

Des Moines & St. Louis Railroad Company.

Board Meeting, January 27" 1882.

The Board met this day pursuant to adjournment all the members of the Board being present the minutes of the preceeding meeting being read the same were approved and signed.

The question of executing a mortgage on the railroad & property to the Central Trust Co. and a lease thereon to the Wabash, St. Louis and Pacific Railway Company having been duly considered by the Board it was on motion of J. S. Polk unanimously

Resolved, That Whereas, it has been mutually agreed by and between the said Des Moines and St. Louis Railroad Company, the subscribers to its capital stock and the Wabash, St. Louis & Pacific Railway Co. that bonds of the last named Co. secured by its general mortgage shall be executed and delivered to the said Des Moines & St. Louis Railroad Company, to be used in part payment for construction and equipment of the railroad of the said Company and also that the Des Moines & St. Louis Railroad Company shall execute and deliver to said Wabash, St. Louis and Pacific Railway Company a lease in perpetuity of said railroad, and that said

Wabash, St. Louis & Pacific Railway Company shall thereafter operate said railroad continuously under said lease and upon the conditions and agreements to be covenanted therein, providing for the operation and maintenance of said railroad, the payment of all taxes and assessments thereon
272 and protection by the said Wabash, St. Louis & Pacific Railway Company of the interest on the mortgage bonds aforesaid, and any further payment which due proportion of the earnings of said railroad may hereafter render just, the bonds aforementioned to form the principal consideration of said lease, also that the general mortgage bonds of the Wabash, St. Louis & Pacific Railway Company shall be secured by a first mortgage upon the railroad property of the said Des Moines & St. Louis Railroad Company to the extent of the par value of so many of said bonds as shall be issued in part payment for construction and equipment of the railroad of the last named Company,

Now therefore, Resolved, That the President and Secretary be and they are hereby directed to execute under the corporate seal and for and in behalf of this Company two certain Indentures of which the following are copies:

(Here follow copies of the trust deed, plaintiff's exhibit No. 38, and of the lease, plaintiff's exhibit No. 40 in stipulation filed March 23, 1911.)

Resolved, That a special meeting of the stockholders of the Company be called for the 4th day of March 1882, at the office of the Company in Des Moines, Iowa, for the purposes of submitting to a vote of said stockholders the question of adopting the aforesaid Indentures.

Resolved, That the Secretary be directed to cause a notice of the time, place and object of said meeting to be published for four consecutive weeks prior to the time fixed for said meeting in a newspaper published in Polk County in
273 the State of Iowa.

And there being no further business before the Board it on motion of John S. Runnells adjourned until February 8" 1882 to consider the propriety of entering into a contract for terminal facilities in Des Moines, Ia., with the Des Moines Northwestern Railway Company and others.

Attest

F. M. Hubbell
Secy.

J. S. CLARKSON
Prest.

274 **Defendants' Exhibit 176.**

Des Moines & St. Louis Railroad Company.

Board meeting, April 11" 1882.

The Board met this day in regular session a quorum being present the minutes of the last meeting were read and approved.

On motion of John S. Runnells a contract between this Company and the Chicago Rock Island & Pacific Railway Company for right of way &c over the Chicago Rock Island and Pacific Railway right of way in Des Moines Ia. which is in words following, to-wit:

Agreement.

This agreement entered into this ..... day of November 1881 between the Chicago Rock Island and Pacific Railway Co. and the Des Moines and St. Louis Railroad Co.

Witnesseth That the said Rock Island and Pacific Railway Company in consideration of the premises hereinafter mentioned hereby grants unto the said Des Moines and St. Louis Railroad Company the right to contract and operate a railway track or tracks upon so much of the right of way or property of said C. R. I. & P. Ry. Co. as is described as follows, to-wit:

Commencing at a point on the north line of the right of way of said C. R. I. & P. Ry. Co. which point is four hundred and seventy two feet (472) south 87° 30′ west from a stone at the intersection of the center lines of Mulberry and West fifteenth streets in the city of Des Moines, Ia. thence North 70° 30′ west along and on the North line of said right of way four
275 hundred feet (400) thence in a southeasterly direction to a point that shall be fifteen (15) feet south of said first line and thence in a northeasterly direction to the place of beginning, said point 15 feet south of said north line to be the outer point of the arc of a curve that may be drawn between said eastermost and westermost points.

This grant is upon the express condition which the said Des Moines & St. Louis Railroad Co. concedes that the said C. R. I. & P. Ry. Co. may when it shall so desire for the purpose of reaching points north of said railway of said Des Moines & St. Louis R. R. Co. construct and operate a track or tracks across the track or tracks and right of way of said last named company between 11th street in West Des Moines and the Bluffs west thereof. This agreement being the sufficient authority thereof.

It is further agreed between said companies that whereas the said D. M. & St. L. R. R. Co. has for temporary convenience laid its track upon certain portions of the right of way of said C. R. I. & P. Ry. Co., lying west of the premises above described now in pursuance of the agreement and understanding heretofore had between said Companies, it is hereby declared that the said occupation of said premises is temporary only, and said D. M. & St. L. R. R. Co. agrees that as soon as by diligence it can and not later than June 1" 1883 at which time said right shall terminate, it will remove its track from said right of way and in the meanwhile hold said
C. R. I. & P. Ry. Co. free and harmless from all in-
276 jury that may result therefrom.

It is further agreed between said companies that whereas for the convenience of said D. M. & St. L. R. R. Co. and at its request the said C. R. I. & P. Ry. Co. has constructed a track from its line to that of said D. M. & St. L. R. R. Co. which line runs in part on the north line of Vine streets between tenth and eleventh streets in West Des Moines Polk Co. Iowa, and adjacent to the lots abutting on the north side of said Vine street and is maintaining said track.

Now in consideration of the premises the said D. M. & St. L. R. R. Co. agrees with the said C. R. I. & P. Ry. Co. that it will pay all costs and damages that may accrue to adjacent property holders on said Vine street between 10" and 11" streets by reason of the construction operation and maintenance of said track including any and all costs of erecting and maintaining walls or other protections to said abutting property, and any and all damages that may result from the construction and maintenance and operation of said track to any person except such as may be injured on the track of said railway and said D. M. & St. L. R. R. Co. hereby waives any claim for damages that it might make as abutting property holders for laying down any tracks by said C. R. I. & P. Ry. Co. on Vine street west of Tenth Street.

In Witness Whereof the parties hereto have caused these presents to be signed in their corporate names by them and attested to by their Secretaries and their official seals
277 to be attached.

THE DES MOINES & ST. LOUIS R. R. CO.
By ..... Prest.
Secy

CHICAGO ROCK ISLAND & PACIFIC CO.
By ..... Prest.
Asst Sec'y

The within contract is hereby ratified and approved this 8" day of May 1882.

THE ST. LOUIS DES MOINES & NORTHERN RY. CO.

By ..... Prest.

Secretary.

THE DES MOINES NORTHWESTERN RAILWAY CO.

By ..... Prest.

Secretary.

Was approved and adopted and the President & Secretary of this Company are directed to execute the same on behalf of this Company.

And there being no other business the Board adjourned until the 13" day of April 1882 for the purpose of considering the demand of James F. How Agent for the issuance of the Capital Stock of this Company on the completed portion of the road.

Attest

F. M. Hubbell
Secy

J. S. CLARKSON
Prest

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278 **Defendants' Exhibit 177.**

Des Moines & St. Louis Railroad Company.

Board meeting, April 13" 1882.

Board met pursuant to adjournment.

A quorum being present the minutes of the preceeding meeting were read and approved.

The President presented a demand of Jas. F. How Agent for the issuance to him of the stock due him under his contract with this Company of date 18th Feby 1881 which demand was accompanied by the certificate of N. R. Gibson Chief Engineer of this Company showing the said How had constructed 40.681 miles of road for this Company and upon consideration thereof it was

Resolved that the President and Secretary of this Company be and they are hereby directed to issue to said James F. How Agent the full paid Capital Stock of this Company amounting to the sum of one million dollars in part compliance with said contract between said How and this Company.

Whereupon the Board adjourned until May 9" 1882 the day of the regular meeting.

Attest

F. M. Hubbell Secy

J. S. CLARKSON Prest

279

Defendants' Exhibit 178.

Des Moines & St. Louis Railroad Company.

Stockholders meeting, January 4" 1883.

The stockholders met this day in regular session.

The minutes of the stockholders meeting for the year 1882 were read and also were the minutes of the proceedings of the Board for the past year and the acts of the Board as set out were duly ratified and approved and all contracts made and acts done by the officers of the Company were ratified and approved and the President reported the completion of the road from Des Moines to Albia and that through trains were running thereon.

J. S. Polk moved that the road be accepted by this company as completed from Des Moines to Albia and that the Directors shall at once take steps to settle with James F. How Agent for the building of the same and shall cause to be issued to him the balance of the capital stock of this Company so subscribed for by him and paid for by building said road.

Which motion after being fully considered was unanimously adopted.

On motion of John S. Runnells the meeting proceeded to the election of a Board of Directors for the ensuing year, and it appearing that J. S. Clarkson, John S. Runnells, J. S. Polk and F. M. Hubbell received all the votes cast at such election, they were declared unanimously elected Directors for the ensuing year.

280 There being no other business before the meeting it adjourned.

J. S. CLARKSON, Prest.

Attest: F. M. Hubbell, Secy.

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281 **Defendants' Exhibit 179.**

Des Moines & St. Louis Railroad Company.

Board meeting, Jannary 9" 1883.

The newly elected Board of Directors met this day and on motion of J. S. Runnells it was

Resolved that this Board proceed to organize and elect officers for the ensuing year.

Thereupon J. S. Clarkson was elected President, John S. Runnells was elected Vice President of the Company, F. M. Hubbell was elected Secretary of the Company and J. S. Polk was elected Treasurer of the Company for the ensuing year and until their successors are elected and qualified.

On motion of J. S. Polk it was

Resolved that the President and Secretary of this Company proceed to settle with James F. How Agent for building and equipping this companies road from Des Moines to Albia and that they issue to said James F. How Agent the full amount of Capital Stock of this Company due him under his contract with this Company of date February 18" 1881.

The minutes of this meeting of this Board for the months of October, November and December 1882 were then read and approved and signed and there being no other business before the Board it adjourned until the regular monthly meeting in February 1883.

J. S. CLARKSON, Prest.

Attest: F. M. Hubbell, Secy.

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282 **Defendants' Exhibit 180.**

Des Moines & St. Louis Railroad Company.

Directors meeting, January 3" 1884.

The Board met this day at the office of the company on call of the President. All the members of the Board being present. The minutes of the preceding meeting were read and approved.

Thereupon John S. Runnells moved that Article IV of the Articles of Incorporation of this Company be amended by striking out of the first Section thereof the word "four" and inserting therein the word "nine" so that said section of said Article 4 shall read as follows to-wit:—

"The affairs of the company shall be managed by a board of nine directors who shall be elected annually by the stockholders on the first Thursday in January except as hereinafter provided each share having one vote."

The President thereupon submitted such resolution to the vote of the Board, and all the members of the Board to-wit:—

J. S. Clarkson, J. S. Polk, J. S. Runnells & F. M. Hubbell being present, and voting therefor it was declared carried by the unanimous vote of the Board of Directors.

On motion the Secretary of this Company was directed to cause this amendment to be duly recorded and a notice thereof published as provided by law.

There being no other business before the Board it adjourned.

J. S. CLARKSON, Prest.

F. M. Hubbell, Secy.

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283 **Defendants' Exhibit 181.**

Des Moines & St. Louis Railroad Company.

Stockholders meeting, January 3, 1884.

The stockholders of this company met this day in regular session all the stock of the company being present and represented in the persons of the stockholders or by proxy.

Mr. Clarkson by power of attorney representing the Wabash St. Louis & Pacific Railway Company, the largest stockholder of the Company which is as follows to-wit:—

"Know all men by these Presents that the undersigned have made, constituted and appointed and by these presents do make, constitute and appoint J. S. Clarkson its true and lawful attorney in fact for it and in its name to appear as its representative at the annual meeting of the stockholders of the Des Moines & St. Louis Ry. to be held at Des Moines Iowa on January 3" 1884, and there to vote in its name for Directors of said Company to serve for the year beginning on ..... and to vote in favor of increasing the number of Directors to nine.

In Witness Whereof I have hereunto set my hand and seal this 19" day of December 1883.

THE WABASH, ST. LOUIS & PACIFIC RY. CO.,
By James F. How, Secy."

The President in the chair. The meeting was called to order and the minutes of the stockholders meeting of January 4th 1883 were read and approved, and the action of the stockholders as therein set out was fully ratified and confirmed.

284 The stockholders then called for the reading of the minutes of the proceedings of the Board for the preceeding year which was done and on motion of J. S. Runnells the action of the Board and officers of the Company was fully ratified and approved.

The President then called the attention of the stockholders to the action of the Board of Directors this day had for the purpose of amending Article IV of the Articles of Incorporation of this Company and after consideration of the same such action was on motion unanimously approved & ratified and the meeting then proceeded to the election of nine Directors of the Company as provided in such amended Article.

The President then presented a written request from James F. How Secy. of the Wabash St. Louis and Pacific Railway Company for the election of the following named persons as directors of the company for the ensuing year towit Jay Gould, R. S. Hays, A. L. Hopkins, H. M. Hoxie, J. S. Polk, J. S. Clarkson, J. S. Runnells, F. M. Hubbell and Jas. F. How.

Whereupon J. S. Runnells put said several gentlemen in nomination for directors of this company and they have received the unanimous vote of all the stock represented were declared elected directors for the ensuing year.

There being no other business before the meeting it adjourned.

F. M. Hubbell,
Secy.

J. S. CLARKSON,
Prest.

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285 **Defendants' Exhibit 182.**

Des Moines & St. Louis Railroad Company.

Stockholders meeting January 6th, 1887.

The stockholders met this day in regular session at the office of the company at Des Moines Iowa for the election of Directors and the transaction of other business pursuant to the Articles of Incorporation.

The meeting having been called to order by John S. Runnells Chairman it was ascertained that there was present & represented 9998 shares of the stock of the company. J. S. Polk by power of Attorney representing the stock of this company

standing in the name of the Mercantile Trust Company to-wit,:—9096 shares, which power of attorney is as follows,

"Know all Men by these Presents:—That the Mercantile Trust Co., the undersigned Stockholder in the Des Moines & St. Louis Ry., do hereby constitute and appoint F. M. Hubbell of.....true and lawful attorney with power of substitution for it and in its name to vote at a meeting of the stockholders in said company for the election of Directors due notice of which has been given to be held at Des Moines Ia., on the 6th day of January A. D. 1887, or at any adjournment thereof on all matters which may properly come before it with all powers it shall possess if personally present.

In Testimony Whereof,....have hereunto set....hand and... seal....this 11th day of December 1886.

Witness: THE MERCANTILE TRUST CO.
J. C. Otteson. John Montgomery, V. P.

286 (Endorsed on the back of the above power of attorney is the following substitution):

"I authorize J. S. Polk to act for me in pursuance of the power & authority conferred on me by the within power of attorney. F. M. Hubbell."

And John S. Runnells and J. S. Polk each were present, and represented one share of the Capital Stock of the Company.

The minutes of the last annual meeting were then read and approved, and ordered to be signed. On motion the minutes of the meeting of the Board of Directors held August 3rd, 1886, were read and after due consideration of the same by the stockholders, the action of the Board therein set out, was duly ratified and approved.

Thereupon J. S. Polk presented a communication from James F. How, General Agent, which is as follows to-wit:

St. Louis, Mo. Dec. 31st 1886.

F. M. Hubbell, Esq.
Secretary.

Dear Sir:—I enclose you herewith proxie to vote the stock in the Des Moines & St. Louis R. R. standing in the name of the Mercantile Trust Co. at the annual election of Directors to be held on Jany. 6th, 1887. I send this proxie with the understanding that you vote the same for the following parties as directors: J. F. How, A. L. Hopkins, J. S. Clarkson, W. H. Blodgett, D. S. H. Smith, J. S. Runnells, A. A. Talmage, J. S. Polk & F. M. Hubbell.

287 Please send me a copy of the minutes of the meeting.

Yours truly

JAMES F. HOW, Gen'l Agent."

And moved that the meeting proceed to the election of a Board of Directors for the ensuing year which motion was unanimously adopted, and he then nominated for such Board of Directors,:—J. F. How, A. L. Hopkins, J. S. Clarkson, W. H. Blodgett, D. S. H. Smith, J. S. Runnells, A. A. Talmage, J. S. Polk, and F. M. Hubbell.

A ballot was thereupon taken for the election of a Board of Directors and the several persons above nominated having each received the unanimous vote cast at such election were declared elected as Directors of the Company for the ensuing year.

It appearing that a quorum of the newly elected board were not present and such quorum could not be presently had it was on motion resolved that the present officers of the company continue to act as such until the new board should meet and organize by the election of officers.

On motion J. S. Polk was directed to appear at the annual meeting of the Des Moines Union Railway Company and nominate on behalf of this company the following named gentlemen to-wit, J. F. How, A. L. Hopkins, A. A. Talmage and J. S. Runnells to be voted for as Directors of said last named Company for the ensuing year.

There being no other business before the meeting it adjourned.

F. M. Hubbell, Secy.

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292 **Defendants' Exhibit 183.**

Des Moines & St. Louis Railroad Company.

St. Louis, Mo., May 25, 1889.

Minutes of the meeting of the Board of Directors of the Des Moines & St. Louis Railroad Company.

Said meeting convened at the hour of eleven A. M. in room number 708 Commercial Building St. Louis, Mo.

There were present the following Directors of said Company:

Wells H. Blodgett, James F. How, Charles M. Hays, H. S. Priest and George S. Grover.

On motion of James F. How, Wells H. Blodgett was elected chairman of the meeting.

On motion of Charles M. Hays, George S. Grover was elected Secretary of the meeting.

On motion of Charles M. Hays, James F. How was elected President of the company for the ensuing year.

On motion of James F. How, Charles M. Hays was elected Vice President of the company for the ensuing year.

On motion of Charles M. Hays, F. M. Hubbell of Des Moines Iowa was elected Secretary and Treasurer of the company for the ensuing year.

On motion of H. S. Priest, the agreement between the Des Moines Union Railway Company and the Des Moines & St. Louis Railroad Company and the Des Moines & North Western Railway Company, and the St. Louis Des Moines & Northern Railway Company dated May 10" 1889 was approved, and the President & Secretary were authorized and directed to
293 execute the same, and attach the seal of the company thereto; which contract is in words and figures following to-wit:

(Here follows a copy of the agreements of May 10, 1889, identified as plaintiff's exhibit No. 27 in Complainant's evidence.)

On motion the meeting adjourned.

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296 **Defendants' Exhibit 184.**

Des Moines & St. Louis Railroad Company.

Meeting of the Directors of the Des Moines & St. Louis Railroad Company.

Des Moines Iowa January 3rd 1890.

At a meeting of the Directors of the Des Moines & St. Louis Railroad Company held at the office of the Company at Des Moines Iowa, on this date, there were present the following Directors:

C. M. Hays
F. M. Hubbell
and J. F. How.
A. B. Cummins
J. S. Polk

The first business before the meeting being the election of officers of the company for the ensuing year.

Mr. A. B. Cummins placed in nomination

James F. How for President
C. M. Hays for Vice President
and F. M. Hubbell for Secretary & Treasurer.

A ballot being taken it was found that the persons placed in nomination had received the votes of all the Directors present and they were accordingly declared elected to hold their offices during the ensuing year or until their successors are duly elected and qualified.

Mr. A. B. Cummins offered the following resolution:

Resolved, That the Secretary of this company be directed to certify to the Des Moines Union Railway Company the nomination of the following named persons to be voted for
297 as Directors at the annual meeting of 1890 of the Des Moines Union Railway Company: J. F. How, C. M. Hays, W. H. Blodgett and A. B. Cummins.

The resolution was unanimously adopted.

Upon motion of A. B. Cummins their being no further business before the meeting the same was declared adjourned.

F. M. HUBBELL,
Secretary.

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298 **Defendants' Exhibit 185.**

Des Moines & St. Louis Railroad Company.

Meeting of the Directors of the Des Moines & St. Louis Railroad Company.

Des Moines Iowa, April 8th 1890.

The Directors of the Des Moines & St. Louis Railroad Company met in regular monthly meeting.

Present: James F. How, C. M. Hays, A. B. Cummins, F. M. Hubbell, H. S. Priest and George S. Grover.

Jas. F. How, presiding.

C. M. Hays offered the following resolution and moved its adoption:

Whereas, the purchasing committee of the Wabash St. Louis & Pacific Railway Company has sold to F. M. Hubbell one eighth and to G. M. Dodge one eighth of the stock of the Des Moines Union Railway Company and

Whereas the entire capital stock of said company owned by the company, issued as a part of the purchase price thereof has been fixed at Four hundred thousand dollars.

It is therefore now

Resolved, that the said sale by the said Purchasing Committee be and the same is hereby ratified, confirmed and approved by the Des Moines & St. Louis Railroad Company.

Said Resolution was adopted by the unanimous vote of all the Directors present.

C. M. Hays offered the following Preamble & Resolution and moved its adoption.

Whereas, on or about the first day of December 1881 the
299 Des Moines and St. Louis Railroad Company, a corporation organized under the laws of the State of Iowa, mortgaged and conveyed to the Central Trust Company of New York and James Cheney, trustees, all the right of way and railroad of said Des Moines & St. Louis Railroad Company, extending from the eastern boundary line of the city of Des Moines in the State of Iowa to Albia in said State, running through the counties of Polk, Marion & Monroe, together with all its real estate, embankments, bridges, turnouts, side tracks, buildings and structures, water tanks and fixtures, shop, engine and other houses, depots, turntables, engines, cars, machinery, tools and all its railroad property acquired and to be acquired and everything appurtenant to said railroad, or used in connection therewith together with all rents, issues and profits, tools and earnings, credits and choses in action accruing to said Des Moines & St. Louis Railroad Company from said railroad as owner and holder thereof except the real estate, buildings and improvements lying and being within the corporate limits of the city of Des Moines, and

Whereas, said mortgage or conveyance was made to secure the holders of certain bonds of the Wabash, St. Louis & Pacific Railway Company dated on or about June 1, 1880, known as the "General Mortgage Bonds" of said company, which bonds were issued and delivered to said Des Moines & St. Louis Railroad Company at the rate of fifteen thousand dollars per mile of its railroad aforesaid to aid in the construction and equipment thereof, which bonds bear interest from date of
300 issue at the rate of six per cent per annum payable semi-annually on the first days of June and December in each year; and

Whereas, no interest has been paid on said bonds since the first day of December 1883 and the principal of said bonds and all interest thereon from the date last aforesaid are now due and payable; and

Whereas, the principal and interest now due on said bonds largely exceed the value of said mortgaged railroad and property, and

Whereas, said bonds are all now owned and held by James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, as a purchasing committee of the Wabash, St. Louis & Pacific Railway Company, and

Whereas, they as the aforesaid owners and holders of said bonds have proposed to accept the title to said mortgaged railroad and property in satisfaction of the principal and interest of the bonds aforesaid. Now therefore in consideration of the premises it is

Resolved by the Directors of said Des Moines & St. Louis Railroad Company that the proposition of the holders of said bonds to accept the title to said mortgaged railroad and property in satisfaction of the principal and interest of the bonds secured thereon by the aforesaid deed of trust or mortgage be and the same is hereby accepted by the Directors of said Des Moines & St. Louis Railroad Company, and in consideration of the premises and of the sum of one dollar to them
301 paid, the President and Secretary of said Company are hereby authorized and directed to execute and deliver to said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles under the corporate seal of said company a proper deed of conveyance granting, conveying and assigning unto said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles all the right, title and interest of said Des Moines & St. Louis Railroad Company in and to its railroad and property aforesaid.

Said Preamble & Resolution was adopted by unanimous vote of all the Directors present.

Whereupon the Board adjourned.

F. M. HUBBELL, Secy.

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302 **Defendants' Exhibit 186.**

Des Moines & St. Louis Railroad Company.

Des Moines Iowa, Febry. 11th, 1891.

Stockholders Meeting.

Pursuant to adjournment, the stockholders of the Des Moines & St. Louis Railroad Company met at the office of the Company at eleven o'clock A. M. There were present

C. M. Hays .....Representing one share
Jas. F. How..... " " "
F. M. Hubbell ..... " " "
A. B. Cummins ..... " " "
L. M. Martin ..... " " "

& the Purchasing Committee of the Wabash St. Louis & Pacific Railway Company, representing ninety nine hundred ninety six (9996) shares by Jas. F. How, who held a proxy therefor.

Jas. F. How, President, presiding.

The President stated the first business of the meeting to be the election of a board of directors for the ensuing year, to hold their office until their successors are elected and qualified

Upon a ballot being taken for the election of a board of nine directors, it appeared that the votes of all the stockholders present had been cast for the following Directors: Jas. F. How, A. B. Cummins, Geo. S. Grover, C. M. Hays, O. D. Ashley, W. H. Blodgett, H. S. Priest, L. M. Martin and F. M. Hubbell.

303 The gentlemen named having received the unanimous vote of all the stockholders present and represented, were declared duly elected Directors for the ensuing year, or until their successors are elected and qualified. On motion the meeting adjourned sine die.

F. M. HUBBELL, Secy.

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304 **Defendants' Exhibit 187.**

Des Moines & St. Louis Railroad Company.

Meeting of the Directors of the Des Moines & St. Louis Railroad Company.

Des Moines February 11th 1891.

At a meeting of the Directors of the Des Moines & St. Louis Railroad Company held at the office of the company at Des Moines Iowa, on this date, there were present the following directors:

C. M. Hays, F. M. Hubbell, Jas. F. How, A. B. Cummins and L. M. Martin.

The first business before the meeting being the election of officers of the company for the ensuing year.

Mr. Cummins placed in nomination:

Jas. F. How for President.

C. M. Hays for Vice President.

F. M. Hubbell for Secretary and Treasurer.

The ballot being taken it was found that the persons placed in nomination had received the votes of all the directors present and they were accordingly declared elected to hold their respective offices during the ensuing year or until their successors are duly elected and qualified.

C. M. Hays offered the following resolution and moved its adoption.

Whereas the Purchasing Committee of the Wabash St. Louis & Pacific Railway Company has sold to F. M. Hubbell one eighth of the stock of the Des Moines Union Railway
305 Company amounting in par value to $50,000.00,

It is therefore now

Resolved that the sale of said stock by the said Purchasing Committee to said F. M. Hubbell be and the same is hereby ratified, confirmed and approved by the Des Moines & St. Louis Railroad Company. Said stock after being transferred is represented by certificates numbers two (2) sixteen (16) seventeen (17) and eighteen (18).

Said resolution was adopted by the unanimous vote of all the directors present.

Thereupon the Board adjourned sine die.

F. M. HUBBELL,
Secy.

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306 **Defendants' Exhibit 188.**

Des Moines & St. Louis Railroad Company.

Des Moines, Ia. Janry. 15, 1897.

Meeting of the Board of Directors of the Des Moines & St. Louis Railroad Company.

At a meeting of the Board of Directors of the Des Moines & St. Louis Railroad Company held at the office of the Company in the city of Des Moines, in the state of Iowa, on the 15th day of January, 1897, the following Directors were present:

F. M. Hubbell, A. B. Cummins, L. M. Martin, Geo. S. Grover, and Wells H. Blodgett.

Mr. Hubbell, the Secretary, stated that the meeting had been called in pursuance of the following written request signed by more than two Directors of the Company, to-wit:

"St. Louis Mo., Janry. 7, 1897."

To F. M. Hubbell Secy.

Des Moines & St. Louis R. R. Co, Des Moines, Iowa.

Dear Sir—You are hereby requested to call a meeting of the Board of Directors of the Des Moines & St. Louis Railroad Company, to be held at the office of the Company, at the city of Des Moines, in the State of Iowa, at 12 o'clock M. on Friday, January 15th, 1897, for the transaction of such business as may then be brought before the Board for its consideration.

Very respectfully yours.

L. M. MARTIN,
WELLS H. BLODGETT,
GEO. S. GROVER."

307 The death of James F. How President of the Company was reported, and Mr. C. M. Hays, the Vice President, being absent, Mr. A. B. Cummins was on motion of Mr. Blodgett, called to the chair.

The proceedings of the last meeting of the Board were then read by the Secretary and approved by the Board.

Mr. Blodgett then offered the following resolution and moved its adoption, to-wit:

"Resolved, that the Secretary of the Company be and he is hereby directed to call a meeting of the stockholders of the Company, to be held at its office in the City of Des Moines, in the State of Iowa, on Monday January 25th, 1897, for the purpose of electing a Board of Directors to serve for the period of one year from January 7th 1897, and until their successors are elected and qualified, and that the Secretary be directed, as far as practicable, to give written notice of said meeting to the several stockholders of the Company."

The motion of Mr. Blodgett was seconded by Mr. Martin.

The chairman stated the question to be upon the adoption of the resolution, and a vote being taken, the following Directors were present and voted in favor thereof, to-wit:

F. M. Hubbell, A. B. Cummins, L. M. Martin, George S. Grover and Wells H. Blodgett.

Whereupon the chairman declared the resolution offered by Mr. Blodgett, unanimously adopted.

Mr. Blodgett then offered the following resolution and
308 moved its adoption:

"Resolved, That the terminal contract entered into between the Des Moines Union Railway Company and the Chicago Great Western Railway Company, bearing date July 2, 1896 (the same having been already approved by the Purchasing Committee of the Wabash Railroad Co.), be and the same is assented to and approved by the Des Moines & St. Louis Railroad Company and the President and Secretary authorized and directed to execute such assent and approval in writing, in form as follows, to-wit:

"This written assent, executed by the Des Moines & St. Louis Railroad Company, a corporation organized and existing under the laws of the State of Iowa, and the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, a Committee organized by the bondholders of the last named railway company, and which has an interest in the railway known as the Des Moines & St. Louis Railroad, this 3rd day of December 1896, Witnesseth,"

That

Whereas there exists a contract between the Des Moines Union Railway Company, a corporation organized under the laws of the state of Iowa, and owning and operating certain terminal railway property in the city of Des Moines in said county and state, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, a corporation formerly owning a line of railway in the state of Iowa, and the St. Louis, Des Moines & Northern Railway Company, a corporation formerly owning a line of railroad in said State (the railway property formerly owned by
309 said two last named companies being now the property of the Des Moines, Northern & Western Railroad Company), which said contract bears date on the 10th day of May, 1889; and

Whereas it is provided substantially in and by said agreement that upon the admission of any other railway company to the said terminal property the assent of each of the parties to the agreement so admitting the railway company to said property should be procured; and

Whereas the Chicago Great Western Railway Company although heretofore using the said terminal property under a contract originally entered into between the Des Moines Union Railway Company and the Chicago St. Paul & Kansas City Railway Company bearing date on the 2nd day of June 1890, has now entered into a new and different contract with the said Des

Moines Union Railway Company for the use of the said terminal property or some portion thereof, and

Whereas, the said new contract bearing date the 2nd day of July 1896, has been exhibited to the parties hereto and has met their approval and assent.

It is Now Therefore, in consideration of the premises, declared by the said Des Moines & St. Louis Railroad Company and the said Purchasing Committee that they do and each of them does assent to and approve the said contract so entered into between the said Des Moines Union Railway Company and the Chicago Great Western Railway Company, bearing date the 2nd day of July 1896.

In Witness Whereof we have hereunto set our names by
310 due and proper authority the day and year first herein named.

O. D. Ashley)
) Purchasing
Thos. H. Hubbard)
) Committee, Trustees.
Edgar T. Welles)

The motion of Mr. Blodgett was seconded by Mr. Martin.

Thereupon the Chairman stated the question to be upon the resolution offered by Mr. Blodgett, and a vote being taken, the following Directors voted in the affirmative, to-wit—F. M. Hubbell, A. B. Cummins, L. M. Martin, George S. Grover and Wells H. Blodgett. Thereupon the chairman announced the resolution unanimously adopted.

On motion of Mr. Hubbell the meeting then adjourned.

F. M. HUBBELL.
Secy.

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311 **Defendants' Exhibit 189.**

Des Moines & St. Louis Railroad Company.

Des Moines, Iowa, Janry. 25, 1897.

Special Meeting of Stockholders of the Des Moines & St. Louis Railroad Company held at the Secretary's office in Des Moines, Iowa, Janry. 25th, 1897, in pursuance of a call made by the Board of Directors at a meeting held by said Board on January 15, 1897.

There were present and represented twenty thousand shares of stock as follows, viz:

F. M. Hubbell in person, holding 1 Share

The following shares were represented by F. M. Hubbell by written proxies signed by the following Stockholders, viz.	
O. D. Ashley, as Trustee of the Pur. Com. of Wabash St. Louis & Pacific R. R. Co.	9995 Shares
Purchasing Committee of the Wabash St. Louis & Pacific R. R. Co.	9996 Shares
O. D. Ashley	1 "
A. B. Cummins	1 "
J. C. Otteson	1 "
Wells H. Blodgett	1 "
H. S. Priest	1 "
George S. Grover	1 "
312 Edgar T. Welles	1 Shares
Jos. Ramsey, Jr.	1 "
Total	20,000 Shares.

The object of the meeting was stated to be the election of a Board of Directors for the ensuing year, to hold their officers until their successors are elected and qualified.

Upon the ballot being cast for the election of a Board of nine (9) Directors it appeared that the votes of all of the stockholders present and represented (being 20,000 votes) had been cast for the following Directors, to-wit: Thomas H. Hubbard, Edgar T. Welles, O. D. Ashley, J. C. Otteson, C. J. Lawrence, H. K. McHarg, W. H. Blodgett, Jos. Ramsey, Jr., and F. M. Hubbell. These gentlemen having received the unanimous vote of all of the stockholders present and represented, were declared duly elected Directors for the ensuing year, and until their successors are elected and qualified.

On motion the meeting adjourned sine die.

F. M. HUBBELL,
Secretary.

313

Defendants' Exhibit 190.

Des Moines & St. Louis Railroad Company.

Meeting of the Board of Directors.

New York, Febr. 8, 1897.

A meeting of the Board of Directors of the Des Moines & St. Louis Railroad Co. was held February 8, 1897, at the office of The Wabash Railroad Co., #195 Broadway, New York.

Present, Messrs. O. D. Ashley, Thomas H. Hubbard, Edgar T. Welles, Cyrus J. Lawrence, Henry K. McHarg, and J. C. Otteson.

Upon Motion of Gen'l Hubbard, duly seconded, Mr. Ashley was appointed Chairman of the meeting and Mr. Otteson secretary thereof.

The Chairman stated to the meeting that a meeting of the stockholders of the Company had been held in Des Moines, Iowa, on January 25, 1897, and that the following gentlemen had been elected as Directors, viz:

Thomas H. Hubbard,
Edgar T. Welles,
O. D. Ashley,
Cyrus J. Lawrence,
Henry K. McHarg,
John C. Otteson,
Wells H. Blodgett,
Joseph Ramsey, Jr.,
F. M. Hubbell.

314 The Chairman also stated that the meeting of the Board was called for the purpose of electing officers for the ensuing year and to authorize, if the Directors were so inclined, the execution of the proposed new agreement between the Des Moines & St. Louis Railroad Co. and the Des Moines Union Railway Co. and its Tenant-Companies, which new agreement was necessary in view of the legal changes that had taken place with respect to some of the Tenant-Companies since the execution of the old agreement.

The following gentlemen were nominated for the offices set opposite their respective names; viz.,

For	President,	O. D. Ashley,
"	Secretary,	F. M. Hubbell,
"	Ass't "	J. C. Otteson,
"	Treasurer	F. L. O'Leary.

No other nominations having been made, the secretary of the meeting was instructed to cast the ballot for the Board present, and duly announced that the ballot had been cast for

O. D. Ashley, for President;
F. M. Hubbell " Secretary;
J. C. Otteson " Asst. Secretary;
F. L. O'Leary " Treasurer.

The gentlemen named were thereupon declared by the meeting elected to the offices following their respective names.

Upon Motion of Gen'l Hubbard, duly seconded,

Voted, That the President of this Company be, and he hereby is authorized to execute the new agreement between the Des Moines Union Railway Co. and the Tenant, or
315 Proprietary Companies, substantially upon the terms and conditions of the one now in existence after the approval of the same by Col. Wells H. Blodgett, General Counsel of The Wabash Railroad Co.

Adjourned.

J. C. OTTESON, Asst. Secretary.

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316 **Defendants' Exhibit 191.**

Des Moines & St. Louis Railroad Company.

Stockholders' Meeting, Des Moines Ia., Feb. 3rd 1899.

The stockholders of the Des Moines and St. Louis Railroad Company, met this day pursuant to adjournment, at the Secretary's office in Des Moines, Iowa.

There were represented 20,000 shares of stock being all the shares of the corporation, as follows, viz:—

The following shares were represented by A. B. Cummins by written proxies, signed by the following stockholders, viz:—

O. D. Ashley	1 share.
O. D. Ashley, Sec. Wabash Purchasing Com	19991 shares.
Thomas H. Hubbard	1 share.
C. J. Lawrence	1 share.
Henry McHarg	1 share.
J. C. Otteson	1 share.
Edgar T. Welles	1 share.

The following shares were represented by B. C. Winston, by written proxies signed by the following stockholders, viz:—

Joseph Ramsey, Jr.	1 share.
Wells H. Blodgett	1 share.
F. M. Hubbell, was represented by written proxy to H. D. Thompson	1 share.
Total	20,000 shares.

The meeting having been called to order on motion, Mr. A. B. Cummins was elected chairman of the meeting, and
317 B. C. Winston Sec. The minutes of the stockholders' meeting of January 25th 1897, were read and approved.

On motion of Mr. H. D. Thompson the meeting proceeded to the election of a Board of Directors for the ensuing year, and upon the ballot being cast, it appeared that 20,000 shares of stock had been cast in favor of

Thomas H. Hubbard,
Edgar T. Welles,
O. D. Ashley,
J. C. Otteson,
C. J. Lawrence,
H. K. McHarg,
W. H. Blodgett,
Joseph Ramsey, Jr.,
F. M. Hubbell,

and they were declared unanimously elected directors for the ensuing year.

On a motion of Mr. B. C. Winston the following resolution was submitted to the meeting for its consideration, to-wit:—

"Whereas, the Wabash Railroad Company is the legal or equitable owner of all the capital stock of this corporation, and

Whereas, It is considered to be for the best interests of this Company and its stockholders that its road and property should be owned and controlled by said Wabash Railroad Co., a consolidated corporation, existing under the laws of the States of Missouri, Illinois, Indiana, Ohio and Michigan;

318 Now therefore, in consideration of the premises, it is by the stockholders of this Company;

Resolved: That the Board of Directors, and President and Secretary, or other proper officers of this Company, be, and they are hereby authorized and empowered to execute in the name and behalf of this Company, and under its corporate

seal, a deed or deeds of conveyance for such consideration, and in such form as they may approve, or may be advised are appropriate and necessary to vest in and convey to said Wabash Railroad Company, all the railroad right of way, real estate, franchises and other property, real and personal, of every kind and wherever situated, that now does or may hereafter belong to the Des Moines and St. Louis Railroad Company, or in which it now has or may hereafter have any title, interest or estate."

Said resolution having been duly considered, was on motion of Mr. Winston adopted by the stockholders represented by proxy voting unanimously in favor thereof.

There being no other business before the meeting, it adjourned, subject to the call of the President upon five days notice to each stock holder.

B. C. WINSTON, Secretary.

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319 **Defendants' Exhibit 192.**

Des Moines & St. Louis Railroad Company.

Meeting of the Board of Directors.

New York, March 16, 1899.

A special meeting of the Directors of the Des Moines & St. Louis Railroad Co. was held this day at the office of The Wabash Railroad Co., No. 195 Broadway, New York, pursuant to call setting forth the object of the meeting.

Present: Messrs. O. D. Ashley, Edgar T. Welles, Cyrus J. Lawrence, Thomas H. Hubbard, and J. C. Ottenon.

Upon Motion, duly seconded, Resolved, that the present officers, viz.—

O. D. Ashley, President;

F. M. Hubbell, Secretary;

J. C. Ottenon, Assistant Secretary; and

F. L. O'Leary, Treasurer,

be and they hereby are, re-elected to the respective offices for the ensuing year and until their successors are chosen.

The minutes of the Directors' meeting held February 7, 1899, were read and approved.

Upon Motion, duly seconded, Resolved, That the word "stockholders" in the first line of the resolution passed by the

Board of Directors of the Des Moines & St. Louis Railroad Co. on April 8, 1890, and the word "stockholders" in the eighth line of said resolution, recorded on page 151 of these Records, be stricken out and the word "Directors" be substituted
320 therefor in each case.

Upon Motion, duly seconded, the following preamble and resolution were adopted:

Whereas, On or about the 8th day of April, 1890, the Board of Directors adopted resolutions authorizing the proper officers of the Company to convey all its railroad and property to the Wabash Purchasing Committee; and,

Whereas, No conveyance has ever been made to said Committee in pursuance of the authority in said resolution contained;

Now, Therefore, Resolved, that said resolution of April 8, 1890, be, and the same is hereby, for all purposes repealed and rescinded;

2nd. Resolved. That the President and Assistant Secretary be, and they are hereby authorized to execute in the name of the Company and under its corporate seal a deed conveying all the railroad, franchises, real estate, and other real and personal property of the Company wheresoever situated to the Wabash Railroad Company. And such deed may be, in form, substantially as follows:

This Indenture made and entered into this first day of January A. D. One thousand eight hundred and ninety nine, between The Des Moines & St. Louis Railroad Company, a corporation of the State of Iowa, of the first part, and The Wabash Railroad Company, a consolidated railway corporation existing under the laws of the states of Missouri, Illinois, Indiana, Ohio and Michigan of the second part.

321 Witnesseth; That, Whereas, the Des Moines & St. Louis Railroad Company owns a line of railroad in the State of Iowa, extending from Des Moines in said State through the Counties of Polk, Marion and Monroe to the town or city of Albia in said Monroe County, where its said line of road connects with the tracks of the Wabash Railroad; and,

Whereas, The Wabash Railroad Company owns and operates a line of railroad extending from St. Louis in the State of Missouri by way of Moberly and Glenwood Junction in said State, to Moulton in the County of Appanoose in the State of Iowa, and from thence to Ottumwa in the State last aforesaid;

Whereas, The Wabash Railroad Company is engaged in the construction of a line of railroad from Moulton aforesaid, to the town or City of Albia in said County of Monroe, where its said line connects with the road and tracks of what is known as the Des Moines & St. Louis Railroad; and,

Whereas, The stockholders of the Des Moines & St. Louis Railroad Company have, by their unanimous vote, authorized and directed the proper officers of said Company to sell, assign, and set over unto said Wabash Railroad Company all its railroad, right of way, rolling stock, leasehold interests and other property.

Now, Therefore, Know all Men by These Presents, That for and in consideration of the premises, and of the sum of One Dollar paid to the Des Moines & St. Louis Railroad Company, the receipt whereof is hereby acknowledged, the Des Moines & St. Louis Railroad Company has granted, bargained,
322 sold, assigned and set over, and by these presents it does grant, bargain, sell, assign and set over unto the Wabash Railroad Company, its successors and assigns forever, all of its said line of railroad and right of way as the same now is or may be hereafter constructed, or acquired in said State of Iowa, commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the Counties of Polk, Marion and Monroe to the town or City of Albia in Monroe County, a distance of about sixty-seven miles, together with all the real estate and embankments, bridges, turn-outs, side-tracks, yards, structures, water tanks, shops, engine houses, depots, turntables, engines, cars and other rolling stock, machinery, tools, lots, lands, buildings, offices, furniture and all its rights privileges and franchises and all other things, real and personal, now owned, or used or that may be hereafter owned or used by the party of the first part in connection with the line of railroad above described and herein and hereby granted, and especially including all the rights and leasehold and other interests of the first party under a contract dated May 10, 1889, between the Des Moines Union Railway Company of the first part and the Des Moines & St. Louis Railroad Company, the Des Moines and Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, of the second part.

To Have and to Hold All and singular the above granted and described property with all its appurtenances and
323 the revenues, rents, issues and profits thereof, unto said Wabash Railroad Company, its successors and assigns, forever.

In Testimony Whereof the Des Moines & St. Louis Railroad Company has caused these presents to be signed in its name by its President and attested by its corporate seal the day and year first above written.

Adjourned.

J. C. OTTESON,
Assistant Secretary.

Defendants' Exhibit 193.

324

Deed From D. M. & St. L. R. R. Co. to The Wabash R. R. Co. Filed March 24, 1899. Dated January 1, 1899. Book 295, Page 409.

Des Moines & St. Louis R. R. Co., to The Wabash Railroad Co. } Deed.

This Indenture made and entered into this first day of January A. D. One thousand eight hundred and ninety-nine, between The Des Moines & St. Louis Railroad Company, a corporation of the state of Iowa, of the first part, and The Wabash Railroad Company, a consolidated railway corporation, existing under the laws of the states of Missouri, Illinois, Indiana, Ohio, and Michigan, of the second part; Witnesseth: That

Whereas, The Des Moines & St. Louis Railroad Company owns a line of railroad in the state of Iowa extending from Des Moines in said state through the counties of Polk, Marion and Monroe to the town or city of Albia in said Monroe county, where its said line of road connects with the tracks of the Wabash Railroad; and,

Whereas, The Wabash Railroad Company owns and operates a line of railroad extending from St. Louis in the state of Missouri, by way of Moberly and Glenwood Junction in said state, to Moulton in the county of Appanoose in the
325 state of Iowa, and from thence to Ottumwa in the state last aforesaid; and,

Whereas, The Wabash Railroad Company is engaged in the construction of a line of railroad from Moulton aforesaid to the town or city of Albia in said county of Monroe, where its said line connects with the road and tracks of what is known as the Des Moines & St. Louis Railroad; and,

Whereas, the stockholders of the Des Moines & St. Louis Railroad Company have, by their unanimous vote, authorized and directed the proper officers of said company to sell, as-

sign and set over unto said Wabash Railroad Company all its railroad, right of way, rolling stock, leasehold interests and other property;

Now, Therefore, Know All Men By These Presents: That for and in consideration of the premises and of the sum of One Dollar paid to the Des Moines & St. Louis Railroad Company, the receipt whereof is hereby acknowledged, the Des Moines & St. Louis Railroad Company has granted, bargained, sold, assigned and set over, and by these presents it does grant, bargain, sell, assign and set over unto the Wabash Railroad Company, its successors and assigns forever, all of its said line of railroad and right of way as the same now is, or may be hereafter constructed or acquired in said state of Iowa, commencing at a point in or near the city of Des Moines where said road connects with the tracks of the Des Moines Union Railway Company and extending from thence in a southeasterly direction through the counties of Polk, Marion and Monroe, to the town or city of Albia in Monroe county, a distance of about sixty-seven miles, together with all the real estate and
326 embankments, bridges, turn outs, side tracks, yards, structures, water tanks, shops, engine houses, depots, turn tables, engines, cars, and other rolling stocks, machinery, tools, lots, lands, buildings, offices, furniture and all its rights, privileges and franchises, and all other things, real and personal, now owned or used or that may be hereafter owned or used by the party of the first part in connection with the line of railroad above described and herein and hereby granted, and especially including all the rights and leasehold and other interests of the first party under a contract dated May 10th, 1889, between the Des Moines Union Railway Company of the first part and the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, of the second part.

To have and to hold all and singular the above granted and described property, with all its appurtenances and the revenues, rents, issues and profits thereof unto said Wabash Railroad Company, its successors and assigns forever.

In Testimony Whereof, the Des Moines & St. Louis Railroad Company has caused these presents to be signed in its name by its president and attested by its corporate seal, the day and year first above written.

(Seal) DES MOINES & ST. LOUIS RAILROAD COMPANY,

By O. D. Ashley, President.

Attest:

J. C. Otteson,
Assistant Secretary.

327 State of New York, } ss.
County of New York }

Be It Remembered, that on this 16th day of March A. D. 1899, before me, the undersigned, a Notary Public within and for the county and state of New York, came O. D. Ashley, President of the Des Moines and St. Louis Railroad Company, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing as President of the said The Des Moines and St. Louis Railroad Company, and who acknowledged the same to be his voluntary act and deed as President of the said The Des Moines and St. Louis Railroad Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 16th day of March A. D. 1899.

(Seal)

H. L. UTTER,
Notary Public Kings County.

Certificate filed in New York County.

328 State of New York, } ss.
County of New York }

I, William Sohmer, clerk of the county of New York and also clerk of the supreme court for the said county, the same being a court of Record, Do Hereby Certify, That H. L. Utter has filed in the clerk's office of the county of New York, a certified copy of his appointment as Notary Public for the county of Kings, with his autograph signature, and was at the time of taking the proof of acknowledgment of the annexed instrument duly authorized to take the same, and further that I am well acquainted with the handwriting of such Notary and verily believe the signature to the said certificate or proof of acknowledgment to be genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court and county the 18th day of March, 1899.

(Court Seal)

W. M. SOHMER,
Clerk.

329 State of New York, } ss.
County of New York }

Be It Remembered, that on this 18th day of March A. D. 1899, before me, the undersigned, a Notary Public within and for the county and state of New York, came O. D. Ashley, President of the Des Moines and St. Louis Railroad Company, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing as President of the said The Des Moines and St. Louis Railroad Company, and who acknowledged the same to be his voluntary act and deed as President of the said The Des Moines and St. Louis Railroad Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal 18th day of March, 1899.

(Seal) B. R. HIGGINS,
Notary Public New York County.

330 State of New York, } ss.
County of New York }

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for said county, the same being a court of Record, Do Hereby Certify, That B. R. Higgins, whose name is subscribed to the certificate or the proof of acknowledgment of the annexed instrument and thereto written, was at the time of taking such proof or acknowledgement a Notary Public in and for the county of New York, dwelling in the said county, commissioned and sworn and duly authorized to take the same. And further that I am well acquainted with the handwriting of said Notary and verily believe that the signature to the said certificate of proof or acknowledgement is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court and county the 18th day of March, 1899.

(Court Seal) W. M. SOHMER,
Clerk.

331 **Defendants' Exhibit 194.**

Des Moines Northwestern Railway Company.

Directors' Meeting, January 23, 1882

The Board met this day pursuant to adjournment. A quorum being present the minutes of the preceding meeting were read and approved.

John S. Runnells presented for the consideration of this meeting an agreement for the purchase from the St. Louis, Des Moines and Northern Railway Company of its road from Waukee to Clive, and one-half of its road from Clive to Farnham street in Des Moines, Iowa; and also an agreement for the use of this joint road. A copy of which he presented and filed with the secretary, the same being dated January 3, 1882, and reported that the amount of consideration for the purchase was to be settled as soon as the cost of construction could be ascertained, and agreed on, the same being considered by this Board, it was on motion ratified and agreed to and the President and Secretary of this company are directed to execute the same on behalf of this Company.

On motion the Board adjourned until February 8, 1882, to take action with reference to a contract with the Des Moines and St. Louis, and the St. Louis, Des Moines and Northern and others for terminal facilities in Des Moines Iowa, and for such other business as may come before the Board.

J. S. POLK, Prest.

J. S. Runnells, Sec.

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332 **Defendants' Exhibit 195.**

Des Moines Northwestern Railway Company.

Directors' Meeting, December 9, 1884.

The Board met this day in regular session. A quorum being present the meeting was called to order by the President and the minutes of the meetings of this Board for July, August, September, October and November being read, were approved and signed.

Thereupon John S. Runnells offered for the consideration of the Board the following resolution, to-wit:

Whereas heretofore to-wit on the 2" day of January, 1882 the Des Moines & St. Louis Railroad Company, the Des Moines & North Western Railway Company, the St. Louis Des Moines & Northern Railway Company, G. M. Dodge, Jas.

F. How and Jas. F. How, trustee, entered into a contract whereby it was agreed to pruchase and use certain real estate and franchises theretofore acquired by certain of said parties for terminal facilities in Des Moines, and

Whereas it is desirable that a corporation be organized for the purpose of taking and holding such property,

Now Therefore Be It Resolved: That J. S. Polk and F. M. Hubbell be and they are appointed to act for this company in the organization of such corporation, and they are selected to act as two of the directors of said proposed corpora-
333 tion, so to be organized, for the purpose of carrying out the objects of said contract of January 2", 1882.

Said resolution, after being duly considered, was unanimously adopted.

There being no other business before the Board, it adjourned.

J. S. POLK, Prest.

J. S. Runnells, Secy.

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334 **Defendants' Exhibit 196.**

Des Moines Northwestern Railway Company.

Directors' Meeting. May 18, 1889.

An adjourned meeting on call of chairman of the Board of Directors of the Des Moines and North Western Railway Company was held May 18, 1889.

Board met pursuant to adjournment.

F. M. Hubbell, President, in the chair.

Present: The President, A. N. Denman, A. B. Cummins, F. C. Hubbell. 4.

Absent: L. M. Martin, H. D. Thompson, G. M. Dodge.

Voted: That the proposed contract dated May 10, 1889 which was offered and read by Mr. A. B. Cummins between the Des Moines Union Railway Company of the first part and the Des Moines & St. Louis Railroad Co., the Des Moines and Northwestern Railway Co. the Saint Louis Des Moines and Northern Railway Co. parties of the second part, relating to the use of terminal property in the city of Des Moines and the compensation therefor be approved and that the President and Secretary of this company be and are hereby authorized to at-

tach the seal and to execute the same in behalf of this Company.

Upon motion adjourned.

A. N. DENMAN, Sect'y.

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335 **Defendants' Exhibit 197.**

Des Moines and Northwestern Railway Company.

Stockholders' Meeting, January 2, 1890. 2 P. M.

Stockholders met pursuant to adjournment.

Present:	F. M. Hubbell,	representing	....	shares
	A. B. Cummins,	"	....	"
	H. D. Thompson,	"	....	"
	F. C. Hubbell,	"	....	"
	A. N. Denman,	"	....	"

President F. M. Hubbell in the chair.

Voted: That we now proceed to the election of seven directors to hold office for one year or until their successors be chosen. A ballot having been taken all the votes were found cast for the following persons, who were thereupon declared elected directors for the ensuing year: F. M. Hubbell, G. M. Dodge, A. N. Denman, H. D. Thompson, Fred C. Hubbell, A. B. Cummins and L. M. Martin.

Upon motion it was unanimously Resolved:

That the stockholders of the Des Moines & N. W. Railway Co. hereby ratify and approve the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company upon all its property and franchises to secure the issuance of $800,000. of First Mortgage Bonds and do declare that this resolution shall have the same force and effect as though this authority had been executed prior to the execution of said mortgage.

336 The record of the last meeting of the stockholders was read, also the minutes of the directors' meetings during the past year. Said record and minutes and all the actions of the officers of the company for the past year was ratified, approved and confirmed.

A. N. DENMAN, Secretary.

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337 **Defendants' Exhibit 198.**

Des Moines and Northwestern Railway Company.

Directors' Meeting, October 23, 1890.

A meeting of the board of directors of the Des Moines & Northwestern Railway Company was held pursuant to adjournment October 23, 1890.

Present: Messrs. F. M. Hubbell, F. C. Hubbell, H. D. Thompson, A. N. Denman, L. M. Martin, A. B. Cummins.

President F. M. Hubbell in the chair.

(Preamble and resolution as follows:—)

The following Preamble and resolution was also adopted:

Whereas, this company is the owner of one hundred and fifteen bonds of the Des Moines Union Railway Company of One Thousand Dollars each commonly known as "Terminal Bonds" and

Whereas it has outstanding its own bonds secured by a mortgage upon its property and One Hundred & Twelve of said Terminal Bonds are under pledge to further secure the payment of the said bonds of the railway company, and

Whereas it now has an opportunity to take up twelve of its said mortgage bonds aggregating One Hundred & Twenty Thousand Dollars by transferring to the holder thereof the said Terminal Bonds, and the payment of Five Thousand Dollars in cash, and

Whereas it is for the best interest of the company to make such exchange of Bonds, Now, therefore, be it

Resolved: That the president be and he is hereby au-
338 thorized to transfer said Terminal Bonds and make said payment and to turn into the Treasury of the Company the said twelve of its own mortgage bonds aggregating One Hundred & Twenty Thousand Dollars for such disposition as may hereafter be ordered.

On Motion the Board adjourned.

A. N. DENMAN, Secretary.

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339 **Defendants' Exhibit 199.**

Des Moines and Northwestern Railway Company.

Stockholders' Meeting, October 12, 1891.

The stockholders of the Des Moines & Northwestern Railway Company having been duly convened in special meeting, and having been duly notified as provided by the Articles of Incorporation, the by laws, and the laws of the State of Iowa, met at the office of the company in Des Moines, Iowa pursuant to such notice.

The President, F. M. Hubbell presiding—There were present:

F. M. Hubbell,	holding & representing	3250	shares
G. M. Dodge	do	3500	"
F. M. Hubbell & Son,	do	3249	"
A. B. Cummins	do	1	"
F. C. Hubbell	do	1	"
L. M. Martin	do	1	"
H. D. Thompson	do	1	"
A. N. Denman	do		
	Total	10,004	shares

The above and foregoing are all the shares of the capital stock of the Des Moines & Northwestern Railway Co. issued or outstanding.

Whereupon the President announced and declared that all the stockholders of the company were present.

The President further announced that pursuant to the notice calling the meeting, the subject for consideration was the proposed consolidation union and merger of the Des
340 Moines & Northwestern Railway Company & the Des Moines & Northern Railway Company as provided by the statutes of the State of Iowa.

Whereupon A. N. Denman offered a certain preamble and resolutions and moved their adoption, said preamble and resolutions are as follows, to-wit:

Whereas: The Des Moines & Northwestern Railway Company is the owner and engaged in the operation of a line of standard gauge railway extending from Farnham street in the city of Des Moines, Iowa, to Fonda, Iowa, and

Whereas: The Des Moines and Northern Railway Company is the owner of a line of standard gauge railway extending from said Farnham street to Boone, Iowa, and

Whereas, it was and is believed that the consolidation union and merger of the capital stocks and corporate and other franchises, rights, privileges and property of said railway companies into a consolidated corporation which will own and be possessed of all the corporate and other franchises, rights, privileges, immunities and property of each and both of said railway companies will secure greater economy and efficiency in the management and operation of said lines and thereby promote the interests of the public of said corporate parties and of all the shareholders and other parties in interest in each of them, and

Whereas, G. M. Dodge, Solon Humphreys and F. M. Hubbell who own and are the owners severally in various
341 proportions of all the bonds and stock of said two railway corporations did on the first day of July, 1891, enter into a contract looking to said consolidation and merger, a copy of which is as follows, to-wit:

This Agreement entered into this first day of July, 1891, between G. M. Dodge and Solon Humphreys, hereinafter called the first parties, and F. M. Hubbell, hereinafter called the second party,

Witnesseth: That whereas the first parties are the owners of all the capital stock of the Des Moines and Northern Railway Company, which corporation owns and operates a line of railroad from Farnham street in the city of Des Moines, Iowa, to the city of Boone, Iowa, and

Whereas, the second party and said G. M. Dodge are the owners of all the capital stock of the Des Moines and North Western Railway Company, a corporation which owns and operates a line of railway from Farnham street in said city of Des Moines to Fonda, Iowa, and

Whereas, the said Des Moines and Northern Railway Company has issued its first mortgage bonds in the aggregate sum of Seven Hundred and Forty Thousand Dollars and has a small floating indebtedness and the said Des Moines and North Western Railway Company has issued its first mortgage bonds in the aggregate sum of Four Hundred and Fifty Thousand Dollars, and has a large floating indebtedness, and

Whereas, the first parties are the owners of all the
342 said mortgage bonds so issued by the Des Moines and Northern Railway Company, and

Whereas, it is believed to be for the best interests of the parties hereto to unite the two railroad properties above mentioned;

Now, therefore, in consideration of the mutual covenants, promises and undertakings herein contained, it is agreed as follows, to-wit:

First: That parties mutually agree that they will cause legally called meetings of the stockholders of said respective companies to be held in Des Moines, Iowa on the first day of January, 1892, at which meetings such due and legal proceedings shall be taken as will consolidate the said railway properties, and merge said two railway corporations into a single railway corporation according and pursuant to the provisions

of Section twelve hundred and seventy-five (1275) of the Code of the state of Iowa.

Said consolidated corporation shall have an authorized capital stock of a sufficient amount so that it may legally issue its capital stock at the rate of Twenty-eight Thousand Dollars per mile of its completed standard gauge main track whether acquired by such consolidation or thereafter acquired or constructed and shall have the power among other powers to execute a trust mortgage securing the payment of the bonds herein provided to be issued by it.

Second: The second party agrees that on or before the first day of January, 1892, he will cause the gauge of the
343 main and side tracks of the Des Moines & North Western Railway Company to be widened to a standard gauge, that is to say, to a gauge of four feet eight and one-half inches, and it is understood and agreed that between the station of Clive and the city of Jefferson, Iowa, the main track shall be laid with steel rails of at least the weight of fifty-two pounds per yard, and between Jefferson and Fonda the track shall be laid with the forty pound steel rail now in use and so much of the best thirty-five pound iron rail now in use as may be necessary to complete the track between said points.

Third: It is further agreed that by such consolidation the said consolidated Corporation hereinafter called the "Consolidated Company" shall become the owner of the entire line of railway now belonging to the Des Moines and Northern Railway Company, extending from Farnham street aforesaid to Boone aforesaid including its right of way, roadway, main tracks, side tracks, bridges, culverts, round houses, shops station houses, engines, cars, real estate and all property of whatsoever name, nature or description in fact belonging to the said Des Moines and Northern Railway Company, including about seventy acres of land at or near High Bridge, and about thirty acres at Boone and also including one-quarter of the capital stock of the Des Moines Union Railway Company which stock is now the property of the Des Moines and Northern Railway Company, and it is further agreed that the consideration to be paid and issued for and on account of the said property of the Des Moines and Northern Railway Com-
344 pany and for which all its bonds and stock are to be surrendered and cancelled shall be six hundred and fifty-five thousand dollars in the first mortgage bonds and one million ninety-two thousand dollars par value of the capital stock of the Consolidated Company.

Fourth: The parties further mutually agrees that by such consolidation the Consolidated Company shall become the owner of the entire railway line of the said Des Moines & Northwestern Railway Company extending from Farnham street aforesaid to Fonda aforesaid, including its right of way, roadway, main tracks, side tracks, bridges, culverts, round houses, shops, station houses, engines, cars, real estate and all property of whatsoever name, nature or description in fact belonging to the said Des Moines & Northwestern Railway Company including one-fourth of the capital stock of the Des Moines Union Railway Company, which capital stock is now the property of the said Des Moines and Northwestern Railway Company, and it is further agreed that the consideration to be paid and issued for and on account of the said property of the Des Moines and Northwestern Railway Company for which all its bonds and stock are to be surrendered and cancelled shall be one million, six hundred thousand dollars in the first mortgage bonds and three million, one hundred and eight thousand dollars par value in the capital stock of the Consolidated Company.

Fifth: It is further mutually agreed that if the sec-
345 ond party shall cause the gauge of the Des Moines & Northwestern Railway Company to be widened from Farnham street to Fonda at any time before the 1st day of January, 1892, he may give notice to that effect to the first parties and thereupon meetings of the stockholders of the Des Moines & Northwestern Railway Company and the Des Moines and Northern Railway Company shall be held twenty days after such notice is given and at such meetings there shall be taken all the proceedings provided for herein to be taken at the meetings so to be held January 1, 1892, and all matters and things to be thereafter done and performed to execute this contract shall be done and performed in like manner and to like effect as though said meetings had been held and said consolidation made on said 1st day of January, the intent being to bring about the consolidation as soon as it can practically be done after the gauge of the Des Moines & Northwestern Railway is so widened.

Sixth: The first parties agree that until said consolidation all the earnings and assets of the said Des Moines & Northern Railway Company whether now in its possession or hereafter coming into its possession shall either be devoted to the payment of operating expenses, the improvement and betterment of the property or otherwise remain in its possession, the intent being that there shall be no withdrawal from said com-

pany of any property that it now has or any that may come into its possession before the said consolidation.

346 Seventh: The first parties further agree that when the consolidation is so made the property of the Des Moines & Northern Railway Company shall be free and clear of all liens or encumbrances, and the said company shall likewise be free and clear of all indebtedness except such liens or indebtedness as may be created in the ordinary operation and maintenance of the railway and except the sum of Seventeen Thousand Dollars due to Pullman's Palace Car Company of Chicago, Illinois which indebtedness is to be paid by the Consolidated Company in its mortgage bonds at not less than ninety per cent of par value and the first parties agree that they will procure the assent of the said Pullman Palace Car Company to the payment of such indebtedness in such manner.

Eighth: The second party agrees that when the consolidation is so made the property of the Des Moines & Northwestern Railway Co. shall be free and clear of all liens or incumbrances and said company shall likewise be free and clear of all indebtedness except such liens or indebtedness as may be created in the ordinary operation and maintenance of the railway.

Ninth: The said G. M. Dodge agrees to sell, assign, transfer and convey unto said Consolidated Company one-eighth of the capital stock of the Des Moines Union Railway Company now owned by him, and one-half of the capital stock of the Midland Coal Company, a corporation organized under
347 the laws of the state of Iowa, and engaged in the business of producing coal for railway and other purposes and to receive as consideration therefor Fifty-five Thousand Dollars in the first mortgage bonds of the Consolidated Company at par, said assignment, transfer and conveyance to be executed at the time of said consolidation.

Tenth: The second party agrees to sell, assign, transfer and convey unto the said Consolidated Company one-fourth of the capital stock of the Des Moines Union Railway Company now owned by him and to receive as consideration therefor Sixty Thousand Dollars in the first mortgage bonds of said Consolidated Company at par, said assignment, transfer and conveyance to be executed at the time of said consolidation.

Eleventh: It is further mutually agreed that contemporaneously with said consolidation said Consolidated Company shall execute and deliver to the Metropolitan Trust Company

of New York a trust mortgage upon all the property so acquired by it except the capital stock of the Midland Coal Company and except five-eighths of the capital stock of the Des Moines Union Railway Company which mortgage shall contain the usual provisions and conditions and secure the payment of an issue of bonds not to exceed Eighteen Thousand, Five Hundred Dollars per mile of completed standard gauge main track the said mortgage shall among other things provide for the immediate issuance and certification of the bonds hereinbefore referred to and which constitute
348 a part of the consideration of the property consolidated and purchased and shall also contain the customary provisions relating to the issuance and certification of further bonds, but in no event shall the aggregate issue of bonds exceed Eighteen Thousand, Five Hundred Dollars per mile of track which the Consolidated Company shall then own or thereafter acquire or construct. Said corporation shall at the same time execute and deliver to the trustee and the trustee shall certify and deliver pursuant to the provisions of this contract Two Million, Three Hundred and Ninety Thousand Dollars of said first mortgage bonds, said bonds shall be in the form of the exhibit hereto attached marked Exhibit A and made a part hereof.

Twelfth: It is further mutually agreed that contemporaneously with the said consolidation and execution and delivery of the trust mortgage and bonds provided for in the preceding section the first parties will cancel and surrender or cause to be cancelled and surrendered all the mortgage bonds of the Des Moines & Northern Railway Company and will cause the trustee in its said mortgage to satisfy and discharge the same and the second party and G. M. Dodge agree severally in like manner contemporaneously as aforesaid to cancel and surrender or cause to be cancelled and surrendered all the mortgage bonds of the Des Moines & Northwestern Railway Company and to cause the trustee in its said mortgage to satisfy and discharge the same and the first parties agree that at the same time they will surrender or cause to
349 be surrendered all the capital stock of the Des Moines & Northern Railway Company and the second party and G. M. Dodge agree severally that in like manner they will surrender or cause to be surrendered all the capital stock of the Des Moines & Northwestern Railway Company.

Thirteenth: It is further mutually agreed that the considerataion so to be paid and issued for and on account of the property, bonds and stock of the Des Moines & Northern Railway Company which is hereinbefore recited to be Six Hundred and Fifty-five Thousand Dollars in the bonds of said

Consolidated Company and One Million and Ninety-two Thousand Dollars of its capital stock shall be disposed of as follows: The said bonds and stock shall be delivered to the first parties, whereupon said first parties shall transfer and deliver said stock to the second party.

Fourteenth: It is further mutually agreed that the consideration so to be paid and issued for and on account of the property, bonds and stock of the Des Moines and Northwestern Railway Company, which is hereinbefore recited to be One Million, Six Hundred Thousand Dollars, in the first mortgage bonds of the Consolidated Company, and Three Million, One Hundred and Eight Thousand Dollars of its capital stock shall be disposed of as follows, to-wit; Fifteen Hundred and Sixty-nine Thousand Dollars of the Bonds to F. M. Hubbell, and Thirty one Thousand Dollars of the bonds to G. M. Dodge and of the stock One Million, One Hundred Thousand Dollars par value to G M Dodge and Two Mil-
350 lion and Eight Thousand par value of said stock to F. M. Hubbell.

Fifteenth: It is further mutually agreed that Fifty-five Thousand Dollars of said first mortgage bonds of the Consolidated Company shall be delivered to G. M. Dodge as the purchase price of said one-eighth of the capital stock of the Des Moines Union Railway Company, and one-half of the capital stock of the Midland Coal Company, and that Sixty Thousand dollars of said bonds shall be delivered to the second party as the purchase price of one-fourth of the capital stock of the Des Moines Union Railway Company.

Sixteenth: It being the intent of the parties hereto that the interest upon the Six Hundred and Fifty Thousand Dollars of the first mortgage bonds so to be delivered to the first parties shall for a period of five years from and after their date have priority over the interest upon the remainder of said mortgage bonds, the second party agrees that the Consolidated Company shall from and after the time it comes into the possession and begins the operation of said line of railway set apart from month to month for five years six per centum or such lesser amount as may be necessary of its gross earnings to be used for the payment of the interest coupons attached to the said Six Hundred and Fifty Thousand Dollars of bonds and for no other purpose and said second party further agrees that for the said period of five years there shall in no event be anything paid as interest upon the said remaining bonds while any sum is due as interest upon the said Six Hundred and Fifty Thousand Dollars
351 of bonds and the said G. M. Dodge assents to the foregoing provision and agrees to cooperate with the sec-

ond party in the performance thereof. And the said G. M. Dodge and the second party agree that if they or either of them sell or dispose of any of said remaining bonds or cause other bonds to be issued during said period of five years they will take or cause to be taken such action as may be necessary to make this agreement effective as against the bonds so sold or issued.

Seventeenth: The Consolidated Company shall take the property so to be conveyed to it subject to the indebtedness excepted in Sections Seventh and Eighth and shall assume and pay such indebtedness as from time to time it matures.

Eighteenth: Said consolidation shall be carried out under the supervision of A. B. Cummins who shall direct the manner in which the proceedings shall be taken.

In Witness Whereof the parties hereto have hereunto set their hands the year and day first above written.

352 and Whereas in pursuance of said contract for the purpose among other things of carrying out and performing the same and by and with the consent of all the stockholders including the said G. M. Dodge, the said Hubbell did on the 18th day of August, 1891 enter into a contract with this Company to widen the gauge of its tracks as provided in said contract, which said contract between said Hubbell and this Company is as follows, to-wit:

This Agreement made and entered into on this 18th day of August, A. D. 1891 between the Des Moines & North Western Railway Company, party of the first part, and F. M. Hubbell party of the second part, Witnesseth:

That whereas by resolution of the stockholders of the Des Moines & Northwestern Railway Company adopted at a stockholders' meeting of the said company held on the 17th day of August, 1891 action was taken respecting the widening of the gauge of the main and the side tracks of the line of railway of the party of the first part to the standard gauge of four (4) feet and eight and one-half (8½) inches and also authorizing the Board of Directors to enter into a contract with the party of the second part for the said work including also the surrender and cancellation of all the bonds now outstanding
353 against this Company and the payment of all of its floating debt and also looking to a consolidation of the said line of railway, its franchises and property with the Des Moines & Northern Railway Co. and

Whereas, at a meeting of the Board of Directors of the said Company held at the office of the said Company on the 18th

day of August, 1891, the Board of Directors authorized the vice-president and secretary of the party of the first part hereto to enter into a contract according to the terms of the said resolutions with the party of the second part covering the said matters.

Now Therefore, the party of the second part hereby agrees and undertakes that he will widen or cause to be widened at his own expense the main and side tracks of the line of railway of the party of the first part to the standard gauge of four (4) feet eight and one-half (8½) inches and that in so doing he will lay the main track of said line of railway from Clive to the city of Jefferson, Iowa, with steel rails weighing at least fifty-two (52) pounds per yard and between Jefferson and Fonda he will lay the said track with the forty (40) pound steel rails now in use on the said line of railroad and so much of the best thirty-five (35) pound iron rails now in use as shall be necessary to complete the said track between said points.

The said party of the second part further agrees that he will cause all of the bonds now outstanding against the party of the first part to be surrendered and cancelled, and will
354 further take up, pay and discharge all of the floating debt now outstanding against the party of the first part. All of which things the said party of the second part will do or cause to be done on or before January 1, 1892.

The party of the first part agrees in consideration of the performance of the agreements and covenants above named by the party of the second part that it will pay therefor as follows, to-wit: It will cause to be issued a deed of trust or trust mortgage upon all of its property and franchises to secure a series of bonds of not less than Sixteen Hundred Thousand (1,600,000) dollars and will deliver of the said bonds to the party of the second part Fifteen Hundred and Sixty-nine Thousand Dollars ($1,569,000.00) and it will further pay to the said party of the second part the net earnings accruing from the operation of the said railway from the first of March 1891 to the first of January 1892, the foregoing to be payment in full for the performance of his undertakings hereinbefore set forth by the party of the second part, or if the party of the first part shall on or before the 1st day of January, 1892 consolidate its franchises and property with the franchises and properties of the Des Moines & Northern Railway Company as now contemplated and agreed upon between the said companies, the party of the second part further agrees to surrender and cancel all of the stock he now holds in the party of the first part and shall receive in full compensation for the performance of the

agreements and covenants of this contract on his part
355 including that last above named in lieu of the consideration hereinbefore agreed to be paid of the bonds of the new corporation (the result of the consolidation of the Corporations and properties above named) the sum of Fifteen Hundred and Sixty-nine Thousand Dollars, ($1,569,000.00) thereof all of which shall be properly secured by a deed of trust or trust mortgage upon all the properties of the companies as consolidated, and of the stock of the said corporation the sum of Two Million, and Eight Thousand Dollars ($2,008,000.00) together with the net earnings of this company as hereinbefore set out as full compensation for the performance of all and singular the covenants and agreements of the party of the second part hereto.

Signed this 18th day of August, A. D. 1891.

DES MOINES & NORTHWESTERN RY. CO.
By F. C. Hubbell, Vice-Pres.
A. N. Denman, Secretary
F. M. Hubbell

and Whereas the said Hubbell has now widened the gauge of the tracks of this company in full and complete compliance with the terms and provisions of both the contracts hereinbefore mentioned and has brought the said railroad and its property to that condition in every respect that they should be to conform to and comply with the requirements of said contracts and each of them, and

Whereas it was provided in said first mentioned contract
356 that the entire property of this company should be sold, transferred, assigned, consolidated and merged to and in the said Consolidated Company, for and at the consideration of One Million, Six Hundred Thousand Dollars par value of its first mortgage bonds of the character and to be secured as provided in said first mentioned contract and for and at the additional consideration of its capital stock fully paid and non-assessable of the par value of Three Million One Hundred and Eight Thousand Dollars as well as the general consideration of effecting a union of said properties upon the terms recited in said contract, and

Whereas, it was individually agreed by the said Dodge and Hubbell in and by said first mentioned contract and again as stockholders of this Company at the time of the execution of said second mentioned contract that in consideration of said consolidation the said widening of the gauge the payment of certain floating indebtedness, the surrender of all his

capital stock in this company and cancellation and satisfaction of all his mortgage bonds of this company by the said Hubbell and agreed in said first mentioned contract that in consideration of said consolidation and the surrender of all his capital stock in this company, and cancellation and satisfaction of all his mortgage bonds of this company by the said Dodge that he (the said Hubbell) should receive One Million Five Hundred and Sixty-nine Thousand Dollars par value of the first mortgage bonds so to be issued and secured by the consolidated company and Two Million and Eight Thousand dollars par value of the capital stock of the said com-
357 pany so to be issued and that the said Dodge should receive Thirty-one Thousand Dollars par value of the said first mortgage bonds so to be issued and secured by the Consolidated Company, and One Million, One Hundred Thousand Dollars par value of the capital stock of said company so to be issued, the total of said bonds and stock so to be delivered to and received by said Hubbell and said Dodge being the whole amount of bonds and stock to be issued by the Consolidated Company to the Des Moines & Northwestern Railway Company in consideration of the consolidation, union and merger of its property, franchises, bonds and stock, and

Whereas, the payment of said floating debt, the surrender of said capital stock and the cancellation and satisfaction of said mortgage bonds are to be contemporaneous with the issuance and delivery of said bonds and stock of the Consolidated Company,

Now, Therefore, in view of the premises, provisions and agreements hereinbefore recited and referred to Be It Resolved, by the stockholders of the Des Moines & Northwestern Railway Company in meeting duly convened and held as follows, to-wit:

First: That it is for the best interests of all the stockholders and all other persons interested in the property of this company also for the best interest of the public to effect a consolidation, union and merger of all the property franchises, rights, and privileges of this Company, with all the property, franchises, rights and privileges of the
358 Des Moines & Northern Railway Company pursuant to the provisions of Section twelve hundred and seventy-five (1275) of the Code of 1873 of the state of Iowa and according to the terms and provisions of the contract of July 1, 1891, set out in the preamble hereof.

Second: That with full knowledge of all the terms and provisions of the contract between F. M. Hubbell and this Company, a copy of which is set out in the preamble hereof of

the manner in which said Hubbell has performed the same, and of the amounts he has expended in the performance thereof and of all other matters and things relating thereto the stockholders of this company hereby ratify, confirm and approve the same and all the acts and doings of said Hubbell thereunder.

Third: That the railway line including tracks, equipment and all other property belonging to this Company and now in the condition required by said first mentioned contract for consolidation and merger.

Fourth: That the president and secretary of this Company be and they are and each of them is hereby authorized to unite with the president and secretary of the Des Moines & Northern Railway Company in the execution, acknowledgement and consummation of Articles of Consolidation for the formation of said Consolidated Company under such name and style as said officers may select.

That said Articles of Consolidation shall among other things provide for the full sale, release, conveyance, assignment and transfer unto the Consolidated Company of the re-
359 spective railroads, railroad lands, rights of way, roadways, tracks, stations, station grounds, lands, lots, bridges, culverts, cars, locomotives, rolling stock, tools, machinery fuel, timber, iron, stone, materials and goods and chattels and generally of all property, rights and credits of whatever name, nature or description belonging to the said Des Moines & Northwestern Railway Company, and the Des Moines & Northern Railway, or either of them.

Said Articles shall also confer upon said Consolidated Company full power to issue mortgage bonds to the amount and of the character described in said first mentioned contract to execute a mortgage to secure the payment of the same as therein provided, and also to issue capital stock to the amount and for the purposes therein mentioned. Said Articles shall also provide that the said consolidated company shall assume and become liable for all claims or demands against or indebtedness of said two railway companies except such claims, demands or indebtedness as by the terms of said contract are to be paid, satisfied or discharged by the said G. M. Dodge, and Solon Humphreys, or by the said F. M. Hubbell.

Said Articles shall also provide that among the purposes and objects of said Consolidated Company shall be the following—to own, complete, extend, improve, maintain, and operate the railroads now respectively owned and operated by the Des Moines & Northwestern Railway Company and the

Des Moines & Northern Railway Company and to use
360 and enjoy all the corporate and other franchises, rights, privileges, immunities and property of every nature and description which form a part of or are appurtenant or relate to either of said railroads to acquire by construction, purchase, lease or otherwise and own and operate additional lines of railway in this or any adjoining state to construct and operate branches or extensions of the lines of railway now consolidated to own capital stock in the Des Moines Union Railway Company or any other terminal company to own capital stock in any coal, stone or elevator company to own or lease and operate such coal mines, stone quarries, warehouses and elevators as may be convenient, profitable or necessary in the management and operation of its lines of railway. Said Articles shall also contain such other provisions as may be convenient or necessary for the complete and efficient organization of said Consolidated Company, and agreed upon by the said officers of said companies and it is expressly declared that the enumeration herein contained in not exclusive. The president and secretary of this company are also authorized to execute, acknowledge and deliver such deeds of conveyance, transfers and assignments as may be required to give said Consolidated Company evidence of ownership of all the property, rights, privileges and franchises which by said Articles of Consolidation is vested in it.

361 Fifth: That the consideration to be paid and issued by said Consolidated Company for and on account of the said property, rights, franchises and privileges of the Des Moines & Northwestern Railway Company, the payment of its indebtedness, cancellation and satisfaction of its bonds, the surrender of its capital stock, and the general considerations of consolidation as shown in said contract shall be One Million, Six Hundred Thousand Dollars in the first mortgage bonds of the Consolidated Company, secured by mortgage and Three Million, One Hundred and Eight Thousand Dollars par value of the capital stock of the Consolidated Company, said bonds to be executed and secured and said stock to be issued as provided by the terms of said first mentioned contract.

Sixth: That when said Consolidated Company is ready to deliver the mortgage bonds and capital stock mentioned in the last preceding resolution and contemporaneously with the delivery thereof the said Dodge shall cancel and satisfy the bonds of this company held by him amounting without interest to Thirty-One Thousand Dollars, and surrender the capital stock of this company held by him amounting to Three Hundred and Fifty Thousand Dollars par value and at the same time the said F. M. Hubbell shall cancel and satisfy the bonds of this

company held by him amounting without interest to Three Hundred and Nineteen Thousand Dollars, and surrender the capital stock of the company held by him amounting to Six Hundred and Fifty Thousand Dollars par vane, and shall also produce receipts showing the payment of the floating
362 debt of the company as provided in said contract and thereupon the said Consolidated Company shall issue and deliver to said Dodge its said first mortgage bonds amounting to Thirty-One Thousand Dollars par value and its capital stock amounting at par value to One Million, One Hundred Thousand Dollars and said Consolidated Company shall at the same time issue and deliver to the said F. M. Hubbell its said first mortgage bonds amounting to One Million Five Hundred and Sixty-nine Thousand Dollars par value, and its capital stock amounting at par value to Two Million and Eight Thousand Dollars which bonds and stock so to be issued and delivered to said Dodge and said Hubbell constitute the consideration to this company for such consolidation, merger and union and this company distributes and disposes of the same in the aforesaid manner and proportion according to the provisions of said first mentioned contract and for the considerations as between said Dodge and said Hubbell the sole parties in interest therein named.

Seventh: That all the acts and doings of whatever kind of nature heretofore done or performed by the officers and directors of this company are, and each of them is hereby ratified, approved and confirmed and inasmuch as the said Dodge and the said Hubbell are the sole parties in interest in the property, obligations, bonds and stock of this company, each acknowledges to the other that with full knowledge of the manner in which the company has been conducted the manner and
363 amount of all expenditures made or caused to be made by the said Hubbell whether as president of the company or as contractor in widening the gauge of the road that no claim or demand exists in favor of one and against the other, and these resolutions shall be accepted as a final and complete settlement between said parties with respect to all matters connected with or relating to this company.

Eighth: That Wager Swayne, Esq., Trustee of the mortgage securing the payment of the mortgage bonds of this company be and he is hereby requested to satisfy and release said trust mortgage whenever all the bonds secured thereby shall be cancelled and satisfied.

Whereupon H. D. Thompson seconded the motion for the adoption of said preamble and resolutions. After consideration by the stockholders the President announced the question

to be. Shall the same preamble and resolutions be adopted? and thereupon ordered the secretary to call the roll of stockholders which being done, said stockholders voted: as follows:

F. M. Hubbell voted 3250 shares Aye; G. M. Dodge voted 3500 shares Aye; F. M. Hubbell & Son voted 3249 shares aye; A. B. Cummins voted 1 share aye; F. C. Hubbell voted 1 share aye; L. M. Martin voted 1 share aye; H. D. Thompson voted 1 share aye; A. N. Denman voted 1 share, aye; Total 10,004 shares, Aye:

Whereupon the president declared that said preamble and resolutions had been duly and legally adopted by the
364 unanimous vote of all the stockholders of the company.

Upon motion of L. M. Martin the stockholders of the Des Moines & Northwestern Railway Company adjourned sine die.

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365 **Defendants' Exhibit 200.**

Des Moines and North Western Railway Company.

Directors' Meeting. December 8, 1891.

The Board of Directors of the Des Moines & Northwestern Railway Co. met in regular session Decr. 8, 1891.

Present: F. M. Hubbell, F. C. Hubbell, H. D. Thompson, A. N. Denman. 4

Absent: Messrs. G. M. Dodge, A. B. Cummins, L. M. Martin. 3.

F. M. Hubbell, President in the Chair.

The following preamble and resolution was offered and unanimously passed. Whereas this company advanced to the Des Moines Union Railway Company during the years 1889 and 1890 the sum of Three Thousand Four Hundred and Thirty-seven 58/100 (3437.58) Dollars which was used in new construction, and which amount said company has agreed to refund and pay to this company in its first mortgage 5% 30 year bonds at par, and

Whereas this company is indebted to the Des Moines Savings Bank in the sum of Fifteen Thousand Dollars ($15,000.) and accrued interest and the said bank has signified its willingness to accept from this company at 92½% the Des Moines Union Railway Company bonds now due to this company on account of the transactions above mentioned, Now Therefore be it

Resolved; That the President of this company is directed
366 to receive from the Des Moines Union Railway Company bonds to the full amount of the advances so made and pay said bonds to the Des Moines Savings Bank at 92½% in part payment of the indebtedness of this company to the bank as above set out.

Upon motion adjourned.

A. N. DENMAN, Secretary.

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367 **Defendants' Exhibit 201.**

St. Louis, Des Moines & Northern Railway Company.

Board Meeting. January 22nd 1882.

The board met this day pursuant to adjournment. A quorum being present the minutes of the preceeding meeting were read and approved.

On motion of J. S. Runnells it was

Resolved, That the President and Secretary of this Company execute in behalf of this Company a conveyance to the Des Moines Northwestern Railway Company of all its right title and interest in and to its branch road from Clive to Wankee and one half of its road from the station of Clive to Farnham Street in the City of Des Moines Iowa and an agreement with said railway company with reference to the operation and management of the joint road and the final division of the same &c &c. (A copy of which dated January 3rd 1882 with the approval of the Wabash St. Louis & Pacific Railway Company endorsed thereon is filed with the Secretary of this Company) and that the same be delivered to G. M. Dodge for delivery to the Des Moines Northwestern Railway Company when the same shall be paid for by it.

The Secretary having presented for the consideration of this board a mortgage from this Company to the Mercantile Trust Company of New York covering the railroad and property of this Company lying west of the western boundary line of the City of Des Moines except so much of the same
368 as had been theretofore sold to the Des Moines North Western Railway Company to secure the bonds of this Company heretofore issued which mortgage bears date Aug. 1st 1881 and a copy of which is filed with the Secretary of this Company.

269

Defendants' Exhibit 202.

St. Louis, Des Moines & Northern Railway Company.

Resolution adopted at Stockholders' Meeting Jan. 1, 1885.

Resolved, That this company ratify and approve the election heretofore made, of G. M. Dodge and C. F. Meek to serve as directors of the Des Moines Union Railway Company in accordance with the provisions of Article 4 of the Articles of Incorporation of that company, authorizing this company to nominate two members of the Board of Directors of said Company.

On motion of F. M. Hubbell, the following preamble and resolutions were submitted to the meeting for its consideration, to-wit, and were unanimously adopted:

Whereas the Des Moines and St. Louis Railroad Company, the Des Moines North Western Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge and James F. How and Jas. F. How, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises, in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract; and

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated, and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate property, rights and franchises in the City of Des Moines, east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

Now Therefore:

I. Resolved, That this Company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

369a II. Resolved: That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway

Company to which it may be entitled, under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever nature and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City, now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased acquired or held in pursuance of said contract.

Resolved, That the proper officers of the company be authorized to transfer the management, and operation of its property in Des Moines so far as the same may now be vested in the company on the 1st day of January or as soon thereafter as practicable leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein.

And the same being duly considered was adopted by the meeting all the stock present and represented voting therefor.

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370 **Defendants' Exhibit 203.**

St. Louis, Des Moines & Northern Railway Company.

Directors Meeting January 1st 1883.

Resolution as follows:

On motion of C. F. Meek the following resolution was submitted to the Board to-wit;—

"Resolved, That the proper officers of the company be authorized to transfer the management, and operation of its property in Des Moines so far as the same may now be vested in the company on the first day of January or as soon thereafter as practicable leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein."

And after the same was duly considered it was adopted by the Board. All the Directors voting therefor.

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371 **Defendants' Exhibit 204.**

St. Louis, Des Moines & Northern Railway Company.

Stockholders Meeting. January 7th 1886.

Record of resolution as follows:

On motion the Vice President of this Company was directed to attend the annual meeting of the Des Moines Union Ry. Co. for the election of a Board of Directors and nominate on behalf of this Company G. M. Dodge and C. F. Meek to be voted for as two of the Directors of such Railway Company.

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372 **Defendants' Exhibit 205.**

St. Louis, Des Moines & Northern Railway Company.

Stockholders Meeting. January 6th 1887.

On motion the Assistant Secretary was directed to attend the annual meeting of the Des Moines Union Railway Company for the election of a Board of Directors, and nominate on behalf of this company G. M. Dodge and C. F. Meek to be voted for as two of the Directors of said Railway Company.

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373 **Defendants' Exhibit 206.**

St. Louis, Des Moines & Northern Railway Company.

Board of Directors Meeting. January 3rd 1889.

The newly elected Board met this day in regular session.

Present. A. B. Cummins, L. M. Martin and F. M. Hubbell, being a quorum.

The Board was called to order and L. M. Martin was chosen to preside at the meeting.

Thereupon on motion of A. B. Cummins the Board proceeded to the election of officers of the company for the ensuing year, and the following named persons each received the unanimous vote of all the Directors present for the several offices hereinafter mentioned, and were declared duly elected thereto, to-wit:

G. M. Dodge	President
A. B. Cummins	Vice President
J. T. Granger,	Secretary & Treasurer
F. M. Hubbell,	Assistant Secretary & Treasurer.

The minutes of the preceding meetings of the Board were read and approved.

On motion, G. M. Dodge and L. M. Martin were nominated as Directors of the Des Moines Union Railway Company for the year 1889, and the Secretary was directed to certify such nomination to the annual meeting of stockholders of said company.

Whereupon the Board adjourned.

F. M. HUBBELL, Asst. Secy.

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374 **Defendants' Exhibit 207.**

St. Louis, Des Moines & Northern Railway Company.

Stockholders' Meeting, January 2, 1890.

Resolution adopted as follows:

Mr. L. M. Martin offered the following resolution:

Resolved, that the stockholders of the St. Louis Des Moines & Northern Railway Company, hereby ratify and approve the execution of the mortgage of the Central Trust Company by the Des Moines Union Railway Company upon all its property and franchises to secure the issuance of Eight Hundred Thousand, ($800,000.00) Dollars of first mortgage bonds, and do hereby declare that this resolution shall have the same force and effect as though this authority had been executed prior to the execution of said mortgage.

The resolution was carried unanimously.

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380 **Defendants' Exhibit 208.**

Des Moines, Northern & Western Railway Company.

Meeting of stockholders, Des Moines, Iowa, December 14th, 1891.

The stockholders of the Des Moines, Northern & Western Railway Company met at the office of the Company in Des Moines, Iowa. Present, F. M. Hubbell, F. C. Hubbell, F. M. Hubbell & Son, G. M. Dodge and Solon Humphreys (by proxy, duly filed), L. M. Martin, A. B. Cummins, H. D. Thompson, and A. N. Denman.

President F. M. Hubbell presiding.

Upon call it appeared that all persons owning or having any interest in the capital stock of the Des Moines, Northern & Western Railway Company were present, or represented as aforesaid.

Whereupon A. B. Cummins offered the following resolution and moved its adoption.

Whereas the Board of Directors of this Company did, at its meeting held on the fourteenth day of December, 1891, unanimously adopted the following preamble and resolutions, to-wit:

"Whereas, by the terms of the Articles of Consolidation heretofore entered into between the Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company, and of the resolutions heretofore adopted by the stockholders of said two respective companies, it has been provided, among other things, that a portion of the consideration for the consolidation of the property, rights and franchises of said corporations above mentioned, and of the cancellation, satisfaction and surrender of all the mortgage bonds and capital stock of said two corporations, and the widening
381 of the gauge of the Des Moines & Northwestern Railway Company, and the payment of the floating indebtedness of both companies (save and except certain items described in said Articles and Resolutions), should be the issuance by this Company of certain of its first mortgage bonds, secured by a trust mortgage upon all the property of the consolidated corporation (save and except certain items mentioned in said resolutions), and

Whereas, said consolidation is now complete, and this company in now the owner of all the property, rights, privileges, franchises and immunities heretofore owned by the Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company,

Be it therefore resolved; that the Des Moines, Northern & Western Railway Company, the consolidated corporation hereinbefore referred to, shall duly execute and acknowledge a trust mortgage to the Metropolitan Trust Company of the City of New York, as Trustee, which mortgage shall convey, under the usual terms and conditions, all its railroad extending from Farnham street in the city of Des Moines, County of Polk, and state of Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, Iowa, to Fonda in said last named county, and also extending from Farnham street aforesaid over the same line to Clive in the County of Polk, and thence through the counties of Polk, Dallas and Boone, Iowa, to the city of Boone in said last named county, together with

all its real estate necessary for and used in the operation
382 of said lines of railway; its rights of way, roadbed, bridges, tracks, sidetracks, turnouts, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars and machinery; also together with all its corporate and other franchises, rights, privileges and immunities, rents, issues, tolls and earnings; also all its property of whatsoever name, nature or description that may hereafter be acquired; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company; but it is expressly understood and agreed that said mortgage shall not convey an additional five-eighths interest in the capital stock of the said Des Moines Union Railway Company, of which the said company is the owner, nor one-half of the capital stock of the Midland Coal Company, of which it is the owner; it being the intent to convey and mortgage all its railroad property, and all things appurtenant thereto, or used in connection therewith, whether now acquired and owned or hereafter acquired and owned, except as hereinbefore provided. The said mortgage shall be executed to secure the issuance of a series of bonds of One thousand dollars each, payable forty years after date in gold coin of or equal to the present standard of value, with interest payable semi-annually in like gold coin at the rate of four per cent. per annum for the five years first ensuing after their date, and at the rate of five per cent. per annum thereafter. Said mortgage shall provide that said bonds may be issued at the rate of Eighteen thousand five hundred dollars per mile of completed, equipped standard gauge
383 main track and branches, owned by the company, and that in no event shall the aggregate issue of bonds exceed Eighteen thousand five hundred dollars per mile of completed, equipped standard gauge main track and branches. It shall further provide that no bond shall be legal or valid until it has received the certificate of the trustee; that such bonds at the rate of Eighteen thousand five hundred dollars per mile of completed, standard gauge main track now owned and operated by the Company shall be at once issued, certified by the Trustee, and delivered as hereinbefore provided; and that further bonds may be issued, and when so issued, shall be certified by said Trustee, as from time to time the company adds to its present mileage of such main track or branches.

Resolved further: That the President and Secretary of this company be and they are hereby authorized to duly execute and acknowledge such trust mortgage containing the provisions above set forth, and such other provisions as to them may seem best, and to deliver the same to the Trustee therein named. They are further authorized to execute and issue bonds, secured

by said trust mortgage, of the amount and containing the provisions hereinbefore set forth, and such other provisions as may seem to them best, to the extent of Eighteen thousand five hundred dollars per mile of completed, equipped, standard gauge main track now owned by the company; they are further authorized to have said bonds certified by said Trustee, and to dispose of the same as follows, to-wit:

384 They shall deliver One million five hundred and sixty-nine thousand dollars, par value, of the same to F. M. Hubbell, for and on account of the considerations expressed in the said resolutions and the said articles of consolidation.

They shall deliver Thirty-one thousand dollars, par value, thereof to G. M. Dodge, for and on account of the same consideration.

They shall deliver Six hundred and fifty-five thousand dollars, par value, thereof to G. M. Dodge and Solon Humphreys, for and on account of the same considerations.

They shall deliver Fifty-five thousand dollars, par value, thereof to G. M. Dodge, for and on account of the purchase price of one-eight of the capital stock of the Des Moines Union Railway Company, and one half of the capital stock of the Midland Coal Company.

They shall deliver Sixty thousand dollars, par value, thereof to F. M. Hubbell, for and on account of the purchase price of one-fourth of the capital stock of the said Des Moines Union Railway Company.

They shall deposit the remainder of said bonds in the treasury of the Company, to be used and disposed of for the benefit of the Company as the Board of Directors may hereafter determine.

Resolved further: That the delivery of the bonds herein provided for shall be made contemporaneously with the cancellation and satisfaction of all the mortgage bonds of
385 the said Des Moines & Northwestern Railway Company, and the Des Moines & Northern Railway Company, of the satisfaction of the trust mortgages securing the same, of the surrender of all the capital stock of said two corporations, and of the payment of the floating indebtedness thereof, as provided in said resolutions and the preamble thereof.

The motion for the adoption of said preamble and resolutions, was seconded by H. D. Thompson, and after consideration, it was submitted to the Directors and unanimously adopted; and thereupon the President declared that said resolutions

had been adopted by the unanimous vote of all the Directors of the corporation now present, to-wit; six in number."

Now therefore, be it resolved by the stockholders of the Des Moines, Northern & Western Railway Company, being all here present, or duly represented, that the above and foregoing resolutions be and the same are hereby ratified, approved and confirmed.

The motion to adopt the resolution so offered by Mr. Cummins, was duly seconded, and upon being submitted, received the affirmative votes of all present and represented.

Whereupon, the President declared that the resolution had been duly adopted by the votes of all stockholders and those interested in the stock of the Des Moines, Northern & Western Railway Company.

Whereupon, on motion, the meeting of stockholders adjourned.

R. L. CHASE, Secy.

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387 **Defendants' Exhibit 209.**

Des Moines, Northern & Western Railway Company.

Adjourned Meeting of the Board of Directors of the Des Moines Northern & Western Ry. Co. held at the Office of the President of the Company Octo. 4th 1893, at 2 o'clock p. m.

The Board of Directors met pursuant to adjournment.

There were present F. M. Hubbell, President, H. D. Thompson, A. B. Cummins, L. M. Martin, F. C. Hubbell and A. N. Denman.

The President stated the object of the meeting to be to take some action to give to F. M. Hubbell & Son such security as the Company could give for the indebtedness held by that firm against the Company.

After full discussion, on motion of A. B. Cummins, it was Resolved that this Company pledge to F. M. Hubbell & Son, as collateral security, nineteen (19) bonds of the Des Moines Union Ry. Co., of one thousand dollars ($1,000) each, numbered as follows: 562, 563, 570, 571, 575 to 584 inc. and 607 to 611 inc. and certificate of stock to the amount of two hundred fifty thousand dollars ($250,000.00) in the Des Moines Union Ry. Co. Said certificate being numbered as follows: No. 26 dated Octo. 4, 1893.

This Resolution was seconded by L. M. Martin, whereupon a vote was taken which resulted in the adoption of said Reso-

lution, by the unanimous vote of all of the Directors present, and the Treasurer of this Company was directed to deliver to F. M. Hubbell & Son the above specified collaterals.

388 The indebtedness secured by the above pledge is set out in the following schedule of notes, to-wit:

Note No.	Amount.	Date.
14.	$ 10,000.00	July 1, 1892.
15.	10,000.00	" 9, "
22.	5,000.00	" 18th "
23.	5,000.00	Aug. 3 "
24.	5,000.00	Nov. 19 "
25.	10,000.00	" 28 "
26.	10,000.00	Dec. 20 "
30.	15,000.00	Jan. 21 1893.
32.	10,000.00	Apr. 3 "
35.	9,000.00	" 26 "
37.	6,000.00	May 19 "
38.	5,000.00	" 22 "
39.	5,000.00	" 31 "
41.	5,000.00	June 3 "
42.	5,000.00	" 17 "
44.	4,000.00	" 26 "
47.	3,000.00	Aug. 17 "
Total,	$122,000 00	

Whereupon the Board adjourned to meet at the office of the President on Octo. 25th 1893.

R. L. CHASE,
Secy.

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389 **Defendants' Exhibit 210.**

Des Moines, Northern & Western Railway Company.

Des Moines, Iowa Jan. 9, 1894.

Minutes of Adjourned Meeting of the Stockholders of the Des Moines Northern & Western Ry. Co., held at the office of the President Jany. 9, 1894.

There were present in person:

F. M. Hubbell, F. M. Hubbell & Son, F. C. Hubbell, H. D. Thompson, A. B. Cummins, A. N. Denman and L. M. Martin, and by proxy, Gen'l. G. M. Dodge, represented by L. M. Martin, and W. R. Warfield by his proxy, L. M. Martin.

F. M. Hubbell was appointed chairman of the meeting.

On motion of L. M. Martin, the minutes of all of the meetings of the Board of Directors, held during the year 1893 were read and approved, and all of the acts and doings of the officers of the Company were confirmed, ratified and approved.

L. M. Martin moved that the stockholders proceed to the election of a Board of seven (7) Directors to hold their office during the ensuing year. Carried.

F. C. Hubbell moved that the Board of Directors for 1893; viz. G. M. Dodge, F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. B. Cummins, A. N. Denman and H. D. Thompson, be re-elected for the year 1894. The motion being duly seconded, the following vote was had:

	F. M. Hubbell voted	15,000 Shares
	F. M. Hubbell & Son by F. M. Hubbell, voted	14,997 "
390	G. M. Dodge by his proxy, L. M. Martin, voted	5,000 Shares
	L. M. Martin voted	5,950 "
	A. B. Cummins voted	1,000 "
	W. R. Warfield by his proxy, L. M. Martin, voted	50 "
	A. N. Denman, voted	1 "
	F. C. Hubbell voted	1 "
	H. D. Thompson voted	1 "
	Total	42,000 Shares.

The entire issue of stock having been voted for the persons nominated by F. C. Hubbell, they were declared unanimously elected as Directors of the Company for the ensuing year.

On motion of H. D. Thompson, a vote of thanks was tendered the General Manager, L. M. Martin, and the Superintendent, F. C. Hubbell, for the efficient manner in which the property of the Company had been managed and operated during the past year.

Carried unanimously.

On motion, the stockholders meeting adjourned sine die.

R. L. CHASE, Secretary.

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391 **Defendants' Exhibit 211.**

Des Moines, Northern & Western Railway Company.

Des Moines Iowa, Jany. 29, 1894.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Northern & Western Railway Company, held at the office of the President Jany. 29, 1894.

The Board met pursuant to adjournment. There were present, F. M. Hubbell, L. M. Martin, A. B. Cummins, A. N. Denman, and H. D. Thompson.

A. B. Cummins offered the following preamble and resolution.

Whereas, this Company is indebted to F. M. Hubbell & Son in the sum of one hundred twenty eight thousand eight hundred thirty three and 33/100 dollars (128,833.33) for principal and interest upon certain promissory notes as follows to-wit:

	Note No.	Amount.	Date.
	14.	$ 10,000 00	July 1, 1892
	15.	10,000 00	" 9, "
	22.	5,000 00	" 18, "
	23.	5,000 00	Aug. 3, "
	24.	5,000 00	Nov. 19, "
	25.	10,000 00	" 28 "
	26.	10,000 00	Dec. 20 "
	30.	15,000 00	Jan. 21, 1893.
	32.	10,000 00	Apr. 3, "
	35.	9,000 00	" 26, "
392	37.	6,000 00	May 19, 1893.
	38.	5,000 00	" 22, "
	39.	5,000 00	" 31, "
	41.	5,000 00	June 3, "
	42	5,000 00	" 17, "
	44.	4,000 00	" 26, "
	47.	3,000 00	Aug. 17, "
	56.	3,000 00	Jan. 2, 1894.
	57.	3,000 00	" 29, "
	Int. 1 month on $125,000 00	833.33	
	Total	$128,833.33	

Whereas, a large part of said indebtedness is now long past due, and the Company is unable to pay the same or any part thereof, and

Whereas, The said F. M. Hubbell & Son are liable as endorsers upon certain promissory notes executed by the Company to the Metropolitan Trust Company of New York, and to the American Savings Bank of the City of Des Moines, which notes aggregate twenty thousand dollars ($20,000.00) and

Whereas, the Company will be unable to pay said notes at maturity, and it will be necessary for the said F. M. Hubbell & Son to pay and discharge the same on account of their indorsements; and

Whereas, this Company has in its treasury certain of its first mortgage bonds, to-wit bonds numbered 2448 to
393 2577, inclusive, and bonds numbered 2676 to 2770 inclusive amounting to two hundred twenty five thousand dollars ($225,000.00) and the Company, although it has made strenuous efforts to dispose of the same at fifty five (55) per centum of their par value, has been wholly unable to do so hav-

ing in said efforts offered to each of the stockholders of the Company, as well as in the markets, the said bonds at said price; and

Whereas, the Company is also the owner of twenty five hundred (2500) shares of the capital stock of the Des Moines Union Railway Company evidenced by Certificate No. 26, which shares of stock have no market value; and

Whereas, the said F. M. Hubbell & Son have offered to accept the said two hundred twenty five (225) first mortgage bonds above described at fifty five (55) cents on the dollar of their face value, with all coupons maturing prior to July 1, 1894, detached, and have offered to purchase said capital stock of the Des Moines Union Ry. Company at ten (10) per centum of the par value thereof, and to cancel and surrender to this Company in payment of said bonds and stock the said promissory notes, aggregating one hundred twenty eight thousand dollars ($128,000.00) exclusive of interest, and to assume and pay sufficient of said notes now in the hands of the Metropolitan Trust Company and the American Savings Bank to represent the difference between the aforementioned notes and the purchase of the bonds and stock as hereinbefore described.

It is therefore now Resolved. That the Treasurer of
394 this Company be and is hereby authorized and directed to transfer and deliver to the said F. M. Hubbell & Son the said bonds numbered 2448 to 2577 and 2676 to 2770 inclusive, with all coupons maturing prior to July 1, 1894, detached, and to assign and deliver to the said F. M. Hubbell & Son the twenty five hundred (2500) shares of capital stock of the Des Moines Union Railway Company evidenced in said Certificate No. 26, upon the surrender to him as Treasurer of the Company of the said notes of the Company, aggregating one hundred twenty eight thousand dollars ($128,000.00) and upon receiving an agreement from the said F. M. Hubbell & Son containing an undertaking on their part to pay the said sum of nineteen thousand nine hundred sixteen and 67/100 ($19,916.67) upon the notes so held by the Metropolitan Trust Company and said American Savings Bank.

On motion of A. B. Cummins seconded by L. M. Martin the foregoing resolution was adopted by the affirmative vote of A. B. Cummins, A. N. Denman, L. M. Martin and H. D. Thompson, F. M. Hubbell not voting.

On motion the Board Adjourned sine die.

R. L. CHASE, Secretary.

395 **Defendants' Exhibit 212.**

Des Moines, Northern & Western Railway Company.

Des Moines Iowa, July 26th 1894.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Northern & Western Railway Company, held at the Office of the President, July 26th 1894.

F. M. Hubbell President, presiding.

There were present,—Directors, F. M. Hubbell, A. B. Cummins, L. M. Martin, F. C. Hubbell, A. N. Denman and H. D. Thompson.

The President presented the traffic contract dated March 15th, 1894, entered into between the Des Moines Northern & Western Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, and asked to have the same approved, whereupon L. M. Martin offered the following resolution:

Resolved that the traffic contract now presented to this Board, executed by the Officers of this Company, and the Officers of the Chicago, Milwaukee & St. Paul Railway Company be hereby ratified, approved and confirmed. Said Resolution was adopted and passed by the unanimous vote of the six Directors present.

Director A. N. Denman handed in his resignation of the office of Director of this Company.

On motion, his resignation was accepted. Thereupon H. D. Thompson moved that E. P. Ripley, 3rd Vice President of the Chicago Milwaukee & St. Paul R'y Company, be elected to fill the vacancy caused by the resignation of Mr. Denman, as
396 Director of this Company, to hold his office until the next annual meeting of its stockholders, in January 1895. Carried.

On motion the meeting adjourned sine die.

R. L. CHASE,
Secretary.

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397 **Defendants' Exhibit 213.**

Des Moines, Northern & Western Railway Company.

Des Moines Iowa, Octo. 3, 1894.

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Northern and Western Railway Company held at the Office of the President of the Company October 3rd, 1894.

There were present F. M. Hubbell, F. C. Hubbell, H. D. Thompson and A. B. Cummins.

Treasurer's report of sale of D. M. Union Ry. Bonds.

The Treasurer reported that he had received from the President of the Des Moines Union Railway Company nine (9) Des Moines Union Ry. Bonds Nos. 620 to 628 both inclusive, with the November 1st, 1894 and subsequent coupons attached, in payment for money expended for construction for the Des Moines Union Ry. Company during the year 1893.

The Treasurer also reported that in pursuance of a resolution of the Board of Directors of this Company, adopted December 5th, 1893, in which the President was directed to sell Des Moines Union Ry. Bonds at not less than ninety (90) per cent he had sold to Gen'l. G. M. Dodge eight (8) Des Moines Union Ry. Bonds Nos. 562, 563, 571, 607, 608, 609, 610 and 611; and to F. M. Hubbell and F. M. Hubbell & Son ten (10) Des Moines Union Ry. Bonds Nos. 570, 620, 621, 622, 623, 624, 625, 626, 627 and 628, with the November 1st, 1894, and subsequent coupons attached, at par, and had accepted in payment for same, the past due coupons of this Company, at par;
and that this sale disposed of all of the Des Moines
398 Union Ry. Bonds belonging to this Company.

Whereupon the action of the President was approved, and the report of the Treasurer adopted.

On motion the meeting adjourned until Octo. 29th, 1894.

R. L. CHASE,
Secretary.

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399 **Defendants' Exhibit 214.**

Des Moines, Northern & Western Railway Company.

Des Moines, Iowa, Jany. 3, 1895.

Minutes of the Annual Meeting of the Stockholders of the Des Moines Northern & Western Ry. Co. held at the office of the President, January 3, 1895.

There were present and represented, F. M. Hubbell, F. M. Hubbell & Son, F. C. Hubbell, H. D. Thompson and A. B. Cummins in person, and Roswell Miller, Trustee, by proxy to F. M. Hubbell.

On motion duly seconded, F. M. Hubbell was elected Chairman of the meeting.

On motion of H. D. Thompson the minutes of all of the meetings of the Board of Directors held during the year 1894, were read and approved, and all of the acts and doings of the Officers of the Company were confirmed, ratified and approved.

A. B. Cummins moved that the stockholders proceed to the election of a Board of seven Directors to hold their office during the ensuing year. Carried.

F. C. Hubbell moved that the Board of Directors for the year 1895 shall consist of the following named persons, to-wit:

E. P. Ripley, A. J. Earling, P. M. Myers, F. M. Hubbell, H. D. Thompson, A. B. Cummins, and F. C. Hubbell.

On motion duly seconded the following vote was had:

460	F. M. Hubbell voted	6676	Shares
	F. M. Hubbell & Son, voted	6673	"
	A. B. Cummins, voted	446	"
	Roswell Miller, Trustee, voted,	23268	"
	Total	37063	Shares.

There being no other persons nominated and all of the above named gentlemen having received the votes of a large majority of all of the stock of this Company, to-wit, 37063 Shares, were declared unanimously elected as Directors of the Company for the ensuing year.

On motion the stockholders meeting adjourned sine die.

A. N. DENMAN,
Secretary.

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461 **Defendants' Exhibit 215.**

Des Moines, Northern & Western Railway Company.

Directors' Meeting, March 5, 1895.

First meeting of the board of directors named in the Articles of Incorporation filed March 4, 1895, of the Des Moines, Northern & Western Railroad Company, held at the office of the Company in the city of Des Moines on the 5th day of March 1895 at 11 o'clock A. M.

Minutes of Proceedings.

Present: A. B. Cummins, H. D. Thompson, A. N. Denman, Carroll Wright, J. P. Hewitt, C. Huttenbacher and J. C. Cummins.

Upon motion of H. D. Thompson, A. N. Denman was unanimously elected temporary chairman of the Board and J. C. Cummins temporary secretary. A. N. Denman presiding.

A. B. Cummins offered the following resolution, to-wit:

Be it Resolved, that the Des Moines, Northern & Western Railroad Company purchase of G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, all those certain lines of railroad and all that railway property together with franchises and appurtenances more particularly described as follows, to-wit:

A certain line of railroad extending from Farnham Street in the city of Des Moines, Polk County, Iowa, through
402 the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas to Fonda in the said last named county; and also extending from Clive in the county of Polk through the counties of Polk, Dallas and Boone to Boone in the county of Boone and state of Iowa, together with all the real estate necessary for and used in the operation of said lines of railroad, the rights of way, road bed, bridges, tracks, side tracks, turnouts, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, turn tables, engines, cars and machinery, also all the franchises, rights, privileges and immunities connected with, appurtenant to, or used in the operation of the railway property hereinbefore described; also all the rents, issues, tolls and earnings now in the possession of the grantors, and arising from the use and operation of said property, also a one-fourth interest in the capital stock of the Des Moines Union Railway Company; the intent being to acquire by such purchase the full and absolute title of the said railroad lines as they now exist, with all their appurtenances and incidents as received from the said Purchasing Committee by a deed of conveyance executed and delivered by George F. Henry, Commissioner of the United States Circuit Court within and for the Southern District of Iowa, dated the 8th day of February 1895, and which deed of the said Commissioner was made in pursuance of a
decree of the said Circuit Court of the United States
403 entered into November 7, 1894, the foreclosure sale had under said decree on the 18th day of December, 1894, and the supplemental decree of said court entered February 7, 1895; the said railway property being all the railway property heretofore owned and operated by a corporation known as the Des Moines, Northern & Western Railway Company.

Be it Further Resolved, that the said Des Moines, Northern & Western Railroad Company shall issue, deliver and pay to the said G. M. Dodge, F. M. Hubbell and F. C. Hubbell as the consideration for the said property hereinbefore described as follows, to-wit:

1st. $2,915,000 par value of the first mortgage gold bonds of this company, dated January 1, 1895, payable twenty years after date, with interest at the rate of four per centum per annum, payable semi-annually; said bonds to be secured by a trust mortgage upon all of the property of the company, whether now in existence or hereafter acquired; which trust mortgage shall be of the form that may hereafter be ordered or approved by the Board.

2nd. $4,372,500 par value of the capital stock of this company said stock to be full paid and nonassessable.

3rd. As a further consideration, this company having received all the current income of the property now acquired it shall assume the current obligations of the Des Moines, Northern & Western Railway Company and said Purchasing Committee, incurred in the operation of said property, ex-
494 pressly excluding, however, from said assumption all claims for damages, either to persons or property, that may now or hereafter exist against the said Des Moines, Northern & Western Railway Company.

4th. This company shall purchase of the bonds so to be issued to the said G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee $13,000 par value being bonds Nos. 2903 to 2915 both inclusive at par, the said bonds having been issued to the said Purchasing Committee on account of interest from July 1st, 1894, to January 1st, 1895, due on bonds numbered 1 to 650, both inclusive issued by the said Des Moines, Northern & Western Railway Company.

Be It Further Resolved, that upon the delivery to this company of a proper deed of conveyance from the said G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee the aforesaid bonds and stock shall be delivered to said Purchasing Committee and the aforesaid assumptions and agreements immediately come into full force and effect.

A. B. Cummins moved the adoption of the said resolution, which upon motion was seconded by H. D. Thompson, and after being considered was adopted by the unanimous votes of all the directors of the company and declared by the presiding officer to have been duly and legally carried and adopted.

A. B. Cummins offered a further resolution as follows, to-wit:

Be It Further Resolved, that the Des Moines, Northern
405 & Western Railroad Company shall execute, acknowledge, and deliver to the Metropolitan Trust Company of the City of New York as Trustee, a trust mortgage, which mortgage shall convey under the usual terms and conditions and according to the form now submitted to the Board and approved by it, all its railroad extending from Farnham street in the city of Des Moines, county of Polk and state of Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, Iowa, to Fonda in said last named county, and also extenting from Clive in said county of Polk, and thence through the counties of Polk, Dallas and Boone to the city of Boone in said last named county, together with all its real estate necessary for and used in the operation of said lines of railroad, the rights of way, road bed, bridges, tracks, side tracks, turnouts, switches, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables, engines, cars and machinery, also together with all its corporate and other franchises, rights, privileges and immunities, rents, issues, tolls and earnings; also all its property of whatsoever name, nature or description that may hereafter be acquired; also a one-fourth interest in the capital stock of the Des Moines Union Ry. Company, it being the intent to convey in said trust mortgage all the railroad property of said company and all things appurtenant
thereto, or used in connection therewith, whether now
406 acquired and owned or hereafter acquired and owned by the said Des Moines, Northern & Western Railroad Company.

The said mortgage shall be executed to secure the issuance of a series of bonds of one thousand dollars ($1000) each, dated January 1st 1895, payable twenty (20) years after date in gold coin of or equal to the present standard of value with interest payable semi-annually in like gold coin at the rate of four (4) per cent. per annum. Said mortgage shall provide that of said series of bonds $2,915,000 par value, shall be immediately executed by the said Railroad Company, certified by the Trustee, and delivered to G. M. Dodge, F. M. Hubbell, and F. C. Hubbell, Purchasing Committee, as a part of the consideration of the railway property this day purchased of the said Purchasing Committee.

It shall further provide that additional bonds aggregating exclusive of interest, $2,500,000, par value, may be issued upon the following conditions:

a. For the actual cost of extensions or branches, whether acquired by construction or purchase, not to exceed $15,000 par value per mile of completed and equipped main track of such extensions or branches.

b. For the actual cost of the additional main track if it shall become necessary to construct a double track, not exceeding $10,000 per mile, par value, of such additional main track.

c. For the actual cost of additional locomotives, cars
407 and other equipment purchased by the Railroad Company, not exceeding, however, in all for such additional locomotives, cars and other equipment, $50,000 par value.

d. For the actual cost of additional side tracks, as from time to time shall be authorized by the Board of Directors.

All of such additional bonds to be executed, issued and certified as provided in said trust mortgage.

The President and the Secretary of the Company are hereby directed, empowered and authorized to execute, acknowledge, seal and deliver the said mortgage and to do whatsoever may be proper or necessary to carry this resolution into effect.

Resolved Further, that the President and the Secretary of the Company be and they are hereby authorized to duly execute seal and issue said bonds so to be delivered to said Purchasing Committee aggregating $2,915,000 and to procure the certification of the same by the said Metropolitan Trust Company of the City of New York, Trustee and cause the same to be delivered to the said G. M. Dodge, F. M. Hubbell, and F. C. Hubbell, Purchasing Committee.

A. B. Cummins moved the adoption of said resolution, seconded by H. D. Thompson, and after consideration it was submitted to the Directors and unanimously adopted, and thereupon the Chairman declared that said resolution had been adopted by the unanimous vote of all of the Directors of the corporation.

Whereupon, A. B. Cummins offered the following resolution, to-wit:

Resolved, that there be issued and delivered to G. M. Dodge, F. M. Hubbell, and F. C. Hubbell, Purchasing Committee,
capital stock of this Company aggregating $4,372,500,
408 par value, as part consideration of the railway property this day purchased by the Company from said Purchasing Committee.

And it is hereby declared that said stock is full paid and nonassessable. The President and the Secretary are hereby directed empowered, and authorized to sign, seal and deliver to said G. M. Dodge, F. M. Hubbell, and F. C. Hubbell, Purchasing Committee, a certificate, or certificates for such shares of capital stock and to do whatever may be proper or necessary to carry into effect this resolution.

A. B. Cummins moved the adoption of said resolution, seconded by H. D. Thompson, and after consideration it was submitted to the Directors and unanimously adopted and thereupon the Chairman declared that said resolution had been adopted by the unanimous votes of all the Directors of the corporation.

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409 **Defendants' Exhibit 216.**

Des Moines, Northern & Western Railway Company.

Stockholders, Des Moines, Iowa, March 5, 1895.

Special meeting of the Stockholders of the Des Moines Northern & Western Railroad Company, held at its office in Des Moines Iowa, March 5th, 1895.

Present, F. M. Hubbell, F. C. Hubbell, H. D. Thompson, A. B. Cummins and G. M. Dodge, F. M. Hubbell and F. C. Hubbell Purchasing Committee, President F. M. Hubbell, Presiding.

Upon call it appeared that all persons owning or having any interest in the capital stock of the Des Moines Northern & Western Railroad Company were present or represented at the meeting.

Whereupon, A. B. Cummins, offered the following resolution: and moved its adoption.

Whereas the Board of Directors of this Company did at its meeting held on the 5th, day of March, 1895, unanimously adopt the following resolution:

Be It Resolved: That the Des Moines, Northern & Western Railroad Company purchase of G. M. Dodge, F. M. Hubbell and F. C. Hubbell Purchasing Committee, all those certain lines of railroad and all that railway property together with franchises and appurtenances more particularly described as follows, to-wit:

A certain line of railroad extending from Farnham Street in the City of Des Moines, Polk County, Iowa, through the Counties of Polk, Dallas, Guthrie, Greene, Calhoun, and
410 Pocahontas, to Fonda in the said last named county; and also extending from Clive in the County of Polk

through the Counties of Polk, Dallas and Boone to Boone in the County of Boone and State of Iowa; together with all the real estate necessary for and used in the operation of said lines of railroad, the rights of way, road bed, bridges, tracks, sidetracks, turnouts, switches, buildings and structures water tanks and fixtures, shops, engine and other houses, turn-tables, engines, cars and machinery; also all the franchises, rights and privileges and immunities connected with, appurtenant to or used in the operation of the railway property hereinbefore described; also all the rents, issues, tolls and earnings now in the possession of the grantors, and arising from the use and operation of said property; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company; the intent being to acquire by such purchase the full and absolute title of the said railroad lines as they now exist, with all their appurtenances and incidents, as received from the said Purchasing Committee by a deed of conveyance executed and delivered by Geo. F. Henry, Commissioner of the United States Circuit Court within and for the Southern District of Iowa, dated on the 8th day of February, 1895, and which deed of the said commissioner was made in pursuance of a decree of the said Circuit Court of the United States entered November 7th, 1894, and the foreclosure sale had under said decree on the 18th day of December, 1894, and the supplemental decree of said court entered February 7th, 1895; the said railway property being all the railway property heretofore owned and
411 operated by a corporation known as the Des Moines, Northern & Western Railway Company.

Be It Further Resolved: That the said Des Moines, Northern & Western Railroad Company shall issue, deliver and pay to the said G. M. Dodge, F. M. Hubbell and F. C. Hubbell as the consideration for the said property hereinbefore described as follows, to-wit:

1st. $2,915,000. par value, of the first mortgage gold bonds of this Company, dated January 1st, 1895, payable twenty years after date, with interest at the rate of four per cent. per annum payable semi-annually; said bonds to be secured by a trust mortgage upon all the property of the Company, whether now in existence or hereafter acquired; which trust mortgage shall be of the form that may hereafter be ordered or approved by the board.

2nd. $4,372,500. par value of the capital stock of this Company, said stock to be full paid and non-assessable.

3rd. As a further consideration, this Company having received all the current income of the property now acquired, it shall assume the current obligations of the Des Moines, Northern & Western Railway Company and said Purchasing Committee incurred in the operation of said property, expressly excluding, however, from said assumption all claims for damages, either to property," or persons that may now or hereafter exist against the said Des Moines Northern & Western Railway Company.

4th. This Company shall purchase of the bonds so to be issued to the said G. M. Dodge, F. M. Hubbell and F. C.
412 Hubbell, Purchasing Committee, $13,000. par value, being bonds numbered 2903 to 2915 inclusive at par, the said bonds having been issued to the said Purchasing Committee on account of interest from July 1st 1894 to January 1st 1895, due on bonds numbered 1 to 650 both inclusive, issued by the said Des Moines, Northern & Western Railway Company.

Be It Further Resolved: That upon the delivery to this Company of a proper deed of conveyance from the said G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, the aforesaid bonds and stock shall be delivered to said Purchasing Committee and the aforesaid assumptions and agreements immediately come into full force and effect, and

Whereas at the same meeting said Board also adopted the following further resolution:

Be It Resolved: That the Des Moines, Northern & Western Railroad Company shall execute acknowledge and deliver to the Metropolitan Trust Company of the City of New York as Trustee, a Trust Mortgage which mortgage shall convey under the usual terms and conditions and according to the form now submitted to the Board and approved by it, all its railroad extending from Farnham Street in the City of Des Moines, County of Polk and State of Iowa, through the Counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas Iowa to Fonda in said last named County, and also extending from Clive in said County of Polk and thence through the Counties of Polk, Dallas and Boone to the City of Boone in said
413 last named County, together with all its real estate necessary for and used in the operation of said lines of railroad, the rights of way, road bed, bridges, tracks, sidetracks, turn-outs, switches, buildings, and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables, engines, cars and machinery, also together with all its corporate and other franchises, rights, privileges and immunities,

rents, issues, tolls and earnings; also all its properties of whatsoever name, nature or description that may hereafter be acquired; also a one-fourth interest in the capital stock of the Des Moines Union Railway Co., it being the intent to convey in said Trust Mortgage all the railroad property of said Company and all things appurtenant thereto or used in connection therewith, whether now acquired and owned or hereafter acquired and owned by the said Des Moines Northern & Western Railroad Company.

The said mortgage shall be executed to secure the issuance of a series of bonds of One Thousand Dollars ($1000.) each, dated January 1st, 1895, payable twenty (20) years after date in gold coin of or equal to the present standard of value with interest payable semi-annually in like gold coin at the rate of four (4) per cent per annum. Said mortgage shall provide that of said series of bonds, $2,915,000. par value shall be immediately executed by the said railroad company, certified by the Trustee and delivered to G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee as a part of the consideration of the railway property this day purchased of the said Purchasing Committee.

414 It shall further provide that additional bonds aggregating, exclusive of interest, $2,500.00. par value, may be issued upon the following conditions:

A. For the actual cost of extensions or branches, whether acquired by construction or purchase, not to exceed $15,000. par value per mile of completed and equipped main track of such extensions or branches.

B. For the actual cost of the additional main track, if it shall become necessary to construct a double track not exceeding $10,000. per mile par value of such additional main track.

C. For the actual cost of additional locomotives, cars and other equipment purchased by the railroad company, not exceeding however in all of such additional locomotives, cars and other equipment $50,000. par value.

D. For the actual cost of additional sidetracks as from time to time shall be authorized by the Board of Directors.

All of such additional bonds to be executed, issued and certified as provided in Trust Mortgage.

The President and the Secretary of the Company are hereby directed, empowered, and authorized to execute, acknowledge, seal and deliver the said mortgage and to do whatsoever may be proper or necessary to carry this resolution into effect,

Resolved Further, That the President and the Secretary of the Company be, and they are hereby authorized to duly execute seal and issue said bonds so to be delivered to said Purchasing Committee, aggregating $2,915,000. and to pro-
415 cure the certification of the same by the said Metropolitan Trust Company of the City of New York, Trustee, and cause the same to be delivered to the said G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee."

Now Therefore Be It Resolved, By the Stockholders of the Des Moines, Northern & Western Railroad Company being all here present, or duly represented that the above and foregoing resolutions be and the same are hereby ratified, approved and confirmed.

The motion to adopt the resolution so offered by Mr. Cummins, was duly seconded and upon being submitted received the affirmative votes of all present and represented.

Whereupon, The President declared that the resolution had been duly adopted by the votes of all the stockholders and those interested in the stock of the Des Moines Northern & Western Railroad Company.

Whereupon, upon motion the meeting of the stockholders adjourned.

A. N. DENMAN,
Secretary

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416 **Defendants' Exhibit 217.**

Des Moines, Northern & Western Railway Company.

Regular Monthly Meeting of the Directors of the Des Moines, Northern & Western Railroad Company, held December 8th 1896. There were present—

F. M. Hubbell, F. C. Hubbell, H. D. Thompson, and A. B. Cummins.

The contract entered into by and between the Des Moines Union Railway Co. and the Chicago Great Western Railway Co. dated July 2nd 1896 was presented to the Directors for their approval, and thereupon H. D. Thompson offered the following resolution, viz:

Resolved that the contract bearing date July 2nd 1896 entered into by and between the Des Moines Union Railway Company and the Chicago Great Western Railway Company, which contract has been signed by their respective Presidents and Secretaries, be and the same is hereby consented to, ratified, and confirmed on the part of the Des Moines, Northern &

Western Railroad Co., and the Secretary of this Company is hereby authorized to attach to said contract a certified copy of this resolution.

There being no further business before the Board, the meeting adjourned.

Approved,

F. M. HUBBELL,
President.

A. N. DENMAN,
Secretary.

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417 **Defendants' Exhibit 218.**

Des Moines, Northern & Western Railway Company.

Des Moines, Iowa, Sept. 7' 1897.

Minutes of the Regular Monthly Meeting of the Directors of the Des Moines, Northern & Western Railroad Company, held at the office of the President of the Company September 7th 1897.

There were present, F. M. Hubbell, F. C. Hubbell, H. D. Thompson and A. B. Cummins.

President F. M. Hubbell, presiding:

The contract entered into by and between the Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines Northern & Western Railroad Company, July 31st 1897 was presented to the Directors present, for approval, and thereupon H. D. Thompson offered the following resolution, viz;

"Resolved, that the contract bearing date July 31st, 1897, entered into by and between the Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company, which contract has been signed by their respective Presidents and Secretaries, and which embraces seventeen (17) pages, be and the same is hereby ratified, approved and in all respects confirmed on part of the Des Moines, Northern & Western Railroad Company, and the Secretary of this Company is hereby authorized to attach to said contract a certified copy of this resolution."

There being no further business before the Board, the meeting adjourned.

A. N. DENMAN, Secretary.

419 **Defendants' Exhibit 219.**

Des Moines, Northern & Western Railroad Company.

Stockholders' Meeting. Des Moines, Ia. January 5, 1899.

Pursuant to Article Eight of the Articles of Incorporation of this Company, the Annual Meeting of the Stockholders was held at the office of the Company in the City of Des Moines, Iowa at 11 o'clock A. M. of Thursday, the 5th day of January 1899.

The President of the Company acted as President of the meeting, and the Secretary of the Company acted as Secretary of the meeting.

The Secretary laid before the meeting the following list of stockholders of the Company showing the number of shares held by them, and each of them on this day, which list is as follows, to-wit:

Chicago, Milwaukee & St. Paul Railway Company	32,994 Shares
Collins, W. G.	1 Share
Cummins, A. B.	465 Shares
Earling, A. J.	1 Share
Goodnow, C. A.	1 Share
Hanson, Burton	1 Share
Hubbell, F. C.	1 Share
Hubbell, F. M.	1 Share
Miller, Roswell	2 Shares
Miller, Roswell, Trustee	10,232 Shares
Myers, P. M.	1 Share
Thompson, H. D.	1 Share
Warfield, W. R.	24 Shares
Total	43,725 Shares

420 and the roll being called it appeared that there were present in person and by proxy the holders of 43,725 shares out of a total issue of 43,725 shares of the capital stock of the Company.

On motion of Mr. Earling, duly seconded, the Secretary was directed to read, for the information of the Stockholders, the record of the acts and doings of the Board of Directors since the last annual meeting of the Stockholders and the same having been read, it was on motion duly seconded,

Resolved, that all the acts and doings of the Board of Directors and of the Officers of this Company had and taken since the last annual meeting of the Stockholders, as set out in the minutes of the Board and now read in our hearing, be and the same are hereby, in all things, ratified, approved and confirmed as the acts and doings of this corporation.

On motion duly seconded, it was Resolved, to proceed by ballot to the election of seven (7) Directors to hold their offices for one year, or until their successors are elected and qualified, and that Mr. H. D. Thompson be appointed Teller to receive and count the votes. And a ballot being taken, the Teller reported that W. G. Collins, A. J. Earling, C. A. Goodnow, Burton Hanson, F. M. Hubbell, F. C. Hubbell, and P. M. Myers had each received 43,235 votes, being all the votes cast at said election, and thereupon, the President declared the above named gentlemen duly elected Directors of this Company to hold office for the term of one year, or until their successors are elected and qualified.

And there being no further business to come before
421 the meeting the Stockholders adjourned sine die.

Attest: Cyrus Kirk, Secretary. F. M. HUBBELL, President.

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422 **Defendants' Exhibit 220.**

Des Moines, Northern & Western Railway Company.

Special Meeting of Directors.

Chicago, Illinois, April 24, 1899.

Pursuant to the call of the President and to notice duly given, a special meeting of the Board of Directors was held at the office of the President in the Old Colony Building, in this city, at 2.30 o'clock P. M. of this day.

And there were present Messrs. Collins, Earling, Goodnow, Hanson, and Myers, ... 5

And absent Messrs. F. M. Hubbell and F. C. Hubbell.... 2

The President, having taken the chair, the minutes of the last meeting were read and approved.

The President stated to the Board that the Wabash Railroad Company is the holder of five hundred (500) shares of the capital stock of the Des Moines Union Railway Company and is, together with this Company, the signer of two certain contracts with said Des Moines Union Railway Company, one of which contracts is dated the tenth day of May, 1889, and the other the thirty first day of July, 1897, and both relate to the use of the facilities of said Des Moines Union Railway and to the manner of transferring the stock of said Company which may be held either by the Wabash Company or by this Company.

That the Wabash Company has requested this Company and the Des Moines Union Railway Company to sign a written consent permitting the Wabash Company to pledge its stock in and contracts with the Des Moines Union Railway
423 Company to the Continental Trust Company, as Trustee of a certain mortgage which said Wabash Company executed to it on or about the first day of January 1889, to secure certain bonds in said mortgage, particularly described.

That this consent was executed by the Des Moines Union Railway Company and by the officers of this Company and he asked the Board to direct that the consent be entered upon the minutes and that the act of the officers of this Company in signing it, be ratified and approved.

Whereupon, on motion duly seconded, it was unanimously

Resolved That this Board does hereby ratify, approve and confirm the action of the President and Secretary of this Company in executing, together with the Des Moines Union Railway Company, the following "Consent"—

Whereas on or about the tenth day of May, 1889, the Des Moines Union Railway Company as party of the first part, entered into a contract with the Des Moines and St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, as parties of the second part, wherein and whereby said first party granted to said second parties the right to use, upon the terms and conditions therein set forth, the tracks, stations and terminal properties of said first party in and near the city of Des Moines in the State of Iowa, and

Whereas the Des Moines and Northwestern Railway Company and the St. Louis, Des Moines and Northern Rail-
424 way Company have ceased to own or operate the respective railroads that were owned and operated by them at the time said contract was made, and the Des Moines, Northern and Western Railroad Company has become the owner of and now operates the lines of railroad which were formerly owned and operated by the said Des Moines and Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, and

Whereas, on or about the 31st day of July, 1897, said contract was by an agreement of that date, ratified, confirmed and adopted, as a contract between said Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines, Northern and Western Railroad Company, and

Whereas in a certain mortgage, made by the Wabash Railroad Company to the Continental Trust Company of the City

of New York, dated on or about the first day of January, 1899, the Wabash Railroad Company, to secure the bonds in said mortgage described, has granted and conveyed to said Trust Company the Des Moines and St. Louis Railroad, extending from the city of Des Moines to Albia, in the State of Iowa, and all its leasehold rights and privileges to the use and enjoyment of the tracks, stations, and terminal properties of the Des Moines Union Railway Company, in or near said City of Des Moines, including also the rights and interest of the Wabash Railroad Company in and to said terminal contract, dated the 31st day of July, 1897, and in and to said other contract, dated the 10th day of May, 1899; and

Whereas, it is provided in said mortgage that both said contracts shall be deposited with and assigned to the Continental Trust Company of the City of New York, by the Wabash Railroad Company, and that such assignment of said contracts shall be made with consent of said Des Moines Union Railway Company and with the consent of said Des Moines, Northern and Western Railroad Company, as the assignee or successor of the Des Moines and Northwestern Railway Company and of the St. Louis, Des Moines and Northern Railway Company; and

Whereas the Wabash Railroad Company has also in its said mortgage granted and conveyed to said Continental Trust Company, of the City of New York, five hundred shares of the capital stock of said Des Moines Union Railway Company of the par value of one hundred dollars each; and

Whereas it is provided in said mortgage that the Wabash Railroad Company shall deposit with, or cause to be delivered to and deposited with said Continental Trust Company, of the City of New York, duly endorsed in blank, said five hundred shares of the capital stock of the said Des Moines Union Railway Company, and shall also file, with said Trust Company, the consent of the Des Moines Union Railway Company, and the consent of the Des Moines, Northern and Western Railroad Company to said assignment or mortgage to said Continental Trust Company, of said five hundred shares of the capital stock of the Des Moines Union Railway Company;

Now Therefore, in consideration of the premises, the Des Moines Union Railway Company, and the Des Moines, Northern and Western Railroad Company, and each of them, do hereby consent to any assignment that has been made or that may be hereafter made, by the Wabash Railroad Company of said two contracts, and of its rights under the [illegible] to the Continental Trust Company of the City of New

York, as provided for in said mortgage and said Des Moines Union Railway Company and said Des Moines, Northern and Western Railroad Company have consented, and do hereby consent, to all assignments or conveyances that have been made, or that may be hereafter made, by the Wabash Purchasing Committee, to the Wabash Railroad Company, or that have been made or may be hereafter made, by the Wabash Railroad Company to the Continental Trust Company of the City of New York, of said five hundred shares of stock in accordance with the term of said mortgage and in order to give effect to its provisions.

In testimony whereof the Des Moines Union Railway Company and the Des Moines, Northern and Western Railroad Company have hereunto subscribed their corporate names by their respective Presidents, and caused these presents to be attested by their corporate seal this 10th day of March A. D. 1899.

DES MOINES UNION RAILWAY COMPANY,
By (Signed) H. D. Thompson,
Vice-President.

Attest:
(Signed) F. M. Hubbell,
Secretary.

THE DES MOINES, NORTHERN & WESTERN RAILROAD CO.
By (Signed) A. J. Earling,
President.

Attest:
(Signed) P. M. Myers,
Secretary.

427 The President laid before the Board the following preamble and resolutions adopted by the Board of Directors of the Chicago, Milwaukee & St. Paul Railway Company, at their meeting held in the City of New York on the ninth day of March, 1899, which preamble and resolutions are as follows:

"Whereas the Des Moines, Northern & Western Railroad Company owns and operates a line of railroad commencing in the City of Des Moines, Polk County, Iowa, and extending thence in a general northwesterly direction, via Clive, in said County, to Fonda, in Pocahontas County, and also a line of railroad commencing at Clive, and thence extending in a northerly direction to Boone, in Boone County, all in the State of Iowa, the aggregate length of said lines of railroad being about 150 miles, and

Whereas, the said Des Moines, Northern & Western Railroad Company has issued, and there are now outstanding, 43,725 shares of One Hundred Dollars ($100) each of its capital stock, and its railroad and property are encumbered by a mortgage debt consisting of two thousand, nine hundred and thirty-three (2,933) bonds of One Thousand Dollars ($1,000) each, due January 1st, 1915, and bearing interest at four per cent (4%) per annum, payable semi-annually, both interest and principal payable in gold, and

Whereas this Company is the owner of 43,724 out of the above mentioned 43,725 shares of capital stock and of 2,932 out of the above mentioned 2,933 bonds, and has paid therefor the sum of $2,462,511.95; and

Whereas, the lines of railroad of the said Des Moines, Northern & Western Railroad Company intersect and are con-
428 nected with the Chicago & Council Bluffs Division of the railway of this Company, at Madrid and at Herndon, in said State of Iowa, and by reason of such connections form a through line reaching the principal cities and towns in said State and States adjacent; and

Whereas, it is for the interest of this Company, and of the public that the said lines of the Des Moines Northern & Western Railroad should be owned and operated by this Company, and that to this end, the said Des Moines, Northern & Western Railroad Company should sell and convey and transfer by deed, to the Chicago, Milwaukee & St. Paul Railway, all its railroad and property, and every part thereof, and all its rights, franchises, licenses, privileges, and immunities, of every kind, however derived; and the said Des Moines, Northern & Western Railroad Company is authorized and empowered, under the laws of the State of Iowa, to make such sale and to execute and deliver such conveyance as aforesaid;

Now Therefore, be it

Resolved, that the Des Moines, Northern & Western Railroad Company be, and is hereby requested to sell and convey to this Company all its railroad and property and for this purpose to make, execute and deliver, through its proper officers, a good and sufficient deed of conveyance, conveying and transferring to this Company all its railroad and property of every name and nature, wheresoever situated, and all its rights,
429 franchises, licenses, privileges, and immunities of every kind, however derived, in consideration of the sum of One Dollar and of the cancellation and surrender by this Company of all the above mentioned mortgage bonds of the Des Moines, Northern & Western Railroad Company, amounting

in the aggregate to the sum of $2,933,000, with the interest due thereon, and of the payment of all other lawful debts of said Company; and this Company hereby agrees that, upon the delivery to it of such deed, it will cancel and surrender the said mortgage bonds and will assume and pay all other lawful debts of said Des Moines, Northern & Western Railroad Company, and hold said Company free and clear and harmless therefrom; and

Resolved That the officers of this Company be, and they are hereby authorized and directed to accept such deed for and on behalf of this Company, and to cause the same to be duly recorded, and when so recorded, to be filed with the muniments of title of this Company".

And the same having been read and duly considered, it was, on motion duly seconded, unanimously

Resolved, That the offer of the Chicago, Milwaukee & St. Paul Railway Company, to purchase the railroad and property of this Company, as set out in the foregoing preamble, and resolutions, be and is hereby accepted; and that the President and Secretary of this Company be, and they are hereby directed, to make and execute a proper deed of conveyance, under the seal of this Company, conveying to the Chi-
430 cago, Milwaukee & St. Paul Railway Company, its successors and assigns, all the railroad and property of this Company, of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges and immunities of every kind, howsoever derived, in consideration of the sum of One Dollar and of the cancellation and surrender by the said Chicago, Milwaukee & St. Paul Railway Company, of all the mortgage bonds of this Company now outstanding, amounting in the aggregate to the sum of $2,933,000, with the interest due thereon, and of the payment of all other lawful debts of this Company; and

Resolved, That a meeting of the Stockholders of this Company be called to be held at its office in the City of Des Moines, Iowa, at 12 o'clock noon, of Monday, the 8th day of May, 1899; and that these resolutions and said deed be presented to said meeting, and if the same be approved by said Stockholders, then the officers of this Company are directed, to deliver the deed aforesaid to the said Chicago, Milwaukee & St. Paul Railway Company.

On motion, duly seconded, it was unanimously

Resolved, That Article 1 of the By-Laws be, and the same is hereby repealed; and that in place thereof there be inserted;—

Article 1.

"At all the meetings of the stockholders, each stockholder shall, as provided in the Articles of Incorporation, be entitled to one vote for each share of stock held and owned by him, as appears by the books of the Company at the time of such meeting".

431 And there being no further business to come before the Board at this time, on motion, duly seconded, the Directors adjourned sine die.

Attest,

P. M. MYERS, Secy.

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432 **Defendants' Exhibit 221.**

Des Moines, Northern & Western Railway Company.

Special Meeting of Directors. Chicago, Illinois May 5, 1899.

Pursuant to the call of the President, a special meeting of the Board of Directors was held at the office of the Company in the Old Colony Building, in this city, at 4:30 o'clock P. M. of this day.

And there were present Messrs. Earling, Goodnow, Hanson, Miller and Myers, ... 5

And absent Messrs. Keeler and Collins, ... 2

The President, having taken the chair, on motion, duly seconded, the reading of the minutes of the last meeting was dispensed with.

Mr. Miller stated to the Board that all the mortgage bonds which had been executed by the officers of this Company, amounted to the sum of $3,000,000; that of this sum $13,000 in bonds had been taken up, paid, and cancelled by this Company and are now in its possession; that $54,000 in bonds remained in the hands of the Metropolitan Trust Company, trustee of the mortgage, having never been issued to or by this Company, and that $2,933,000 in bonds were now held by the Chicago, Milwaukee & St. Paul Railway Company.

That the St. Paul Company proposed to surrender these bonds to the trustee for the purpose of cancellation and destruction, and to procure a release of the mortgage of January 1st, 1895, in consideration of the conveyance which
433 this Company proposes to make of its railroad and property to the St. Paul Company; but that the Trust Company declined to make the release without a resolution of the Board of Directors of this Company, authorizing and

requesting the trustee to cancel and destroy the bonds and to release the mortgage.

And thereupon he offered the following preamble and resolutions, which, being duly seconded, were unanimously adopted and are as follows;

Whereas, on the seventh day of March, 1895, this Company made and executed, under its corporate seal, to the Metropolitan Trust Company, of the City of New York, as Trustee, a certain mortgage deed of trust, bearing date January 1st, 1895, to secure the issue of not exceeding $5,415,000 in amount of bonds bearing even date with said mortgage, and payable twenty (20) years after said date, and bearing interest at the rate of four per cent per annum, payable semi-annually on the first day of January and July of each year; which said bonds were to be issued upon certain terms and conditions particularly set forth in said mortgage, to which mortgage reference is hereby made for greater certainty; and

Whereas, on the sixteenth day of March, 1895, the Metropolitan Trust Company, of the city of New York, the trustee therein named, duly accepted said trust, and thereafter caused said mortgage to be duly recorded according to law as follows; to-wit;

In the office of the Recorder of Polk County, Iowa, on the 20th day of March, 1895, in Book 316, on Page 254, of
434 Polk County Records, and

In the office of the Recorder of Guthrie County, in said State, on said 20th day of March, in Book 96, on pages 37 to 44, inclusive, of Guthrie County Records; and

In the office of the Recorder of Greene County, in said State, on the 21st day of March, 1895, in Book 39 of Land Mortgages, on page 523 of Greene County Records; and

In the office of the Recorder of Calhoun County, in said State, on said 21st day of March, in Book 37, of Mortgages, on page 359 of Calhoun County Records; and

In the office of the Recorder of Pocahontas County, in said State, on the 22nd day of March, 1895, in Book 28 of Mortgages on page 341, of Pocahontas County Records; and

In the office of the Recorder of Boone County in said State, on said 22nd day of March, in Book 82, on page 620 of Boone County Records; and

In the office of the Recorder of Dallas County, in said State, on the 23rd day of March, 1895, in Book of Mortgage Records, 128, on page 402, of Dallas County Records.

Being all the places where said mortgage was required by law to be recorded; and

Whereas, only $3,000,000 in amount of said bonds were executed by the officers of this Company and delivered to said trustee for its counter-signature, as required in said mortgage; and

Whereas, of the said $3,000,000 so as aforesaid delivered to said trustee, $2,915,000 in amount, being bonds numbered 1 to 2915, both inclusive, were countersigned by said trus-
435 tee, and delivered to this Company shortly after the execution and recording of said mortgage; and subsequently, and in the year 1898, $31,000 in amount of said bonds, —being numbered 2916 to 2940, both inclusive, and 2960 to 2965, both inclusive—were also countersigned by said Trustee and delivered to this Company, making in all $2,946,000 of bonds so countersigned and delivered; and

Whereas there are now in the hands of said trustee bonds issued under said mortgage—numbered 2941 to 2959 both inclusive, and 2966 to 3000, both inclusive—making in all $54,000 of said bonds so in the hands of said trustee; and

Whereas of the said $2,946,000 in amount of the bonds so as aforesaid executed, countersigned and delivered to it, this Company has taken up, paid, and cancelled $13,000 in amount of said bonds—being bonds numbered 2903 to 2915, both inclusive—and now has the same in its possession, and there are now outstanding in the hands of the public, bonds to the amount of $2,933,000; and

Whereas this Company desires that all of said $3,000,000 of bonds so as aforesaid executed by it, be cancelled and destroyed by said trustee, and that said mortgage of January 1st, 1895, be discharged of record;

Now, Therefore, be it

Resolved, That the said Metropolitan Trust Company, of the City of New York, Trustee, as aforesaid, be and is hereby authorized and requested to immediately cancel and destroy $54,000 in amount of bonds heretofore issued by this
436 Company, and hereinabove referred to and now in the hands of said Trustee, whether said bonds, or any of them, are or are not countersigned by said trustee, and also to cancel and destroy the said $13,000 in bonds heretofore paid by this Company and which are now tendered to said Trustee for this purpose, and

Resolved, That whenever and as soon as the remaining $2,933,000 in amount of the bonds issued by this Company, and

hereinabove referred to, and now outstanding, are presented to it, the said trustee is hereby authorized and requested to cancel and destroy all of said bonds and all coupons thereto belonging, whether said coupons are paid or unpaid, and thereupon to make and execute a proper release of the aforesaid mortgage, dated January 1st, 1895, and to deliver said release to Mr. Frank S. Bond, of the city of New York, to the end that said release may be recorded and said mortgage discharged of record in all the offices in which the same was recorded as aforesaid; and

Resolved, That the Secretary of the Company be and is hereby directed to send a certified copy of the foregoing preamble and resolutions to said Metropolitan Trust Company, of the City of New York.

The President stated that the contract between this Company and the United States Express Company could now be terminated at any time by thirty days notice, and in view of the fact that the road of this Company would be acquired by the St. Paul Company on the eighth instant, he suggested that notice should be given to the Express Company of
437 the desire of this Company to terminate the contract at the expiration of thirty days.

Whereupon, on motion, duly seconded, it was

Resolved, That the Secretary be and is hereby directed to notify the United States Express Company, through Mr. C. H. Crosby, its Vice President, at Chicago, that this Company desires to terminate the existing express contract, at twelve o'clock noon of Thursday, June 8th, 1899.

And there being no further business to come before the meeting, on motion, duly seconded, the Directors adjourned to meet at the call of the President.

Attest: (Signed) P. M. MYERS, Secretary.

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438 **Defendants' Exhibit 222.**

Des Moines, Northern & Western Railway Company.

Special Meeting of Stockholders.

Des Moines, Iowa, May 8th, 1899.

Pursuant to the call of the Board of Directors and to notice duly given in accordance with Article VIII of the Articles of Incorporation, a special meeting of the Stockholders of this Company was held at its office in the city of Des Moines at 12 o'clock noon of this day.

In the absence of the President and Vice-President, Mr. C. A. Goodnow, was appointed Chairman of the meeting and the Secretary of the Company acted as Secretary thereof.

The Secretary presented a certified list of the stockholders of this Company, showing the number of shares held by them and each of them respectively, which list is as follows:

"Des Moines, Northern and Western Railroad Company.

It is hereby certified that the following is a full, true and complete list of the stockholders of this Company and the number of shares held by them and each of them, as the same appears by the books and records of the Company;

Wallace G. Collins,	1	share,
Albert J. Earling,	1	"
C. A. Goodnow,	1	"
Burton Hanson,	1	"
Charles B. Keeler,	1	"
Roswell Miller,	1	"
Peter M. Myers,	1	"
Chicago, Milwaukee & St. Paul Ry. Company,	43718	"
Total, ...	43,725	shares.

In Witness Whereof I have hereunto set my hand and
439 affixed the seal of said Company at its office in the City of Milwaukee, Wisconsin, this first day of May, A. D. 1899.

(Seal) P. M. MYERS, Secretary."

And the names of the stockholders having been called, it appeared that every shareholder of the Company was present either in person or by proxy, and that the entire amount (43,725 shares) of the capital stock now outstanding, was represented at the meeting.

The Chairman laid before the meeting the preamble and resolutions adopted by the Board of Directors of the Chicago, Milwaukee & St. Paul Railway Company at their meeting held in the City of New York, on the ninth day of March, 1899, which preamble and resolutions are as follows;

"Whereas the Des Moines, Northern & Western Railroad Company owns and operates a line of railroad commencing in the City of Des Moines, Polk County, Iowa, and extending thence in a general northwesterly direction, via Clive, in said

County, to Fonda, in Pocahontas County; and also a line of railroad commencing at Clive and thence extending in a northerly direction to Boone, in Boone County, all in the State of Iowa, the aggregate length of said lines of railroad being about 150 miles, and

Whereas, the said Des Moines, Northern & Western Railroad Company has issued, and there are now outstanding 43,725 shares of one hundred dollars ($100) each of its capital stock, and its railroad and property are encumbered by a mort-
440 gage debt consisting of two thousand, nine hundred and thirty-three (2,933) bonds, of one thousand dollars ($1,000) each, due January 1st, 1915, and bearing interest at four per cent (4%) per annum, payable semi-annually both interest and principal payable in gold; and

Whereas, this Company is the owner of 43,724 out of the above mentioned 43,725 shares of capital stock, and of 2,932 out of the above mentioned 2933 bonds, and has paid therefor the sum of $2,462,511.95; and

Whereas, the lines of railroad of the said Des Moines, Northern & Western Railroad Company intersect and are connected with the Chicago and Council Bluffs Division of the railway of this Company at Madrid and at Herndon, in said State of Iowa, and by reason of such connections form a through line reaching the principal cities and towns in said State and States adjacent; and

Whereas, it is for the interest of this Company and of the public that the said lines of the Des Moines, Northern & Western Railroad should be owned and operated by this Company, and that to this end, the said Des Moines, Northern & Western Railroad Company should sell and convey and transfer by deed, to the Chicago, Milwaukee & St. Paul Railway Company all its railroad and property, and every part thereof, and all its rights, franchises, licenses, privileges, and immunities of every kind, howsoever derived; and the said Des Moines, Northern & Western Railroad Company is authorized and empowered, under the laws of the state of Iowa, to make such sale and to execute and deliver such conveyance as aforesaid;

Now, Therefore, be it

441 Resolved, That the Des Moines, Northern & Western Railroad Company be and is hereby requested to sell and convey to this Company all its railroad and property, and for this purpose to make, execute and deliver, through its proper officers, a good and sufficient deed of conveyance, con-

veying and transferring to this Company, all its railroad and property of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges, and immunities of every kind, howsoever derived, in consideration of the sum of one dollar and of the cancellation and surrender by this Company of all the above mentioned mortgage bonds of the Des Moines, Northern & Western Railroad Company amounting in the aggregate to the sum of $2,933,000 with the interest due thereon, and of the payment of all other lawful debts of said Company and this Company hereby agrees that, upon the delivery to it of such deed, it will cancel and surrender the said mortgage bonds and will assume and pay all other lawful debts of said Des Moines, Northern & Western Railroad Company and hold said Company free and clear and harmless therefrom, and

Resolved, that the officers of this Company be, and they are hereby authorized and directed to accept such deed for and on behalf of this Company, and to cause the same to be duly recorded, and when so recorded, to be filed with the muniments of title of this Company."

The Chairman further laid before the meeting the resolutions adopted by the Board of Directors, of this Company
442 at their meeting held in the City of Chicago, on April 24th, ultimo, at which meeting the foregoing preamble and resolutions of the Directors of the Chicago, Milwaukee & St. Paul Railway Company were presented, read, and considered—which resolutions of the Board of Directors of this Company are as follows;

"Resolved, That the offer of the Chicago, Milwaukee & St. Paul Railway Company to purchase the railroad and property of this Company, as set out in the foregoing preamble and resolutions, be and is hereby accepted; and that the President and Secretary of this Company be, and they are hereby directed to make and execute a proper deed of conveyance under the seal of this Company, conveying to the Chicago, Milwaukee & St. Paul Railway Company, its successors, and assigns, all the railroad and property of this Company, of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges, and immunities of every kind, howsoever derived, in consideration of the sum of one dollar, and of the cancellation and surrender by the said Chicago, Milwaukee & St. Paul Railway Company of all the mortgage bonds of this Company now outstanding, amounting in the aggregate to the sum of $2,933,000 with the interest due thereon, and of the payment of all other lawful debts of this Company; and

Resolved, that a meeting of the stockholders of this Company be called to be held at its office in the City of Des Moines, Iowa, at 12 o'clock noon of Monday, the eighth day of May, 1899; and that these resolutions and said deed be presented to said meeting, and if the same be approved by said
443 stockholders, then the officers of this Company are directed to deliver the deed aforesaid to the said Chicago, Milwaukee & St. Paul Railway Company".

The Chairman also submitted to the meeting the form of deed which the officers of this Company had prepared and executed in pursuance of the direction and authority given to them in the next foregoing resolutions of the Board of Directors, which deed is in the words and figures following, to-wit;

"This Indenture, made this first day of May, in the year of our Lord, One Thousand, Eight Hundred and Ninety-nine, by and between the Des Moines, Northern & Western Railroad Company a corporation of the State of Iowa, party of the first part, and the Chicago, Milwaukee & St. Paul Railway Company, a corporation of the State of Wisconsin, party of the second part—Witnesseth;

Whereas, the Des Moines, Northern & Western Railroad Company now owns and operates a certain line of railroad, commencing at the east line of Section Seven (7), Township Seventy-eight (78) North, Range Twenty-four (24) West, in the city of Des Moines, Polk County, Iowa, and thence extending in a general northwesterly direction, via Clive in said County, through the Counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to Fonda in said last named County; and also a line of railroad extending from Clive, in said County of Polk, through said County to Boone, in the County of Boone; said lines of railroad having an aggregate length of about one hundred and fifty (150) miles, all in the State of Iowa; and

444 Whereas, said lines of railroad connect with the railroad of the said Chicago, Milwaukee & St. Paul Railway Company at Madrid and at Herndon, in said State, and can be operated in connection with said last mentioned railroad conveniently to the public and to the common benefit of both companies, forming a through line reaching the principal cities and towns in said State of Iowa, and States adjacent; and

Whereas the said Des Moines, Northern & Western Railroad Company is indebted to divers parties in the amount of two million, nine hundred and thirty-three thousand dollars of bonds, due January 1st, 1915, and bearing interest at four

per cent per annum payable semi-annually, both interest and principal payable in gold, which said bonds are secured by a mortgage of all its railroads, property, and franchises, executed by the said Des Moines, Northern & Western Railroad Company to the Metropolitan Trust Company, of the City of New York, as Trustee, bearing date the first day of January, 1895; and

Whereas, the said Chicago, Milwaukee & St. Paul Railway Company proposes to purchase said railroads, together with all the equipment, rolling stock, and franchises, and all other property of every name and nature, in anywise appertaining thereto, and in payment therefor to take up, pay, cancel and satisfy all of the above mentioned bonds, with the interest due thereon, and also all other lawful indebtedness of said Des Moines, Northern & Western Railroad Company; and

Whereas, the Des Moines, Northern & Western Rail-
445 road Company has, by its Board of Directors, and with the authority and approval of its stockholders, given in the manner prescribed by statute, authorized the sale of all its railroads, and all its property and franchises in anywise appertaining thereto, to the Chicago, Milwaukee & St. Paul Railway Company and has directed this conveyance to be executed on its part by its President and Secretary, and its corporate seal to be affixed thereto by the officers executing the same; and

Whereas the said Des Moines, Northern & Western Railroad Company is authorized and empowered by the laws of the State of Iowa, to make this conveyance and the said Chicago, Milwaukee & St. Paul Railway Company is authorized and empowered by the laws of the States of Wisconsin and Iowa, to receive the same;

Now, Therefore, in consideration of the premises and the sum of one dollar, to it in hand paid, the receipt whereof is hereby acknowledged and confessed, and in further consideration of the undertaking and obligation of the said Chicago, Milwaukee & St. Paul Railway Company to take up, pay, cancel and satisfy all of the above mentioned mortgage bonds, with all the accrued interest thereon, and to pay any and all other just debts of the said Des Moines, Northern & Western Railroad Company the said Des Moines, Northern & Western Railroad Company, party hereto of the first part, does hereby sell and convey unto the said Chicago, Milwaukee & St. Paul Railway Company party hereto of the second part, its successors and assigns, all and singular, the rail-
446 road and railway of the party of the first part, commencing at a point in the east line of Section Seven (7)

Township Seventy-eight (78) North, Range Twenty-four (24) West in the city of Des Moines, Polk County, Iowa, and thence extending in a general northwesterly direction, via Clive, in said County, through the Counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to Fonda, in said last named County, and also extending from Clive, in the county of Polk, through the Counties of Polk, Dallas and Boone, to Boone in the County of Boone, and State of Iowa, in all a distance of about one hundred and fifty miles (150), being the railroads and railways formerly known as the Des Moines, Northern & Western Railroad, including all the railroads, railways, ways, and rights of way; all the depot grounds, and other lands, all the tracks, bridges, viaducts, culverts, turntables, fences, and other structures; all the depots, station houses, engine houses, carhouses, freight houses, woodhouses, coal-houses, elevators and other buildings; and all machine shops and other shops held or acquired for use in connection with the said railroad, or in connection with the business thereof; including the road-bed right-of-way, appurtenances, and all property of every kind and description belonging or appertaining to the railroads hereby conveyed and heretofore belonging to the said Des Moines, Northern & Western Railroad Company; including also, all locomotives, tenders, cars, and other rolling stock and equipment, and all machinery, tools, implements, fuel and materials for the constructing, operating, repairing or replacing of said railway or any
447 part thereof, or any of its equipment or appurtenances and including also, all franchises of said Des Moines, Northern & Western Railroad Company connected with or relating to the said railroads, or to the construction, maintenance, use and operation of the same; together with all and singular the tenements, hereditaments and appurtenances to said premises belonging; and the reversion and reversions, remainder and remainders, tolls, income, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said Des Moines, Northern & Western Railroad Company of, in and to the same, and every part thereof; and also said company's interest, whatsoever the same may be in and to the line of telegraph extending along the route of said railway, with all the instruments, implements, machinery, furniture, and materials for constructing, furnishing or operating the same, and also one-fourth interest in the capital stock of the Des Moines Union Railway Company; it being the intent hereof to convey all the aforesaid railroad lines, with all their appurtenances and incidents, as received by the grantor herein from a deed of conveyance executed and delivered to it by G.

M. Dodge, F. M. Hubbell, and F. C. Hubbell, Purchasing Committee, on the eighth day of February, 1895; together with all property, rights, franchises, licenses, and privileges of every name and description, which the said grantor has in any manner acquired since said eighth day of February, 1895.

To Have and To Hold all and singular, the said premises above mentioned and described and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said Chicago, Milwaukee & St. Paul Railway Company, party hereto of the second part, and to its successors and assigns forever.

And the said Des Moines, Northern & Western Railroad Company hereby warrants the title to all the above mentioned and described premises against all persons whomsoever, and hereby covenants and agrees to and with the said party of the second part hereto that it will make, execute, and deliver to it all such further deeds and instruments as may be reasonably required by it for the better assuring of the title to the premises hereby conveyed, or intended so to be.

In Witness Whereof, the said Des Moines, Northern & Western Railroad Company has caused these presents to be executed by its President and its corporate seal to be hereunto affixed and attested by its Secretary, the day and year first above written.

DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY,

(Corporate Seal) By A. J. Earling, President.

Attest: P. M. Myers, Secretary.

State of Wisconsin } ss.
County of Milwaukee }

Be it known, That on the fifth day of May, A. D. 1899, before me, a Commissioner residing in the State of Wisconsin, duly appointed and commissioned by the Governor of the State of Iowa, to administer oaths and take acknowledgments and proofs of deeds to be used and recorded in the State of Iowa, personally came Albert J. Earling, President, and Peter M. Myers, Secretary, of the Des Moines, Northern & Western Railroad Company, to me personally known, and known by me to be the identical persons who executed the foregoing instruments, and by me being duly sworn, did each depose and say; That they are respectively President and Secretary of said Company; that the seal affixed to the foregoing instrument is the corporate seal of

said Company and was affixed by authority of said Company, and that they signed their respective names thereto as President and Secretary by the like authority; and they severally acknowledged the execution thereof to be their voluntary act and deed and the voluntary act of the said Des Moines, Northern & Western Railroad Company for the purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year last above written.

(Commissioner's seal) E. W. ADAMS,
Commissioner for Iowa in Wisconsin.

(United States Revenue stamps to the amount of $2,464.00 affixed and cancelled).

And all the foregoing resolutions and the deed having been read to and considered by the meeting, on motion duly seconded, and upon a stock vote, the following resolutions were unanimously adopted, 43,725 shares—being all the
450 shares of the capital stock of this Company issued and now out-standing—voting in favor thereof;

Resolved, that this company will and it does hereby accede to the request, and accept the offer made to it by the Chicago, Milwaukee & St. Paul Railway Company as set out in the preamble and resolutions adopted by the Board of Directors of said company at a meeting of said Board held in the City of New York, on March 9th ultimo, and now read in our hearing; and

Resolved, That this Company hereby ratifies and approves and confirms the action taken by its Board of Directors at their meeting held in the City of Chicago on April 24th ultimo, accepting said offer of the Chicago, Milwaukee & St. Paul Railway Company and authorizing and directing the President and Secretary of this Company to make and execute a deed of conveyance of all the railroad and property of this Company to the said Chicago, Milwaukee & St. Paul Railway Company as set out in the minutes of said meeting of April 24th and now read in our hearing, and

Resolved, that this Company hereby approves the form of deed made and executed by the President and Secretary of this Company, and now laid before and read to this meeting of stockholders, conveying to the Chicago, Milwaukee & St. Paul Railway Company, its successors and assigns, all the railroad and property of this Company of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges, and immunities of every kind, however

derived, as in said deed particularly set forth, and here-
451 by ratifies, approves and confirms the execution and acknowledgment thereof by the President and Secretary of this Company, and hereby directs said officers to deliver said deed to the said Chicago, Milwaukee & St. Paul Railway Company.

And there being no further business to come before this meeting, on motion duly seconded, the stockholders adjourned sine die.

Attest:

P. M. MYERS,
Secretary.

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452 **Defendants' Exhibit 223.**

Des Moines, Northern & Western Railway Company.

Special Meeting of Directors. Chicago, Illinois, May 27, '99.

Pursuant to the call of the President, a special meeting of the Directors was held at the office of the Company in this city at 3 o'clock in the afternoon of this day.

And there were present the President and Messrs. Goodnow, Keeler, Miller and Myers, ... 5

And absent, Messrs. Collins and Hanson, ... 2

The President having taken the chair, on motion, duly seconded, the reading of the minutes of the last meeting of the Directors was dispensed with.

The President stated to the Board that the stockholders of this Company at their special meeting held in the City of Des Moines, on the 8th instant, had unanimously ratified the sale of the railroad and property of this Company, to the Chicago, Milwaukee & St. Paul Railway Company and the deed of conveyance thereof, and had directed the officers of this Company to deliver said deed of conveyance to the Chicago, Milwaukee & St. Paul Railway Company;

That said deed had been delivered, in pursuance of the authority so given, and that the Chicago, Milwaukee & St. Paul Railway Company had delivered to this Company a release duly executed by the Metropolitan Trust Company of the City of New York, Trustee, of the mortgage made by this Company to said Trust Company, under date of January 1st, 1895;
and also a certificate of the destruction by burning of
453 all the bonds and coupons issued thereunder, except eighteen (18) coupons due January 1st, 1897, which had never been presented for payment; and that there was now

in the hands of the Trust Company the sum of $355 in money, belonging to this Company which amount is held by the Trust Company against said coupons; and he suggested that the Trust Company be requested to pay over said amount of $355 to the Chicago, Milwaukee & St. Paul Railway Company as said last named Company is, by the terms of the deed, obligated to pay all the debts of every name and nature of this Company, including, of course, any unpaid coupons.

Whereupon, on motion, duly seconded, it was

Resolved, that the Secretary of the Company be and is hereby directed to enter in full on the record, and as part of the minutes of this meeting the said release of mortgage and said certificate of cremation of the bonds issued thereunder; and that he be, and is hereby directed to put said release of mortgage on record in the Counties where the mortgage was originally recorded.

And the said release of mortgage and cremation certificate are as follows;

Know All Men By These Presents;

That, Whereas, the Des Moines, Northern & Western Railroad Company did on the first day of January, 1895, make execute and deliver to the Metropolitan Trust Company, of the City of New York, Trustee, a mortgage deed of its railway property known as its Trust Mortgage, to secure
454 certain bonds, which said property was in said Trust Mortgage described as follows;

"All its railroad, extending from Farnham Street, in the city of Des Moines, County of Polk, and State of Iowa, through the Counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, Iowa, to Fonda, in said last named County, and also extending from Clive, in said County of Polk, through the Counties of Polk, Dallas and Boone, Iowa, to the city of Boone, in said last named County, together with all its real estate necessary for and used in the operation of said lines of railway, its rights-of-way, roadbed, bridges, tracks, side-tracks, turnouts, switches, buildings, and structures, water tanks, and fixtures, shops, engine and other houses, depots, turntables, engines, cars, and machinery; also together with all its corporate and other franchises, rights, privileges, and immunities, rents, issues, tolls, and earnings; also all its properties of whatsoever name, nature, or description that may hereafter be acquired; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company; it being the intent hereby to convey and mortgage all its railroad property and all things appurtenant thereto or used in connection

therewith, whether now acquired and owned or hereafter acquired and owned by the party of the first part"; and

Whereas, the Des Moines, Northern & Western Railroad Company did on the 5th day of May, 1899, by its Board of Directors, pass a resolution requesting the Metropolitan Trust Company, of the City of New York, Trustee of said Trust Mortgage, to satisfy and discharge the said Trust Mortgage of record;

455 Now, Therefore, This Indenture Witnesseth; That the said Trustee, the Metropolitan Trust Company of the City of New York, hereby acknowledges payment and satisfaction of said Trust Mortgage, and does hereby cancel and discharge the said Trust Mortgage and release and quit-claim unto the said Des Moines, Northern & Western Railroad Company its successors and assigns forever, all of the property covered by said mortgage, and does hereby authorize the various officers of the State and Counties in which the same is recorded and filed, to properly discharge the same of record.

In Witness Whereof, the Metropolitan Trust Company of the City of New York has caused these presents to be executed by its President under its corporate seal, attested by its Secretary, the 17th day of May, One Thousand, Eight Hundred and Ninety-nine.

(Corporate Seal) METROPOLITAN TRUST COMPANY, of the City of New York,

By Brayton Ives, President.

Attest: Beverly Chew, Secretary.

In the presence of
P. J. Josy, Jr.,
Chas. Edgar Mills.

(The certificate of acknowledgment is omitted.)

456 * * * * And there being no further business to come before the meeting, on motion duly seconded, the Board adjourned.

Attest: J. M. MYERS, Secretary.

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457 **Defendants' Exhibit 224.**

Chicago, Milwaukee & St. Paul Railway Company.

Extracts From Stockholders' Records

Relating to

Des Moines, Northern & Western Railroad Company.

Annual Meeting, September 23, 1899.

"On behalf of the Board of Directors, the President reported to the meeting that this Company has acquired the entire capital stock (43,725) shares of the Des Moines, Northern & Western Railroad Company, and all of its outstanding first mortgage bonds, amounting to $2,933,000; and that the amount paid for said stock and bonds is $2,463,511.95;

"That 43,718 of said shares now stand in the name of this Company, and one share stands in the name of each of the seven Directors, all of whom are officers of this Company; that all of said mortgage bonds, together with all matured and unmatured coupons, have been surrendered and cancelled and the mortgage securing them has been released by the Trustee thereof, and the release has been duly recorded; and that said Company has no other or further debts than current liabilities, which have been fully paid by its current asset;

"That in consideration of such surrender, cancellation and release of its mortgage debt, the said Des Moines, Northern & Western Railroad Company did, by deed dated May 1st, 1899, convey to this Company all its railroad extending from Des Moines, via Clive, to Boone, and from Clive to
458 Fonda, aggregating 150 miles, all in the State of Iowa, and all its property of every name and nature, and that said deed has been duly recorded and is now on file with the muniments of title of this Company:

"That a certificate of the aforesaid purchase and conveyance has been filed with the United States Trust Company of New York, Trustee of the so-called General Mortgage of this Company, to the end that the railroad and property so acquired from the Des Moines, Northern & Western Railroad Company should become subject to the lien of said General Mortgage; and

"That the Board of Directors respectfully requests this meeting of stockholders to adopt the following resolution:

"Resolved, that the stockholders of this Company do hereby ratify, approve, and confirm the action of the Board of Directors and officers of this Company in acquiring, on behalf of this Company, all the capital stock and mortgage bonds of the Des Moines, Northern & Western Railroad Company, and in surrendering and cancelling said bonds and procuring the release of the mortgage securing the same, and in accepting from said Company its certain deed, dated May 1st, 1899, which deed, in consideration of said surrender, cancellation and release, conveys to the Chicago, Milwaukee & St. Paul Railway Company, all the railroad and property of said Des Moines,

Northern & Western Railroad Company, and in recording said deed; and further ratify, approve and confirm the acquisition and purchase of the railroad and property of the Des Moines, Northern & Western Railroad Company.

"And thereupon, on motion of Mr. Milbank, duly seconded, the foregoing resolution was unanimously adopted."

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459 **Defendants' Exhibit 225.**

Chicago, Milwaukee & St. Paul Railway Company.

Extracts From Directors' Records

Relating to

Des Moines, Northern & Western Railroad Company.

Executive Committee, November 30, 1894:

"A letter from the President, dated 15th of November was read, reporting the foreclosure of the mortgage covering the Des Moines, Northern & Western Railroad, and suggesting that the new mortgage should provide for extensions and improvements.

"The suggestion was approved."

Executive Committee, May 16, 1895:

"The Vice President read for information of the Committee, letter dated 13th May from the President, stating that the re-organization of the Des Moines, Northern & Western Railway Company is completed and the property transferred to the new Company named Des Moines, Northern & Western Railroad Company.

"That the new Company has issued 43,725 shares of stock, $100.00 each, and $2,915,000. of bonds for the purchase of the property. That forty per cent (40%) of the 43,725 shares, or 17,490 shares, had been transferred to Roswell Miller, as Trustee, in accordance with the contract made by this Company, with Fred M. Hubbell and others, and that 3498 of these shares (1/5) one-fifth had been earned by this Company under the contract."

460 Executive Committee, May 23, 1895:

"The Vice President submitted for information and for the files of this office a pamphlet containing the foreclosure proceedings of the Des Moines, Northern & Western Railway

Company mortgage, the incorporation, etc., of the successor company, Des Moines, Northern & Western Railroad Company, and copy of the mortgage made by that Company to the Metropolitan Trust Company of the City of New York as Trustee."

Executive Committee, October 20, 1898:

"On motion it was

"Resolved, that this Committee recommend the Board of Directors to authorize the President of this Company to purchase all of the Des Moines Northern & Western Railroad Company, stock and bonds held by F. M. Hubbell & Son and their friends, the price not to exceed 85 per cent of the face value of the bonds, and that he be further authorized to purchase all the minority holdings of stock and bonds of that Company that shall be offered for sale on like or better terms."

Directors Meeting, October 27, 1895:

"After consideration of the recommendation of the Executive Committee, it was

"Resolved, that the President of this Company be and he hereby is authorized to purchase the stock and bonds of the Des Moines, Northern & Western Railroad Company held by F. M. Hubbell & Son and their friends, at not exceeding
461 85% of the face value of the bonds, provided, however, that the stock so to be purchased from the Hubbells, shall, with the stock already in possession of this Company, constitute a clear majority of all the share capital of that Company. And further

"Resolved, that he be, and hereby is authorized to purchase the minority holdings of stock and bonds of that Company that shall be offered for sale on like or better terms."

Executive Committee, November 17, 1898:

"On motion it was

"Resolved, that the purchase reported by the President's letter of the 15th of November of 2150 bonds out of a total issue of 2902 of the Des Moines, Northern & Western Railroad Company, and $1,873,900 of stock of that Company, at 85% and interest for the bonds is hereby approved.

"The Vice President reported that said stock together with what this Company had acquired under its traffic contract amounts to $3,622,900 out of $4,372,500 the total outstanding stock of that Company."

Executive Committee, December 1, 1898:

"The Vice President reported that he had purchased from General Dodge $446,000 Des Moines, Northern & Western Railroad Company, four per cent bonds; that all but 67 have been delivered and paid for at 85 per cent and interest; and that he had received from General Dodge 6839 shares of stock
462 that go with the bonds, except 900 of the shares included in certificate No. 13, that are the property of L. M. Martin for which we are to pay at the rate we were to have paid for the option stock about $7.00 per share. He further reported that he had purchased $158,000 of bonds without stock for which he had paid 75 per cent flat."

Executive Committee, December 15, 1898;

"The Vice President reported that all except six of the so-called minority holdings of the Des Moines, Northern & Western Railroad Company bonds have been purchased by the Company."

Board of Directors, December 29, 1898:

"The Vice President reported that he had completed the purchase from F. M. Hubbell of the 2150 bonds of the Des Moines, Northern & Western Railroad Company, and paid for them at the rate of 85c. ex. January coupon, and he read letter dated 27th December from the President stating that there was no reason why we should not complete the purchase of the bonds and stock of that Company. On motion the purchase was approved.

Executive Committee, February 9, 1899;

"The Vice President reported for information of the Committee that the President had purchased from A. B. Cummins for $5,000.00, 625 shares of stock of the Des Moines,
463 Northern & Western Railroad Company, leaving but 35 shares still outstanding and one bond outstanding of the entire issue."

Executive Committee, February 16, 1899:

"The Vice President read letter dated 12th February from the President stating that he had obtained the 32 shares of Des Moines, Northern & Western Railroad stock of W. R. Warfield for $256.00,—all the stock of that Company that was outstanding,—and suggesting that proceedings be taken to absorb the road.

"On motion it was

"Resolved: That the President be authorized to take the necessary steps to absorb the Des Moines, Northern & Western Railway property, under advice of counsel, in accordance with his recommendation."

Executive Committee, March 2, 1899:

"On motion it was

"Resolved, that this Committee recommend the Board of Directors to adopt a resolution requesting the Des Moines, Northern & Western Railroad Company to convey its railway, franchises and other property to this Company."

Board of Directors, March 9, 1899:

"The Vice President reported that all but one share of the stock of the Des Moines, Northern & Western Railroad Company, and all of its bonds, except one for $1000, had been
464 purchased by this Company; and that it was deemed advisable to take over its railroad and property; and he submitted the following described documents prepared by counsel.

"1. Resolutions to be adopted by Board of Directors of Chicago, Milwaukee & St. Paul Railway Company, offering to purchase the Des Moines, Northern & Western road.

"2. Resolutions to be adopted by Board of Directors of the Des Moines, Northern & Western Railroad Company, consenting to sell its road; directing the making and execution of deed thereof to St. Paul Company, and calling meeting of its stockholders to ratify consent; approve deed, and authorize delivery of same.

"3. Resolutions to be adopted by the stockholders of the Des Moines, Northern & Western Railroad Company, ratifying sale of its road, and authorizing delivery of deed to St. Paul Company.

"4. Draft of deed from the Des Moines, Northern & Western Railroad Company to the Chicago, Milwaukee & St. Paul Railway Company. Made in pursuance of the authority contained in forms 1, 2, and 3.

"Whereupon on motion the preamble and resolutions of document No. 1 were adopted as follows:

"Whereas, the Des Moines, Northern & Western Railroad Company owns and operates a line of railroad commencing in the city of Des Moines, Polk County, Iowa, and extending thence in a general northwesterly direction, via Clive,
465 in said county, to Fonda, in Pocahontas County; and also a line of railroad commencing at Clive and thence extending in a northerly direction to Boone, in Boone County, all in the State of Iowa, the aggregate length of said lines of railroad being about 150 miles; and

"Whereas, the said Des Moines, Northern & Western Railroad Company has issued and there are now outstanding 43,725 shares of one hundred dollars ($100.) each, of its capital stock; and its railroad and property are encumbered by a mortgage debt consisting of two thousand nine hundred and thirty-three (2933) bonds of one thousand dollars ($1000) each, due January 1st, 1915, and bearing interest at four per cent (4%) per annum, payable semi-annually, both interest and principal payable in gold; and

"Whereas, this Company is the owner of 43,724 out of the above mentioned 43,725 shares of capital stock, and of 2932 out of the above mentioned 2933 bonds, and has paid therefor the sum of $2,462,511.95 dollars; and

"Whereas, the lines of railroad of the said Des Moines, Northern & Western Railroad Company intersect and are connected with the Chicago & Council Bluffs Division of the railway of this Company, at Madrid and at Herndon, in said State of Iowa, and by reason of such connections form a through line reaching the principal cities and Towns in said state, and states adjacent; and

466 "Whereas, it is for the interest of this Company and of the public that the said lines of the Des Moines, Northern & Western Railroad should be owned and operated by this Company, and that to this end, the said Des Moines, Northern & Western Railroad Company should sell and convey and transfer by deed to the Chicago, Milwaukee & St. Paul Railway Company, all its railroad and property, and every part thereof, and all its rights, franchises, licenses, privi-

leges, and immunities of every kind howsoever derived; and the said Des Moines, Northern & Western Railroad Company is authorized and empowered, under the laws of the State of Iowa, to make such sale and to execute and deliver such conveyance as aforesaid:

"Now, Therefore, be it

"Resolved, that the Des Moines, Northern & Western Railroad Company be and is hereby requested to sell and convey to this Company all its railroad and property, and for this purpose to make, execute, and deliver, through its proper officers, a good and sufficient deed of conveyance, conveying and transferring to this Company all its railroad and property of every name and nature wheresoever situated, and all its rights, franchises, licenses, privileges and immunities of every kind, however derived, in consideration of the sum of one Dollar, and of the cancellation and surrender by this Company of all the above mentioned mortgage bonds of the Des Moines, Northern & Western Railroad Company, amounting in the aggregate to the sum of $2,933,000 with the interest
467 due thereon, and of the payment of all other lawful debts of said Company; and this Company hereby agrees that, upon the delivery to it of such deed, it will cancel and surrender the said mortgage bonds and will assume and pay all other lawful debts of said Des Moines, Northern & Western Railroad Company, and hold said Company free and clear and harmless therefrom; and

"Resolved, that the officers of the Company be, and they are hereby authorized and directed to accept such deed for and on behalf of this Company, and to cause the same to be duly recorded, and when so recorded, to be filed with the muniments of title of this Company."

Executive Committee, April 13, 1899:

"The Vice President reported for the information of the Committee that he had paid par for the last Des Moines, Northern & Western Railroad Company bond which was outstanding. Approved.

Executive Committee, May 4, 1899:

"The Vice President reported that all of the stock of the Des Moines, Northern & Western Railroad Company, except seven shares in names of the Directors, now stand registered in name of the Chicago, Milwaukee & St. Paul Railway Company."

Executive Committee, May 18, 1899:

"The Vice President reported that he had received a certificate of the burning of the bonds and coupons of the
468 Des Moines, Northern & Western Railroad Company, certified by a Notary Public and by James M. McKinley on the part of the Railway Company and by John Telfer on the part of the Metropolitan Trust Company. Also that he received from the Trust Company a satisfaction of the mortgage securing the bonds, executed under the seal of the Trust Company and signatures of Brayton Ives, President, and Beverly Chew, Secretary.

Board of Directors, May 25, 1899:

"The Vice President reported that the Des Moines, Northern & Western Railroad Company had conveyed its railway and property to the Chicago, Milwaukee & St. Paul Railway Company, by deed dated 1st May, 1899; and that the deed executed by the Des Moines, Northern & Western Railroad Company, and the satisfaction piece executed 17th May, 1899, by the Metropolitan Trust Company of the Des Moines, Northern & Western Railroad Company mortgage dated 1st January, 1895; and the General Mortgage executed by this Company 1st May, 1889; were in the hands of the Secretary of this Company with instructions to have these three instruments recorded in the several counties in which the property of the said Des Moines Company is located.

"The Vice President further reported that the President had written saying that he will continue to operate the Des Moines, Northern & Western road as a separate property until the first of July next."

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469 Executive Committee, June 15, 1899:

"The Vice President submitted certificate, signed by the President and the Chief Engineer, of the acquisition by purchase by this Company of the railroad and property of the Des Moines, Northern & Western Railroad Company, showing the cost thereof to be $2,466,574.01; to which certificate there is affixed certified copy of the proceedings of the Board of Directors and of the stockholders of said railroad company, and of the deed of the railroad and property made in pursuance thereof. After consideration it was

"Resolved, that the officers of this Company are hereby instructed to file certificate of the acquisition of the Des Moines, Northern & Western Railroad and property with the United

States Trust Company, Trustee of the General Mortgage of this Company dated May 1st, 1889, and to request the certification and delivery to this Company of $2,467,000 in amount of General Mortgage Bonds in accordance with the requirements of said mortgage.

"The Vice President read for information of the Committee, letter dated 7th June from Secretary Myers, which states that the deed to this Company made by the Des Moines, Northern & Western Railroad Company, and the release of the mortgage of that Company have been duly recorded and returned to him; also that the General Mortgage of this Company has been recorded in all the counties in which the Fonda and Spencer line and the Rockwell City and Storm Lake line will be built."

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470 Executive Committee, June 29, 1899:

"The Vice President reported that official notice by circulars dated June 26th had been issued taking over the Des Moines, Northern & Western Railroad, and announcing that from July 1st that line would be operated as a part of the St. Paul Lines to be known as the Des Moines Division."

Executive Committee, December 12, 1901:

"On motion, duly seconded, it was

"Resolved, that the item of $4372.50 standing on the balance sheet for stock of the Des Moines, Northern & Western R. R. Co. be written off to cost of road."

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471 **Defendants' Exhibit 226.**

Wabash, St. Louis & Pacific Railway Company.

Adjourned Meeting of Directors.

March 23, 1881.

Whereas, James F. How, has at the request and for the benefit of the Wabash St. Louis & Pacific Railway Co. subscribed for the entire Capital Stock of the St. Louis and Des Moines R. R. Co. with the exception of four shares and executed a contract with said Company for the construction of its railroad from Albia to Des Moines, therefore,

Resolved, That this Company will protect and save the said James F. How harmless from all personal liability as the subscriber for and holder of said stock or as a party to said contract for the construction of said railroad.

Whereas, James F. How has been requested to subscribe in his own name for the entire Capital stock of the St. Louis Jerseyville and Springfield Railroad Company of Illinois and hold said stock as an agent of this Company, and

Whereas, he has also been requested as such agent, to enter into a contract with said St. Louis Jerseyville and Springfield Railroad Company for the construction of its line of railroad, now therefore

Resolved, that the Wabash St. Louis and Pacific Railway Company will protect and save said James F. How harmless from all personal liability to any person or persons whomsoever either as the subscriber for or as holder of said stock or as a party to any contract made for the construction of said railroad.

472

Defendants' Exhibit 227.

Wabash, St. Louis & Pacific Railway Company.

Regular Meeting Executive Committee, December 26, 1882.

Voted. That the securities of this Company as given in the list furnished by the 2nd Secretary and copied in these records below, which are not already held in trust, be deposited with the Mercantile Trust Co. as soon as practicable to secure the payment of any and all unpaid notes of this Company which have been or may be endorsed by Jay Gould, Russell Sage, Sidney Dillon, and Solon Humphreys, including such transfer of the fee or ownership of the Rolling Stock held by the N. Y. & Pacific Car Trust Association as can be legally conveyed by said Car Trust Association and confirmed by this Company.

LIST OF SECURITIES.

Stock in St. Louis & N. O. Transportation Co	$	100,000
" " American Refrigerator Co		14,985
" " Union Elevator Co		35,416 67
" " Union Depot Kansas City		7,666 66
" " " " St. Louis		1,000
" " " " Hannibal		6,000
Miscellaneous Securities Union Bridge Co. Bonds &c		27,794 39
Bonds, Havana R. & Eastern R		5,012 75
Stock " " " " "		246,856 67
" Des Moines & Northwestern		2,801 57
Bonds, Toledo P. & Western 1st. Income		1,711,000
" " " " " 2nd. "		728,000
Stock, Champaign H. & W. ($1,632,850.)		1,306,280
" Toledo Peoria & W. ($1,212,900.)		404,300
Bonds Humeston & Shenandoah 1st. Mtge		951,000
" General Mtge		1,000,000
" Mtge. 7s of 1879		400,000
" Detroit Division		199,000
" Peoria & P. Union R		42,000
Stock " " " "		500,000
Stock Chicago & Western Indiana		1,000,000
" St. Louis Bridge & Tunnel Co. (½)		1,250,000
Real Estate in Des Moines		300,000
Securities in Terry Trust consisting of Steamers, Rolling Stock and Real Estate in Chicago		1,100,000
		$11,339,113.71

475 **Defendants' Exhibit 22[illegible].**

Wabash Western Railway Company.

Extract from minutes of meeting of Board of Directors of Wabash Western Railway Co.

March 14, 1887.

General Hubbard brought the matter of the sale of the Des Moines Northwestern Railway Co. to Messrs. Polk & Hubbell, before the Board and after some discussion the following resolution was adopted.

Resolved, that the conditional agreement which the Purchasing Committee have heretofore entered into with Messrs. Polk & Hubbell for the resale of the Des Moines Northwestern Railway Co. be, and the same is hereby approved and confirmed, and the said Purchasing Committee is hereby directed to consummate the same, it being understood that no part of the Car Trust Equipment is included in said agreement.

The said agreement being as follows:

"New York, October 9, 1886.

"To the Purchasing Committee of the Wabash, St. Louis and
"Pacific Railway Co.

"Gentlemen:

"We make the following proposition in regard to the Des Moines Northwestern Railway. The mortgage to be foreclosed to cover all advances made by the Wabash Company to D. M. N. W. R'y. Co. A good and perfect title free from all liens and encumbrances, including all claims the Receivers may have against it, to be made to Polk & Hubbell for said Railway and all its property, rights, franchises, all its (interest) in the equipment and a one-fourth interest in the terminal property at Des Moines and 5037 shares (of stock) in the D. M. N. W. R'y. Co.

Upon the delivery of the property above named in the condition as to title as above specified, Polk & Hubbell are to pay the Committee a $450,000 first mortgage 5% bond.

476 The issue to be only $450,000 and to be secured by a first mortgage on the property conveyed, to-wit: on that part of said railway lying between Farnham Street in Des Moines and the town of Fonda, and equipment. To run two years from the time the title is delivered to Polk & Hubbell and to be redeemable at their option at any time before maturity, upon payment of principal and accrued interest, and if paid within one year from the time the title is delivered to Polk and Hubbell, then $450,000 cash shall discharge said mortgage and debt. Polk & Hubbell to have all the stock of the new Company. As soon as the contract is completed Polk & Hubbell are to make arrangements to standard gauge the road. If accepted, the details and plan of carrying out the above is to be agreed upon and embodied in a contract to be signed by the necessary parties.

((Signed) POLK & HUBBELL."

"New York, October 9, 1886.

The foregoing proposition is satisfactory to us and we agree as a Committee acting under the contract of July 15, 1885 between ourselves and certain bondholders to take all measures in our power to have the same fully performed.

(Signed) O. D. ASHLEY,
" THOS. H. HUBBARD,
" EDGAR T. WELLES."

477 **Defendants' Exhibit 229.**

Extract from report of Charles M. Hays, General Manager, to J. F. How, Vice-President, Wabash Western Railway Co., dated February 25, 1888, and embodied in the annual report presented to the Stockholders of said Company at the annual meeting, held March 13, 1888.

There has also been erected during the year an addition of fifteen stalls to roundhouse at Moberly, at a cost of $15,625.79

Fifteen-stall roundhouse at Des Moines, Ia. (which will be conveyed, with other property at that point, to the Des Moines Union Railway Co.).$12,472.96

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478 **Defendants' Exhibit 230.**

The Wabash Railroad Company.

Executive Committee Meeting. December 17, 1889.

The President reported an offer the Purchasing Committee had received from Mr. F. M. Hubbell of $300,000 in cash for the Des Moines Northwestern Road now represented by $450,000 in Bonds in the hands of the Purchasing Committee. After some discussion, and without taking formal action, the members of the Committee declined to advise acceptance of the proposition by the Purchasing Committee.

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479 **Defendants' Exhibit 231.**

The Wabash Railroad Company.

Directors' Meeting, February 18, 1890.

The President on behalf of the Committee appointed by the Executive Committee January 28th, to consider Mr. Hubbell's proposition of $350,000 cash for the Des Moines & Northwestern Bonds, stated that a counter proposition, subject to the approval of the Board, had been made to Mr. Hubbell for the sale of the Bonds for $400,000, $115,000 of which was to be paid in Des Moines Union Railway Company Bonds, and the balance in ten cash payments of $28,500 each with interest on the latter from March 1, 1890, at 6% per annum; Mr. Hubbell to have until March 1st. the option of accepting or declining this proposition.

On Motion, the reports were accepted and the proposition of the President to Mr. Hubbell approved.

480

Defendants' Exhibit 232.

The Wabash Railroad Company.

Directors' Meeting, March 3, 1890.

The President stated that the proposition which he had made for the sale of the Des Moines & Northwestern bonds to Mr. F. M. Hubbell, had been accepted by the latter; and requested the Board to authorize the execution of the following agreement:

Referring to a conditional contract dated October 9, 1886, between Messrs. Polk & Hubbell, of the one part, and the Wabash Purchasing Committee, so called, of the other part, and to an agreement dated September 10, 1887, made between the same parties, and to an agreement dated May 29, 1888, signed by the Central Trust Company of New York, and assented to by said Purchasing Committee, and to an agreement dated May 15, 1889, between said Purchasing Committee and the Des Moines & Northwestern Railway Company, the parties interested in said agreements do hereby covenant, undertake and agree as follows:

First. F. M. Hubbell of Des Moines, Iowa, agrees to buy and does hereby buy from the said Purchasing Committee forty-five First Mortgage bonds of the Des Moines & Northwestern Railway Company, each for the principal amount of $10,000, being the same bonds now held by said Central Trust Company, and mentioned in said agreement of May 29, 1888.

Second. The said F. M. Hubbell agrees to pay for said bonds as follows; to-wit: He will pay and deliver to the said Purchasing Committee when this agreement is signed bonds of the Des Moines Union Railway Company of the par value
481 of $115,000. Of said last mentioned bonds $112,000 par value are held in trust by Wager Swayne, and the said Hubbell agrees to have said trust discharged so that said bonds may be delivered unconditionally to the said Purchasing Committee; to whom also the said Hubbell will deliver other bonds of the same issue of $3000 par value. The said Hubbell will also pay to said Purchasing Committee $285,000 in ten monthly instalments as follows, to-wit: April 1, 1890, $28,500; May 1, 1890, $28,500; June 1, 1890, $28,500; September 1, 1890, $28,500; October 1, 1890, $28,500; November 1, 1890, $28,500; December 1, 1890, $28,500; January 1, 1891, $28,500; February 1, 1891, $28,500; March 1, 1891, $28,500. As evidence of his indebtedness for said payment said Hubbell will make and deliver to said Purchasing Committee his ten promissory notes for the several amounts and falling due on the several dates hereinbefore mentioned, and each of said notes shall bear in-

terest at the rate of six per cent per annum from March 1, 1890, until paid. It is understood and agreed that said Hubbell may, at his pleasure, anticipate payment of any of the amounts above mentioned and thereby stop interest thereon.

Third. The said Purchasing Committee agrees to sell to said F. M. Hubbell the said forty-five First Mortgage Bonds of the Des Moines & Northwestern Railway Company each for the principal amount of $10,000 as aforesaid, and to assign and transfer, as said Committee hereby does to said F. M. Hubbell all the rights of said Committee with respect to said forty-five bonds in consideration of the payments to be made by said Hubbell as hereinbefore specified and to deliver to said Hubbell $45,000 par value of said Des Moines & Northwestern Railway Company bonds (being one-tenth of the total
482 amount thereof) upon the payments by said Hubbell of each one of the notes above mentioned with interest as aforesaid.

Fourth. Polk & Hubbell and the Des Moines & Northwestern Railway Company assent to this agreement and release the said Purchasing Committee and its individual members from all liability in respect to all or any of the agreements mentioned in the preamble to this contract, so far as such liability might otherwise be charged upon the estate of said Committee not heretofore conveyed and so far as the members of said Committee might otherwise be individually liable. It is, However, expressly understood and agreed by both the parties hereto that nothing herein contained is meant or shall be construed to release or waive any agreement or liability made or assumed by said Committee and which by the terms of any decree of Court or conveyance by said Committee has been charged upon any property whatever which said Committee has heretofore purchased or conveyed. And the said F. M. Hubbell joins in said release, in consideration that the Wabash Railroad Company agrees to perform said contracts so far as they are not superseded hereby and so far as said Purchasing Committee would otherwise be bound to perform the same and to protect and hold harmless the parties to said agreements to the same extent that the said Purchasing Committee would be bound to protect them and hold them harmless if this release had not been made.

Fifth. In consideration of the premises and in consideration also of its interest in the bonds of the Des Moines &
483 Northwestern Railway Company and of its obligation to protect the said Purchasing Committee in respect to the several contracts and agreements herein mentioned, which it hereby recognizes and acknowledges, the Wabash Railroad Com-

pany by authority of its Board of Directors undertakes and agrees to perform the several agreements and the conditional contact mentioned in the preamble to this contract so far as the same are not superseded by this contract and so far as the said Purchasing Committee would be bound to perform the same if not released by the last preceding article hereof; and agrees to protect and hold harmless Polk and Hubbell, F. M. Hubbell and the Des Moines & Northwestern Railway Company against any claims or liens which may exist upon any of the property sold by said Purchasing Committee to Polk and Hubbell or to the Des Moines & Northwestern Railway Company according to the true meaning and intent of the agreements mentioned in the preamble to this contract, and especially to protect them against the claim of the Des Moines & Fort Dodge Railroad Company now pending in the supreme court of the United States as cause numbered 256 on the calendar of said Court and against all claims that may arise from any of the matters mentioned or referred to in said cause numbered 256 aforesaid.

Sixth. The Central Trust Company of New York hereby assents to this contract in consideration that the Purchasing Committee delivers to it the $115,000 bonds of the Des Moines Union Railway Company and the ten notes of F. M. Hubbell hereinbefore mentioned to be held by the Central Trust
484 Company as collateral security for the indebtedness to it of said Purchasing Committee.

In Witness Whereof, the several individuals, parties to this contract have hereunto set their names and affixed their seals, and the several corporations, parties hereto, have caused these presents to be signed by one of their officers and their seals to be affixed and attested by their respective Secretaries this first day of March 1890.

Upon Motion, duly seconded, the agreement was ratified and confirmed, and the officers of the Company were authorized to execute the same.

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485 **Defendants' Exhibit 233.**

The Wabash Railroad Company.

Directors' Meeting, June 2, 1890.

President Ashley stated that he had received two propositions from Mr. Willard T. Block, President of the Chicago, Fort Madison & Des Moines R'y. Co., for the purchase of the line running from Albia to Des Moines, now held by the Purchasing Committee; that the first proposition was $7,000 per

mile, one half in cash and one half in the five per cent bonds of the Chicago, Fort Madison & Des Moines R'y Co., to be issued at the rate of $20,000 per mile on the line from Fort Madison to Des Moines. The second proposition was $7,000 per mile, $100,000 to be in cash, and the balance, secured by the line purchased, to be paid in not less than three years: One eighth of the Des Moines Terminal R'y. Company Capital Stock to go with the line purchased under either proposition.

Upon Motion, duly seconded, Mr. Block's propositions were referred to the Executive Committee with power.

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486 **Defendants' Exhibit 234.**

The Wabash Railroad Company.

Directors' Meeting, October 22, 1895.

Whereas, The Des Moines & St. Louis Railroad Company, a corporation organized under the laws of Iowa, did on or about the first day of December, 1881, execute a certain deed of trust or mortgage whereby it conveyed to the Central Trust Company of New York and James Cheney, trustees, all its railroad, extending from the eastern boundary of the City of Des Moines to Albia, and all situated in the counties of Polk, Marion and Monroe in said State of Iowa, together with the appurtenances of said railroad as the same are in said mortgage described; and,

Whereas, Said deed of trust or mortgage was executed to secure certain bonds, known as the General Mortgage Bonds of the Wabash, St. Louis & Pacific Railway Company; and,

Whereas, All the general mortgage bonds of said Wabash, St. Louis and Pacific Railway Company have since been surrendered and cancelled; and,

Whereas, The Wabash Purchasing Committee, composed of James F. Joy, Thomas H. Hubbard, O. D. Ashley, and Edgar T. Welles, now hold all the capital stock of said Des Moines and St. Louis Railroad Company in trust for the Wabash Railroad Company;

Now, Therefore, In consideration of the premises, be it

Resolved, By the Board of Directors of the Wabash Railroad Company, that the Central Trust Company and James
487 Cheney, trustees, be, and they are hereby, requested to execute and deliver to the Des Moines & St. Louis Railroad Company a proper deed remising, releasing and quitclaiming unto said Des Moines & St. Louis Railroad

Company, its successors and assigns, all the right, title, interest, estate, claim and demand which they, or either of them, acquired, or now hold in or to the said Des Moines and St. Louis Railroad, by, through or under the aforesaid deed of trust or mortgage to them executed, as aforesaid, on or about said first day of December, A. D. 1881.

488

Defendants' Exhibit 235.

The Wabash Railroad Company.

Directors' Meeting, March 7, 1899.

New York, March 7, 1899.

"To the Board of Directors,
"Wabash Railroad Company,
"New York, N. Y.

"Gentlemen,

"In order to facilitate the adjustment and final settlement "of (the) accounts of the Wabash Purchasing Committee, and "at the same time vest the legal title to all the capital stock "and property of the Des Moines & St. Louis Railroad Com- "pany in the Wabash Railroad Company for an adequate con- "sideration, after which said capital stock and railroad can be "properly pledged and mortgaged by the Wabash Railroad "Company as security for its proposed issue of bonds to an "amount not exceeding One Million Eight Hundred Thousand "dollars to be known as First Mortgage Gold Bonds, Des "Moines Division, 'we, the undersigned, surviving members of "said Committee, submit to you the following propositions:

"1st. We will make deeds or other proper instruments as- "signing and conveying to The Wabash Railroad Company all "the Capital Stock of said Des Moines & St. Louis Railroad "Company, and also conveying to the Wabash Railroad Com- "pany all our rights, title, interest and estate in and to the "Des Moines & St. Louis Railroad, extending from the City "of Des Moines to 'Albia' in the State of Iowa, a distance of "about sixty-seven miles.

"2nd. In consideration of the assignment and conveyance "of said Capital Stock and railroad to The Wabash Railroad "Company as aforesaid, the Wabash Railroad Company shall "deliver to the undersigned, as such Purchasing Committee, as "soon as issued, six hundred and seventy (670) of the bonds of "said Company known as First Mortgage Gold Bonds, Des "Moines Division' or the proceeds thereof.

"3rd. The undersigned will then proceed, as soon as prac-
"ticable, to adjust their remaining accounts and make report
"thereof to your Board, as provided in a former report of the
"Committee made to and accepted by you, and the undersigned
"will then transfer, convey, assign, set over and deliver to the
"Wabash Railroad Company on the terms stated in said former
"report, all the remaining railroads, stocks, bonds, money and
"other things of value remaining in their hands or standing
"in their names as such Purchasing Committee.

"Very respectfully yours,

"(signed) O. D. ASHLEY,
"THOS. H. HUBBARD,
"EDGAR T. WELLES,
"Surviving members
"Wabash Purchasing Committee."

489 Upon Motion of Mr. McHarg, duly seconded,

Resolved, That the proposition of the Purchasing Committee, as contained in their communication to the Board, dated March 7, 1899, be, and the same is hereby accepted; and the Secretary is hereby directed to spread the same upon the records.

The following form of proposed mortgage, referred to in the above letter of Col. Blodgett, General Counsel, was submitted to the meeting:

(Here follows mortgage above referred to)

Upon Motion, of Mr. Wyckoff, duly seconded,

Resolved. That the form of the mortgage to secure the bonds of the Company to be known as "First Mortgage Gold Bonds, Des Moines Division," to the extent of One Million Eight Hundred Thousand Dollars upon the property therein described, be and the same is hereby approved; and the President and Secretary are hereby authorized and directed to execute on behalf of this Company, said mortgage and the bonds therein described, and to deliver same to the Continental Trust Company of the City of New York, Trustee.

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490 **Defendants' Exhibit 236.**

The Wabash Railroad Company.

Stockholders' Meeting, October 10, 1899.

Whereas, The Board of Directors and Officers of this Company have executed its bonds for the sum of One Million

Eight Hundred Thousand Dollars ($1,800,000), dated January 1, 1899, and due fifty (50) years after date, with interest at the rate of four per cent per annum, payable semi-annually, on the first days of January and July of each year, and have secured the same by a mortgage or deed of trust to the Continental Trust Company of the City of New York, as Trustee, on the Des Moines Division of the Wabash Railroad, extending from the City of Des Moines, through the Counties of Polk, Marion, Monroe and Appanoose, to Moulton in the State of Iowa, and on the Hannibal and Quincy Railroad, extending from East Hannibal, through the Counties of Pike and Adams, to the City of Quincy, in the State of Illinois, as said roads are now, or may be hereafter constructed, maintained and operated, and of all the franchises, real estate rolling stock and other property and appurtenances of said roads, as the same are in said mortgage described, and which said mortgage is in words and figures as follows, to-wit:

(Here follows mortgage above referred to.)

And, Whereas, By the terms of said mortgage or deed of trust the bonds of the Company therein described can only be issued to the extent of One Million Six Hundred Thousand Dollars ($1,600,000), until such time as a majority in
491 interest of all the Stockholders of the Company shall, after sixty days' notice duly published, at a regular meeting, or at a special meeting duly called for that purpose, by resolution ratify and confirm said mortgage and expressly declare their intention and consent to have it operate as a lien upon all and every part of the property therein described for the equal benefit of the holders of all said bonds, to the full amount of One Million Eight Hundred Thousand Dollars ($1,800,000).

Now, Therefore, Be It Resolved, That said mortgage is hereby in all things ratified and confirmed, and then the bonds therein described shall have been issued to the amount of One Million, Eight Hundred Thousand Dollars ($1,800,000) in accordance with the terms and conditions of said mortgage, we hereby declare our intention and consent to have said mortgage operate as a first lien upon all and every part of the property therein described for the equal benefit of the holders of all said bonds to the full amount of One Million Eight Hundred Thousand Dollars.

492 **Defendants' Exhibit 237.**

The Wabash Railroad Company.

Directors' Meeting, Oct. 5, 1897.

The following agreement which had been executed on behalf of The Wabash Railroad Company was presented to the Board.

(There is here inserted a copy of the agreement Exhibit No. 37 to the stipulation filed herein March 23, 1911.)

Mr. Ramsey stated that the reason for ratifying the old Des Moines Union contract was due to the fact that the Des Moines & St. Louis was the only Company bound by the old contract, as the Des Moines Northern & Western, having passed through the receivership, and been reorganized, it was not bound by the old contracts, and therefore in order to protect the interests of the Wabash and bind the Des Moines Northern & Western to bear its share of fixed charges, rental and expenses, the Wabash desired their ratification of the old contract, and after a number of meetings, the Des Moines Northern & Western agreed to ratify the old contract. In order to make the ratification complete it was thought best that the Des Moines Union, and Des Moines & St. Louis, and the Wabash Company, as operating the Des Moines and St. Louis, all become parties to the ratification; that there was no change in the terms of the old contract and that the ratification can only be in the interest of the Wabash Company, not only as a user of the property, but on account of increasing the value of the bonds held by the Purchasing Committee.

Upon Motion, duly seconded, Resolved, That the agreement dated July 31st, 1897 between the Wabash Railroad Co., the Des Moines Union Railway Company, and the Des Moines Northern & Western Railroad Company, ratifying and confirming the agreement made May 10, 1889, by the Des
493 Moines Union Railway Co. the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & Northwestern Railway Company, for the use of the terminal facilities etc. of the Des Moines Union Railway Company, is hereby approved, confirmed and ratified.

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494 **Defendants' Exhibit 238.**

The Wabash Railroad Company.

Purchasing Committee meeting, August 16, 1898.

To the Board of Directors of The Wabash Railroad Company:

Your Purchasing Committee, established and continued under an agreement entered into by them with the General Mortgage and Collateral Trust Bondholders of the Wabash, St. Louis & Pacific Railway Company, dated July 15, 1885, and under an agreement entered into between Henry K. McHarg, John T. Terry, Cyrus J. Lawrence and T. B. Atkins, called therein the Bondholders' Committee; James F. Joy, G. D. Ashley, Thomas H. Hubbard and Edgar T. Welles, called therein the Purchasing Committee; the Central Trust Company of New York and the Wabash Western Railway Company, called therein the Railroad Company, dated November 21, 1887; beg leave to submit for your information and for the information of the Bondholders and Stockholders of the Company, the following, as the final report and statement of their accounts in the premises:

First: As such Committee they received from the properties and assets mentioned in the 6th Sections of said agreements, sums of money as follows:

Contributions from holders of General Mortgage and Collateral Trust Bonds of the Wabash, St. Louis & Pacific Ry. Co....	$	493,760.55
Contributions from holders of Preferred and Common Stock, ..		3,399,785.86
Penalties on delayed subscriptions,		20,194.00
Interest on delayed subscriptions, .		13,590.51
Sale of Des Moines & Northwestern R. R.		288,420.00
495 Interest on delayed payments, Des Moines & Northwestern Railroad, ...	$	23,343.67
Sale of St. Louis, Jerseyville & Springfield Railroad, ...		170,000.00
Interest on delayed payments St. Louis, Jerseyville & Springfield R. R.		7,218.33
Sale of Hunneston & Shenandoah R. R. Bonds		450,000.00
Coupons of Hunneston & Shenandoah R. R. Bonds, ...		46,970.00

Surplus earnings of Hunneston & Shenandoah Railroad, ...	17,500.00	
Sale of Peoria, Pekin & Jacksonville & Springfield & Northwestern R. R., ...	1,170,000.00	
Interest on deferred payments, Peoria, Pekin & Jacksonville & Springfield & North Western Railroads, ...	25,392.41	86,126,173.22

Second. The Committee received from miscellaneous sources funds, as follows:

Receivers' checks not presented for payment, ...$	163.30	
Money advanced to Special Master, Edmund T. Allen, and refunded to Committee, ...	13,202.39	
Insurance paid by Receiver McNulta and refunded to Committee, ...	8,637.96	
Money advanced to pay judgment of James Short vs. W., St. L. & P. Ry. Co. and refunded to Committee, ...	9,348.47	
Refund of balance advanced to Chicago & Western Indiana R. R. Co. in March, 1886, with which to pay judgment for personal injuries, ...	1,279.97	
From sale of Wabash Railroad Company's First & Second Mortgage Bonds, ...	6,123,989.16	
496 From sundry bills and pooling balances, ...$	676.77	
From Post Office fines remitted, ..	587.16	
From subsidies voted to St. L., J. & S. R. R., ...	24.90	
Surplus Earnings Champaign & Southeastern Ry, ...	3,589.24	

From sale of bonds and stock, Des Moines Union Ry Co., ...	382,743.89
From sale of steamer Morley, ...	20,000.00
From sale of lots in St. Joseph, Mo.,	25,000.00
From sale of stock St. Joseph, T. D. Co., ...	3,500.00
From sale of stock Miss. Valley Trans. Co., ...	87,000.00
From sale of stock Peoria & Pekin Union Ry. Co., ...	50,000.00
From sale of land in Chicago,.....	48,765.82
" " " " " Peoria,.....	20,000.00
From sale of stock Quincy Bridge Co., ...	6,825.00
From sale of lots in Quincy, ...	5,125.00
From sale of one bond Great Western Ry Co., ...	1,113.70
From sale of bonds Havana, Rantoul & Eastern R. R. Co., ...	4,875.00
From sale of three bonds, Chicago Division, ...	4,086.87
From sale of one share Memphis Cotton Exchange, ...	224.63
From sale of one Chicago & Erie Income Bond, ...	516.25
From sale of Chicago & Erie Scrip,	70.00
From sale of one old table, ...	10.00
From profit on Debenture Scrip	28.00
697 From profit on Lake Erie Transportation Company's Bonds, ...$	96.25
From dividends on Peoria & Pekin Ry. Stock, ...	27,000.00
From dividends on stock Quincy Bridge Co., ...	3,822.70

From dividends on stock Miss. Valley Trans. Co., ...	32,480.00
From dividends on stock Kansas City U. D. Co., ...	20,000.00
From rentals on Chicago property,	13,384.83
From rentals on property in Quincy, ...	800.00
From rebates Toledo & Wabash Elevator Co., ...	12,404.77
From subsidies Quincy, Missouri & Pacific R'y. Co., ...	2,282.94
From surplus earnings Detroit Division, ...	62,431.89
From James F. Joy on account surplus Detroit Div., ...	3,450.13
From interest on sundry securities bought for Purchasing Committee, ...	18,118.06
From interest allowed by Central Trust Co. on deposits, ...	5,413.43
From interest allowed on deposits, ...	73,196.48
From interest on bonds and stock Des Moines Union R'y. Co., ..	103,773.22
From interest on bonds Lake Erie Trans. Co., ...	1,951.96
From interest on Bonds Des Moines Northwestern R. R. Co., ...	360.00
From net earnings American Refrigerator Transit Co., ...	41,956.65
From interest on dividends Quincy Bridge Co., ...	1,039.91

498	From rent on property in Burlington and Peoria, ...$	55,528.30	
	From surplus earnings and rentals Lake Line steamers, ...	53,519.43	
	From interest on Wabash Railroad First Mortgage Bonds, ...	21,687.50	
	From interest on Wabash Railroad Company's Second Mortgage Bonds, ...	9,300.00	
	From overdue coupons Wabash Railroad Second Mortgage Bonds, ...	1,512.50	
	From interest on bonds Chicago Division deposited at par, ..	343.41	
	From detached coupons when bonds were issued, ...	781.00	
	From Receiver Clarinda Branch on account rental of rolling stock, ...	2,965.16	
	From Des Moines Union R'y Co..	110.80	
	From condemnation of right-of-way, ...	100.00	7,395,254.64

Third. The Committee has paid out on account of advances made by the Central Trust Company of New York, and on account of interest on certificates issued by said Trust Company; on account of indebtedness incurred by the Receivers and by the Committee, as their successors, and on account of the expenses of re-organizing the main lines purchased, under the name of The Wabash Railroad Company, sums of money as follows:

	To Humphreys & Tutt, Receivers (under order of Court) to be applied on their indebtedness, ...	2,811,853.39	
499	To Central Trust Company of New York for payment of interest on First Mortgage Bonds, rendered necessary on account of inadequate earnings of East lines while in possession of Receivers, ...	4,153,556.78	

Less coupons collected from Receiver McNulta	516,410.88			
Coupons on Detroit Div.	112,358.37			
Coupons on Wab. R'y "Sevens"	14,000.00	642,769.25	3,510,787.53	
On account of liabilities of McNulta, Receiver			208,983.57	
On account of expenses of incorporating Wabash Western R'y Co			45,025.00	
On account of expenses of incorporating Wabash Railroad Company			52,000.00	
On account of payments to Trustees of mortgages			18,500.00	
On account of legal expenses, Court Costs, etc.,			352,946.42	
On account of reorganization expenses			488,259.67	
On account of loss in operating Des Moines & St. Louis Railroad			279,996.57	
On account of loss in operation Attica, Covington & Southern R. R			8,167.06	
On account of loss in operation Des Moines & Northwestern Railroad			1,988.12	
On account of interest paid on advances			129,877.56	
On account of interest on advances by Wabash Railroad Company			221,693.08	
On account of claim of Omaha & St. Louis R. R. Co. for use of rolling stock by Humphreys & Tutt, Receivers			52,280.96	
On account of sundry judgments against Receivers			27,085.52	8,200,441.45

500 Fourth. The Committee has paid out on account of miscellaneous transactions connected with the discharge of their duties under said agreements, sums as follows:

For mortgage bonds and accrued interest not coming in under reorganization agreement,	$4,846,897.76	
For interest on Wabash Railroad Company's First Mortgage Bonds, accrued prior to July 1, 1889,	277,158.34	
Interest on Burlington Real Estate notes,	40,580.00	
Burlington real Estate Notes, reduction of principal,	12,000.00	
Taxes on property in Chicago and Burlington,	41,805.06	
Proportion cost Round House, Des Moines,	6,116.80	
Supplies turned over to Des Moines Union R'y,	8,425.00	
Building sidewalk at Albia,	24.15	
Expense in connection with Burlington real estate,	32.37	
Recording deed to Peoria property,	2.75	
For one share of C. & W. I. Stock for voting Director,	100.00	
Advances to Lake Erie Transportation Company, account sinking Fund,	75,577.81	
On account of loss in operation Eel River Railroad,	39,597.86	5,348,317.90

501 **Recapitulation.**

Receipts from asset mentioned in Sixth Sections, of said agreements,.....	$6,126,175.33	
Expenditures for the payment of which certain properties were pledged under 6th Section of Agreement of Nov. 21, 1887,..	8,209,444.45	
Expenditures in excess of receipts,		$2,083,269.12
Receipts from Miscellaneous sources	$7,395,254.64	
Miscellaneous Expenditures,.....	5,348,317.90	
Miscellaneous Receipts in excess of Expenditures		2,046,936.74
Net Excess of Miscellaneous Expenditures over Receipts, ...		36,332.38

Explained as follows:

Balance due Wabash R. R. Co.,..	$ 37,841.61	
Less:		
Cash on hand March 1, 1898,....	1,509.23	36,332.38

Fifth. Your Committee now has in its hands and standing in its name, the property and assets described in the schedule hereto attached, marked "Schedule A," all of which they are ready to assign, transfer and deliver to The Wabash Railroad Company or to such other person, or persons, as The Wabash Company may direct, upon receiving proper indemnity against any and all claims that may exist or that may at any time be asserted against them, or any of them, as such Committee, or as a member of such committee.

They also submit herewith a form of conveyance and assignment of said property and assets, and of all other property and assets coming to them as such Committee, which the several surviving members are ready to execute and deliver
502 to The Wabash Railroad Company, or to such other person or persons, as The Wabash Railroad Company may direct, upon being indemnified as aforesaid.

Since the organization of your Committee, Mr. James F. Joy of Detroit, one of its most valued members, has departed this life, and this report is, therefore, submitted by the undersigned as the surviving members thereof.

And, having fully discharged the trusts devolving upon them under said agreements, the Committee asks that this, their final report, be accepted, and that they be severally, and as such Committee discharged from all further obligations, liabilities and duties under the same.

O. D. ASHLEY,
THOS. H. HUBBARD,
EDGAR T. WELLES.

"Schedule 'A'."

List of Real Estate and Personal Property now in the hands, or standing in the name of the Wabash Purchasing Committee.

Real Estate.

Lots in Burlington, Iowa, Des Moines County:

All of lots No. 13, 13a, 14, 15, 15a, 16, 17, 18, 19, 20, 21, 22, 23, and 24, in the City of Burlington, according to the original plat and survey of said City, subject to mortgage for $56,000.

503 Real Estate in Pekin, Illinois, Tazewell County:

Lots 8 and 8, Block 41, and lot 9 in Block 40, in the City of Pekin, with all the side tracks and improvements situated thereon, and also all side tracks lying west of the track formerly known as the "Main track" of the Peoria, Pekin & Jacksonville R. R. Co., and situated between Elizabeth Street and Susanah Street in said City of Pekin, County of Tazewell, and state of Illinois.

Real Estate in Quincy, Illinois, Adams County:

Block Nos. 4, 5 and 6 of Henry Von Phul's Subdivision of the fractional Sectional Section No. 10 and that part of the northwest quarter of fractional section 11, all in Township 2, South, Range 9 west of 4th P. M., which lies west of Front Street in the City of Quincy, Adams County, Illinois, as laid off by said Von Phul on September 10, 1852.

Also

A tract of land situated in the City of Quincy, County, of Adams and State of Illinois and being a part of the south

½ north west ¼, section 35, Township 1 South, Range 9 west, more particularly described as follows: Beginning at a point 50 rods north of the southwest corner of the northwest ¼, section 35, Town and Range aforesaid, thence running north along the west line of said quarter section 30 rods, thence east to the west line of the Third Street in the City of Quincy, produced north, thence south along the west line of said Third Street produced, 30 rods, thence west to the place of beginning, containing about ten acres more or less. Excepting out of the above described premises so much as has heretofore been conveyed to the Northern Cross Railroad for a right of way.

Real Estate in the City of Chicago:

All of lots 1, 2, 3, 4, 5 and 6, Block 9, in Springer & Fox's addition to Chicago.

Also

All that part of lot 32 in the Assessors Division of the N. W. ¼ and the W. ½ of the N. E. ¼ of section 32, T. 39, N. R. 14 East of the 3rd P. M. lying east of the center of the South Branch of the Chicago River.

Also

All of lot or block 13 in the Assessors Division of the N. W. ¼ and West ½ of N. E. ¼ of Section 32, T. 39 N. R. 14 east of the 3rd P. M.

504 In Brown's addition to Chicago, situate in N. E. ¼ Section 32, T. 39 R. 14 E. All of lots 8, 41 and 42 in Block 3 of said addition.

Lots 8, 9, 32, 39, 40, 41, 43, 44, 47 and 48 in Block 4 of said addition.

Also

In Gallagher's Subdivision of S. ½ Block 9, Canal Trustees Subdivision of section 33, T. 39 N. R. 14 east of 3rd P. M.

All of Lots 19, 20, 27 and 28 in Block 2 of said Subdivision.

All of lots 23, 24, 31, and 32 in block 1 of said Subdivision.

Also

In T. J. Foster's Subdivision of part of block 10 in Canal Trustees Subdivision of section 33, T. 39 N. R. 14 East of 3rd P. M.

Lots 1 and 37 in Block 1,

Lots 1 and 37 in Block 2.

Also

In Gano Subdivision of part of block 10 in Canal Trustee Subdivision of section 33, T. 39, N. R. 14 East of 3rd P. M.

Lots 46, 47 and 48 of said block 10.

Also

In Assessors Division of Block 11 of Canal Trustees Subdivision of section 33, T. 39, N. R. 14 east of 3rd P. M.

Lots 61, 62, 99 and 100 of said block 11.

Personal Property and Assets.

20,000	shares of stock of the Des Moines & St. Louis R. R. Co., Estimated value,	$450,000.00
750	shares of stock of the Attica, Covington & Southern R. R., Estimated value,	143,800.00
995	shares of stock of the Champaign & Southeastern R. R., Estimated value,	116,600.00
	Balance due on sale of Peoria & Pekin Union R'y. Stock,	100,000.00
505	Balance due on sale of the St. Louis, Jerseyville & Springfield R. R., not considered available,	$ 80,000.00
4,000	shares of the stock of the Lake Erie Transportation Co.	

State of Missouri, }
City of St. Louis } ss.

E. B. Pryor, states that he is the Assistant Auditor of The Wabash Railroad Company; that he has examined in detail the books and accounts of the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, and also the attached report of said Committee to the Board of Directors of The Wabash Railroad Company, and he believes said report to be correct.

E. B. PRYOR,
Assistant Auditor,
Wabash Railroad Company.

Subscribed and sworn to before me, the undersigned Notary Public within and for the City of St. Louis, State of Missouri, this 16th day of July, 1898.

In Testimony Whereof I have hereunto set my hand and official seal, the day and year aforesaid.

Commission expires Nov. 2, 1901.

Seal

B. C. WINSTON,
Notary Public City St. Louis, Mo.

506 Upon Motion, duly seconded, the following preamble and resolution were adopted:

Whereas, O. D. Ashley, Thomas H. Hubbard and Edgar T. Welles, the surviving members of the Wabash Purchasing Committee created under the agreements of July 15, 1885, and November 21, 1887, have submitted to the Board of Directors of The Wabash Railroad Company a final statement and report of their accounts and doings as such Committee, together with a schedule of the assets and property remaining in their hands and standing in their names, and a form of conveyance and assignment of all said property and assets, and of all other property and assets that have come to them, or in which they acquired any interest or estate, as such Committee, and which deed the several surviving members of said Committee are now ready to execute to The Wabash Railroad Company, upon receiving proper indemnity against any claims that may exist or that may at any time be asserted against such Purchasing Committee, or any member thereof; and,

Whereas, Said report, and the form of said conveyance and assignment are satisfactory to the Board of Directors; Now, Therefore, Be It

Resolved, That said final report and statement of the accounts and doings of said Committee under said agreements, be, and the same hereby are approved, and upon the execution by the surviving members of said Committee of a conveyance,
or assignment, to The Wabash Railroad Company of
507 the property and assets now in their hands and standing in their names, in the form submitted with their said report, they, and each of them, and the heirs, executors, administrators and assigns of them, and each of them, shall be, and they hereby are, forever released and discharged from all and every future liability and claim of every kind whatsoever, whether at law or in equity on account of said agreements, and on account of their acts and doings, and the acts and doings of each and all of them under said agreements or either of them. And in consideration of the conveyance and assignment by the surviving members of said Committee, of the aforesaid assets and property to The Wabash Railroad Company, said Company will assume, and does hereby assume, the payment of every debt, claim and liability of every

kind whatsoever now existing, or that may be hereafter adjudged against said Committee, or any member of said Committee, on account of any and every act, contract or thing done, made or suffered by them or either of them as such Committee, or as a member thereof; and The Wabash Railroad Company does hereby agree to indemnify and hold harmless the said Committee and each member thereof, their and each of their heirs, executors, administrators and assigns, from and against all claims that may at any time exist or be asserted against them, or either of them, in connection with or on account of any of the matters hereinbefore mentioned. And the proper officers of said Company are hereby authorized and directed to execute the conveyance above mentioned in evidence of the acceptance thereof by said Company.

508

Defendants' Exhibit 239.

The Wabash Railroad Company.

Directors' Meeting, April 4, 1899.

The following letter was read to the meeting:

St. Louis, March 18, 1899.

O. D. Ashley, Esq.
President, New York.

Dear Sir:—

In 1882 the Wabash, St. Louis & Pacific Ry. Co. bought from Hoyt Sherman of Des Moines the strip of land described in the enclosed deed, but the title was taken in the name of Col. James F. How, trustee, and in order to make it clear that How held as trustee for the Wabash Co., he executed a declaration of trust setting forth that as the Wabash Co. had paid the purchase money he held as its trustee.

It seems, however, that How never made any deed to any one, and while the records in Mr. Lincoln's office show that he had the declaration of trust, he has never been able to find it since the fire. The property in question was conveyed, in 1889, along with other lots in Des Moines, to the Des Moines Union Ry. Co., but the legal title still remained in How. Some months ago the facts were presented to me, and at my request Mrs. How and her two sons executed to the Wabash Railroad Company a quit claim deed of all their rights and interests.

I sent that deed up to Mr. Hubbell, and he now writes me that in order to complete their title they should have a quit claim from the Wabash Company to the Terminal Company.

I have therefore, prepared the enclosed deed for you to
509 execute for the Wabash R. Co.

I think it entirely right for you to do so, and Mr. Hubbell is quite anxious to have it done and placed on record before our new mortgage is recorded. The mortgage only covers our leasehold interests in the Des Moines terminals, but in order to satisfy Mr. Hubbell, who has been doing considerable for our accommodation in the past two or three weeks, I would be glad to have you sign and acknowledge this quit claim deed, and return same to me at your earliest convenience.

Very truly yours,

(Signed) WELLS H. BLODGETT.

The President stated that, to carry out Col. Blodgett's request without delay, he had executed the deed referred to, in accordance with the authority conferred by the following paper:

New York March 21, 99.

We, the undersigned, Directors of The Wabash R. R. Co. hereby authorize the President to execute on behalf of the said Company quit claim deed to the Des Moines Union Railway Co. and referred to in Col. Blodgett's letter of March 18 99 to President Ashley.

EDGAR T. WELLES
S. C. REYNOLDS
GEO. J. GOULD,
RUSSELL SAGE
510 THOS. HUBBARD
CYRUS J. LAWRENCE,
O. D. ASHLEY.

The following is a copy of the deed in question:

Know all Men by these Presents: That the Wabash Railroad Company, a consolidated corporation of the States of Missouri, Illinois, Indiana, Ohio and Michigan, in consideration of the sum of One Dollar in hand paid by The Des Moines Union Railway Company, a corporation of the State of Iowa, has quit claimed and released, and by these presents it does quit claim and release unto the said Des Moines Union Railway Company, all its right, title, interest and estate in and to the following described premises, situated in Polk County, and State of Iowa, to-wit:—

Commencing at a point on the section line eighteen hundred and eighty three (1883) feet south of north-west corner of Section No. eight (8) in township No. seventy-eight (78)

North Range No. Twenty-four (24) west, thence north 61½ east on a line parallel to and fifty (50) feet from the center line of the Des Moines Union Railway Company's track as now constructed five hundred and seventy-eight (578) feet; thence north 64½ east eight hundred (800) feet; thence north 58 east eight hundred and seventy-two (872) feet to the east line of lot number four (4) of the Official Plat of the Northwest quarter of said Section No. eight (8); thence south along said line one hundred and twenty-five feet to the north line of the right of way of the C. R. I. & P. Ry. Co., thence south 55 west along said right of way line of
311 said C. R. I. & P. Ry. Co. (which is fifty feet from center of track) twenty three hundred and thirty (2330) feet to the Section line; thence north along the Section line three hundred and fifteen (315) feet to the place of beginning.

In Testimony whereof, the Wabash Railroad Company has caused these presents to be signed in its name by its President and attested by its corporate seal, this 20th. day of March, A. D. 1899.

THE WABASH RAILROAD COMPANY,
By O. D. Ashley,
President.

Attest.
J. C. Otteson
Secretary.

Upon Motion duly seconded, the action of the Directors, set forth in the foregoing paper, and the action of the President, were confirmed and ratified.

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312 **Defendants' Exhibit 240.**

Wabash, St. Louis & Pacific Railway Company.

Adjourned Meeting of Purchasing Committee, New York, August 6th, 1886.

The question of the sale of the interest of the Committee in the Des Moines & Northwestern Ry. Co., having been introduced, Mr. Welles of the Sub Committee, appointed at the meeting of July 26th, made a verbal report advising the acceptance of the propositions made by Messrs. Polk and Hubbell; whereupon on motion of Mr. Ashley, it was

Voted That this Committee recommend the acceptance of the proposition of Messrs. Polk and Hubbell to buy the interest in the Des Moines Northwestern Railway Company for first mortgage six per cent bonds to the amount of $450,000.00 according to the terms and conditions understood by Mr. Joy;

the bonds to be guaranteed principal and interest by Messrs. Polk and Hubbell and the sale to include only one quarter of the terminal property formerly owned by the Wabash Railway Company and General Dodge; this sale leaving the Purchasing Committee or the new Wabash Company in possession and ownership of one-half of said terminal property.

Some discussion followed in regard to the proposed modifications of the proposition of the Purchasing Committee suggested by the Committee of the Bondholders, but no formal action was taken.

Adjourned,

O. D. ASHLEY, Secy.

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513 **Defendants' Exhibit 241.**

Wabash, St. Louis & Pacific Railway Company.

Meeting of Purchasing Committee, New York, Sept. 27, 1887.

The Secretary read two papers containing suggestions in regard to the transfer of the Des Moines & No. Western R. to Polk & Hubbell or the new Company and as to the formation and development of Terminal Company, to be called the Des Moines Union Company.

The suggestions in regard to the Des Moines & N. W. were as follows:

1st. The Purchasing Committee to turn over the possession of the Des Moines & N. W. Ry. to Messrs. Polk and Hubbell or to the new corporation to be formed, October 1st, 1887.

2nd. All accounts prior to October 1st to be settled by the Wabash Western for the Purchasing Committee and all earnings prior to that date to be collected by said N. W. Company.

3rd. The new Company or Messrs. Polk and Hubbell to assume all necessary repairs of the D. M. & N. W. road, commencing the same as soon as the condition of the road requires such improvements and repairs.

4th. This arrangement to continue until the contemplated decree and sale have been completed and the property has been legally acquired according to the agreement.

5th. In case of any obstruction or delay in carrying out the plan as detailed in the agreement to such an extent as to render it doubtful of completion within a reasonable time, it shall be in the power of either the Purchasing Committee

or Messrs. Polk & Hubbell to restore the status of the
314 property by surrender and delivery to the Purchasing Committee upon thirty (30) days notice,—but in case of such restoration Messrs. Polk & Hubbell or the new Company shall be entitled to any expenditure they may have made in repairing or operating the road over and above the amount of its net receipts, and in case they have received net earnings in excess of such expenditure, then the balance constituting such excess shall be paid over to the Purchasing Committee."

and on motion of Mr. Joy the transfer was authorized and approved in accordance with the suggestions.

Messrs. Joy, Hubbard, Welles, Ashley and General Swayne were present at this meeting.

and on motion of Mr. Ashley

Voted that the question of transfer of the lots at Des Moines, Iowa, in the name of J. F. How, Trustee, to the Des Moines Union Company, be referred to General Swayne, it being understood that when such conveyance is made the Terminal Company shall pay for the cost of said lots, including taxes, and interest, in first mortgage bonds of the Terminal Company.

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315 **Defendants' Exhibit 242.**

Meeting of Purchasing Com. at N. Y.

Dec. 22, 1887.

Mr. Ashley submitted a memorandum of proposed organization of the Des Moines Union Depot Co. and suggested a plan of including the Chicago & N. W. in the number of lessees by a sale of one quarter part of the stock. No vote was taken but the suggestions of Mr. Ashley were informally approved.

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316 **Defendants' Exhibit 243.**

Wabash, St. Louis & Pacific Railway Company.

Meeting of Purchasing Committee.

Meeting May 30th, 1888. On motion of General Hubbard Mr. Ashley was authorized to use not exceeding 32,000 dollars of the bonds of the Des Moines Union Depot Company for the purchase of six switching engines and engine lathes for the use of the Wabash Western Ry. Company upon condition that the property thus purchased shall be kept in the name of and under the control of the Purchasing Committee.

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517 **Defendants' Exhibit 244.**

Wabash, St. Louis & Pacific Railway Company.

Meeting of Purchasing Committee.

February 18th, 1890. New York, Feb. 18th a meeting of the Purchasing Committee was held at the office of the Wabash Railroad Company. Present, Messrs. Joy, Hubbard, Welles, and Ashley.

The minutes of previous meetings were read and approved.

Mr. Ashley reported that he had sold to F. M. Hubbell of Des Moines, Iowa, $135,000 of the Des Moines Union Railway Company mortgage bonds, out of $270,000 held by the Committee at their par value, and accrued interest in cash, the sale carrying also one quarter part of the interest of the Committee in the stock of the Des Moines Union Railroad Company. The amount had been paid and credited to the Purchasing Committee by the Treasurer of the Wabash Railroad Company, and the bonds delivered.

On motion of General Hubbard, the sale and settlements were approved.

Mr. Ashley also submitted a proposition he had made to F. M. Hubbell of Des Moines, Iowa, for a sale of the $450,000.00 mortgage bonds of the Des Moines Northwestern Railway Company, subject to the ratification of the purchasing Committee and the Wabash Railroad Company.

This proposition was as follows:

"Chicago, February 11, 1890.

To F. M. Hubbell, Esq.
Des Moines, Ia.

Dear Sir:—

"In behalf of the Purchasing Committee of the Bondholders of the Wabash, St. Louis & Pacific Ry. Company, I am
518 authorized to accept a proposition from you to buy the $450,000.00 bonds issued May 20th, 1888 upon the following terms and conditions:

First, The amount to be paid by you for said bonds shall be $400,000.00, payable on or before March 1st, 1890, as follows: You to deliver to said Purchasing Committee on or before said date $115,000.00 in the bonds of the Des Moines Union Railway Company, which shall be part of the $400,000.00 aforesaid. It is understood that $112,000.00 of the said $115,000.00 Des Moines Union Railway Company bonds are now held in trust for the Purchasing Committee by Gen'l.

Wager Swayne; said bonds carrying coupons due May 1st, 1890. The balance of said $400,000 viz., $284,000.00 to be paid in ten monthly installments, as follows: April 1st, 1890 $28,500.00 May 1, 1890 $28,500.00, June 1st, 1890, $28,500.00, July 1st, 1890, $28,500.00, August 1st, 1890 $28,500.00, Sept. 1st, 1890, $28,500.00, October 1st, 1890 $28,500.00, Nov. 1st, 1890 $28,500.00, Dec. 1st, 1890 $28,500.00, and January 1st, 1891 $28,500; each installment bearing interest at the rate of six per cent from March 1st, 1890.

I am also willing to agree as one of the Purchasing Committee that upon the payment of each installment, as aforesaid, to deliver to you $45,000.00 in bonds of the Des Moines & Northwestern R. Co., but as I have not consulted my associates upon this point, this clause must be subject to the ratification of the whole committee, which I will try to secure.

Second. It is understood that the sale, terms and conditions, as before stated, are to be subject to the approval and ratification of the Board of Directors of the Wabash
519 R. R. Company, but I will agree to recommend to the Board all, or so much of the foregoing as may be ratified by the Purchasing Committee.

Third. It is also understood that in case you accept the foregoing proposition you shall procure such action on the part of the Des Moines & Northwestern Ry. Co., as will release the Purchasing Committee and the Wabash Railroad Company from liability on account of the contract heretofore made between them and the Des Moines & Northwestern Ry. Co., for the sale of said property last aforesaid.

Fourth: It is understood that you will accept the undertaking of the Wabash Railroad Company to idemnify you as purchaser against any claim or liens which may exist upon any of the property sold by the Purchasing Committee to Polk & Hubbell, or the Des Moines & Northwestern Railway Company.

Fifth: You are to accept or decline this proposition on or before March 1st, 1890.

(Signed) O. D. ASHLEY, Sec'y.,
Purchasing Committee."

On motion of Mr. Joy it was voted to approve the proposition made in the foregoing letter to Mr. Hubbell.

Mr. Ashley stated that the Board of Directors of the Wabash Railroad Company had also ratified the proposition.

520 **Defendants' Exhibit 245.**

Wabash, St. Louis & Pacific Railway Company.

Meeting of Purchasing Committee.

New York, July 16th, 1890.

Mr. Ashley also reported expenditures made by the Central Trust Company, by checks drawn by him since Oct. 31st, 1889, amounting to $130,953.54. Mr. Ashley also gave a memo statement of the account of the Central Trust Company with the Committee as follows:

Debit.

May 21st, 1890. Balance of account rendered by Central Trust Company	$145,660.58
Checks drawn since	1,257.26

Credit.

Interest on $115,000.00 Terminal bonds	$2875.00
F. M. Hubbell Terminal Bonds	7736.00
Debenture Bonds	54000.00
On D. M. & N. W. paid by G. M. Dodge	9500.00
Paid by F. M. Hubbell on sale $50,000 DMU Bonds	10000.00
	$84111.00

Approximate balance July 11th, 1890 $67801.64 to debit of Purchasing Committee, not including interest.

Mr. Ashley also reported a sale of $50,000 of the Des Moines Union Depot & Company bonds and 1/8 of the stock of that Company to F. M. Hubbell for $57,736.00, being par value and accrued interest on the bonds and 15% on the stock. On motion duly seconded this sale was approved.

521 Mr. Ashley also reported the completion of the sale of the interest in Des Moines & Northwestern R. Co. referred to in the letter of February 11th, 1890, per record of February 18th, and stated that the sale had been approved by the Board of Directors of the Wabash Railroad Company.

This sale was also approved by the Committee.

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522 **Defendants' Exhibit 246.**

Wabash, St. Louis & Pacific Railway Company.

Meeting of Purchasing Committee.

March 29th, 1897, Committee meeting. Mr. Ashley stated that he had been trying to sell $150,000 of Peoria & Pekin Union

Railway Company stock, and wanted authority to use his discretion in effecting a sale, as he might desire to close a trade without further consultation, and this was granted.

Mr. Ashley stated also that he had nearly succeeded in selling the Des Moines Union Railway mortgage bonds ($204,000) but had been obliged to suspend negotiations on account of the interference with the old agreement, caused by the foreclosure of the Des Moines & Northwestern and the Des Moines & Northern, which roads have since been consolidated. A new agreement is under way which, when executed, will remove this trouble. Meantime, the old agreement is binding on all the parties, during the period of occupation.

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523 **Defendants' Exhibit 247.**

Wabash, St. Louis & Pacific Railway Company.

Meeting of Purchasing Committee.

New York, Oct. 29, 1897. Purchasing Committee meeting, Messrs. Ashley & Hubbard present.

Mr. Ashley reported the sale of $75,000.00 of the Des Moines Union Railway Company terminal bonds at 90-½ per cent, and accrued interest, and stated that he had paid over to the Treasurer of The Wabash Railroad Company $67,875.00 to the credit of the Purchasing Committee. He stated also that he hoped to sell the balance of the bonds during the ensuing month.

Mr. Ashley also reported that negotiations were pending for the sale of $150,000.00 of Peoria & Pekin Union Stock at 90 per cent, and hoped to bring that also to a conclusion. He also stated that he had several parties talking about the purchase of the Des Moines & St. Louis road, but could report nothing definite at present.

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524 **Defendants' Exhibit 248.**

Wabash, St. Louis & Pacific Railway Company.

Meeting of Purchasing Committee.

March 1st, 1898, Meeting of Purchasing Committee, Mr. Ashley reported a sale of the balance of the Des Moines Union Railway Company mortgage bonds, viz: $129,000 together with $36,000 in the treasury of the Wabash Railroad Company at 90-½ and interest net. Also, sale of $150,000 Peoria & Pekin Union Railway Company stock to the Peoria & Pekin Union Railway Company at par, receiving therefor, $50,000 in cash and the notes

of the Peoria & Pekin Union Railway Company at par, $100,000 on six and twelve months, $50,000 each at six per cent. interest, with the entire amount of stock (except two shares) as collateral security. Mr. Ashley also stated that he had had further negotiations with the Chicago, Fort Madison and Des Moines Railway Company representatives in regard to a purchase of the Des Moines & St. Louis line, without having yet received a definite offer.

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525 **Defendants' Exhibit 249.**

Wabash, St. Louis & Pacific Railway Company.

Memorandum—1899.

The transfer of assets remaining in the possession of the Purchasing Committee having been delayed in various ways, and especially by the proposed construction of the line between Moulton and Albia, by which line of railway the entire line of the Des Moines & St. Louis from Albia to Des Moines can be utilized, it became necessary for the Committee to transfer that line to the Wabash Railroad Company. This was accordingly done and the Committee received from The Wabash Railroad Company $670,000 for the same. This amount, having been paid to the Wabash Railroad Company, was credited to the Purchasing Committee.

The accounts of the Committee having been examined by E. B. Pryor, Assistant Auditor of the Wabash Company on the ..... 1899, the Board of Directors of that Company passed resolutions holding the Committee harmless and accepting the accounts of the Committee, a deed conveying the property in the hands of the Purchasing Committee was executed as of date of August 18th, 1898, and the functions of the Committee have ceased, except as to outstanding accounts with the railway Share and Agency Company of London, November 1st, 1899. This last account is necessarily kept open in connection with the reorganization plan, under which certain debenture bonds and Stock are still to be exchanged and on which certain assessments and penalties are due.

O. D. ASHLEY, Secy.

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526 **Defendants' Exhibit 250.**

Whereas the Narrow Gauge Railway Construction Company of Iowa did heretofore to-wit: on the 8th day of Dec. 1880 enter into a contract with the Des Moines North Western Railway Company and the Wabash St. Louis & Pacific Railway Company, whereby it agreed to build certain extensions of the Des Moines Company's road.

And Whereas the Wabash Company by the terms of said contract as a consideration for furnishing its bonds to aid in such extensions and taking a lease of said road, became entitled to one-half of the Stock of the Des Moines road and will be jointly interested in the same with the Construction Company.

And Whereas it is to the interest of both parties hereto that the same shall be prudently and economically constructed.

Now therefore to that end it is agreed by and between the parties hereto

That if said extension can be completed and equipped for less than the avails of the 7000 per mile in Bonds provided for in said contract in addition to the subsidies acquired along the line of said extension, then so much thereof as shall not be used shall be returned to the Des Moines Company and cancelled or otherwise disposed of as said Company shall direct. The Wabash Company will not however require nor will it as a stockholder in the Des Moines Company or lessee of its railroad insist on the Construction Company expending upon the construction and equipment of said extension more than the avails of said $7,000 per mile of said Bonds in addition to the subsidies acquired along the line of said extension.

327 In Witness whereof the parties above named have caused their respective signatures and seals to be affixed by their Presidents and attested by their Secretaries respectively, this eighth day of Dec., 1880.

(Seal) THE WABASH ST. LOUIS & PACIFIC RAILWAY CO.
By Solon Humphrey, Prest.

Attest: James F. How, Secretary.

(Seal) THE NARROW GAUGE RAILWAY CONSTRUCTION COMPANY,
By F. M. Hubbell, Prest.

Attest: J. S. Runnells, Sec. N. G. R. Cons. Co.

528 **Defendants' Exhibit 251.**

Wabash, St. Louis
and
Pacific Railway.

Peoria & Iowa Division.

W. F. Merrill,
General Sup't.
Peoria, Ill.

Feb. 28, 1881.

F. M. Hubbell,
Des Moines, Ia.

Dear Sir—I have just received a letter from Col. How in which he says that Mr. Hopkins told him that he thought it was understood that he (Col. How) was to subscribe for the stock of the D. M. & St. L. road. Col. How is now waiting for official information in that respect. I will let you know just as soon as I hear from him, and also whether he wants the deeds made direct to him personally or as Trustee, from the parties in whose names you have the original deeds made.

In all cases where you pay any money for this right of way, you should make out vouchers in favor of yourself, if you furnish the money, for the amount, and let them go through the regular run, the same as for any moneys expended for any other purpose on account of the D. M. & St. L. Ry. Whenever you make out any vouchers for right of way, have the items full on the face of the face of the voucher, stating the lot and the block, in whose name the deed is taken and what proportion of the purchase price is paid, also if any of the amount stated on the voucher is paid for recorder's fees, for getting up abstracts or anything of that sort. Send them to me approved by
529 Mr. Clarkson, and I will forward them to St. Louis, so that the money can be refunded you. This will answer your letter to Col. How, on the same subject.

If you wish other names to make deeds to besides those I gave you, you might add G. S. Grover, Joseph Dickson, or W. H. Blodgett of St. Louis, who are all connected with the legal department in St. Louis.

Yours truly,

(Signed) W. F. MERRILL, Gen. Supt.

530 **Defendants' Exhibit 252.**

Wabash, St. Louis & Pacific Railway Company.

Office of
Second Vice-President and Secretary,
Room 1, Third Story, Republican Building.

St. Louis, July 18" 1881.

Mess. Polk & Hubbell
Des Moines, Ia.

Gents.
I have yours of the 15" advising me that you can sell the north half of lot 6, block 22 at 1800.00. The price is certainly very satisfactory and it seems to me that we don't want the land, but I would like to have you talk with Mr. Kinney before we come to any conclusion in the matter.

I also have a letter from Mr. Hubbell giving me price of parts of other lots which he says he can sell. My impression is that we don't need the north half of lots between 8" and 12" streets. Will you please confer with Mess. Clarkson & Runnels and with Mr. Kinney and get their views in the matter and let me know if they agree with me. We can then if we so decide take steps to sell at price you name, which seems to me satisfactory. My only hesitation about deciding the matter now is that I remember that certain property down in that locality will be needed for shoproom for narrow gauge road and probably for an interchange yard between the two roads and don't wish to sell anything that may be required for this purpose.

Yours truly

(Signed) JAMES F. HOW, 2d V. President.

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531 **Defendants' Exhibit 253.**

Wabash, St. Louis & Pacific Railway Company.

Office of
Second Vice-President and Secretary
Room 1, Third Story, Republican Building.

St. Louis, May 26" 1882.

F. M. Hubbell Esq.
Des Moines

Dear Sir,
As you are aware we have charged to the Des Moines & Northwestern road a quantity of rails which property should

be charged to the Des M. & Northern, there may be other charges which have been made to Des M No West'n a portion of which should be billed against D M & Northern, likewise there may be, (I do not know that there is,) some counter-charges to be made against the D M No West'n. We are anxious to find out just how the account stands between the two companies & therefore I have requested Mr Trumbull our ass't auditor to go to Des Moines and go over with you these accounts with a view (to) such an adjustment. The amount the D M & N W will owe for the half interest in the track between Des Moines & Clive and for the whole of the track between Clive and Waukee, and for which the D M N W road should have credit, I have requested Mr. Trumbull to show separately. While he is there I have asked him also to see whether everything which should be charged against J. F. How, Trustee in the city of Des Moines has been so charged & whether the other properties have had credit for any such charges.

532 Mr Trumbull will leave here on Sunday evening & I hope you will arrange to be in Des Moines on his arrival and also have Mr. Kinney there, and have these accounts all finally adjusted.

Yours truly

(Signed) JAMES F HOW
3d V Prest

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533 **Defendants' Exhibit 254.**

June 11 1882

193 Broadway, New York.
June 3rd 1882.

F. M. Hubbell, Esq., President.
Des Moines, Iowa.

Dear Sir:

I have your letters of May 31st and April 5th. I notice in your statements of April 5th that the cost of the work done by me was $131,995.50, while the cost as made up to May 31st was $126.824.11. I send you herewith copy of the Wabash statement in which you will notice they give us a credit for expenditure of only $103.436.48. I do not exactly understand these figures. Can you reconcile them, or tell me where the discrepancy occurs? I notice the Wabash people cut down by one half the cost of the construction from the corporation line to Cleve, and from Cleve to Waukee they cut down the cost $6000, while they increase the cost on account of the State limits $2000.

There is nothing added for superintendance or interest. I suppose you will expect us to add them here. Are you sure you have carried into this account every thing that should be there? These statements run up the cost of the road some $30,000 or $40,000 above what has been heretofore reported to me.

Very truly yours,

(Signed) G M DODGE.

P. S. Please explain to me fully the item of expenditure by Wabash, Des Moines to Clive, $15,174.06.

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534 **Defendants' Exhibit 255.**

Jas. F. How,
3rd Vice President,
St. Louis, Missouri.

Dear Sir:

In accordance with your instructions the Asst. Auditor visited Des Moines on the 29th inst. and the following is respectfully submitted as result of a careful examination of vouchers and accounts made by him, in connection with Mr. F. M. Hubbell, President Narrow Gauge Construction Company, and Mr. E. C. Kinney, Chief engineer in charge of Construction.

Statements in detail of expenditures made by General G. M. Dodge were prepared and certified, and will be submitted for your further information as soon as copies can be prepared in this office:

Expenditures by W. St. L. & P. Ry. Co.

on road from City limits of Des Moines to Cleve, includ-
property in Cleve.

Iron Rails, 5.54 miles at 55 tons per mile, 304.7 tons, costing in St. Louis $49.80 per ton.....	$15.174.96

On road from Cleve to Boone,

Iron Rails, 37.53 miles, 55 tons per mile, 2064.15 tons at $49.80 per ton...	$102.794.67
Freight St. L. to Ottumwa on 19 cars ties	161.28
	$102.955.95

Expenditures by G. M. Dodge.

On account of property in City limits of Des Moines	$36,391.39
On account of road from City limits (of) Des Moines to Cleve.....	46,775.25
On account of road from Cleve to Waukee	43,657.47

Under my interpretation of the terms of proposed settlement, I find that General Dodge will owe this Company $7,106.50, as fully set forth in account herewith enclosed.

Yours truly,

(Sgd.) D. B. HOWARD,
Auditor.

535 General G. M. Dodge in acct. with the Wabash St. Louis & Pacific Railway Company.

Debits.

Expenditures by W. St. L. & P. Ry. Co. on road, Des Moines to Clive, $15,174.86,		
One half payable by General Dodge,	$ 7,587.93	
Expenditures on road Cleve to Boone,	102,955.95	
		$110,542.88

Credits.

Expenditures by Genl. Dodge on acct. of property in City limits of Des Moines	$ 36,391.39	
Expenditures on road Des Moines to Cleve, $46,775.25, one half payable by W. St. L. & P. Ry. Co.	23,387.62	
Expenditures on road, Cleve to Waukee, ...	43,657.47	$103,436.48
Balance due W. St. L. & P. Ry. Co...		$ 7,106.50

May 31st 1882.

536 **Defendants' Exhibit 256.**

June 10, 1882.

G. M. Dodge,
195 Broadway,
New York.

June 3d. The difference in the figures showing expenditures in the city limits and from city to Clive occurs namely as follows:

An item of $1800 paid by you for real estate in Des Moines was reported as belonging to the account of city limits to Clive. This error was discovered when Mr. Trumble was here and which increases amount expended in city and reduces amount expended between city and Clive.

As to the deductions in cost of road from Clive to Wauker it came as follows:

It was found that although I had paid for splices, spikes, bolts, and ties for the road to Wauker and had taken credit for them, yet when we came to finish the road to Boone we were compelled to borrow from the Wabash supplies quite a large amount of all of these, the value of which was ascertained to be $6,199.71, which was deducted from amount expended by you from Clive to Wauker, namely, $49,857.18. Less supplies $6,199.71. Total Clive to Wauker $43,657.47. City limits to Clive $46,775.25. Inside of city limits $36,391.39. These are footed, $126,824.11. As you own one half
537 of the road from city to Clive it is proper for you to collect from Wabash only one half of the item of $46,775.25.

For the same reason as the Wabash furnished all the iron from city limits to Clive it is proper for you to pay for one half of it, namely, one half of $15,174.06. We added nothing for superintendence or interest, leaving that for you to settle with the Wabash. We think the account is correctly stated.

Yours truly,

F. M. HUBBELL, President.

538 **Defendants' Exhibit 257.**

James F. How,
Sec'y W. St. L. & P. R'y Co.
Ass't Sec'y The Mo. Pac. R'y Co.
The Missouri Pacific Railway Co.
The Wabash, St. Louis and Pacific Railway Co.

The Missouri Pacific Railway,
Central Branch U. P. R. R.
Missouri, Kansas & Texas Railway,
St. Louis, Iron Mountain & S'n R'y. Secretary's Office.
Texas & Pacific Railway,
International & Great N. R. R.
Wabash, St. L. & Pac. R'y Co.

St. Louis, May 29th 1883.

J. S. Polk Esq
Des Moines

Dear Sir,

Enclosed please find correspondence between Col. Blodgett and myself from which you will notice that he interprets the

contract with the Des Moines & St. L. R. R. in the same manner as I do, that is, I am entitled to $2,000,000 of the stock minus 4 shares. Will you therefore please see that a certificate is issued to me, for remainder of the stock due.

I enclose herewith certificate No. 10 for 6206 shares of D. M. & St. L. Ry. Co. stock issued to me as Agent, which I have endorsed to the W. St. L. & P. Ry. Please send me a new certificate for same amount in the name of that Co.

I enclose herewith a copy of the contract between yourself & the others and the W. St. L. & P. Ry. also a copy of the contract between the D. M. & St. L. R. R. Co. & myself both of which you left with Col. Blodgett. I enclose a paper drawn up by Col. Blodgett to be executed by the D. M. &
539 St. L. & myself which acknowledges the performance of the contract of Feb'y 18th 1881. Will you please sign both of the latter papers and return them to me with the certificate of stock in lieu of the one I send you and certificate of stock to the additional amount to which I am entitled; on receipt of this certificate and agreements, I will sign one of the agreements and return to you.

Yours truly,

(Signed) JAMES F. HOW,
Secty.

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540 **Defendants' Exhibit 258.**

James F. How,
Sec'y W. St. L. & P. R'y Co.
Ass't Sec'y The Mo. Pac. R'y Co.

The Missouri Pacific Railway Co.

The Wabash, St. Louis and Pacific Railway Co.

The Missouri Pacific Railway,
Central Branch U. P. R. R.
Missouri, Kansas & Texas Railway,
St. Louis, Iron Mountain & S'n R'y. Secretary's Office.
Texas & Pacific Railway,
International & Great N. R. R.
Wabash, St. L. & Pac. R'y Co.

St. Louis, Sept. 20th 1883.

Messrs Polk & Hubbell,
Des Moines

Gents,

Have you made any collections on account of taxes voted in aid of D. M. N. W. R. R. since your last remittance, if so

please give me a statement of what is collected and send check for same. I would like to know at the same time just what is remaining unpaid on account of taxes voted for us and when we can expect the payment.

I have never received from you a statement of the rents collected on property belonging to J. F. How Trustee or the road, in Des Moines, there must be a number of houses on the property which we bought which are rented and there should be considerable due us from that source. Please give me a detailed statement of the amount collected showing from what time & to what time payment covers.

Yours truly,

(Signed) JAMES F. HOW, Secy.

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541 **Defendants' Exhibit 259.**

James F. How,
Sec'y W. St. L. & P. Ry Co.
Ass't Sec'y The Mo. Pac. Ry Co.

The Missouri Pacific Railway Co.

The Wabash, St. Louis and Pacific Railway Co.

The Missouri Pacific Railway.
Central Branch U. P. R. R.
Missouri, Kansas & Texas Railway.
St. Louis, Iron Mountain & So Ry. Secretary's Office.
Texas & Pacific Railway,
International & Great N. R. R.
Wabash, St. L. & Pac. Ry Co.

St. Louis, Sept. 27th 1883.

Hon Polk & Hubbell,
Des Moines

Gents,

Yours of Sept. 24th enclosing draft for 2279.33 and voucher for 2.64 making $2281.97 collected on account of taxes voted in aid D. M. N. W. road is received. Please let me hear as soon as you have the information how much is still due on account of taxes voted in aid of that road, also let me have statement concerning rents, about which I wrote you, at as early a date as possible.

Yours truly,

(Signed) JAMES F. HOW,
Sec'y.

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542 **Defendants' Exhibit 260.**

Wabash, St. Louis & Pacific Railway Company.

Solon Humphreys and Thomas E. Tutt,
Receivers.

James F. How,
General Agent for the Receivers.

St. Louis, Mo., Aug. 4th, 1884.

Messrs Polk & Hubbell.

Gentlemen:

Some two years ago when our Auditor called on you to adjust the account between the Des Moines & Northwestern Ry. Co., Genl. Dodge, and the Wabash; in the settlement ~~the former~~ (Genl D—) was credited with cost of the land he had purchased in Des Moines, with the understanding that it was to be deeded to J. F. How, Trustee, in which name stood most of the other property belonging to the R. R. and I understood that Mr. Hubbell prepared deeds and sent them to Genl Dodge for his signature but for some reason they were not then executed. It is important now to have these deeds executed, and I yesterday telegraphed, asking you where they were; and just have your telegram, that you know nothing of them which is a surprise to me, as the information I had, that they were prepared, came from one of your firm. As you are thoroughly acquainted with the matter, will you prepare such deeds from Genl Dodge to J. F. How, Trustee, and send them to ~~New York~~ (me) to be executed.

Yours truly

(Signed) JAMES F. HOW,
Genl. Agt.

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543 **Defendants' Exhibit 261**

Wabash, St. Louis & Pacific Railway Company.

Solon Humphreys and Thomas E. Tutt,
Receivers.

James F. How,
General Agent for the Receivers.

St. Louis, Aug. 8th, 1884.

Messrs. Polk & Hubbell.

Gentlemen. Yours of Aug. 7th received. It is necessary to have a deed of the property, spoken of in your letter, as belonging to the St. L. D. M. & N. Ry, as well as that which

was in the name of Gen. Dodge. Please send me a deed for the same to James F. How trustee and if the Officers of the Company live in Des Moines have them execute it. And if it has to be executed by Gen Dodge prepare it and send it to me and I will forward it to him to be executed. I have telegraphed you today to this effect. This property was as you know to be left separate from the Roads in one name with the idea of having a terminal company in which all roads should have a proportionate interest and in making up the account against the Boone R. R. they received credit for the value of this property.

Yours Truly,

(Signed) JAMES F. HOW,
Genl. Agt.

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544 **Defendants' Exhibit 262.**

195 Broadway,

New York. Sept. 9, 1884.

Messrs. Polk and Hubbell,
Des Moines, Ia.

Gentlemen:

I am endeavoring to make a settlement of the open account between the St. Louis Des Moines & Northern R'y Co. and the Wabash Co. and also settle the ownership and title of our terminals in Des Moines.

If any of the Wabash People write you about our contracts, the cost of work, land owned in Des Moines and cost of same, please make them no definite answer but refer them to me, and very much oblige,

Yours truly

G. M. DODGE,
G.

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545 **Defendants' Exhibit 263.**

New York, October 9, 1886.

To the Purchasing Committee
of the Wabash, St. Louis & Pacific Ry Co.

Gentlemen:

We make the following proposition in regard to the Des Moines Northwestern Railway. The mortgage to be foreclosed to cover all advances made by the Wabash Company to the

1574

D. M., N. W. Ry. Co. A good and perfect title free from all liens and incumbrances including all claims the Receivers may have against it to be made to Polk & Hubbell for said railway and all its property, rights, franchises, all its interest in the equipment and a one fourth interest in the terminal property at Des Moines and 5037 shares of stock in the D. M., N. W. Ry. Co.

Upon the delivery of the property above named in the condition as to title as above specified Polk & Hubbell are to pay the Committee a $450,000 first mortgage 5% bond. The issue to be only $450,000, and to be secured by a first mortgage on the property conveyed, to-wit, on that part of said railway lying between Farnham Street in Des Moines and the Town of Fonda and equipment. To run two years from the time the title is delivered to Polk & Hubbell, and to be redeemable at their option at any time before maturity upon payment of principal and accrued interest, and if paid within one year from
the time the title is delivered to Polk & Hubbell, then
546 $450,000 cash, shall discharge said mortgage and debt. Polk & Hubbell to have all the stock of the new Company. As soon as the contract is completed Polk & Hubbell are to make arrangements to standard gauge the road. If accepted, the details and plan of carrying out the above is to be agreed upon and embodied in a contract to be signed by the necessary parties.

(Signed) POLK & HUBBELL.

New York, October 9, 1886.

The foregoing proposition is satisfactory to us and we agree as a Committee acting under the contract of July 15th, 1885, between ourselves and certain bondholders to take all measures in our power to have the same fully performed.

(Signed) O. D. ASHLEY.
" THOS. H. HUBBARD.
" EDGAR T. WELLES.

Received of Messrs. Polk & Hubbell the mortgage bonds specified in the foregoing contract, to-wit:

$450,000 new first mortgage bonds of the Des Moines & Northwestern Railway Co.

New York City) O. D. ASHLEY Secy Purchasing
May 28/88) Committee

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547 **Defendants' Exhibit 264.**

Resolved, That the conditional agreement which the Purchasing Committee have heretofore entered into with

Messrs. Polk & Hubbell for the re-sale of the Des Moines Northwestern Railway be, and the same is, hereby approved and confirmed; and the said Purchasing Committee is hereby directed to consummate the same;—it being understood that no part of the car trust equipment is included in said agreement.

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548 **Defendants' Exhibit 265.**

This Memorandum of Agreement made and entered into this 10th day of September, A. D. 1887, by and between Messrs. Polk & Hubbell, parties of the first part, and James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, as a Purchasing Committee under contract of July 15th, 1885, parties of the second part, Witnesseth:

That Whereas, under date of October 9th, 1886, the parties to this agreement entered into a certain conditional contract for the foreclosure and sale of the Des Moines Northwestern Railway, as shown by copy of proposition of the first party hereto and acceptance of the second party hereto, attached to this agreement and made part hereof.

And Whereas, in pursuance of said contract said foreclosure and sale is to take place as provided in said agreement and said parties of the first part expect and intend to become purchasers at said sale. .

Now, Therefore, it is further agreed between the parties above named as follows:

1st. For the purpose of enabling Messrs. Polk & Hubbell to bid in the Des Moines Northwestern Railway at the foreclosure sale above referred to the Committee will furnish to said Polk & Hubbell the general mortgage bonds required to make payment of said bid, so far as the same may be required and can be used in that way; the cash payment required by
549 the decree shall be advanced by Messrs. Polk & Hubbell and credited upon the purchase price of the property above mentioned.

2nd. A decree of foreclosure and sale shall be entered as soon as possible after the first day of the next term of the Circuit Court of the United States for the Southern District, Central Division of Iowa. Messrs. Polk & Hubbell will see that the amount of the cash payment is made as small as possible, and to that end will negotiate for a reduction of the Master's fees and other costs, as far as the same can be obtained. The day of sale shall, moreover, be made as soon as possible.

3rd. The requirement of the agreement hereto annexed, for the delivery to the Committee by Messrs. Polk & Hubbell of a

bond for $450,000, shall be satisfied by the delivery of such bond secured by first mortgage as provided in proposition of October 9th, 1886, executed by a new corporation organized for that purpose, and holding the property disposed of at such sale.

4th. As soon as practicable after the signing of this stipulation the Des Moines Northwestern Railway shall be turned over to Messrs. Polk & Hubbell and thenceforth regarded as having been transferred under the contract hereto annexed.

5th. Simultaneously with the execution and delivery of said bond the Committee will convey to Messrs. Polk & Hub-
550 bell, or their assignees, the one-fourth interest in the terminal property at Des Moines, and will transfer also 5037 shares of stock of the Des Moines Northwestern Railway Company, and also all the interest of the parties of the second part in the equipment of said Des Moines Northwestern Railway. It is hereby understood that the rolling stock of the New York & Pacific Car Trust Association is not included in this agreement.

Simultaneously with the conveyance above mentioned of one-fourth interest in the terminal property at Des Moines, the same shall be mortgaged back to the Purchasing Committee for the further security of the said $450,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, the bonds and stock received from the Terminal Company in exchange for said one-fourth interest shall be transferred in lieu of the property to Messrs. Polk & Hubbell, or their assignees, or transferred by them to the Committee, to be held by the Committee as a further security for the payment of the $450,000 above mentioned.

6th. The transfer of the bonds mentioned in paragraph one of this agreement, to Messrs. Polk & Hubbell, and the execution and delivery of the bond and mortgage mentioned in paragraph three, shall be consummated if possible on the same date as the delivery of the Master's deed to Messrs. Polk & Hubbell,
551 or their assignees; said mortgage being recognized as a purchase money mortgage.

(Signed) POLK & HUBBELL,
JAMES F. JOY,
O. D. ASHLEY,
THOS. H. HUBBARD,
EDGAR T. WELLES,
Purchasing Committee.

552 **Defendants' Exhibit 266.**

The Wabash Western Railway Company.

James F. How,
Secretary & Treasurer.

St. Louis, Mo.,
Des Moines, Ia. Sept. 17th, 1887.

Temporary arrangement suggested by Mr. Ashley subject to the approval of the Purchasing Committee.

1. The Purchasing Committee to turn over the possession of the Des Moines N. W. Ry. to Mess Polk & Hubbell, or to the new corporation to be formed, Oct. 1st, 1887.

2. All accounts prior to October 1st 1887 to be settled by the Wabash Western for the Purchasing Committee and all earnings prior to that date to be collected by said W. W. Co.

3. The new Company or Mess Polk & Hubbell to assume all necessary repairs of the Des Moines N. W. road, commencing the same as soon as the condition of the road requires such improvement and repair.

4. This arrangement to continue until the contemplated decree and sale have been completed and the property has been legally acquired according to the agreement.

5. In case of any obstruction or delay in carrying out the plan as detailed in the agreement to such an extent as to render it doubtful of completion within a reasonable time, it shall be in the power of either the Purchasing Committee or Mess Polk & Hubbell to restore the status of the property by surrender and delivery to the Purchasing Committee
553 upon thirty days notice but in case of such restoration Mess Polk & Hubbell or the new Company, shall be entitled to any expenditure they may have made in repairing or operating the road, over and above the amount of its net receipts, and in case they have received net earnings in excess of such expenditures, then the balance constituting such excess shall be paid over to the Purchasing Committee.

St. Louis, Mo. Oct. 1st 1887.

We accept from Oct. 1st 1887. possession of the Des Moines North-Western Railway on the terms stated in above memorandum of agreement, suggested by Mr. Ashley.

(Signed) POLK & HUBBELL.

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554 **Defendants' Exhibit 267.**

Whereas, The Central Trust Company of New York has received from the Wabash, St. Louis & Pacific Railway Com-

pany forty five (45) first mortgage bonds of the Des Moines Northwestern Railway Company, each of said bonds being for the principal sum of ten thousand ($10,000) Dollars, and being the whole of the issue thus described; and

Whereas, the said bonds have been received by the Purchasing Committee of bondholders of the Wabash, St. Louis and Pacific Railway Company under an agreement with Messrs. Polk & Hubbell, dated October 19th, 1886, in which agreement it is stipulated that the said Purchasing Committee will cause the said Des Moines Northwestern Railway to be conveyed to Messrs. Polk & Hubbell free and clear of all liens and encumbrances of every kind whatever; and

Whereas there is pending in the Supreme Court of the United States a certain suit, No. 849 on the Docket of the said Supreme Court and known as the appeal of the Des Moines and Fort Dodge Railroad Company against the Wabash, St. Louis and Pacific Railway Company and others;

Now Therefore the said Central Trust Company of New York, with the assent of the said Purchasing Committee, hereby covenants with the said Polk & Hubbell that it will hold five (5) of said bonds as security for the performance of the contract above mentioned so far as the lien of any judg-
555 ment recovered in said action is concerned.

It is further stipulated on the part of the Central Trust Company of New York, with the assent of the Purchasing Committee aforesaid, that a certain judgment which on the 7th day of December, A. D. 1885, was by the Circuit Court of Iowa in and for Des Moines county rendered against the Wabash, St. Louis & Pacific Railway Company and in favor of R. R. Westfall for Eight thousand ($8,000) Dollars, be received in payment of principal or interest n the said forty-five bonds or any of them when the said interest or principal respectively mature.

(Signed) CENTRAL TRUST COMPANY OF NEW YORK,
by E. F. Hyde,
2d Vice President.

The "Purchasing Committee" mentioned in the foregoing Agreement assent thereto and request the Central Trust Company to sign the same.

Dated, New York, May 29th, 1888.

(Signed) JAMES F. JOY,
EDGAR T. WELLES,
THOS. H. HUBBARD,
O. D. ASHLEY.

556 **Defendants' Exhibit 268.**

Received May 29th 1888 of James F. Joy, O. D. Ashley, Thomas H. Hubbard and Edgar T. Welles, Purchasing Committee, $112,000 of Des Moines Union Depot Company First Mortgage Bonds, to be held by me in trust, subject to the provisions of agreements between said Purchasing Committee and Messrs. Polk and Hubbell, dated October 19, 1886 and September 10, 1887; and also an agreement of extension by the said Purchasing Committee to the Des Moines and Northwestern Railway Company, dated May 15, 1889.

(Signed) WAGER SWAYNE.

Dated, New York City, N. Y. May 29 1889.

Witnesses
Wm. J. Harding
Thomas E. Fell.

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557 **Defendants' Exhibit 269.**

Chicago, Illinois,
May 15, 1889.

Referring to a conditional contract under date of October 9, 1886, as shown by a proposition of Messrs. Polk and Hubbell and its acceptance of the same date and to a memorandum of agreement made September 10, 1887, in pursuance of said contract by Messrs. Polk and Hubbell of the first part and James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles as a purchasing committee, of the second party and to an agreement of the Central Trust Company of New York assented to by said purchasing committee March 29, 1888, the undersigned hereby agree as follows, towit:

First. The time for the payment of the sum of four hundred and fifty thousand dollars and the bonds evidencing the same, mentioned in said agreements is hereby extended five years from May 20, 1890, provided interest accruing thereon shall be paid as hereinafter agreed.

Second. Interest thereon shall be paid half yearly to-wit: May 20 and November 20 in each year until the principal shall be fully paid.

Third. If default shall be made in payment of any interest herein agreed to be paid then the extension hereinbefore agreed to shall immediately end and if such default shall continue two months the aforesaid bonds and the principal sum evidenced thereby shall then become due and payable
558 and payment thereof may forthwith be enforced by suit on said bonds, foreclosure of the mortgage securing the

same, entry on the mortgaged premises or by any lawful proceeding the holders of said bonds may elect to take.

JAMES F. JOY
O. D. ASHLEY
THOS. H. HUBBARD
EDGAR T. WELLES
Purchasing Com.

DES MOINES & NORTH WESTERN RAILWAY COMPANY
By F. M. Hubbell,
Prest.

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559 **Defendants' Exhibit 270.**

Chicago, February 11, 1890.

F. M. Hubbell, Esq.,
Des Moines, Ia.

Dear Sir:—

In behalf of the Purchasing Committee of the Bondholders of the Wabash, St. Louis & Pacific Ry. Co., I am authorized to accept a proposition from you to buy the $450,000.00 Des Moines & Northwestern Ry. Co. Bonds, issued May 20, 1888, upon the following terms and conditions:

First: The amount to be paid by you for said bonds shall be $400,000.00 payable on or before March 1, 1890, as follows: You to deliver to said Purchasing Committee on or before said date $115,000.00 in the bonds of the Des Moines Union Ry. Co., which shall be part of the $400,000.00 aforesaid. It is understood that $112,000.00 of the said $115,000.00 Des Moines Union Ry. Co. bonds are now held in trust for the Purchasing Committee by General Wager Swayne; said bonds carrying coupons due May 1, 1890. The balance of said $400,000.00, namely, $285,000.00 to be paid for in ten monthly installments as follows:

April 1, 1890, $28,500.00; May 1, 1890, $28,500.00; June 1, 1890, $28,500.00; July 1, 1890, $28,500.00; August 1, 1890, $28,500.00; Sept. 1, 1890, $28,500.00; October 1, 1890, $28,500.00; November 1, 1890, $28,500.00; December 1, 1890, $28,500.00; and January 1, 1891, $28,500.00; each installment bearing interest at the rate of six per cent from March 1, 1890.

560 I am also willing to agree as one of the Purchasing Committee that upon the payment of each installment, as aforesaid, to deliver to you $45,000.00 in bonds of the Des

Moines & Northwestern Ry. Co., but as I have not consulted my associates of the Committee upon this point, this clause must be subject to the ratification of the whole Committee which I will try to secure.

Second: It is understood that the sale, terms and conditions, as before stated, are to be subject to the approval and ratification of the Board of Directors of the Wabash Railroad Company, but I will agree to recommend to the Board all, or so much of the foregoing as may be ratified by the Purchasing Committee.

Third: It is also understood that in case you accept the foregoing proposition you shall procure such action on the part of the Des Moines & Northwestern Ry. Co. as will release the Purchasing Committee and the Wabash Railroad Company from liability on account of the contract heretofore made between them and the Des Moines & Northwestern Ry. Co. for the sale of said property last aforesaid.

Fourth: It is understood that you will accept the undertaking of the Wabash Railroad Company to indemnify you as purchaser against any claims or liens which may exist upon any of the property sold by the Purchasing Committee to Polk & Hubbell, or the Des Moines & Northwestern Ry. Co.

Fifth: You are to accept or decline this proposition
561 on or before March 1, 1890.

Yours truly,

(Signed) O. D. ASHLEY, Secy.
Purchasing Committee.

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562 **Defendants' Exhibit 271.**

Referring to a conditional contract dated October 9th, 1886, between Messrs. Polk and Hubbell, of the one part, and the Wabash Purchasing Committee, so called, of the other part, and to an agreement dated September 10th, 1887, made between the same parties, and to an agreement dated May 29th, 1888, signed by the Central Trust Company of New York, and assented to by said Purchasing Committee, and to an agreement dated May 15th, 1889, between said Purchasing Committee and the Des Moines & Northwestern Railway Company, the parties interested in said agreements do hereby covenant, undertake and agree as follows:

First: F. M. Hubbell, of Des Moines, Iowa, agrees to buy and does hereby buy from the said Purchasing Committee forty-five first mortgage bonds of the Des Moines & Northwestern Railway Company, each for the principal amount of

$10,000, being the same bonds now held by said Central Trust Company, and mentioned in said agreement of May 29th, 1880.

Second: The said F. M. Hubbell agrees to pay for said bonds as follows, to-wit: He will pay and deliver to the said Purchasing Committee when this agreement is signed bonds of the Des Moines Union Railway Company of the par value of $115,000. Of said last mentioned bonds, $112,000 par value are held in trust by Wager Swayne, and the said Hubbell agrees to have said trust discharged so that said bonds may be delivered unconditionally to the said Purchasing Committee; to whom also the said Hubbell will de-
563 liver other bonds of the same issue of $3,000, par value. The said Hubbell will also pay to said Purchasing Committee $285,000, in ten monthly instalments as follows, to-wit: April 1, 1890, $28,500. May 1st, 1890, $28,500; June 1st, 1890, $28,500; September 1st 1890, $28,500; October 1st, 1890; $28,500; November 1st, 1890 $28,500; December 1st, 1890, $28,500; January 1st, 1891, $28,500; February 1st, 1891, $28,500; March 1st, 1891, $28,500. As evidence of his indebtedness for said payment said Hubbell will make and deliver to said Purchasing Committee his ten promissory notes for the several amounts and falling due on the several dates hereinbefore mentioned, and each of said notes shall bear interest at the rate of six per cent per annum from March 1st, 1890, until paid. It is understood and agreed that said Hubbell may, at his pleasure, anticipate payment of any of the amounts above mentioned and thereby stop interest thereon.

Third: The said Purchasing Committee agrees to sell to said F. M. Hubbell the said forty-five First Mortgage Bonds of the Des Moines & Northwestern Railway Company each for the principal amount of $10,000, as aforesaid, and to assign and transfer, as said Committee hereby does, to said F. M. Hubbell all the rights of said Committee with respect to said forty-five bonds in consideration of the payments to be made by said Hubbell as hereinbefore specified and to deliver to said Hubbell $45,000, par value of said Des Moines & North-
western Railway Company bonds (being one-tenth of
564 the total amount thereof) upon the payment by said Hubbell of each one of the notes above mentioned with interest as aforesaid.

Fourth: Polk and Hubbell and the Des Moines & Northwestern Railway Company assent to this agreement and release the said Purchasing Committee and its individual members from all liability in respect to all or any of the agreements mentioned in the preamble to this contract, so far as such liability might otherwise be charged upon the estate of said committee not heretofore conveyed and so far as the

members of said committee might otherwise be individually liable. It is, however, expressly understood and agreed by both the parties hereto that nothing herein contained is meant or shall be construed to release or waive any agreement or liability made or assumed by said committee and which by the terms of any decree of court or conveyance by said committee has been charged upon any property whatever which said committee has heretofore purchased or conveyed. And the said F. M. Hubbell joins in said release, in consideration that the Wabash Railroad Company agrees to perform said contracts so far as they are not superseded hereby and so far as said Purchasing Committee would otherwise be bound to perform the same and to protect and hold harmless the parties to said agreements to the same extent that the said Purchasing Committee would be bound to protect them and hold them harmless if this release had not been made.

265 Fifth: In consideration of the premises and in consideration also of its interest in the bonds of the Des Moines & Northwestern Railway Company and of its obligation to protect the said Purchasing Committee in respect to the several contracts and agreements herein mentioned which it hereby recognizes and acknowledges, the Wabash Railroad Company by authority of its Board of Directors undertakes and agrees to perform the several agreements and the conditional contract mentioned in the preamble to this contract so far as the same are not superseded by this contract and so far as the said Purchasing Committee would be bound to perform the same if not released by the last preceding article hereof; and agrees to protect and hold harmless Polk and Hubbell, F. M. Hubbell and the Des Moines & Northwestern Railway Company against any claims or liens which may exist upon any of the property sold by said Purchasing Committee to Polk and Hubbell or to the Des Moines & Northwestern Railway Company according to the true meaning and intent of the agreements mentioned in the preamble to this contract, and especially to protect them against the claim of the Des Moines & Fort Dodge Railroad Company now pending in the supreme court of the United States as cause numbered 256 on the calendar of said Court and against all claims that may arise from any of the matters mentioned or referred to in said cause numbered 256 aforesaid.

Sixth: The Central Trust Company of New York hereby assents to this contract in consideration that the Purchasing Committee delivers to it the $115,000. bonds of the Des
266 Moines Union Railway Company and the ten notes of F. M. Hubbell hereinbefore mentioned to be held by the

Central Trust Company as collateral security for the indebtedness of it of said Purchasing Committee.

In Witness Whereof, the several individuals, parties to this contract, have hereunto set their names and affixed their seals, and the several corporations, parties hereto, have caused these presents to be signed by one of their officers and their seals to be affixed and attested by their respective securities this first day of March, 1890.

JAMES F. JOY, :
O. D. ASHLEY, : Purchasing
THOS. H. HUBBARD, : Committee
EDGAR T. WELLES :

Polk & Hubbell
F. M. Hubbell,
Des Moines & Northwestern Railway Co.
By F. M. Hubbell, Prest.

(Seal) THE WABASH RAILROAD CO.
Attest: By O. D. Ashley,
J. C. Otteson, President.
Secretary.
Attest: A. H. Sharp CENTRAL TRUST COMPANY
Secy. & Treas. OF N. Y.
By N. P. Olcott, Pt.

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567 **Defendants' Exhibit 272.**

New York, March 7th, 1890.

Pursuant to the foregoing agreement The Wabash Purchasing Committee has this day deposited with us three 1st M. Bonds of the Des Moines Union Railway Co. Nos. 3, 4 and 156. $1000. each and an order upon Genl. Wager Swayne for the delivery to this company of $112,000. of 1st M. Bonds of the Des Moines Union Railway Co. and ten notes of F. M. Hubbell for $28,500. each to the order of O. D. Ashley Secy. of the Purchasing Committee of the W. St. L. & P. Ry. and endorsed by said Ashley to the Central Trust Co. of N. Y.

CENTRAL TRUST CO. OF NEW YORK.
By G. S. Mann, President.

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559 **Defendants' Exhibit 273.**

The Wabash Western Railway Company.

James F. How,
Secretary & Treasurer.

St. Louis, Mo., Nov. 19th, 1887.

Messrs. Polk & Hubbell,
Des Moines, Ia.

Dear Sir:—

Referring to the copy of the resolutions adopted at the meeting of the Directors of the Des Moines Union Ry. Co., which you sent me, I notice one error, where the resolution says that one-half of the stock should be transferred to me, it should read three fourths; of this three-fourths, one-fourth I suppose will eventually go to you when you carry out your arrangement with the Purchasing Committee but the three-fourths should be turned over to me and the resolution was so passed. Please make the correction on the books and notify me that you have done so.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

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560 **Defendants' Exhibit 274.**

Nov. 28, 1887.

Jas. F. How,
St. Louis, Missouri.

Dear Sir,—

Yours of the 19th instant in regard to copy of resolution of the Des Moines Union Ry. Co. is received.

The original resolution, which was introduced by you, and passed by the company authorizing the issuance of three-fourths of the capital stock of the Des Moines Union Ry. Co. to you for the Purchasing Committee, and one-fourth to the St. Louis Des Moines & Northern Ry. Co. In entering the same up the words "one-half was inserted by mistake, instead of three-fourths". The record has now been corrected, so as to correspond with the original resolution. We are not advised as to what right the Purchasing Committee have to the stock. We suppose however they acquired it by purchasing the stock of the Des Moines & St. Louis R. R. Co.

It seems to us that the entire stock of the company $2,000,000 should not be issued at present but that three-fourths of

the stock actually issued should be delivered to you and one-fourth to General Dodge. We would like your views in regard to this matter.

Yours truly,

(Signed) POLK & HUBBELL.

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570 **Defendants' Exhibit 275.**

Washington Building,

No. 1 Broadway, New York.

Mess. Polk & Hubbell,
Des Moines.

Dec. 5, 1887.

Gentlemen;

Mr. Ashley was in here to-day with a statement in figures of the expenditures upon the terminals. He seemed to think that in some way or other I ought to pay the balance of the quarter, or that it would be hardly fair for me to receive ¼ of the stock; but I explained to him the facts of my settlement with the Wabash, which you probably remember. They agreed to take bonds for their expenditure, and I agreed to pay interest upon my ¼ of the expenditure which I have done up to date, and when they receive the bonds, they of course will take their interest from the coupons. If this matter comes up between you and him please explain that to him. The original intention of the Wabash, you know, was to pay for the whole and take bonds but in the settlement I turned in what I had expended.

Mr. Ashley also wanted to issue bonds for the roundhous expenditure and the lots owned by you, and have each Co. take its proportion, and make payments. I do not object to that, as we would have to make the payments any way, we can make them direct to the terminal company as well as to the Wabash, and take bonds for the amount we pay in. But there should be turned over on the roundhouse $5000 insurance money. That you want to attend to.

We are drawing up the form for bringing other companies in, which he will take with him to St. Louis. It is based
571 on the Peoria & Pekin agreement, of which you have a copy.

Yours truly,

(Signed) G. M. DODGE.

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572 **Defendants' Exhibit 276.**

The Wabash Western Railway Company.

James F. How,
Secretary & Treasurer.

St. Louis, Mo. Jan'y 31st, 1888.

J. S. Polk, Esq.,
Des Moines, Ia.

Dear Sir:—

I enclose the deeds from Gen'l Dodge to the Des Moines Union Ry. Co. which Col. Blodgett has examined and pronounces all right. In your letter transmitting these deeds, you say that they will not be recorded until the bonds are ready to be issued for them; it appears to me that before the mortgage is signed the deeds should be recorded and certainly before the bonds are issued. I think that the understanding was, that on receipt of the deeds, Gen'l Dodge and myself were to have an agreement from the Terminal Co. that each was to receive so many bonds for themselves or the parties they represent as soon as the bonds could be prepared; indeed I hold such a receipt to be turned over to the Purchasing Committee as soon as my deeds are put on record. Let me know what you decide about this matter and if it is determined to record the deeds at once, I will forward mine or will forward them as soon as you want them.

Please let me know what the law is in Iowa regarding the liability of a party giving a warranty deed? Are they liable for more than the consideration stated in the deed; this is the limit to the liability in this state and is the limit I understand under the common law but I understand that in
573 some states this is different, hence my inquiries concerning the Iowa law.

Yours truly,

JAMES F. HOW,
Vice-President.

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574 **Defendants' Exhibit 277.**

February 1st, 1888.

James F. How, Esq.,
St. Louis, Mo.

Dear Sir:

Your letter of the 31st ult. enclosing two deeds, one from the St. Louis, Des Moines & Northern, and the other from

G. M. Dodge to the Des Moines Union Railway Company for certain property in Des Moines is received.

We delivered to General Dodge the contract of the Des Moines Union Railway Company, to give him the bonds, and stock of the company when the same are issued, in payment for said terminals. If the deeds are satisfactory to you we will put them on record at once.

In regard to the law in Iowa relating to the liability of the party giving warranty deed would say my understanding is that the warrantor is liable only to the extent of the consideration paid him for the property with six per cent interest thereon, less any rents that may have been received from the property by him. If this inquiry is made with reference to the deed you make to the company would say inasmuch as you held the property as trustee for other parties, I should make the conveyance as such and should only make a special warranty deed.

Yours most obtly,

J. S. POLK.

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575 **Defendants' Exhibit 278.**

The Wabash Western Railway Company.

James F. How,
Secretary & Treasurer.

St. Louis, Mo., Feb'y. 13th, 1888.

J. S. Polk, Esq.
Des Moines, Ia.

Dear Sir:—

Enclosed please find a deed from the Des Moines & St. Louis Ry. Co. to the Des Moines Union Ry. Co. for the property owned by the former Co. in Des Moines. Please have same executed by Mr. Clarkson as President, and by Mr. Hubbell as Secretary and return same to me as Mr. Blodgett wishes to see that it is properly executed before it is put on record.

I understand that the Des Moines Northwestern Ry. make no deed as they have no property in Des Moines to transfer. Am I correct about this? If not, I would like to see their deed before it is recorded.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

576

Defendants' Exhibit 279.

The Wabash Western Railway Company.

Law Department.

For Convenience All Business Communications Should be Addressed:

General Solicitor
Wabash Western R'y Co.
St. Louis, Mo.

St. Louis, February 20" 1888.

F. M. Hubbell, Esq.
Des Moines, Iowa.

Dear Sir:

I send you herewith two copies of the Des Moines Union Ry. Co. mortgage, duly executed by General Dodge as President. You will notice that at the end of the mortgage (on page 20) a line is left for your signature as Secretary. It is thought best to execute it in that form, and hence we would like to have you sign there, and also attest by your signature as Secretary and attach the seal of the corporation.

You can then have the certificate of acknowledgment on page 22 filled out and signed by a Notary in the usual way.

After they are executed please send both copies back to me, one will be retained by the Trust Co. with the bonds, while the other is being recorded, after which the recorded copy will be given to the Trust Co. and the other kept by you in the files of Union Ry. Co.

Very truly yours,

(Signed) WELLS H. BLODGETT.

577

Defendants' Exhibit 280.

February 21st, 1888.

James F. How, Esq.
St. Louis, Mo.

Dear Sir:—

I herewith enclose deed from the Des Moines & St. Louis Railroad Company to the Des Moines Union Railway Company, which you forwarded to us for execution. The same has

been signed by Mr. Clarkson, and Mr. Hubbell, and properly acknowledged. Hope you will find it all satisfactory.

Yours most obtly,

(Signed) JEFFERSON S. POLK.

578 **Defendants' Exhibit 281.**

Property in Des Moines, Iowa.

General G. M. Dodge, Ownership.....	51,106.36	
Interest on same at 6% per annum May 29th, 1884, to May 1st, 1888...	12,035.53	63,141.89
Add Rental paid to the Wabash St. L. & P. See below.....		7,887.72
do. ¼ of net cost of round house. See below		3,058.40
		74,088.01
Wabash, St. Louis & Pacific Ry. Co.— Ownership	306,860.95	
Interest on same at 6% per annum May 29th, 1884, to May 1st, 1888...	72,265.73	
	379,126.68	
Add Taxes, Paid by Receivers W. St. L. & P. Ry.....	4,755.04	
	383,881.72	
Deduct Rental collected from St. Louis, Des Moines and Northern R. R. Co. May 29th, 1884, to Nov. 1, 1887, 41 3/31 months at $191.93 per month.....	7,887.72	375,994.00
Add ½ of net cost of round house. See below		6,116.80
		382,110.80

Cost of New Round House, etc., at Des Moines, Ia.

	Total expenditures — construction of round house—tracks—turn table, etc.	17,133.60	
	Less		
579	Insurance collected on Old Round House	5,500.00	12,233.60

Divided as follows:—

The Des Moines & North Western Ry. Co.—¼	=	3,058.40	
The St. Louis, Des Moines & Northern Ry. Co.—¼	=	3,058.40	
The Purchasing Committee of the W. St. L. & P. Railway—½	=	6,116.80	12,233.60

580 **Defendants' Exhibit 282.**

Des Moines Union Ry. Company.

Washington Building.
No. 1 Broadway, New York.

New York, April 14th, 1888.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—
I send to Polk & Hubbell by express 500 Des Moines Union Railway bonds, signed. I thought it better to sign only those we were going to use immediately, and hold the balance here to be signed as we require them. Please have them executed with a seal and got ready to distribute.

Yours truly,

G. M. DODGE,
President.

581 **Defendants' Exhibit 283.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., April 28th, 1888.

Mess. Polk & Hubbell,
Des Moines, Ia.

Gents:—
I enclose herewith deed for one lot, which I hold as Trustee and which was not included in the former deed that I made.

In reference to the lot referred to in the letter of your Mr. J. S. Polk of April 26th, viz:—lot 7, block 4, Ft. Des Moines our record shows that this was condemned and the award of $3,000 was paid and the title stands in the Des Moines & St. Louis Ry. Co. No deed in the name of Jas. F. How, Trustee, appears on our files in this office. I should

judge from this that no deed has been issued to me and that the deed from the Des Moines & St. Louis Ry. Co. should cover this property and if one has not been made by that Co it should be done.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

582 **Defendants' Exhibit 284.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., April 28th, 1888.

F. M. Hubbell, Esq.,
Des Moines, Ia.

Dear Sir:—

I have a letter from General Dodge, saying that he has signed the Terminal Co. bonds and sent them to you. When you have signed those authorized by the resolution passed at the last meeting, will you please forward to me by express, the number that should be turned over to the Purchasing Committee as stated in that resolution. Also if you will send me the bond for Col. Blodgett, I will see that that is delivered to him.

Yours truly

(Signed) JAMES F. HOW,
Vice President.

583 **Defendants' Exhibit 285.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., June 1st, 1888.

F. M. Hubbell, Esq. Secretary.
Des Moines, Ia.

Dear Sir:—

I have received from the Central Trust Co. 388 bonds of the Des Moines Union Railway Company numbered from 1 to 388, inclusive. Of said bonds, bond No. 1, has been delivered to Col. Blodgett in payment for services, please find his receipt for same enclosed. Five bonds, No. 2 to 6 have been sent to Mess. Polk & Hubbell in payment for their proportion

of the amount paid on account of the round-house at Des Moines and for two lots on which said round-house stands.

The remaining bonds, No. 7 to 388, are held by me for account of the Purchasing Committee, in payment of the money advanced by the Wabash St. Louis & Pacific Ry. Co. in payment of terminals at Des Moines.

Gen'l Dodge has retained 74 bonds, the numbers of which he will forward to you, in payment of money advanced by him for terminals at Des Moines.

All this in accordance with resolution passed by the Board of Directors of the Des Moines Union Railway Co.

The surplus due the Purchasing Committee and Gen'l Dodge should be paid as provided by said resolution.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

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584 **Defendants' Exhibit 286.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., June 1st, 1888.

Received from the Des Moines Union Railway Company, one bond of that Company numbered One, for One Thousand Dollars, in payment of my bill for services against that Company in accordance with the resolution adopted by the Board of Directors of said Company.

(Signed) WELLS H. BLODGETT.

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585 **Defendants' Exhibit 287.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., June 28th, 1888.

F. M. Hubbell, Esq.,
Des Moines, Ia.

Dear Sir:—

Has it been decided exactly how much stock the Des Moines Union Ry. Co. are to issue, if not I think this question should be decided as soon as possible, and the stock issued, if it has

already been decided, will you please send certificate to us for the stock to which we are entitled.

(Signed) JAMES F. HOW.

586 **Defendants' Exhibit 288.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., Sept. 17th, 1888.

Messs. Polk & Hubbell,
Des Moines, Ia.

Gents:—

Mr. Ashley is in town and I have just had a talk with him concerning the amendments to the proposed contract for the use of the Des Moines Union Depot that you desire viz;—that the Purchasing Committee should surrender one-fourth of their stock for the benefit of the Depot Co. Mr. Ashley says that this is an arrangement which he could not agree to on behalf of the Purchasing Committee being satisfied that they would not approve of the surrender of any of their stock without a consideration. The contract as submitted last Monday, he feels is a perfectly fair one, as it requires each Co. to pay interest on the bonds only in proportion to their use of the property and he hopes that on reconsideration of the matter you will see the justness of this provision, or if you prefer, that question can be left to arbitration, you to select one arbitrator, we the other, they to select the other if they cannot agree. I trust that you will make up your minds to adopt the contract as submitted so that the matter can be closed up and the bonds then disposed of so as to make the necessary improvements and expenditures that are required.

Yours truly,

(Signed) JAMES F. HOW,
Vice Pres.

587 **Defendants' Exhibit 289.**

The Des Moines Union Railway Company.

G. M. Dodge, President.

F. M. Hubbell, Sec'y and Treasurer.

J. B. Van Dyne, Superintendent.

Des Moines, Iowa, 11/8 1888.

Mr. J. B. Van Dyne,
Sup't., Des Moines, Ia.

Dear Sir:

I have today issued seventeen notes in name of D. M. Union Ry. Co. favor of Rhode Island Locomotive Wks. for a total of

$17600.00, covering cost of Switching Eng. #1 & 2. These notes become due monthly from Dec'r 10th; ten notes at $1035.29 each and seven for $1035.30 each.

You will please arrange to take care of these notes until our Bonds are placed. When Bonds are sold, we will pay the outstanding notes at the time and return amount paid on them by you.

Yours Truly,

G. M. DODGE,
President.

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588 **Defendants' Exhibit 290.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., Mar. 5th, 1889.

F. M. Hubbell, Esq.
Des Moines, Ia.

Dear Sir:—

I am in receipt of your letter of Mar. 2nd. As the property referred to in your letter now belongs to the Des Moines Union Ry. Co., I think that that Co. should pay the interest on the mortgage and will also arrange to take care of the principal. The last payment of interest was made in the month of Jan'y, 1886.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

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589 **Defendants' Exhibit 291.**

The Wabash Western Railway Company.

Office Chief Engineer.

St. Louis, Mo. Mch. 18th, 1889.

F. M. Hubbell, Esqr.,
Des Moines, Ia.

Dear Sir:—

In compliance with your request to Jas. F. How, Vice Prest. of March 7th, 1889, I have to-day forwarded to you the deeds and other title papers to the property which was conveyed by the Company to the Des Moines Union Ry. Co. I have also annexed a list of said papers with a receipt attached thereto,

to which you will please attach your signature and return said list to me for file in my office.

Yours truly,

W. S. LINCOLN,
Chf. Engineer
Per H.

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590 **Defendants' Exhibit 292.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., April 1st, 1880.

F. M. Hubbell, Esq.
Des Moines, Ia.

Dear Sir:—

I have just returned from the East and am in receipt of your letter of the 23rd ult. I think that the interest due on the deed of trust on the lot owned by the Terminal Co. referred to in your letter, should be paid and an arrangement made to continue the deed of trust on the property at a lower rate of interest. Of course the interest now due and to become due should be paid by the Terminal Co.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

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591 **Defendants' Exhibit 293.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., May 25th, 1880.

F. M. Hubbell, Esq.
Secretary, D. M. & St. L. Ry.
Des Moines, Ia.

Dear Sir:—

I enclose herewith the records of the meeting of directors of the Des Moines & St. Louis Ry. called for yesterday and adjourned until to-day and also the records of the adjourned meeting held this day.

I also enclose four copies of the contract for the use of the Des Moines terminals, which I have signed as President of the Des Moines & St. Louis Ry. Co.; Will you please affix the seal of the Co. to same and attest it as Secretary; then please have the seal of the Des Moines Union Ry. Co. affixed to it, also that of the Des Moines & Northern, attested by the Secretaries of those respective Companies and then have all four of the contracts forwarded to Gen'l Dodge for execution as President of these two Co's. Will you please ask him when he has done this, to forward us the copy which is to be retained by the Des Moines & St. Louis Ry. Co.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

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392 **Defendants' Exhibit 294.**

The Wabash Western Railway Company.

James F. How,
Vice President & Treasurer.

St. Louis, Mo., June 28th, 1889.

Messrs. Polk & Hubbell,

Des Moines, Ia.

Gents:—

I am in receipt of yours of June 26th calling attention to certain bills for delinquent taxes on railroad property in Des Moines. Any such bills that are a lien on the property transferred to the Des Moines Union Ry. Co. should be paid by that Co., all the property having been bought for that Co. and since been transferred to it.

I am also in receipt of a letter from Mr. Hubbell of same date referring to your letter and speaking of a similar tax certificate held by him on the same property. Will you please show this letter to him.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

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596 **Defendants' Exhibit 295.**

Jan. 22nd, 1890.

Wells H. Blodgett,
Gen'l Sol'r Wabash Railroad Co.
St. Louis, Mo.

Dear Sir:—

At the last annual meeting of the stockholders of the Des Moines Union Railway Company, I suggested to those present several matters in which, in my opinion, the articles of incorporation of the company ought to be amended. Upon this there was a resolution offered and adopted, appointing you and myself a committee to re-draft these articles, and present our changes to a meeting of the stockholders on the 18th of February. I have made a draft of amended articles thinking it would save time to be able to present something tangible to you whenever we could get together. I regard the matter as an important one, and a change as absolutely necessary for the proper conduct of the company. We shall have to hold a consultation in regard to the matter within a short time, and I write to ask you when and where this consultation shall be held. If you desire me to come to St. Louis, I will endeavor to do so, if you can fix a day sometime three or four days in advance of the time you write. Be good enough to give me an early reply and oblige.

Yours very truly,

(Signed) A. B. CUMMINS.

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597 **Defendants' Exhibit 296.**

Jan. 27th, 1890.

Gen. G. M. Dodge,
No. 1 Broadway, New York.

Dear Sir:—

On account of Col. Blodgett's absence from home, I find that I will not be able to have a consultation with him, until shortly prior to the meeting of the stockholders of the Des Moines Union Railway Company called for February 18; therefore I enclose you a copy of the proposed amendments as they have been prepared by me, and also a copy of a resolution, which I have thought ought to be submitted to and passed by the stockholders after the amendments have been made.

You will observe that these amendments are directed to two purposes, first, to clear up the ambiguity and uncertainty with respect to the amount of stock to be issued on account of the original purchase of the property, second, to enable the Des Moines Union Railway Company to act in all matters

without the previous authority of three corporations. I have endeavored to protect the interest of the minority as fully as it is protected in the present articles, that is to say, under the amendments as now proposed the company cannot do anything of importance without the affirmative vote of the one-quarter of the stock which your road will represent
20m or the vote of one of the directors which you will always be able to control. By this arrangement, you will have as effective a negative upon the conduct of the company exerted directly by your stock, as you now have by requiring the previous formal action of the Des Moines & Northern Railway Company. I have given the matter the most careful attention, and while Mr. Hubbell was at first disposed to oppose the amendments which I have prepared, after a full explanation with him, I believe that he will support them. If this reaches you before he leaves New York, it will be well to talk the matter over with him. In any event give me your ideas as fully as you can, and particularly if you do not expect to be here.

Yours very truly,

(Signed) A. B. CUMMINS.

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209 **Defendants' Exhibit 297.**

New York, Feby. 3, 1890.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I will give you for the Purchasing Committee the option of buying of them $135,000. of the Bonds of the Des Moines Union Railway Co. and 1/4 interest in the capital stock of that Company for $135,000. and accrued interest from Nov. 1st, 1889 any time within ten days from this date. Payment to be made in cash if the option is availed of by you.

O. D. ASHLEY, Secy.
Pur. Com.

New York, Feby. 3, 1890.

O. D. Ashley, Secy.

Dear Sir:—

I hereby accept the proposition made by you, for the Purchasing Committee to me, for the sale to me of $135,000. of Des Moines Union Railway Co. Bonds, and a 1/4 interest in the Capital Stock of that Company, and hand you now $10,-

000. and will pay the balance as soon as you deliver the property.

Yours truly,

F. M. HUBBELL.

New York, Feby. 5, 1890.

Received of F. M. Hubbell his check for Ten Thousand Dollars on account of $135,000. Des M. U. R. Co. bonds and one-quarter of the stock of said company as per letter written to him by me in behalf of the Purchasing Committee.

600

O. D. ASHLEY.

Mr. Ashley:

Please deliver the Bonds & Stock within mentioned to

F. M. HUBBELL.

Feby. 5. 1890.

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601 **Defendants' Exhibit 298.**

Draft of contract of February 11, 1890 for the purchase of Des Moines Union stock and bonds.

Know all Men by these Presents. That the Purchasing Committee of The Wabash Railroad Company, for and in consideration of the sum of $67,000.00 and interest thereon at the rate of 5% per annum from November 1st, 1889, the receipt of which is hereby acknowledged, has sold, assigned and set over, and by these Presents does sell, assign and set over, unto F. M. Hubbell of Des Moines, Iowa, sixty-seven bonds of the Des Moines Union Railway Company, for $1,000.00 each, and also one-~~fourth~~ eighth of the ~~interest of said Purchasing Committee in the~~ ~~capital stock~~ capital stock of said Des Moines Union Railway Company.

And said Committee hereby authorizes and empowers said Des Moines Union Railway Company, or the proper Officers thereof, to issue to said Hubbell or his assigns, one-~~fourth~~ eighth of all the capital stock ~~to which said Committee is entitled~~ in said Des Moines.

The said Purchasing Committee hereby guarantees the approval ~~of the transfer of said stock to said Hubbell~~ by the Des Moines and St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days.

In Testimony Whereof said Committee has caused these Presents to be signed by its Secretary this ..... day of February, 1890.

[The interlineations preceding the last paragraph before the attestation clause are in the handwriting of F. M. Hubbell. The paragraph preceding the attestation clause which is in italics is in the handwriting of W. H. Blodgett. The remainder of the draft is typewritten.]

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602 **Defendants' Exhibit 299.**

Know All Men By These Presents: That the Purchasing Committee of The Wabash, St. Louis & Pacific Railway Company for and in consideration of the sum of $67,000.00. and interest thereon at the rate of 5% per annum from November 1st, 1889 the receipt of which is hereby acknowledged, has sold, assigned, and set over, and by these presents does sell, assign and set over unto F. M. Hubbell of Des Moines, Iowa, sixty-seven bonds of the Des Moines Union Railway Company for $1,000.00 each, and also one-eighth of the capital stock of said Des Moines Union Railway Company.

And said Committee hereby authorizes and empowers said Des Moines Union Railway Company, or the proper officers thereof, to issue to said Hubbell or his assigns, one-eighth of all the capital stock in the said Des Moines Union Railway Company.

The said Purchasing Committee hereby guarantees the approval by The Des Moines and St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days.

In Testimony Whereof, said Committee has caused these presents to be signed by its Secretary this 11th day of February, 1890.

O. D. ASHLEY, Secy.
Purchasing Committee.

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603 **Defendants' Exhibit 300.**

Memorandum of an Agreement made between The Purchasing Committee of The Wabash, St. Louis & Pacific Railway Company, and F. M. Hubbell:

Whereas, it is provided in the Articles of Incorporation of the Des Moines Union Ry. Co. that the Wabash, St. Louis & Pacific Ry. Co. shall nominate four of the directors of said Des Moines Union Ry. Co.: and.

Whereas, the stock of said Union Ry. Co. is now held by different parties and in different proportions from what it was when said Articles were adopted;

Now Therefore, it is agreed between the Purchasing Committee of said Wabash, St. Louis & Pacific Ry. Co. (the successors of said Wabash, St. Louis & Pacific Ry. Co.) and F. M. Hubbell, who has acquired the ownership of one-eighth of the stock of the said Union Ry. Co. that said Purchasing Committee will consent to such change in said Articles of Incorporation as will permit one director of said Company to be nominated by any person or corporation holding one-eighth of the stock of the said Union Ry. Co.

In Witness Whereof, said Purchasing Committee has caused these presents to be signed by its secretary this 11th day of February, 1890.

O. D. ASHLEY, Sec'y.
Purchasing Committee.

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604 **Defendants' Exhibit 301.**

No. 1 Broadway.

New York, Feb. 18th, '90.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I closed out the rest of the bonds and they are in the hands of Messrs. Tilghman, Rowland & Co., and they hold an order for the one-eighth of stock. I paid $69,001.28, and they gave the same kind of papers they gave you, excepting they agreed to turn the stock over to Rowland, who will transfer it to me. I have failed as yet to make a sale of the bonds, and I doubt whether we can unless we shade the price somewhat.

Yours very truly,

G. M. DODGE.

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605 **Defendants' Exhibit 301a.**

Office of
The Wabash Railroad Company
195 Broadway.

New York, April 5, 1890.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I have yours of April 1st this morning. The result of my conversation with Messrs. Joy and Welles is a rather vague

idea that we ought not sell $100,000 of the Des Moines Union R'y Terminal Bonds and one-eighth interest in the capital stock at less than $115,000 and accrued interest on the Bonds, and I do not feel authorized to offer it at any less price. If, however, you will make me a definite bid of the best price you can, I will communicate it to the other members of the Committee and give you an early and definite reply. It must be understood, of course, that a one-eighth interest in the capital Stock shall be sufficient to represent a proprietorship in the Company according to the understanding we had when you were here.

Yours truly,

O. D. ASHLEY,
President.

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606 **Defendants' Exhibit 302.**

Draft of record for meeting of Directors of the Des Moines & St. Louis Railroad Company April 8, 1890.

Meeting of the Directors of the Des Moines & St. Louis Railroad Company.

Des Moines, Iowa, April 8th, 1890.

The directors of the Des Moines & St. Louis Railroad Company, met in regular monthly meeting; Present Jas. F. How, C. M. Hays, A. B. Cummins, F. M. Hubbell, H. S. Priest and George S. Grover. Jas. F. How, Presiding.

C. M. Hays offered the following resolution and moved its adoption:

Whereas, the purchasing committee of the Wabash, St. Louis & Pacific Railway Company, has sold to F. M. Hubbell one-eighth and to G. M. Dodge one-eighth of the stock of the Des Moines Union Railway Company, and

Whereas, the entire capital stock of said Company owned by the company issued as a part of the purchase price thereof has been fixed at $400,000.,

It Is Therefore Now Resolved that the sale by the said Purchasing Committee be, and the same is hereby ratified, confirmed and approved by the Des Moines & St. Louis Railroad Company.

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607 **Defendants' Exhibit 303.**

Amendments to

Articles of Incorporation

Of The

Des Moines Union Railway Co.

We, the officers of the Des Moines Union Railway Company, a corporation existing under and by virtue of the laws of the State of Iowa, do hereby state and certify that at a meeting of the stockholders of said corporation duly called and held on the 8th day of April, 1890, for the purpose of amending the Articles of Incorporation, the said stockholders did unanimously and duly adopt the following amendments to said Articles of Incorporation and did unanimously and duly adopt each of said amendments, to-wit:—

F. M. HUBBELL,
F. C. HUBBELL,
A. B. CUMMINS,
HORACE SEELY,
L. M. MARTIN,
CHAS. M. HAYS,
JAMES F. HOW,
WELLS H. BLODGETT,
G. M. DODGE,
H. D. THOMPSON,

608 Strike out Article I and substitute the following:

Article I.

The name of the corporation shall be the "Des Moines Union Railway Company" and its principal place of transacting business shall be at Des Moines, in the County of Polk and State of Iowa.

Strike out Article II and substitute the following:

Article II.

The objects of the corporation and the general nature of the business to be transacted shall be, the pruchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of

railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, ware houses, elevators, or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines; and also to lease terminal facilities to, and furnish and perform terminal service for all railways whose lines reach or pass through or near the said City of Des Moines; and the corporation shall possess all the powers conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

609 Strike out Article III and substitute the following:

Article III.

The capital stock of the corporation shall be two million dollars ($2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, constituted the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions. Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company and the present owner of the property known as the Des Moines & St. Louis Railroad, one thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines North Western Railway Company, and one thousand shares to the Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, sixteen thousand shares or any part thereof shall be issued onl yby the authority of a resolution of the stock-
610 holders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully

paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered.

The stock shall be transferable only upon the books of the Company by, and with the consent of three-fourths of all the Directors, except in the case the transferee of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

Strike out Article IV and substitute the following:

Article IV.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons who shall be elected by the stockholders at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday in January of each year, and they shall hold their offices for one year and until their successors are elected and qualified; but at all future elections of Directors, it shall require the votes of more than seven-eighths of all the stock theretofore issued, to elect any Director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other things as may be proper or necessary for the corporation to do; but with respect to the matters above mentioned and all other matters except the ordinary operation of the property, the Board of Directors
611 can act only upon the unanimous vote of the eight members thereof and in order to facilitate the transaction of business, power is expressly conferred upon each of the Directors to delegate by written authority, some other person to act or vote for him and in his stead; Provided that such authority shall be filed with the Secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an executive committee, but such selection must be made by the vote of at least seven members.

The duties and powers of such committee shall be defined in the by-laws.

The Board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must

be elected and such by-laws enacted by the unanimous vote of the eight members of the Board. All vacancies occurring in the Board shall be filled by the stockholders at a special meeting in the manner heretofore provided for the election of Directors.

Strike out Article V and substitute the following:

Article V.

The officers of the corporation shall be a President, Vice-President, Secretary and Treasurer (the offices of Secretary and Treasurer may be filled by one person) to be annually elected from the persons composing the Board of Directors as hereinbefore provided; and for that purpose, among others, the newly elected Board shall convene immediately after the adjournment of the annual meeting of the stockholders. Said officers shall hold their offices for one year and until their successors are elected and qualified; and they shall ex-
612 ercise such power and be charged with such duties as usually pertain to their respective offices, subject, however, to the limitations herein contained.

Strike out Article IX and substitute the following:

Article IX.

These Articles may be amended by a vote of more than seven-eighths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendment shall be mailed to each stockholder at his address as disclosed by the transfer books of the Company.

Add Article XI as follows:

Article XI.

Special meetings of the stockholders may be called by the President or by four Directors; but at least ten days notice of such meeting shall be given to each stockholder by mailing to its or his address as shown by the books of the Company a notice stating the time and place of such meeting.

Add Article XII as follows:

Article XII.

At all meetings of stockholders, each stockholder shall be entitled to cast one vote for each share of stock owned by him or it, as may appear from the books of the Company, such vote may be cast either in person or by proxy, but if by proxy, written authority therefor must be filed with the Secretary at or before the time the meeting convenes.

613 Add Article XIII as follows:

Article XIII.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized, that all its authorized capital stock be subscribed or taken.

Add Article XIV as follows:

Article XIV.

The purchase of the property heretofore conveyed to the corporation, the conveyances made in pursuance thereof, the execution of Trust Mortgage to the Central Trust Company of New York, dated February 28th, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 196, at page 525, and the issuance of bonds secured by the same are hereby approved, ratified and confirmed.

Add Article XV as follows:

Article XV.

The proceedings of a meeting held December 10th, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged.

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614 State of Iowa, } ss.
Polk County }

Be it remembered that on this 10th day of April, before me a Notary Public in and for said County and State, personally came F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. B. Cummins, and Horace Seely, officers and directors of the Des Moines Union Railway Company, personally to me known to be the identical persons who signed the foregoing statement and certificate, and acknowledged the execution thereof to be their free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and Notarial Seal this 10th day of April, 1890.

(Seal.)

JAS. P. HEWITT,
Notary Public,
Polk County, Iowa.

State of Missouri, }
County of St. Louis } ss.

Be it remembered that on this 14th day of April, before me a Notary Public in and for said County and State, personally came James F. How, Charles M. Hays and Wells H. Blodgett officers and directors of the Des Moines Union Railway Company, personally to me known to be the identical persons who signed the foregoing statement and certificate and acknowledged the execution thereof to be their free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and Notarial Seal this 14th day of April, 1890.

(Seal.)

B. C. WINSTON,
Notary Public,
City St. Louis, Mo.

Commission expires Nov. 1st, 1893.

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615 State of New York, }
County of New York } ss.

Be it remembered that on this 16th day of April before me, a Notary Public in and for the County of Kings and State of New York aforesaid, personally came G. M. Dodge, President and Director of the Des Moines Union Railway Company, personally known to be the identical person who signed the foregoing statement and certificate and acknowledged the execution thereof to be his free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and Notarial Seal this 16th day of April, 1890.

(Seal.)

WILLIAM MOLLOY,
Notary Public,
Kings County, N. Y.
Certificate filed in N. Y. Co.

State of Iowa, } ss.
Polk County }

Be it remembered that on this 21st day of April, before me, a Notary Public in and for said County and State, personally came H. D. Thompson, Director of the Des Moines Union Railway Company, personally to me known to be the identical person who signed the foregoing statement and certificate and acknowledged the execution thereof to be his free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and Notarial Seal this 21st day of April, 1890.

(Seal.)

J. E. BROWNE,
Notary Public,
Polk County, Iowa.

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616 State of Iowa—ss.

Filed for record in office of Secretary of State, May 12th, A. D. 1890, and recorded in Book C-2, Page 49 to 54 inclusive.

FRANK D. JACKSON,
Secretary of State.

By C. S. Byrkit,
Deputy.

Polk County, Iowa.

Filed for record April 23, 1890, at 10:50 o'clock A. M. and recorded in Book 6, Page 539.

GEO. C. SIMS,
Recorder.

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617 **Defendants' Exhibit 303a.**

The Wabash Railroad Campany.

James F. How, Vice-President.

St. Louis, Mo., April 17th, 1890.

Mr. F. M. Hubbell,
Sec'y. Des Moines & St. Louis Railroad Company,
Des Moines, Iowa.

Dear Sir:—

Enclosed please find Certificate No. 23 for 9,996 shares of the Des Moines & St. Louis Railroad Company stock issued to the Mercantile Trust Company, Trustee. Please issue

Certificate in lieu of same as per the endorsement on the enclosed Certificate to James F. Joy, T. H. Hubbard, Edgar T. Welles and O. D. Ashley, Purchasing Committee, Trustees, and return same to me, and much oblige.

Yours truly,

JAMES F. HOW,
Vice-President.

618

Defendants' Exhibit 303b.

The Wabash Railroad Company.

James F. How, Vice-President.

St. Louis, Mo., April 28th, 1890.

Mr. F. M. Hubbell,
Sec'y. Des Moines & St. Louis R'y.
Des Moines, Iowa.

Dear Sir:—
Your letter of April 22nd is received and I send herein:—

Certificate No. 11 for one share of stock in the Des Moines & St. Louis R'y issued to J. S. Clarkson, for which please issue a certificate in the name of W. H. Blodgett.

Certificate No. 12 for one share of stock in the same company issued to J. S. Runnels, for which please issue Certificate in the name of Geo. S. Grover.

Certificate No. 17 for one share of stock in the same company issued to A. L. Hopkins, for which please issue certificate in the name of H. S. Priest.

Certificate No. 18 for one share of stock issued to R. S. Hays, for which issue certificate in the name of O. D. Ashley.

Certificate No. 19 issued to H. M. Hoxie, for which please issue Certificate in the name of A. B. Cummins.

Certificate No. 20 for one share issued to Mr. Gould for which please issue certificate in the name of Chas. M. Hays.

Please return the new certificates to me and much oblige.

Regarding the resolution referred to in your letter which Col. Blodgett is to prepare, he says that he has been busy since his return from the east, but will forward it to you in a few days.

Yours truly,

JAMES F. HOW,
Vice-President.

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619 **Defendants' Exhibit 303c.**

The Wabash Railroad Company.

James F. How, Vice-President.

St. Louis, Mo., May 10th, 1898.

Mr. F. M. Hubbell,
Sec'y. Des Moines & St. Louis Railroad Co.,
Des Moines, Iowa.

Dear Sir:—

I am in receipt of yours of May 7th, enclosing Certificates of stock of the Des Moines & St. Louis Railroad Co., Nos. 24-30 inclusive, and issued to the parties mentioned in your letter. I enclose herewith the Certificate issued to Mr. Cummins. Will you please have same endorsed and returned to me, and much oblige.

Yours truly,

JAMES F. HOW,
Vice-President.

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620 **Defendants' Exhibit 304.**

The Wabash Railroad Company.

James F. How, Vice President.

St. Louis, Mo., May 20th, 1898

Mr. F. M. Hubbell,
Des Moines, Iowa.

Dear Sir:—

I am just in receipt of yours of the 17th, giving list of certain property that you have purchased in Des Moines, which you offer to sell to the Des Moines Union Railway Company, at the price you paid for same, with interest from the date of purchase, said offer to be accepted at any time within thirty days of the date of your letter. As I understand it, this question will have to be acted upon by the Board of Directors of the Des Moines Union Railway Company, and I suppose your letter is written with the idea of ascertaining how Mr. Hays and myself would vote on the question at such a meeting. It is our opinion that your offer should be accepted, provided the Des Moines Union Railway Company can pay for the property in their bonds at par, with accrued interest.

Yours truly,

(Signed) JAMES F. HOW,
Vice President.

621

Defendants' Exhibit 305.

Agreement between F. M. Hubbell and Purchasing Committee for sale to Mr. Hubbell of 50 bonds Des Moines Union Ry. Co. and 500 shares of its stock, dated June 5, 1890.

New York, June 5, 1890.

This Agreement Witnesseth: That James F. Joy, O. D. Ashley, Thomas H. Hubbard and Edgar T. Welles, constituting the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, do hereby sell to F. M. Hubbell fifty (50) bonds of $1,000 each of the Des Moines Union Railway Company and five hundred (500) shares of the stock of said Des Moines Union Railway Company for the sum of fifty-seven thousand, seven hundred and thirty-six dollars ($57,736.)

We hereby acknowledge the receipt of $7,736 cash in part payment, and said Hubbell's notes for $50,000 to represent the balance due on this contract as follows:

One note for	$5,000	due	July	5,	1890
" " "	$5,000	"	Aug.	5,	1890
" " "	$5,000	"	Sept.	5,	1890
" " "	$5,000	"	Oct.	5,	1890
" " "	$5,000	"	Nov.	5,	1890
" " "	$5,000	"	Dec.	5,	1890
" " "	$5,000	"	Jan.	5,	1891
" " "	$5,000	"	Feb.	5,	1891
" " "	$5,000	"	Mch.	5,	1891
" " "	$5,000	"	Apr.	5,	1891

with interest at 5% per annum.

It is further agreed that all of said bonds and stock shall be deposited with the Central Trust Company of New York as collateral security for the payment of said notes, and that when the first two of said notes are paid that then the
622 said 500 shares of stock shall be delivered to said Hubbell by certificate transferred by endorsement, and we agree to have the same transferred on the books of said Des Moines Union Railway Company, so far as the vote of the Directors of said Des Moines Union Railway Company, representing the Des Moines & St. Louis Railway Company, will secure said transfer.

F. M. HUBBELL
THE PURCHASING COMMITTEE
JAMES F. JOY, O. D. ASHLEY
T. H. HUBBARD & EDGAR T. WELLES,
By O. D. Ashley Secretary of said Committee.

623 **Defendants' Exhibit 305a.**

No. 1 Broadway.

New York, June 6th, 1890.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I duly received yours of May 17th in re. property you have bought at Des Moines. I would like to have you send me a map showing this property. I think the Des Moines Union Railway Co. should take it as soon as they can raise the money to do so on their bonds.

Yours very truly,

G. M. DODGE.

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624 **Defendants' Exhibit 305b.**

Office of
The Wabash Railroad Company.
195 Broadway.

New York, June 7, 1890.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I enclose herewith receipt of the Central Trust Company for the fifty bonds of $1,000 each of the Des Moines Union R'y Co. and the ten notes signed by you, according to the agreement, duplicate of which you have. These bonds and notes are with the agreement now in the possession of the Central Trust Company for the purpose of carrying out the provisions of that agreement.

As soon as we receive the 500 shares of Capital Stock of the D. M. U. R'y Co. we will also deposit that, as understood between us:

Yours truly,

O. D. ASHLEY,
President.

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625 **Defendants' Exhibit 305c.**

Office of
The Wabash Railroad Company.
195 Broadway.

New York, Oct. 5, 1891.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—It has been suggested to me that perhaps we can arrange for the negotiation of the Des Moines Union R'y Co.

bonds, including those owned by the Purchasing Committee and yourself, with parties in London or New York. In order to do this, I should like to have you forward to me a description of the property mortgaged and your valuation of the same, together with copies of the agreements of the lessee companies, and copies, also, of the mortgage and bond. Also a statement of what improvements it is proposed to put upon the property.

I have said that I thought these bonds could be sold at a price which would net 90 to the holders, and I think now is the time to begin the negotiation. The Purchasing Committee hold $205,000 of these bonds, and I think you individually, have over $100,000. It will be necessary in making this negotiation to unite all of these bonds in one mass, so that the seller may control the market and the sale can be made pro rata according to the contributions.

Let me hear from you at your earliest convenience, and believe me,

Yours truly,

O. D. ASHLEY.

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626 **Defendants' Exhibit 305d.**

Telegram.

St. Louis, Mo. Nov. 27, 1891.

F. M. Hubbell, Secy.,

Were any certificates of stock ever issued to Mr. Hays and myself to qualify us as directors of the Des Moines Union Railway Company, or were the entries simply made on the book. Answer.

JAMES F. HOW.

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627 **Defendants' Exhibit 305e.**

The Wabash Railroad Company.

James F. How, Vice-President.

St. Louis, Mo. Nov. 30th, 1891.

Mr. F. M. Hubbell,
Sec'y Des Moines Union R'y Co.,
Des Moines, Iowa.

Dear Sir:—

Yours of the 28th inst. enclosing certificates Nos. 6 and 7 for one share of stock each in the Des Moines Union Railway Company, issued to Mr. Hays and myself, is received.

Yours truly,

JAMES F. HOW,
Vice-President.

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628 **Defendants' Exhibit 306.**

The Wabash Railroad Company.

General Manager's Office.
Chas. M. Hays, General Manager.

St. Louis, April 28th, 1892.

Mr. F. M. Hubbell,
Prest. Des Moines Union Ry. Co. Des Moines, Ia:

Dear Sir:—

I have yours of the 27th in regard to switch to the works of the National Starch Manufacturing Company, West Des Moines, which happened to reach me just as President Ashley was in my office discussing other matters and I therefore laid it before him for his opinion. He agreed with me in my view of the matter, as expressed to you when we discussed it when I saw you in Des Moines last and that is, if it was necessary to run the track off of the main line of the Wabash Road, it should be owned and controlled by this Company, with the privilege to the Des Moines Union, however, of access to and from the Works on the payment of a reasonable car and engine trackage rate. We would not be willing to dispose of the portion of the Wabash main track that would lie between that switch and the present terminus of the Des Moines Union track. In the first place, we would expect a much larger price for the property than the Des Moines Union Railway would, in all probability, be willing to pay, and there are other reasons which we can foresee that would make such action unwise. If the Starch Company desire us to put in the track for them at their expense, in order that they may control the ownership (as I understand from you it is their desire
629 to do) we will be very glad to take the matter up at an early date.

Yours truly,

(Signed) CHAS. M. HAYS,
General Manager.

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630 **Defendants' Exhibit 307.**

The Wabash Railroad Company.

General Manager's Office.

Chas. M. Hays, General Manager.

St. Louis, April 22nd, 1893.

Mr. F. M. Hubbell,
Secy. & Treasurer,

Dear Sir:—

I have your favor of the 19th, in regard to N. 2-3 of lot 6, block 15, bought by Swift & Co. and now offered to us at $8,663.80.

While it seems to me that it is desirable that the lot should be owned by the Des Moines Union Company, we are not in such position that we feel we can, conveniently, advance the amount that would be chargeable to us on usual basis for distributing the expense of such purchase. I think since you are now the largest holder in Des Moines Union Bonds and stock, you should sell the lot to the Company and take bonds at par for same. As a Director of the Des Moines Union Company, I am willing to approve getting lot in this way, but I am not willing to approve of it on basis of each Company contributing its proportion of the purchase price and taking bonds therefor.

Yours truly,

(Signed) CHAS. M. HAYS,
General Manager.

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631 **Defendants' Exhibit 308.**

February 22, '94.

Mr. Roswell Miller, President,
Chicago, Milwaukee & St. Paul Railway Company,
Chicago, Ill.

Dear Sir:—

Your favor of the 20th is received and noted. Enclosed I send you a copy of the Articles of Consolidation and Incorporation and Trust Mortgage of the Des Moines, Northern & Western Railway Company. There has been bonds issued on this property to the amount of $2,770,000. I have no printed copy of the Articles of Incorporation of the Des Moines Union Railway Company, but will say they were drawn by our Attorney, Mr. A. B. Cummins, and I think are all right, and if important to you, can have a copy made and sent you. The amount of bonds authorized by that Corporation is $800,000, bearing 5% interest, of which amount $612,000 have been issued. I enclose plat of Des Moines Union. We have about five miles of right of way occupied by about twenty miles of track. The Des Moines, Northern & Western Railway Company own one-fourth of the capital stock of the Des Moines Union Railway Company. The Wabash own one-eighth and five-eighths is owned by individuals.

If you desire any further information, I shall be glad to furnish it.

Yours truly,

(Signed) F. M. HUBBELL,
President.

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632 **Defendants' Exhibit 309.**

This Indenture, made this Fifteenth day of March A. D. 1894, by and between the Des Moines, Northern & Western Railway Company, hereinafter called the "Des Moines Company," a corporation of the State of Iowa, and the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the "St. Paul Company," a corporation of the State of Wisconsin, authorized to own and operate Railroads in the State of Iowa,—Witnesseth:

1. That the Railroads of said Companies intersect, are connected and can exchange traffic each with the other at Madrid and Herndon, in the State of Iowa, and by reason of such connections can form a through Line, reaching the principal Cities and Towns in said State, and States adjacent, and each can furnish to the other traffic not otherwise obtainable.

2. That it is for the interest of both Companies to establish and maintain close traffic relations with each other, and, so far as they lawfully may, to work jointly for their common benefit as against competing lines of Railroad.

3. That the St. Paul Company owns and controls a large amount of the Capital Stock of the Des Moines Company, and desires to have a voice in directing its traffic affairs; and

4. That, in consideration of the benefits and advantages which they expect to derive from this undertaking, and of their mutual and dependent covenants hereinbelow set forth, the said Companies have agreed and do hereby agree each with th other, as follows, to-wit:

633 First. The Des Moines Company hereby agrees that the entire amount of its indebtedness, secured by Mortgage on its Railroad and property, is Two Million, Seven Hundred and Seventy Thousand Dollars in Bonds, bearing interest at the rate of Four per cent. per annum until January 1st, 1897, and thereafter at Five per cent. per annum, together with the interest accrued to this date on said Bonds; and that it will not, without first obtaining the written consent of the St. Paul Company, make or execute any other or further Mortgage on said premises, and will not increase its present bonded indebtedness, except by the issue of Bonds at par for the actual cost of property hereafter acquired, and that the Bonds, if any, so to be issued shall not, without like consent, bear interest at a higher rate than Four per cent. per annum; and it also agrees that it will faithfully endeavor to reduce the rate of interest on its Bonds now outstanding so that they shall,

from and after April 1st, 1897, bear interest at not exceeding Four per cent. per annum.

Provided however, that this Section shall not be construed so as to prevent the Des Moines Company from making a new Mortgage, and issuing new Bonds thereunder, for the purpose of renewing or extending its present mortgage indebtedness; but provided also, that the new Bonds so to be issued shall bear interest at not exceeding Four per cent per annum, and shall not exceed in amount the aggregate of the principal sum of the present outstanding Bonds of said Company and the interest thereon which shall have accrued and be unpaid at the time of the issuing of new Bonds therefor; and provided, further, that said new Bonds, or their proceeds, shall be
634 used only for the purposes aforesaid, and that the present outstanding Bonds and coupons, exchanged therefor or redeemed thereby, shall be canceled when and as so exchanged or redeemed.

Second. The Des Moines Company further agrees that the entire amount of its Capital Stock now issued and outstanding is Four Million, Two Hundred Thousand Dollars, divided into Forty-two Thousand Shares of One Hundred Dollars each, and that all said Shares have equal rights and preferences; and that it will not, without first obtaining the written consent of the St. Paul Company issue any other or further shares, except at par for the actual cost of property hereafter acquired.

Third. The Des Moines Company further agrees that its Board of Directors shall consist of not more than Seven members, and that it will appoint a Traffic Manager, who shall have charge of, and full powers in regard to, its Freight and Passenger Traffic, and who shall be at all times acceptable to the St. Paul Company, and that the rates on all traffic covered by or contemplated in this Agreement shall be made by, or with the consent of, the St. Paul Company.

Fourth. The Des Moines Company further agrees to maintain its Railroad, equipment and appurtenances in good order and repair, and to operate its trains in close connection with the trains of the St. Paul Company, and to accept, as its share of the revenue which may be derived from the traffic contemplated herein, the divisions mentioned and set out in the next succeeding Section hereof.

Fifth. The St. Paul Company hereby agrees that on all traffic by it received from or delivered to the Des Moines
635 Company the following divisions shall be made:

(a) On Freight traffic between Chicago, or points taking Chicago rates, and points on the Lines of the Des Moines Company, that Company shall receive forty per cent (40%) and the St. Paul Company sixty per cent (60%) of the gross rate.

(b) On Freight traffic between points on the St. Paul Company's lines east of the Mississippi River, taking higher than Chicago rates, and points on the lines of the Des Moines Company, that Company shall receive thirty-five per cent (35%) and the St. Paul Company sixty-five per cent (65%) of the gross rate.

(c) On Freight traffic between Minneapolis, Minnesota Transfer and St. Paul, or other points taking the rates of said Stations, and points on the Lines of the Des Moines Company, that Company shall receive thirty-five per cent (35%) and the St. Paul Company sixty-five per cent (65%) of the gross rate.

(d) On Freight traffic between points on the St. Paul Company's lines in Iowa and points on the lines of the Des Moines Company, that Company shall receive forty per cent (40%) and the St. Paul Company sixty per cent (60%) of the gross rate.

(e) On Freight traffic between points on the St. Paul Company's lines in North and South Dakota and Minnesota, and points on the lines of the Des Moines Company, that Company shall receive thirty-five per cent (35%) and the St. Paul Company sixty-five per cent (65%) of the gross rate.

(f) On Freight traffic between points on which the rate shall be made up of the two local rates, each Company shall be entitled to its local rate.

636 (g) On Passenger traffic between points on the Lines of the St. Paul Company and points on the Lines of the Des Moines Company, the last named Company shall receive its local rates, except in cases of special arrangements which the parties hereto may, from time to time, mutually agree upon.

(h) On any traffic not hereinabove provided for, delivered by either party to the other, just and equitable divisions shall be made from time to time, as circumstances may require.

Sixth. It is mutually understood and agreed by and between the parties hereto that the term "gross rate", as used herein, means the proportion of the through rate which accrues to both parties hereto; and that all accounts, settlements and payments, growing out of this agreement, shall be presented and made monthly.

Seventh. It is further mutually understood and agreed that neither party hereto shall discriminate against the other in favor of any other line of Railroad or any transportation Company, in respect to any traffic covered by this agreement, and that both Companies shall work jointly for their common interest as against competing Lines; and that each Company will, so far as it lawfully may, turn over to the other Company all traffic destined to points on such other Company's Lines or reached by reasonably direct connections thereof.

Eighth. It is further mutually understood and agreed that if any question shall hereafter arise touching the construction of this contract, or any part thereof, or concerning the business or mode of transacting the business to be carried on
637 under its provisions, or concerning the observance or performance of any of its conditions, upon which question the parties hereto cannot agree, the same shall be submitted to the arbitrament of three disinterested persons familiar with such business and experienced in railroad management, to be chosen: One by the Des Moines Company, one by the St. Paul Company, and the other by the two so chosen. The party desiring such arbitration shall select its arbitrator, and give written notice thereof to the other party, and if either of the parties hereto shall fail to name an arbitrator within twenty days after notice as aforesaid has been by the other given to it, the arbitrator named by the party giving such notices shall name and appoint an arbitrator for and on behalf of the party so in default, and the arbitrator so named and appointed shall have the same power and authority as though he had been chosen by such party. The said Arbitrators shall, so soon as possible after their selection, meet at the City of Chicago, unless they shall designate some other place of meeting, to hear and decide the questions submitted to them, and shall give to each party reasonable notice of the time and place of such meeting; and after hearing both parties in regard to the matter in dispute, and taking such other testimony, or making such examinations and investigations as they, the said arbitrators, may deem necessary, they shall make in writing their award upon the question or questions so submitted to them, and serve a copy thereof on each party hereto; and such award of said arbitrators, or a majority of them, shall be
638 final and binding upon said parties, and each or either party shall immediately make such changes in the management or conduct of its business, or such payments or restitution, as the case may be, as are in and by such award re-

quired of it to be made: Provided, however, that until the said arbitrators shall make their award upon any question or questions submitted to them, the business, settlements and payments to be transacted and made under the terms of this agreement shall continue to be transacted and made in the manner and form existing prior to the arising of such question or questions.

Lastly. It is further mutually understood and agreed that, subject to the faithful observance and performance by each party of all its covenants and agreements hereinabove set forth, this agreement shall be and remain in force for Ten Years from and after the First day of November, 1893; provided however, that the St. Paul Company may terminate the same at any time after the 1st day of February, 1899, by giving to the Des Moines Company sixty days' previous notice in writing of its desire and intention so to do; and provided also, that it may, if it so elects, terminate the same without notice on the Second day of April, 1897, if at that time the Des Moines Company has failed to perform any of its covenants contained in the First Article hereof, or if the Mortgage Bonds of the Des Moines Company then bear interest at a higher rate than Four per cent per annum; but provided always, that at any such termination each Company shall be released from all obligation or liability to the other, except for the
639 payment of any then unpaid award of arbitrators, or of any balances due or to become due for traffic carried under the terms of this Contract.

In Witness Whereof, the Des Moines Company and the St. Paul Company have caused these presents to be executed by their proper officers thereto duly authorized and their Corporate Seals to be hereto affixed and properly attested, the day and year first above written.

(Seal) DES MOINES, NORTHERN & WESTERN RAILWAY COMPANY,
By F. M. Hubbell, President.

Attest: R. L. Chase, Secretary.

(Seal) CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
By Roswell Miller, President.

Attest: P. M. Myers, Secretary.

640 **Defendants' Exhibit 310.**

June 11, 1894.

Mr. F. L. O'Leary,
Treas., Wabash Ry.,
St. Louis, Mo.

Dear Sir:—
I am sending you today by U. S. Express under separate cover, D. M. Union bonds 612 to 619 inc., amount $8,000, in settlement of money advanced on Permanent Improvements of the D. M. Union per resolution of the Board of Directors of last January. Please acknowledge receipt of same.

Yours truly,

(Signed) F. C. HUBBELL, Prest

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641 **Defendants' Exhibit 311.**

June 11, 1894.

Mr. C. M. Hays,
Gen. Mgr. Wabash Ry.,
St. Louis, Mo.

Dear Sir:—
I am sending today to your Treasurer D. M. Union bonds 612 to 619 inc., in settlement of money advanced by your Company to D. M. Union for permanent improvements.

Yours truly,

(Signed) F. C. HUBBELL, V. P.

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642 **Defendants' Exhibit 312.**

October 17, 1894.

Mr. Chas. M. Hays,
Vice Prest. Wabash Ry. Co.,
St. Louis, Mo.

Dear Sir:—
In the purchase of the Heath lots and the lots upon which the freight house is built, the D. M. Union incurred an indebtedness of $50,775.00 which at the time was expected to be placed in St. Louis at a very low rate of interest but on account of a sudden stringency in the money market, your Company was unable to place this loan and it has been carried temporarily by the Equitable Life Ins. Co. of Iowa, at eight per cent interest. The paper is past due. While the Insurance Company is very willing to continue the loan at the present rate of interest, I feel that the D. M. Union ought to get a lower rate of interest, if possible. The loan is well secured

by a mortgage on the lots and by a deposit of $60,000 of D. M. Union first mortgage bonds. I think we could make some arrangement whereby the debt can be reduced to about $40,000 by payment out of this Company's Surplus Earnings in the near future, thus improving the security. With this accomplished, cannot your Company arrange with your eastern financial agents, to carry this loan on a five per cent basis? In the event that the loan is placed in the east by you, we would want it for a time certain, so that the Union Company would not be embarrassed by being called upon without notice to pay this large amount of money.

We would like to have this loan fixed so that $3,000 of
643 it could be paid every six months out of future Surplus Earnings with option to this Company to pay it all on any interest day after three years. The interest can be payable semi-annually, both interest and principal payable either in St. Louis or New York as may be found desirable.

Yours truly,

(Signed) F. C. HUBBELL, Pres.

$50,000	at 8% =	$4,000
40,000	at 5% =	2,000
Saving of		2,000 per annum.

644 **Defendants' Exhibit 313.**

The Wabash Railroad Company.

Office.

Chas. M. Hays, Vice-Pres. & Genl. Mgr.

St. Louis, Mo., Oct. 22nd, 1894.

Mr. F. C. Hubbell,
Pres't. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

Replying to yours of Oct. 17th relative to the indebtedness of $50,775.00 incurred by the Des Moines Union Ry. Co. in connection with the purchase of the Heath lots.

I note your suggestion that we should apply our surplus earnings and reduce the debt to the amount of $40,000.00 and your inquiry if with this accomplished we can arrange to carry the loan on a 5% basis.

Upon looking into the matter I find I can make a loan for three years, with the Commercial Bank on the basis of 6%

per annum, interest payable semi-annually, and $5000.00 to be paid every six months. Or, if you prefer, you can make it $5000.00 payable at the end of every year. They would want the collateral you mention, of deed of trust on the property, and $60,000.00 of the Des Moines Un. Ry. First Mortgage bonds.

I enclose form of collateral notes and suggest that if this proposition is accepted, you draw up interest notes to run with each principal note, executing the notes in the two places provided therefor, and send to me with the $60,000.00
645 Des Moines Un. Ry. First Mortgage Bonds, deed of trust and abstract of title to the property conveyed, when I will arrange to get the money and forward you by express.

Yours truly,

CHAS. M. HAYS,
Vice Prest. & Genl. Mngr.

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646 **Defendants' Exhibit 314.**

The Wabash Railroad Company.

Office

Chas. M. Hays, Vice Prest. & Genl. Manager.

(Dictated.) St. Louis, Mo., Nov. 7th, 1894.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry. Co.,
Des Moines, Iowa.

Dear Sir:—

On my return Monday from a week's absence in the East, I found your letter of Oct. 30th, relative to the new loan on the Heath property.

Yesterday being a holiday I did not have an opportunity to see the Bank officers but have seen them this morning, and as a result, wired you as follows:

"Reply to yours of October thirtieth delayed by absence "from home. Bank states that they do not want to hold the "matter open indefinitely, but if you will send the papers "within the next four or five days, will carry out the loan as "proposed."

If you will now have the drawing up of the necessary paper hastened, can get the matter in shape.

Yours truly,

CHAS. M. HAYS,
Vice Prest. & Genl. Mngr.

647 **Defendants' Exhibit 315.**

Nov. 8, 1894.

Mr. Chas. M. Hays,
Vice Prest. Wabash R'y Co.,
St. Louis, Mo.

Dear Sir,—

Herewith I hand you two notes one due in 6 months and one due in one year for the approval of your banker. The date of the collateral bonds is not inserted, as I did not have the date at hand. If the form of notes is satisfactory, in other respects, we will fill out the remainder of the blanks and execute the notes as per schedule which I hereto attach:

Note Due.	Amount.	Amount Collateral.
6 months,	$ 3,000.00	$ 4,000.00
12 "	3,000.00	5,000.00
18 "	3,000.00	4,000.00
24 "	3,000.00	5,000.00
30 "	3,000.00	4,000.00
36 "	3,000.00	5,000.00
36 "	22,000.00	33,000.00
Total,	40,000.00	60,000.00

These notes will have as security, in addition to the $60,000.00 collateral bonds, a first mortgage upon the real estate in Des Moines for which the Company paid $50,775.00. If the notes are satisfactory, please return them promptly for execution.

We are having the necessary resolution prepared, authorizing the cancellation of the present mortgage on the Heath lots and authorizing the making of a new mortgage to secure your bank. As soon as the resolutions are completed, I will
648 send same to you for your approval before our Board passed it.

You will notice that the notes are dated December 1st. It will bother us to make payment of $10,775.00 before that date and if agreeable to your banker, we would like to have that date fixed as the commencement of the new loan. We trust the bank will raise no objection to having the collateral bonds proportioned to the several notes. We are undertaking to pay $3,000 every six months on this loan and should we find it impossible to raise the money, we would want the collateral

attached to each note, in order to make loan elsewhere to take up the debt to the bank.

Yours truly,

F. C. HUBBELL,
President.

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649 **Defendants' Exhibit 316.**

The Wabash Railroad Company.

Office
Chas. M. Hays, Vice-Prest. & Genl. Mgr.

St. Louis, Mo. Nov. 10th, 1894.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

I have your two favors of November 8th relative to the $40,000.00 loan to the Des Moines Union Railway Company for the purpose of taking up existing loan on the Heath property.

I have submitted your letters to President Wm. Nichols of the Commercial Bank, and he suggests that instead of drawing your notes as per samples you enclosed, that you draw them as pay copy I herewith send you, providing for letting the interest run with the notes and insert as collateral for the notes in addition to the bonds, reference to the deed of trust covering description of the property.

As the bank is holding the money for the purpose of making the loan and does not want to be at a loss of too much interest, would prefer to have the notes as of date November 15th. If you will have them drawn up as above, properly executed, and send direct to Mr. Wm. Nichols, President of the Commercial Bank, he will send you check for principal of the notes. I have enclosed with this, a few additional blank notes for your use as you may find necessary.

650 The form of resolution for passage by Board of Directors of the Des Moines Union Railway is satisfactory. As I start Monday morning for our annual inspection trip and will be out on the line of the road for ten days, I cannot well arrange to be in Des Moines to attend meeting to take action on these resolutions, although I shall arrive there on our trip on the 18th inst. at 9:40 P. M. and leave the following morning at seven o'clock.

As the bank is getting somewhat impatient awaiting the consummation of this loan, I will be obliged to you if you will have the matter hurried as much as possible.

Yours truly,

CHAS. M. HAYS,
Vice-Prest. & Genl. Mngr.

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651 **Defendants' Exhibit 317.**

November 20, 1894.

Mr. Roswell Miller, President,
Chicago, Ill.

Dear Sir:—

Have you heard from New York with reference to the provisions of the new first mortgage bonds which are to be executed by the Railroad Company successor to the present Des Moines, Northern & Western Ry. Co?

Since I saw you in Chicago I have had an interview with Genl. Dodge and told him of our conversation, and he seems to think $300,000. of bonds in the treasury for new equipment, additional terminals, and new construction is sufficient, and as much as should be provided for that purpose. He is willing to have $10,000. per mile issued for new extensions.

I desire to have this matter understood as speedily as possible, as I wish to place the copy in the hands of the engraver.

The road is to be sold on the 15th of December, and we hope to have the sale confirmed by the first of January, and a new company organized by that time. The Court may, however, require thirty days to elapse between date of sale and date of confirmation.

Hoping to hear from you soon, I remain,

Yours truly,

(Signed) F. M. HUBBELL,
President.

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652 **Defendants' Exhibit 318.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, Nov. 24th, 1894.

F. M. Hubbell, Esq.,
President D. M. N. & W. R'y Co.,
Des Moines, Iowa.

Dear Sir:—

I have yours of the 22nd instant.

I have not heard again from Mr. Bond, but presume that I shall shortly, and will then communicate further with you. I am still of the opinion that $10,000 per mile for extensions is too small to be of any use. It would be better not to have any provision for extensions than to have an insufficient one. You cannot build and complete a road through an average country for $10,000 per mile. You can do the grading and lay the track for perhaps a little less than that amount, but by the time the road gets well settled and is ballasted and put in permanent condition you will have expended much more than that.

I think the amount authorized for extensions should be liberal enough to take care of the cost, and that there should be a proviso that of such authorized amount anly so much shall be used as represents the actual cost, as is the case in our general mortgage.

633 $300,000 treasury bonds for equipment, additional terminals and improvements is a very small sum. When the road is ballasted it will eat up a good part of it. To be sure it does not need ballasting now, but when you are making a long mortgage you have to look into the future, and as in the case of the bonds issued for extensions, you can protect the owners of the property by the proviso that bonds shall only be issued for actual cost. However, I will leave the matter for Mr. Bond to settle with our Executive Committee, and will then advise you.

I understand you are negotiating with the Iowa Central to let them in on the Des Moines terminal. I do not see how they can be of any advantage to your road. The Terminal Company can get a little revenue out of them, but to my mind the D. M. N. & W. will lose two dollars for every dollar they may get from them. You will be simply introducing another competitor.

Yours truly,

(Signed) ROSWELL MILLER,
President.

How do you make up the amount of your new mtgs?

654 **Defendants' Exhibit 319.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, Nov. 26th, 1894.

F. M. Hubbell, Esq.,
President D. M. N. & W. R'y Co.
Des Moines, Iowa.

Dear Sir:—

I am this morning in receipt of letter from Mr. Bond, from which I quote the following relative to the views of the Executive Committee:

"At our Executive Committee meeting yesterday your letter of the 13th with reference to the Des Moines, Northern & Western Ry. Co. foreclosure, and the importance of providing in the new mortgage for an issue of bonds for additional road and improvements, was submitted, and it seemed to the Committee quite important that the new mortgage should provide for such further issue. It would seem that the holders of the present bonds would be amply protected, for if our company obtain control, it is not probable that we should overload the new company, and doubtless, eventually the whole property would be brought in as a part of the St. Paul property."

I think you are perfectly safe in making a liberal provision for extensions and for improvements so long as issue is limited to actual cost.

Yours truly,

ROSWELL MILLER,
President.

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655 **Defendants' Exhibit 320.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, November 31st, 1894.

F. M. Hubbell, Esq.,
President D. M. N. & W. R'y Co.
Des Moines, Iowa.

Dear Sir:—

I hand you herewith letter just received from Mr. Bond, which please note and return. I should be glad to have you

consider it as transmitted to you personally and not show it to your associates.

I will give you further information after Mr. Bond has succeeded in getting the members of the committee together.

Yours truly,

ROSWELL MILLER,
President.

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656 **Defendants' Exhibit 321.**

New York, 19 Nov. 1894.

D. M. N. & W. Ry.,

Roswell Miller, Esq.,
President.

Dear Sir:—

I am in receipt of your letter of the 13th with other papers relating to the foreclosure of the original Des Moines, Northern & Western Ry. mortgage, and a new issue of bonds carrying 4% interest to the extent of $2,930,000 upon the present 150 miles of completed and equipped main track; and I note your inquiry as to whether in our opinion the new mortgage should provide for further issue of bonds for extensions. Also your calling attention to the last clause of the purchasing committee's agreement whereby the provisions previous existing for bonds Nos. 1 to 650 entitling such holders to six per cent of the gross earnings until January 1, 1897. The papers would have been presented to our committee on Thursday last; but no committee meeting was held as that was the day set for the funeral of Mr. J. Hood Wright. As I understand the matter the old mortgage now being foreclosed provided for an issue of bonds to the extent of $18,500. per mile of road. The new mortgage proposes to increase this mileage amount to nearly $20,000. per mile. ($2,930,000 upon 150 miles). And a copy of the new bond provides that $8,000 per mile additionally only may be issued for completed and equipped main track hereafter acquired by construction or purchase. There is nothing in the

657 mortgage, as suggested in your letter providing for an issue of bonds for improvements. Without having an opportunity of consulting our committee, it seems to me that the new mortgage should make provision in amount equal to the old mortgage for additional road that may be purchased or acquired; also a reasonable amount for improvements. As I understand it was originally contemplated to extend the Boone line into Hamilton and Webster counties to coal properties somewhere in the vicinity of Fort Dodge. If

our company should hereafter acquire control of this property leaving a considerable minority in the stock outstanding, we should, of course, have to finance any extensions and improvement expenditures; and it would be hardly possible to do this without some provision should be made in the mortgage for the cost of such additional road and improvements.

I note your second letter of same date, as to Mr. Hubbell's suggestion that you should acquire an interest in the stock of the Des Moines, Northern & Western Co. It seems to me that your impressions are correct; that while there may be some money in it, it might be objectionable in case, as is very probable, negotiations affecting stockholding interests between the two companies should hereafter be necessary.

I will not return the papers as you request by this mail, as I hope within a day or two to get together some members of our committee long enough to read them with your letters and mine; and when I do I will advise you as to any expression of opinion they may make.

Yours truly,

FRANK S. BOND,
Vice-President.

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658 **Defendants' Exhibit 322.**

November 22, 1894.

Mr. Roswell Miller,
President Chic. M. & St. P. R'y Co.,
Chicago, Ill.

Dear Sir:—

I have yours of the 21st inst. enclosing letter of Frank S. Bond, Vice President, dated November 19th, which I now return herein to you.

I wrote to you on the 20th inst. stating General Dodge's views on this matter, and I hope that you can coincide with the General as to the $10,000. per mile for extensions, and $300,000. treasury bonds for equipment, additional terminals, etc. These figures are satisfactory to me, and I shall be pleased if they also meet with your approval.

Hoping to hear from you soon, I am,

Yours truly,

(Signed) F. M. HUBBELL,
President.

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650 **Defendants' Exhibit 322a.**

The Wabash Railroad Company.

Office.
Chas. M. Hays, Vice-Prest.
& Gen'l. Manager.

St. Louis, Mo. Feb. 22, 1895.

Mr. F. M. Hubbell,
Prest. Des Moines Union Ry.,
Des Moines, Iowa.

Dear Sir:—
Enclosed herewith please find certificate No. 6 for one share of Des Moines Union Railway Company stock in the name of James F. How, which please have transferred to H. L. Magee, qualifying him as a director, and return same to me.

Referring to the matter of sale of $25,000 Des Moines Union Ry. Bonds, I have as you requested, made some inquiry of two or three of our trust companies here, and find that at the present time there is no opportunity to dispose of any of them. There seems to be a disposition to confine investments to home securities.

Did you hear from General Dodge, relative to the three bonds that were to be issued us in settlement for the trucks?

Yours truly,

CHARLES M. HAYS,
Vice-Prest. & Genl. Mngr.

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660 **Defendants' Exhibit 322b.**

The Wabash Railroad Company.

Office.
Chas. M. Hays, Vice-Prest. & Genl. Manager.

St. Louis, Mo. Feb. 25th, 1895.

Mr. F. M. Hubbell,
Secretary, Des Moines Union Ry.
Des Moines, Iowa.

Dear Sir:—
I have yours of Feb. 23rd, enclosing Des Moines Union stock certificate No. 27 for one share of stock transferred to Mr. H. L. Magee, qualifying him as a director in the Des Moines Union Company, and also note that General Dodge has authorized you to transfer from his block of bonds to be issued by the new company, three bonds of the Des Moines

Northern & Western Railway in settlement of our claim against that company.

Yours truly,

CHARLES M. HAYS,
Vice-Prest. & Genl. Mngr.

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661 **Defendants' Exhibit 323.**

Des Moines, Iowa, Mch. 1, 1895.

Roswell Miller, Pres.,
C. M. & St. P. Ry. Co.,
Chicago, Ill.

Dear Sir:—

The foreclosure of the Des Moines, Northern & Western Railway Company mortgage is now complete, and the title of the property is in G. M. Dodge, F. M. Hubbell and F. C. Hubbell as Purchasing Committee of the bondholders. The new Company, called Des Moines, Northern & Western Railroad Company, has been organized. The articles of incorporation provide, among other things, that the capital stock shall be $8,000,000, divided into shares of the par value of $100 each. They further provide that the consideration to be paid for the railway property shall be $2,915,000 of the first mortgage bonds of the company, and $4,372,500 of its capital stock; the stock issued being 50% in excess of the bonded indebtedness as required by law.

The new company will of course assume the current obligations of the old company, and receive its current income. All that remains to be done is the execution of the mortgage, and the issuance of the bonds and stock. The members of the Purchasing Committee, as well as the respresentatives that your company is to have upon the Board, have been omitted from the Board of Directors as named in the articles of incorporation, for the reason that it was necessary to have persons who were here to execute the articles, and it was thought best not to have any member of the Purchasing Committee up-

662 on the Board until after the transfer is made. We intend to at once hold a meeting of the Board, authorize the purchase of the property from the Purchasing Committee for the consideration above named, and then re-adjust the Board in accordance with our agreement with you; that is to say, three of the persons named in the articles will resign, and there will be elected in their stead the persons whom you desire on the Board. The new Board as thus changed will then authorize the execution of the mortgage and the issuance of the bonds to the amount of $2,915,000, to be delivered to the Purchasing Committee for the purpose of being substituted for the bonds of the old company, with their accumu-

lated interest. It will also authorize the issuance to the Purchasing Committee of stock to the amount of $4,372,500 for the distribution by the committee as provided in the Purchasing Committee's agreement. This meeting of the Board should be held at the earliest possible moment, and I suggest Tuesday, the 5th day of March, as the time for holding the meeting, inasmuch as it is of great importance to us to get the bonds out and in the hands of the persons entitled to them as soon as we can do so. I would be very glad if you would see that the three persons who are to represent your Company on the Board are present on that day. In any event you will please indicate to me the names of the Directors you want, and if I do not hear from you I shall take it for granted that the three representatives now on the Board of the old company are to be put on the Board of the new company.

Yours very truly,

(Signed) F. M. HUBBELL.

663

Defendants' Exhibit 323a.

The Wabash Railroad Company.

Office.

Chas. M. Hays, Vice-Prest. & Genl. Manager.

On Road, April 22nd, 1895.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

Replying to yours of April 18th, relative to the proposed erection of building for the Pratt Grocery Company on the Heath lot belonging to the Des Moines Union Railway.

I suggest that the firm of F. M. Hubbell & Son, buy the lot from the Des Moines Union Ry. and then make their arrangements for the erection of the building. It does not seem to me it should be the policy of the Des Moines Un. Ry. to purchase property simply for the purpose of locating thereon free of rental, warehouses or industries of any kind, and if as you say, the lot is at one side and will never be needed for tracks, that is all the more reason for our selling it and relieving the

tenant companies of the Des Moines Union Ry. to that extent of the interest charge on the property.

Yours truly,
CHARLES M. HAYS,
Vice-Pres't. & Gen'l. Mgr.

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664 **Defendants' Exhibit 324.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Chicago, May 14th, 1895.

Dear Sir:—

Please send me another printed copy of the record of re-organization.

I should also be glad to have reports of your earnings and expenses from time to time as they may be made up.

Yours truly,

(Signed) ROSWELL MILLER, President.

F. M. Hubbell, Esq.,
President D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

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665 **Defendants' Exhibit 325.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller, President.

Chicago, May 16th, 1895.

Frederick M. Hubbell, Esq.,
and Messrs. Frederick M. Hubbell & Son,
Des Moines, Iowa.

Dear Sirs:—

As Trustee under the contract between yourselves and the Chicago, Milwaukee & St. Paul Railway Company, dated March 15th, 1894, and in accordance with Section 7 of said contract, I hereby return to you 23,268 shares of the capital stock of the Des Moines, Northern & Western Railway Company deposited by you with me as Trustee, viz.:

Certificate	No.	24,	3360	Shares;
"	"	25,	3360	"
"	"	26,	3360	"
"	"	27,	3360	"
"	"	28,	3360	"
"	"	29,	6468	"

and I have received from you in lieu thereof 24,224 shares of the capital stock of the Des Moines, Northern & Western Railroad Company, to be held by me as Trustee for the purposes stated in said contract, viz:

Certificate	No.	2,	3498	Shares.
"	"	3,	3498	"
"	"	4,	3498	"
"	"	5,	3498	"
"	"	6,	3498	"
"	"	8,	6734	"

666 As authorized and directed by the terms of said contract, I have delivered to the Chicago, Milwaukee & St. Paul Railway Company certificate No. 2, 3498 shares of the capital stock of the Des Moines, Northern & Western Railroad Company, being a part of the 24,224 shares above referred to—which 3498 shares are due to the Chicago, Milwaukee & St. Paul Railway Company by virtue of said contract.

Please acknowledge receipt of this notice and approve my action as stated therein.

Yours truly,

(Signed) ROSWELL MILLER.

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667 **Defendants' Exhibit 326.**

Chicago, Illinois, May 16th, 1895.

Received of Frederick M. Hubbell and Frederick M. Hubbell & Son the following certificates of stock in the Des Moines, Northern & Western Railroad Company, viz:

Number of Certificate	Date	To Whom Issued	No. Shares	Par Value
3	March 5, 1895.	Roswell Miller, Trustee.	3498	$ 349,800
4	March 5, 1895.	" " "	3498	349,800
5	March 5, 1895.	" " "	3498	349,800
6	March 5, 1895.	" " "	3498	349,800
8	March 5, 1895.	" " "	6734	673,400
			20726	$2,072,600

To be held by me in trust, and used, voted and disposed of from time to time, as set out, directed and agreed upon in the contract made between Frederick M. Hubbell and Frederick K Hubbell & Son, parties of the first part, and the Chicago, Milwaukee & St. Paul Railway Company, party of the second part, and Roswell Miller, party of the third part, dated March 15th, 1894, to which reference is hereby made.

(Signed) ROSWELL MILLER.

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668 **Defendants' Exhibit 327.**

May 1st, 1895.

Mr. Chas. M. Hays,
Vice Prest. Wabash R. R. Co.,
St. Louis, Mo.

Dear Sir,—

Referring to attached would advise the Carbondale Coal Company are now in bankruptcy but in the process of reorganization with prospect of interesting very considerable capital. They ask us to make an answer to attached letter. Possibly they will use the letter as an inducement to capitalists to take their new stock and possibly might show the letter to the C. R. I. & P. Road in order to make a better trade with them. However, we think enough of the scheme to wish to know your views. The Carbondale people had figured on building a line from their mines to connect in Des Moines with other lines. It occurred to us that the Wabash might be willing to sell to the D. M. Union the west three miles of its main line into Des Moines; thus enabling the D. M. U. to reach the Carbondale Company's land and connection with their tracks could be made at little expense. Should this be brought about, it seems to us that all the D. M. Union paid the Wabash for Wabash tracks would be almost clear gain as D. M. U. would maintain the three miles which the Wabash now has to maintain. If D. M. U. is enabled to reach the Carbondale plant and handle their switching, would it be acceptable to you to count cars going to C. G. W. and D. M. & W. on wheelage basis and cars going to C. & N. W. as switched cars at rate of $3.00 per car?

Yours truly,

(Signed) F. C. HUBBELL, Prest.

619

Defendants' Exhibit 328.

The Wabash Railroad Company.

Office

Chas. M. Hays, Vice Pres't & Gen'l Manager.

St. Louis, Mo., May 7th, 1895.

Mr. F. C. Hubbell,
Pres't. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

Your favor of May 1st, with letter and blue print from R. E. Sears of the Carbondale Coal Co. received, and the letter is herewith returned.

As I wired you last night, the Wabash does not care to sell any portion of their main line to the Des Moines Union Ry. although we would be willing to either divide with that Company on fair terms, any switching rate which might be necessary to make to meet the competition of other lines reaching the track of the coal company; or we would lease to the Des Moines Union Ry. on a fair rental, the right of use of the three miles of Wabash main track referred to.

So far as rates for performing this service are concerned, I would say to them we would make the same switching rate as made by our competitors, and that the rate would be "per car" and not "per ton."

In regard to their supplying the Des Moines Union with coal, I would advise them they would have an opportunity with other coal companies, to bid for our coal supply.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice Pr. & Genl. Mngr.

620

Defendants' Exhibit 329.

May 10, 1895.

Mr. Chas. M. Hays,
Vice Pres't. Wabash R. R. Co.,
St. Louis, Mo.

Dear Sir,—

Replying to yours of the 7th with respect to Carbondale track, we regret that your Company is not willing to sell three and one-half miles of your line adjoining the D. M. Union. However, your suggestion that we pay rental for the same is very satisfactory, provided the rental charge is made low

enough to warrant the handling of coal business over the same. We would like to have the lease as permanent as possible, say ten years, and the rental based on the number of cars passing over your tracks. From the nature of this coal business, it means that there will be as many empties go eastward as there are loads westward so that one-half of the cars will be empties. The D. M. Union will have to make such a rate as will prevent the Carbondale people from building their own track. They are a strong company and it was their first intention to build their own independent line to Des Moines to connect with the various lines here. In the event that you do not feel like making a low enough rental charge for Carbondale people to pay, would you consider the question of selling a strip of ground off the north side of your right-of-way for three and one-half miles and allowing the Carbondale people to construct a line on the same?

I have an appointment with these people Tuesday morning and would be obliged to have a full answer from you at
671 that time, if possible.

Yours truly,

(Signed) F. C. HUBBELL,
Prest.

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672 **Defendants' Exhibit 330.**

Telegram.

From	St. Louis 5/13 1895	Filed	5.58 p. m.
To	F. C. Hubbell	At	

Referring to your letter of May 10th. We will make you trackage charge of one dollar per loaded car and fifty cent per empty when handled with Des Moines Union engines between the mine of Carbondale Co. near Des Moines and the Des Moines Union track. We would not want to make this agreement for any long period of time but subject to notice by either party of desire to terminate, we would not want to sell strip of ground off of our north right of way for the Carbondale people to construct their own line.

CHAS. M. HAYS.

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673 **Defendants' Exhibit 331.**

The Wabash Railroad Company.

Office
Chas. M. Hays, Vice Pres't & Gen'l Manager.

On Road May 14th, 1895.
St. Louis, Mo.

Mr. F. C. Hubbell,
Prest. Des Moines Union Ry.
Des Moines, Iowa.

Dear Sir:

Your favor of May 10th, relative to the use of the three and one-half miles of our line adjoining the Des Moines Union Ry. to reach the Carbondale Coal Company's plant, received. A rental based on the car trackage rate for the use of this track when cars are handled by the Des Moines Union engines, will be most satisfactory to us. I accordingly wired you last night that we would make an agreement covering the desired use of the track on the basis of $1.00 per loaded cars and 50 cents per empties when handled by Des Moines Union engines.

This is about as low as I feel we could permit the use of the track, and while I would be willing to make the arrangement for one or two years, subject to a sixty days notice on the part of either party of a desire to terminate, I would not care to make it of any more permanent a character than that, on the terms named.

If these figures are satisfactory and the arrangement is concluded, we will have it put in the form of a regular agreement for execution by our respective companies.

As I wired you, we would not want to sell a strip along the North side of our right of way.

Yours truly,

(Signed) CHAS. M. HAYS, V. P. & G. M.

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674 **Defendants' Exhibit 331a.**

Telegram.

New York, May 17, 1895.

F. M. Hubbell.

I want to see if I cannot negotiate our Des Moines terminal bonds with a London Banking house and have already taken the initiative. Will you and General Dodge join with us to the full amount of your bonds? If I can sell to net us ninety and accrued interest we shall be satisfied with this price. If you will join give me the amount of bonds, held by you and

General Dodge, and also send printed copy of lease and map showing location of property. Answer.

O. D. ASHLEY.

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675 **Defendants' Exhibit 331b.**

Office of
The Wabash Railroad Company.
195 Broadway.

New York, May 17, 1895.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I sent you a dispatch this morning asking if you would join us in making a sale of the block of Des Moines Union R'y Co. Bonds held by General Dodge, yourself and the Wabash. I have had a talk this morning with a member of a prominent London banking house, and if I can get bonds enough I think there is a fair chance to get 90 and accrued interest, net, to us. But success depends somewhat, I think, upon the amount of bonds we can control.

J. H. Davis & Co. of this city advertise in their circular these bonds for sale at 95 and interest, and I thought they were acting for you. I called upon them this morning and inferred that while they had some bonds for sale they were not yours. At all events, I want to see if I can unite an amount sufficient to tempt the London bankers. If I can do so it will open the way also to a sale of the bonds in the treasury, when we wish to dispose of them. There have been sales lately of terminal bonds in another city at a price considerably lower than these, but they are not strictly a first mortgage and I have, therefore, claimed that these bonds were of a higher rank.

676 Will you be good enough also, whether you consent to unite with us or not, to send me a description of the property covered by the mortgage, amount of land and cost, and also an estimate of its present value according to recent land sales in Des Moines, adding also such information as you think would be useful to any one desiring to purchase the bonds. I have represented that this property being in the center of the city with its track running through the heart of it and costing only the amount of bonds outstanding, is worth very much more than the amount of that mortgage.

Please reply promptly, and oblige,

Yours truly,

O. D. ASHLEY.
President.

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677 **Defendants' Exhibit 331c.**

Office of
The Wabash Railroad Company.
195 Broadway.

New York, May 29, 1895.

General G. M. Dodge,
#1 Broadway,
N. Y. City.

Dear Sir:—

I have your letter of the 25th inst. I think the Des Moines Terminal Bonds ought to be listed on the New York Stock Exchange at once, but the application must be made by the proper officers of the Company. I think Mr. Davis knows where some of the bonds, which have been sold, are located, and Mr. Hubbell can probably indicate where the rest may be found, as he has sold most of his own.

Yours truly,

O. D. ASHLEY,
President.

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678 **Defendants' Exhibit 331d.**

Office of
The Wabash Railroad Company
195 Broadway.

New York, June 4, 1895.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I received your letter of May 20th in due course and thank you for the information contained therein.

General Dodge in reply to my letter says that he intends to hold the bonds he owns as an investment, and therefore he does not wish to sell. I am afraid I cannot furnish an amount of bonds sufficient to tempt foreign buyers, but they have the matter now under consideration. General Dodge wants to have the bonds listed and I suggest that you take the necessary steps for the officers of the company to make the application at the Stock Exchange. Any assistance I can render in the matter you can depend upon; but I hope the application will be made soon as the listing of the securities will give them a marketable value at once.

I hope your negotiations with the C. & Northwestern will be successful. If we could get that company, or the St. Paul Road, to use our terminals, we could at once erect a handsome union station and all parties would be benefitted.

Now that you have as I understand disposed of your interests in the D. M. Northern & Western property to the St. Paul, will you not turn your attention to the Des Moines & St. Louis Road with the view of making some trade for that property? I think you might manage is so as to make it pay you for the trouble.

Yours truly,

O. D. ASHLEY.

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679 **Defendants' Exhibit 332.**

The Wabash Railroad Company.

Office
Chas. M. Hays, Vice Pres't & Gen'l Manager.

St. Louis, Mo. July 6th, 1895.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

I have yours of July 5th, stating that the Des Moines Union shop is so old it will stand no longer and should be rebuilt this Summer, and recommending that it be rebuilt with brick.

Before we decide to take this action, please have estimate made and advise me as to what it would cost to rebuild with brick? Should we ultimately decide on this, the cost over and above what it would cost to renew it with a building of similar character and material as at present, should be covered by the issue of Des Moines Union bonds. In fact we would not want to advance any money for this purpose, and would therefore suggest that the construction of the building be deferred until we can provide the money by the sale of bonds.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice Prest. & Gen. Mngr.

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680 **Defendants' Exhibit 333.**

The Wabash Railroad Company.

Office
Chas. M. Hays, Vice Pres't & Gen'l Manager.

St. Louis Mo. Aug. 1st, 1895.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

I have yours of July 31st, relative to negotiations with the Carbondale Coal Company for the handling of their busines

via. the Des Moines Un. Ry. and note your proposition to them that they should convey to the Des Moines Union all the tracks they now have, carrying with it the right on the part of the Des Moines Union to break the connection the coal company now has with the C. R. I. & P. Ry., also requiring the coal company to pay the cost of building the new track connecting the coal company's tracks with the Wabash, and the extension of track from their present shaft to the new shaft.

I expect the Des Moines Union could, in consideration of these undertakings on the part of the coal company, afford to consent to switch their coal from mines to Des Moines at 15 cents per ton.

I do not think the rate of car trackage I named you in my letter of May 14th, for the use of our track between the connection with the coal company and Des Moines Union tracks, viz. $1.00 per loaded car and fifty cents per empty, is an excessive price. We might, however, agree that
681 when the business developed to a volume in excess of an average of twenty loads handled per day, it should be on the basis of seventy-five cents per loaded car and forty cents per empties when handled by Des Moines Union engines.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice Prest. & Genl. Mgr.

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682 **Defendants' Exhibit 334.**

August 20, 1895.

Mr. Chas. M. Hays,
Vice Prest. Wabash R. R. Co.
St Louis, Mo.

Dear Sir:—

Years ago when the Des Moines yard was laid out, the main track in the west yard was laid so far south as to encroach on the C. R. I. & P. right-of-way. There is no good way to change this, because in moving one track north we would have to move twenty.

I have had an intimation from the C. R. I. & P. people that they would consent to sell the D. M. Union that part of their right-of-way now occupied by our tracks. The amount of ground required for this is about equal to three regular sized lots in Des Moines. I think the price which the C. R. I. & P. will ask will not be exorbitant.

Have I your authority to purchase this extra right-of-way providing the price is reasonable?

Yours truly,

(Signed) F. C. HUBBELL,
Prest.

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683 **Defendants' Exhibit 335.**

The Wabash Railroad Company.

Office
Chas. M. Hays, Vice Pres't & Gen'l Manager.

St. Louis, Mo. August 21st, 1895.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

Replying to yours of August 20th, relative to encroachment by main tracks of the Des Moines Union in West Yard upon the C. R. I. & P. right of way, and proposition to purchase such right of way from the C. R. I. & P. Ry. Co.

Please ascertain from them what they will consent to sell the property for, and advise.

Would like to know how much is involved before consenting to the purchase.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice Prest. & Genl. Mngr.

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684 **Defendants' Exhibit 336.**

August 24, 1895.

Mr. Chas. M. Hays,
Vice Prest. Wabash R. R. Co.,
St. Louis, Mo.

Dear Sir:—

Herewith I hand you proposed trackage contract somewhat modified by Mr. Cummins. There is only one point which is material as relating to the contract, i. e. three years duration instead of one. In order to induce the Carbondale people to build this expensive track, they feel they must have a contract for a period of three years in any event. I trust you will consent to this, as the Carbondale people will not go

on with the trade unless they feel certain of a three year contract.

Contract is also modified allowing the D. M. Union to switch brick and other freight originating on the line of the Carbondale Co. The Carbondale people are growing very anxious to have work commenced on this and I trust we may arrive at an understanding at a very early date.

Yours truly,

(Signed) F. C. HUBBELL,
Prest.

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685 **Defendants' Exhibit 337.**

The Wabash Railroad Company.
Office
Chas. M. Hays, Vice Pres't & Gen'l Manager.

St. Louis, Mo., August 29th, 1895.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—
Replying to yours of August 24th.

I herewith enclose proposed trackage contract between the Des Moines Union and the Wabash, providing for three years duration instead of one, and further amended in one or two other particulars.

Please advise if now satisfactory, and if so, fill in the blanks and execute and return to me when I will execute same and forward one copy to you.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice Prest. & Genl. Mngr.

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686 **Defendants' Exhibit 338.**

Memorandum Of Agreement, made and entered into this 31st day of August A. D. 1895, by and between the Wabash Railroad Company, party of the first part, and the Des Moines Union Railway Company, party of the second part,

Witnesseth:

Whereas, the party of the second part, in order to reach the tracks of the Carbondale Coal Company located immediately East of the City of Des Moines, Iowa, desires the use of the

main track of said Wabash Company extending from the point of connection with the track of the said Union Company, to the point of connection with the said switch tracks of the said Carbondale Coal Company, a distance of . . . . . miles, for the handling of coal from the mines of said Coal Company.

Now, Therefore, in consideration of the covenants and stipulations hereinafter set forth, the parties hereto agree, each with the other, as follows:

First: The Wabash Company hereby grants unto the said Union Company the right to use the said main tracks and appurtenances, for the purpose of moving loaded and empty cars to and from the mines and tracks of said Coal Company with its own engines and crews.

Second: The said Union Company agrees to pay to the said Wabash Company, and the said Wabash Company agrees to accept in full payment, for the use of said track, the sum of One Dollar for each loaded car, and fifty cents for each empty car transported over said track by the motive power of said second party. Should the number of loaded cars moved over said track by the said Union Company during any
687 month, reach an average of twenty cars per working day, then the said Wabash Company will and hereby agrees to charge for such track service a rate of seventy-five cents per loaded car and forty cents per empty car, for all the cars so transported over said track during said month, which charge the second party agrees to pay.

Third: That the second party will pay all mileage which may be charged for cars moved over said track by its engines and crews, and will reimburse said first party for any and all payments of money that it may be required to make on this account.

Fourth: It is further understood and agreed between the parties hereto that this contract governs only the business which the said Union Company proposes to move to and from the said switch tracks of the said Coal Company, and no other.

Fifth: All property transported by the Union Company over the tracks of the said Wabash Company, shall be at the risk of the Union Company. The said Union Company assumes all risk and responsibility for damage or injury to persons or property transported or owned by it growing out of or caused by any imperfection of said tracks and appurtenances, or misplacements of switches or for any damage to stock or injury that may occur to persons while walking on the said track by being struck by trains of said second party, as well

as all risks of damage or injury to persons or property growing out of or caused by fire set out by the locomotives of the said Union Company, or for any other damage that may arise from the movement of the trains handled by the Union Company.

688 In cases of damages or injuries to persons or property occurring on the trains of either party while on the said track, the proper officer of the said Wabash Company shall adjust and settle same, and a release shall be made to both companies, providing that the said Wabash Company shall not make any settlement of a claim which the Union Company is to pay under the provisions hereof without consultation with the proper officer of the said Union Company.

The said Union Company promises and agrees to protect and save harmless the said Wabash Company against any claims or demands on account of injuries to persons or property transported by it and also against any claims or demands on account of any injuries to any employee of the Union Company, and promises to repay the Wabash Company, any sums which it may be required to disburse because of such claims. It will also pay to the said Wabash Company full compensation for any injury to persons or property for which the said Wabash Company may be held liable by reason of the negligence or want of care or caution of the servants or employes of the Union Company, or by reason of the use by the Union Company of defective machinery or appliances. Provided, however, that any damage arising from the carelessness of the sole employes of the Wabash Company, shall be paid by the Wabash Company.

When any injury or damage to persons or property shall be caused by the operation of trains over the track hereinbefore described, and it cannot be determined which party is responsible therefor, the cause shall be regarded as concealed, and the compensation made to the party injured shall

689 be apportioned to and paid by the parties hereto in equal parts.

Sixth: This contract to remain in full force and effect so long as the Union Railway desires to move freight from and to said switch; provided, however, that it may be terminated at any time after three years from the date hereof by either party giving the other thirty days written notice to that effect.

Seventh: That all questions arising under this agreement which cannot be amicably adjusted by the proper officers of

the parties hereto, shall be finally settled by arbitration, as is customary between railroad companies.

In Witness Whereof, the parties hereto have caused these presents to be signed by their duly authorized officers the day and year first above written.

Witness:
R. S. Logan.

THE WABASH RAILROAD COMPANY,
By Chas. M. Hays,
Vice Prest. & Gen'l Manager.

(Seal)

THE DES MOINES UNION RY. COMPANY,
By F. C. Hubbell, President.

Witness: Attest:
F. M. Hubbell, Secy.

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690 **Defendants' Exhibit 339.**

January 22, 1893.

Mr. Roswell Miller, President,
Chicago, Ill.

Dear Sir:—

I have yours of the 21st inst. In reply will say the reorganization would have been completed some time ago had it not been for the fact that Mr. Solon Humphreys owned 15 bonds which he had deposited as collateral for a loan in Hartford. The owner of the loan died, and Mr. H. had considerable difficulty in getting his bonds deposited with the Metropolitan Trust Company for exchange. However, I received a dispatch yesterday from General Dodge's secretary, Mr. J. T. Granger, stating that Mr. Humphreys' 15 bonds had been deposited with the Metropolitan Trust Company. As soon as I hear from the Trust Company that it has the bonds, with authority to make the exchange, the sale will be confirmed by the court, and the Company reorganized.

The securities, however, cannot be exchanged until the bonds are printed. The New York Bank Note Company is printing the bonds and while it is agreed to deliver the bonds to us in six weeks from the time the proof was furnished, it now insists on taking 12 weeks to do the work. We are informed by the Bank Note Company that the engraving is finished and that the bonds are now being printed, but that the printing will not be finished until about the first of March.

I think I can assure you that early in the month of March the reorganization will be completed, every bond of
691 the old Company will have been exchanged, every share of stock taken in and cancelled, and stock in the New Company issued in lieu thereof.

The sale of the road occurred about the 15th of December, and was bid off by the Purchasing Committee,—General Dodge, F. M. Hubbell and F. C. Hubbell.

Yours truly,

(Signed) F. M. HUBBELL.

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692 **Defendants' Exhibit 340.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, March 6th, 1895.

F. M. Hubbell, Esq.,
President D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—
I have yours of the 1st instant.

I was absent when the letter came, therefore I could not arrange to have our Company represented at the meeting on the 5th of March. The three representatives on the old Board would be designated by us for the new Board.

When the organization is perfected, please send to us certified copies of the following documents for our files: (1) decree of foreclosure and sale; (2) notice of sale; (3) confirmation of sale; (4) Master's or sheriff's deed conveying the property to the purchasing committee; (5) articles of incorporation of new Company; (6) proceedings of incorporators forming new Company; (7) conveyance by purchasing committee of (to) new Company; (8) proceedings of new Company in accepting the deed, making new mortgage, changing Board of Directors, etc.; (9) copy of new mortgage.

I suggest that after the stock is distributed the new mortgage should be ratified at the stockholders' meeting.

Yours truly,

(Signed) ROSWELL MILLER.

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694 **Defendants' Exhibit 341.**

May 11, 1895.

Mr. Roswell Miller,
Pres't. C. M. & St. P. R'y. Co.,
Chicago, Ill.

Dear Sir:—

As requested in your letter of March 6th, I now enclose certified copy of the following documents for your files, viz:

1st. Decree of Foreclosure and Sale.

2nd. Notice of Sale.

3rd. Confirmation of Sale.

4th. Master's Deed conveying property to Purchasing Committee.

5th. Articles of Incorporation of New Company.

6th. Proceedings of Incorporators forming New Company.

7th. Conveyance by Purchasing Committee to New Company.

8th. Proceedings of New Company in accepting Deed, Making New Mortgage, etc.

9th. Copy of New Mortgage.

This printed pamphlet does not contain that part of the record wherein the three Directors resigned and their places were filled by Messrs. E. P. Ripley, A. J. Earling and P. M. Myers. If you wish a certified copy of the action of the Board with reference to the election of these three Directors, I will send it to you. The Meeting of the Board of Directors was held March 5th, 1895.

Director J. P. Hewitt tendered his resignation which was accepted and Mr. E. P. Ripley was elected Director in
695 his stead. Thereupon Director Carroll Wright tendered his resignation as Director, which was accepted, and Mr. A. J. Earling was elected Director in his stead. Thereupon Director A. N. Denman tendered his resignation as Director, which was accepted, and Mr. P. M. Myers was elected Director in his stead.

I now enclose statement showing the amount of stock issued in the Des Moines, Northern & Western Railway Co. and the names of each stockholder. In the re-organization it became necessary, in order to comply with the Iowa Statute, that the amount of stock of the new Company should be $4,372,500. I enclose statement showing the amount of stock and the owner-

ship in the new Company, being the Des Moines, Northern & Western Railroad Co. 40% of the whole amount of stock is equal to $1,749,000. One-fifth of this amount is represented by 3498 shares which your Company has earned under its contract with F. M. Hubbell and F. M. Hubbell & Son, dated March 15th, 1894. I therefore now enclose you Certificate #2 for 3498 shares of stock issued to Roswell Miller, Trustee, and suggest that you endorse it for transfer,—one share each to Messrs. Ripley, Earling and Myers, and the residue (being 3495 shares) to your Company, or to any person you choose. Please date the transfer March 5th, 1895, and return it to me for the purpose of issuing new stock. I make this suggestion so that your three Directors shall each have one share of stock. You will find herewith enclosed the following certificates of stock, viz:

Ctf. #3 for.....3498 shares
Ctf. #4 for.....3498 shares
Ctf. #5 for.....3498 shares
Ctf. #6 for.....3498 shares
Ctf. #8 for.....6734 shares

I have prepared and now enclose a form of receipt, using the same language as was used in the receipt signed by you as Trustee, dated July 21st, 1894, wherein you receipted to Frederick M. Hubbell and Frederick M. Hubbell & Son, for 2,268 shares of stock in the old Company. Will you please sign and return to me the enclosed blank receipt, together with all of the stock in the old Company, covered by your receipt dated the 21st of July last; and I will then forward you receipt for that stock.

Certificates #3, #4, #5 and #6 cover 32% of all of the stock of the new Company, and Certificate #8 covers 15.4% of the stock which your Company has an option to purchase.

Hoping you will find this all satisfactory, and that I shall hear from you very soon, I am,

Yours truly,

(Signed) F. M. HUBBELL,
President.

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697 **Defendants' Exhibit 342.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, May 13th, 1895.

F. M. Hubbell, Esq.,
President D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

I have your favor of the 11th inst. with enclosures as stated, and will give the several matters attention.

I find by the record of sale of the D. M. N. & W. Ry that the amount found by the court to be due was:

Bonds outstanding	$2,770,000.00
Coupons and interest thereon	121,060.98
Total	$2,891,060.98

Sale was made for $2,840,000. The court in approving sale announced the deficit $79,971.59. You issued in payment to the purchasing committee $2,915,000 first mortgage bonds—leaving a difference of $4,971.59 between this amount and the judgment. How was this provided for?

The new issue of stock is $4,372,500; the old issue was $4,200,000. What items does the increased issue represent?

I suppose you will get from the Trust Company a satisfaction of the old mortgage or a certificate of cancellation of bonds by the Commissioner, for the public records.

Yours truly,

(Signed) ROSWELL MILLER.

698 **Defendants' Exhibit 343.**

Chicago, Milwaukee & St. Paul Railway Co.

Secretary's Office. Subject: D. M. N. & W. Stock.

P. M. Myers,
Secretary. M-G.

Milwaukee, May 18, 1895.

Mr. F. M. Hubbell,
President, &c., Des Moines.

Dear Sir:—
Yours of the 16th is received, enclosing the following certificates of Des Moines, Northern & Western Railroad Company Stock, viz:

No. 19:	E. P. Ripley	1 share.
" 20:	A. J. Earling	1 "
" 21:	P. M. Myers	1 "
" 22:	R. Miller, President in Trust ...3495	"

for which please accept thanks.

Yours truly,

(Signed) P. M. MYERS,
Secretary.

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699 **Defendants' Exhibit 344.**

May 15, 1895

Mr. Roswell Miller,
Prest. C. & St. P. R'y. Co.,
Chicago, Ill.

Dear Sir:—
I have yours of the 13th inst. While it is true that the Court rendered a judgment for $79,971.59, being the amount of the deficit, this amount is not collectible.

It was ascertained that $2,915,000, would cover all that was due to the bondholders, together with all expenses of foreclosure, including interest to January 1st, 1895, on the bonded debt of the old Company.

On the 1st of January 1895 there was paid in cash $13,000 being interest on bonds #1 to #650, both inclusive, by reason of which there was covered back into the treasury of this company, out of the $2,915,000 of bonds, the amount of thirteen bonds, being bonds #2903 to #2915, both inclusive, so that the bonded debt of the Company is really $2,902,000.

You ask about the difference of $4,971.59 being the difference between the amount of the bid plus the amount of the judgment for deficit, as compared with $2,915,000. In reply will say I think our attorney took a judgment against the old Company for $4,971.59 more than it should have been, but as the judgment is of no value I suppose it makes no difference.

The occasion for the amount of new stock being $4,372,500 comes about in this way. The bonded debt being $2,700 915,000 the Laws of Iowa require that the stock shall be in amount 50% greater than the debt. If you add 50% to $2,915,000, you will have $4,372,500. Our contract with the C. M. & St. P. R'y. Co. under date of March 15th, 1894, provided that the capital stock of the new Company shall not exceed its mortgage indebtedness more than fifty per cent (50%) (See page 4 Paragraph 5 of Contract).

All of the bonds issued under the old mortgage have been surrendered to the Commissioner who has cancelled and deposited them with the Clerk of the United States Court at Des Moines.

The Metropolitan Trust Company did not certify the new bonds until the Clerk of the Court here gave that Company a certificate showing that all of the old bonds had been surrendered to him and cancelled.

If desired, we can procure an order of Court to have the old bonds destroyed by fire.

The old mortgage is effectually cancelled by the decree of the Court and surrender and cancellation of the bonds.

I have your favor of the 14th inst. and now send to you, under separate cover, three printed copies of the record of reorganization.

Within a day or two I will have a statement of earnings and expenses since January 1st, last, prepared and sent to you, and I will continue to forward you these statements as fast as they are made up.

Yours truly,

(Signed) F. M. HUBBELL, President.

701 **Defendants' Exhibit 345.**

May 17, 1895.

Mr. Roswell Miller,
Prest. C. M. & St. P. R'y. Co.,
Chicago, Ill.

Dear Sir:—

We have your letter of the 16th inst. enclosing certificates of stock in the Des Moines, Northern & Western Railway Company as follows:—

#24 for	3360 shares
#25 for	3360 shares
#26 for	3360 shares
#27 for	3360 shares
#28 for	3360 shares
#29 for	6468 shares
Total	23268 shares

We approve of the action you have taken with reference to Certificate #2 of the Des Moines, Northern & Western Railroad Company, for 3498 shares of stock, in delivering it to the Chicago, Milwaukee & St. Paul Railway Company.

I have received a receipt dated May 16th, 1895, signed by you, covering certificates Nos. 3, 4, 5, 6 and 8 dated March 5th, 1895, covering 20726 shares of stock of the Des Moines, N. & W. Railroad Company. I have cancelled and now return to you the receipt which you gave us dated July 21st, 1894, covering 23,268 shares of stock in the Des Moines, Northern & Western Railway Company.

Yours truly,

(Signed) FREDERICK M. HUBBELL,
FREDERICK M. HUBBELL & SON.

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702 **Defendants' Exhibit 346.**

The Wabash Railroad Company.

Office.
Chas. M. Hays, Vice Pres't & Gen'l Manager.

St. Louis Mo., Sep. 2nd, 1895.

Mr. F. C. Hubbell,

Pres't, D. M. U. Ry. Co., Des Moines,

Dear Sir:—

In accordance with your communication of the 31st, I have executed and return herewith contract with the Des Moines

Union Ry. governing the use of our track to the Carbondale Coal Company's mine.

Please advise me when you are ready to commence the use of our track, and I will then give necessary instructions putting the agreement into effect.

I have instructed our General Superintendent to have our Resident Engineer call upon you for the necessary information, so that he can make tracings showing the property covered by the agreement, and as soon as completed will send you one, to be attached to the enclosed contract.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice-Pres't & Gen'l. Mgr.

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703 **Defendants' Exhibit 347.**

Sept. 2, 1895.

Mr. Chas. M. Hays,
Vice Prest. Wabash R. R.,
St. Louis, Mo.

Dear Sir,—

F. M. Hubbell & Son own the north 44 ft. of Lot 6 in Block 15, and all of Lot 3, Block 15, being property immediately south of the depot. This is needed for railway purposes and in fact was bought by us in anticipation of the Railway Co's needs. The railway tracks are now occupying a part of this property.

The D. M. Union owns Lot 6 in Block 20, being known as the Heath Lot and the north 22 ft. of Lot 8, in Block 30, known as the Darby Gill property.

I believe it would be to the advantage of the D. M. Union to make an exchange of the Heath and Darby Gill property, which is out of the line of the right-of-way of the D. M. Union and will never be needed for tracks, for an equal amount of F. M. Hubbell & Son's ground lying directly south of the depot. I should think that an exchange of one foot of F. M. Hubbell & Son's ground for one foot of the railway land would be a fair way. If F. M. Hubbell & Son owned the Heath lot, they would be in better shape to find a good tenant and shipper, while they are prevented from building any permanent structure on the ground south of the depot, well knowing that the same will be needed for railway purposes. Please advise.

Yours truly,

(Signed) F. C. HUBBELL, Prest.

704

Defendants' Exhibit 348.

The Wabash Railroad Company.

Office
Chas. M. Hays, Vice Pres't & Gen'l Manager.

St. Louis, Mo. Sept. 18th, 1895.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

I have yours of Sept. 17th, relative to track connection with the Union Stock Yards.

I think you should be particular not to make any investments of this character until the Yards are located and fixed beyond any possibility of change, and after that is done and you receive deed from the company for the right of way necessary for the tracks, you have our consent to the putting in of a track, with the understanding that all expense in connection therewith is to be charged to capitalized account and the roads reimbursed by the issue of Des Moines Union bonds in amounts similar to their contributions towards the expense.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice Prest. & Genl. Mngr.

705

Defendants' Exhibit 348a.

The Wabash Railroad Company.

Office
Chas. M. Hays, Vice Prest. & Genl. Manager.

St. Louis, Mo. Nov. 26th, 1895.

Mr. F. M. Hubbell,
Secretary, D. M. U. Ry. Co.,
Des Moines, Iowa.

Dear Sir:—

I hereby tender my resignation as Director of your Company representing the Wabash R. R. to take effect December 1st, 1895, and would suggest that Mr. J. Ramsey, Jr., my successor in the management of this Company, be nominated to fill the vacancy.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice-Pres't & Gen'l Mgr.

Papers all forwarded

April ..... '96.

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706 **Defendants' Exhibit 349.**

The Wabash Railroad Company.

Office
Chas. M. Hays, Vice Pres't & Gen'l Manager.

St. Louis Mo. Sept. 27th, 1895.

Mr. F. C. Hubbell,
Prest. Des Moines Un. Ry.
Des Moines, Iowa.

Dear Sir:—

Replying to yours of Sept. 24th, relative to the purchase of the 18 ft. strip off of the North side of the C. R. I. & P. right of way in West Des Moines, equalling 2.19 acres at $1,000.00 per acre.

I presume from your statement of the case, it is desirable that the Des Moines Union should acquire and own this property, and this will be your authority from us to make the purchase, charging the same to construction account, with the understanding that Des Moines Union bonds are to be issued the contributing parties for the same amounts as paid.

Yours truly,

(Signed) CHAS. M. HAYS,
Vice Prest. & Genl. Mngr.

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707 **Defendants' Exhibit 350.**

Oct. 23, 1895.

Mr. Chas. M. Hays,
Vice Prest. Wabash R. R.,
St. Louis, Mo.

Dear Sir,—

Referring to attached, F. M. Hubbell & Son will sell the north 44 ft. in Block 6, and all of Lots 3 and 4 in Block 15, for $30,000 accepting D. M. Union bonds at par in payment for the same. These lots cost us, figuring the interest at 7% $28,000 and as the D. M. Union bonds are not worth quite par, we figure that this only let us out whole. We do not like to sell Lot 3 and retain Lot 4, as we bought all of this property expecting the Union would need it.

Yours truly,

(Signed) F. C. HUBBELL,
Prest.

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708 **Defendants' Exhibit 350a.**

St. Louis, Mo. Dec. 6, 1895.

Mr. F. M. Hubbell,
Pres't. D. M. U. Ry. Co.,

Dear Sir:—
Enclosed herewith find certificate No. 7 for one share of Des Moines Union Railway Company stock issued for the purpose of qualifying me as director.

Please issue and forward to Mr. J. Ramsey, Jr., General Manager, Wabash Railroad Company, certificate reading in his name.

Yours truly,
CHARLES M. HAYS.

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709 **Defendants' Exhibit 350b.**

The Wabash Railroad Company.

Office
J. Ramsey, Jr., Genl. Manager.

St. Louis, Mo. Dec. 10th, 1895.

Mr. F. M. Hubbell,
Secretary, D. M. U. Ry. Co.,

Dear Sir:—
I am in receipt of your favor of the 9th, together with certificate No. 28, covering one share of stock in the Des Moines Union Railway Company issued in my name.

Yours truly,
J. RAMSEY, Jr.,
General Manager.

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710 **Defendants' Exhibit 350c.**

The Wabash Railroad Company.

Office
J. Ramsey, Jr.,
Vice-Prest. & Genl. Manager.

St. Louis, Mo. Jan. 23rd, 1896.

Mr. F. C. Hubbell,
President, Des Moines Union Railway Co.,
Des Moines, Ia.

Dear Sir:—

In order to complete my records, will you please have prepared and send me at your early convenience, copy of the minutes of the last meeting, held January 2nd, 1896.

Yours truly,
J. RAMSEY, Jr.,
Vice-Pres. & Genl. Mangr.

711 **Defendants' Exhibit 351.**

Chicago, Milwaukee & St. Paul Railway Co. Subject:
Secretary's Office. Des Moines, Nor. & Western

P. M. Myers, M-G
Secretary.

Milwaukee, March 26, 1896.

Mr. F. M. Hubbell, President,
Des Moines, Iowa.

Dear Sir:—

I have yours of the 24th, with minutes of the meeting of the Stockholders of the Des Moines, Northern & Western Railway Company, held Jan. 2, 1896, and of the meetings of the Stockholders of the Des Moines, Northern & Western Railroad Company, for which please accept thanks.

When the notice of the dissolution of the Railway Company has been published as required by law, will you please send me a copy of it, with an affidavit of publication, that I may attach it to the minutes of the Stockholders meeting of that Company?

Yours truly,

(Signed) P. M. MYERS,
Secretary.

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712 **Defendants' Exhibit 352.**

April 7, 1896.

Mr. J. Ramsey, Jr.,
Gen. Mgr. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

The Association of Iowa Egg and Butter Dealers meet at Des Moines this week, with view of building in Des Moines a manufacturing plant to make egg case fillers. They now propose to locate on the land of the Carbondale Coal Company. As there will be a large attendance, it has been requested that the Des Moines Union take the members of the Association out to the Carbondale land to look over the ground. This we are willing to do if the Wabash will allow us trackage free. If the industry is located on the Carbondale land, you of course understand that it will be greatly to the benefit, not only of the Des Moines Union, but also the Wabash. Please advise by return mail.

Yours truly,

F. C. HUBBELL,
Prest.

713

Defendants' Exhibit 353.

The Wabash Railroad Company.

Office
J. Ramsey, Jr., Vice-Prest.
and Genl. Manager.

St. Louis, Mo., April 8th, '96.

Mr. F. C. Hubbell,
President, Des Moines Union Ry.,
Des Moines, Ia.

Dear Sir:—
Replying to your letter of April 7th. If you will furnish the equipment and perform the service, we will allow free trackage from Des Moines to Carbondale Switch and return for the proposed excursion of the Iowa Egg and Butter Dealers.

Yours truly,

J. RAMSEY, Jr.,
Vice-Pres. & Genl. Mangr.

714

Defendants' Exhibit 354.

The Wabash Railroad Company.

Office
J Ramsey, Jr., Vice-Prest.
and Genl. Manager.

St. Louis, Mo., Aug. 21st, '96.

Mr. F. C. Hubbell,
Supt. D. M. N. & W. R. R. Co.,

Dear Sir:—
I have your statement showing the number of cars of coal from Carbondale mines from January 1st to August 1st, 1896, and although you say in your note attached that it explains itself, I must admit that I do not understand the statement. This dullness on my part is probably due to my not being posted as to the manner of handling this traffic.

As I understand it, however, the Wabash company makes a charge for trackage of $1. for each loaded car and 50 cents for each empty car between the Des Moines Union tracks and Carbondale Junction, and that the rate per ton on this coal from the mines to Des Moines is 30 cents, i. e. on all coal for local consumption in Des Moines.

Your statement shows 1679 loads handled; 426 of these were handled in Des Moines Union cars and I presume these

426 cars covered all that was used locally in Des Moines, the remaining 1253 cars having been treated as the business of the Des Moines Northern & Western Road.

The gross revenue to the D. M. U. Ry. Company was $2131.42, and I presume this total revenue accrued from charge applied only on the 426 loads, making an average of less than $5 gross per car, which would indicate at 30 cents per ton, that D. M. U. cars averaged less than 17 tons per car.

715 What revenue, switching charge or trackage expense did the D. M. U. Company receive on the 1253 cars which went to the D. M. N. Ry., or did these cars count only in fixing the percentage to be paid of the D. M. U. expense. If they are handled on the latter plan, will you kindly advise me how they are counted, i. e., did they count each time they entered and left the terminals both on the East and North or only once, as a loaded and empty car passing through the City?

I trust you will pardon the numerous questions I am asking, but I have to ask questions in order to get posted on matters in which the Wabash Company is interested.

If you will therefore kindly write me at some length, explaining the entire system of handling this coal traffic, I shall appreciate it.

Very truly yours,

J. RAMSEY, Jr.,
Vice-Pres't & Gen'l Manager.

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716 **Defendants' Exhibit 355.**

Aug. 24, 1896.

J. Ramsey, Jr., Vice-Pres.,
Wabash R. R., St. Louis, Mo.

Dear Sir:—

Replying to yours of the 21st with reference to Carbondale business, would advise your understanding of the trackage charge of $1.00 for loaded and 50 cents for empty cars is correct. The reason that the gross revenue to the Des Moines Union, per car, for the number of cars handled between Carbondale and Des Moines is so small, is that D. M. N. & W. cars are very small, most of them being 30,000 capacity cars, only a few of them being 60,000 capacity. As stated in my several letters, the business handled from Carbondale mine is treated as though it was on the Des Moines Union tracks and business from the mine to points on the D. M. N. & W. are handled by the switching crews of the Des Moines Union and

billed out as Des Moines Union force in just the same manner as any other business originating in Des Moines. The Des Moines Union counts the D. M. N. & W. wheels when they come on the terminals from the west and when they leave the terminal going west, but do not count any wheelage when cars go to the Carlsondale mine. But D. M. N. & W. pays the trackage charge due the Wabash on cars loaded at Carlsondale for points on D. M. N. & W. I believe this answers all points.

Yours truly,

(Signed) F. C. HUBBELL,
Pre.

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717 **Defendants' Exhibit 356.**

August 24, 1896.

Mr. Jos. Ramsey, Jr.,
Genl. Manager, Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

I have just sent you the following telegram which I now confirm: "We can buy southeast corner Eighth and Cherry Streets 66x132 feet, being Lot 1, Block 4, Original Town, for eleven thousand, five hundred dollars. Will Wabash advance one-half of this amount and take its pay in D. M. Union bonds? This is the lot we talked about when you were here. We recommend its purchase."

The purchase of the lot in question would give the D. M. Union Company the entire front from Seven to Eighth Streets and it is upon these two lots you thought the Great Western freight house should be located, instead of on the block immediately east. We have gone to a great deal of trouble to get this option and I am satisfied that it is as low as we will ever be able to buy the property and whether Mr. Stickney gets it or not, I think the D. M. Union ought to buy it now and thereby obtain the entire Cherry street front from Fifth to Eighth streets.

We understood when you were here that you were in favor of acquiring this property in order to be in condition to trade with Mr. Stickney. Hoping to receive a favorable reply from you at once, I am,

Yours truly,

F. C. HUBBELL,
Prest.

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718 **Defendants' Exhibit 357.**

The Wabash Railroad Company.

Office.
J. Ramsey, Jr., Vice-Pres't. & Gen'l. Manager.

St. Louis, Mo. Aug. 28th, 98.

Mr. F. C. Hubbell,
Pres't. D. M. U. Ry. Co.,

Dear Sir:—

This will be handed you by Mr. Pryor, our assistant auditor, whom I have requested, in company with Mr. Garrett to go to Des Moines, and look over the methods and cost of operating the joint terminals.

I do not do this because I have any doubt or apprehension as to the property being handled in the best way possible for the interests of all, but only in order to full post myself on the whole situation at that point.

I find our company has not been in the habit of receiving any statement from the Des Moines Union, other than the one showing the cost of operation, and we have no information whatever, as to the revenues of the company, their general disposition, etc., nor any of the detailed information which I think we should have in order to keep properly informed.

Will you kindly have the officers of the Des Moines Union furnish Messrs. Pryor and Garrett every opportunity necessary for them to become properly posted in the premises.

Yours truly,

J. RAMSEY, Jr.,
Vice-Pres't. & Gen'l. Manager

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719 **Defendants' Exhibit 357a.**

The Wabash Railroad Company.

Office.
J. Ramsey, Jr., Vice-Pres't. & Gen'l. Manager.

St. Louis, Mo. Oct. 13th, 1898.

Mr. F. M. Hubbell,
Secretary, D. M. U. Ry. Co.,

Dear Sir:—

Replying to yours of the 3rd. The new contract prepared between the C. & G. W. Ry. Co. and the D. M. U. Co. is now in a shape which is satisfactory to the Wabash management

and we will vote in favor of its ratification at the meeting of the Board of Directors.

The organization of the Des Moines & St. Louis Railroad Company was not continued after the purchase of the property by the Wabash Purchasing Committee and all of the rights and contracts of the Des Moines & St. Louis road having accrued to the Purchasing Committee, I presume that Committee would have ample power to sign any agreement necessary in connection with the C. & G. W. contract.

Yours truly,

J. RAMSEY, Jr.,
Vice-Pres't. & Genl. Manager.

730

Defendants' Exhibit 358.

The Wabash Railroad Company.

Office of
J. Ramsey, Jr., Vice-Pres't. & Genl. Manager.

St. Louis, Mo., Nov. 3rd, '86.

Mr. F. M. Hubbell,
Pres't. D. M. U. Ry. Co.,

Dear Sir:—

Failing to find any contract now in effect which gives the D. M. N. & W. Company the right to handle cars to and from Carbondale on the east side of Des Moines, without such cars being counted in the wheelage or number of cars in and out, I would like to have you advise me what your authority has been for leaving these cars out of the wheelage account since the expiration of the contract which should give the Des Moines Northern & Western that right for, I believe a period of three years.

If you have no authority for doing this, I shall ask you to have an account made up showing all of the cars handled for the D. M. N. & W. Company to and from Carbondale mines since the expiration of the contract referred to, and that these cars be charged to the D. M. N. & W. Company, and that hereafter all such cars be accounted for monthly.

Yours truly,
J. RAMSEY, Jr.,
Vice-Pres't. & Genl. Manager.

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721 **Defendants' Exhibit 359.**

Nov. 23, 1896.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Replying to yours of the 3rd respecting the question of wheelage on cars which are handled between Des Moines and Ross Junction over your line would advise yours is the only company which receives any revenue from this movement and if there was any wheelage to be charged for this movement of cars, it would properly be chargeable to the Wabash R. R. as the cars go out and come in over your track and this would be in conformity with our wheelage charge against the C. G. W. R. R. However, at the time the contract was made between the Wabash R. R. and the D. M. Union Ry. it was understood that inasmuch as the D. M. Union Ry. leased the use of the track to Ross Junction that the same would be treated as D. M. Union rail and therefore, for the purpose of counting D. M. Union wheelage, the movement of cars over this rail, by the crews of the D. M. Union Ry. would not be counted against any of the tenant companies.

Yours truly,

F. C. HUBBELL, Prest.

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722 **Defendants' Exhibit 360.**

The Wabash Railroad Company.

Office
J. Ramsey, Jr., Vice-Prest.
& Genl. Manager.

St. Louis, Mo., Nov. 27th '96.

Mr. F. C. Hubbell,
Prest. D. M. U. Ry. Co.

Dear Sir:—

Replying to your favor of the 23rd. As I understand the present method of counting cars and wheelage in and out of Des Moines, as against the companies using its tracks (except the D. M. N. & W.) it is as follows:

The tenant line is charged with one car into Des Moines, and if that car is delivered to a connection at Des Moines, and goes beyond, or is even switched by that connection to some other point in Des Moines, it is charged as another car against the road bringing the car in, and when a tenant line receives a car from a connection, it is charged as one car, and

when the tenant line takes that car out of Des Moines, it is again charged, so that in all cases (excepting the D. M. N. & W. to the Carbondale Coal mines) a car passing through Des Moines, or from a tenant line to a connection is charged as two cars.

The fact that the Wabash Company charges $1.50 per car for the use of its rails between Des Moines and Ross Junction does not affect in the slightest the question of charging the D. M. N. & W. with the wheelage on each car to and from the Carbondale mines which goes out of Des Moines on the D. M. N. & W. Road to any point west of the Des Moines Union tracks.

This coal is billed from the Carbondale mines on D. M. N. & W. billing and the D. M. U. Ry. Co. does not receive one
723 cent of revenue for the service. It is true, probably that the cost of the switching crews, engine service, etc., to the Des Moines Union Company for this service is prorated the same as the cost of its other services between the tenant lines, but even this only renders the discrimination in favor of the D. M. N. & W. and against the Wabash more glaring, for the reason that this service increases the expenses of the D. M. U. Co., which increase is prorated between the Companies on the unfair basis above set forth.

I must therefore insist upon the wheelage of the D. M. N. & W. and the Wabash company being corrected back to the expiration of the period fixed by the agreement, which was entered in to at the time this service was begun.

Furthermore, while on this subject, I desire to call your attention to the fact that the use made of the property of the D. M. Union Company by the D. M. N. & W. having all of its shop work, general repairs, etc. performed at the shops of the D. M. U. Co. and the use of its terminal tracks for the storage of all bad order cars and cars waiting for repairs, and also the use of the services of the Master Mechanic and foreman of the D. M. U. Co. for the general repair work at any point on the line of the D. M. N. & W. Company is an unfair use of the Union property and employes, unless special compensation in addition to the regular wheelage proportion of the expense is paid therefor by the D. M. N. & W. and the information I have leads me to believe that no special compensation has been paid for such service.

Yours truly,

J. RAMSEY, JR.
Vice-Prest. & Genl. Manager.

724 **Defendants' Exhibit 361.**

Dec. 1, 1896.

Mr. J. Ramsey, Jr.
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:

Replying to yours of the 27th would advise the D. M. Union wheelage is now counted in the same manner as it has always been and the plan adopted for counting the wheelage was inaugurated when the Wabash Company dominated the policy of this company.

The tenant lines are charged with one car into Des Moines when it comes on the D. M. Union track. If the car goes to a connecting line for loading or unloading, where it is necessary for the tenant line to pay a charge, the D. M. Union does not make a wheelage charge for delivering the car to such connection, but in case the car is delivered to a line which is a tenant of the D. M. Union and this tenant makes a charge for the car, then the D. M. Union charges wheelage to such tenant in and out. Therefore, you will see that as your Company is receiving the revenue for the cars handled in the Carbondale business and are relieved from wheelage charge on the cars in both directions, you are fairly treated.

Respecting the third paragraph of your letter, as the D. M. N. & W. does not go to Carbondale, I do not understand how a charge against that Company could be made for cars which the D. M. Union handles in the Carbondale business. Carbon-
725 dale mines are located on the D. M. Union tracks in every respect the same as the Packing House and you might just as well ask the D. M. N. & W. to pay a wheelage charge when a car goes to the packing house as when it goes to the Carbondale mine.

The D. M. Union Ry. leases of the Wabash road the right to use your track to Ross Junction and you make bills upon us each month for the rental. This track is either the D. M. Union's, and therefore no wheelage charge can be made, or else it is Wabash track and your company is liable for the wheelage.

Respecting the fourth paragraph of your letter would advise the manner of billing I do not consider an operating question, but one which is handled wholly in the freight department. If the General freight agent of the Des Moines Northern & Western Ry., sees fit to instruct the agent at Des Moines to bill

shipments one way or another, it is not a question of wheelage or a question in which any other tenant is interested from the standpoint as a tenant line. I would further state with reference to the last part of paragraph four of your letter, there does not seem to be any material increase in the Yard Expense since the commencement of the Carbondale business. If you will compare statements of expense of October, 1896 with October 1895 you will see the Yard Expense will not bear out your proposition and October, 1896, Yard Expense was largely increased by the running of the Wild West Show trains which earned the D. M. Union the very considerable revenue.

I would call your attention to the fact that since
726 the Carbondale business has been handled by the D. M. Union Ry. Co. the wheelage of the D. M. N. & W. has increased so much that they are now paying forty per cent of the total wheelage; while before this, Carbondale business was handled by the D. M. Union, the D. M. N. & W. wheelage was so much smaller that the Wabash wheelage was about forty per cent of the total wheelage and is now about twenty per cent. This is a direct advantage to your company.

The Carbondale traffic is new business and increases the D. M. U. wheelage to just that extent. The fine coal is used in the northwest and the lump chiefly for locomotive purposes. There is no reason why your company should not be glad to see this traffic increase as much as possible. For your information would state that nine-tenths of this coal is handled on a rate based on continuous mileage and as the revenue is divided between the C. M. & St. P. Ry. and the D. M. N. & W. Ry. you can readily see that the D. M. N. & W's earnings are very thin and when that company pays wheelage two ways and pays the D. M. Union $1.50 trackage, there is very little left to represent earnings. It cost the D. M. N. & W. $3.63 per car in the month of October for all the Carbondale coal which they handled. You will see therefore, this coal business is taxed as heavily as the traffic will bear.

Answering the fifth paragraph of your letter, would further state that the question of Carbondale wheelage was clearly understood by all concerned at the time the arrangement was made a year ago. As there has been no change in the method of keeping the accounts and as this contract
727 has been interpreted in this manner for one year by the people who made it, we cannot change it now. Of course you recognize that the D. M. Union must be its own judge of the manner in which wheelage is counted. While on this subject, allow me to present this matter to you in still a different phase. You probably have noticed that wheelage

in Des Moines yard runs more than one dollar per car each day. The D. M. N. & W. bring about 20 empty cars into Des Moines every day for Carbondale business which are loaded and returned, making 40 wheels or more than $40.00 which they pay to the D. M. Union. It takes about three hours time for the switch engine to make the trip to Carbondale with these 20 cars each way. The billing is a matter of small expense. The D. M. N. & W. further furnishes the D. M. Union with the cars necessary to handle the switching business for the city trade.

Respecting the last paragraph of your letter would advise the contract under which the D. M. N. & W. is doing business with the D. M. Union Ry. provides that the D. M. Union will furnish adequate shop facilities for the repairs of engines and cars. This part of the contract has been verily complied with by the D. M. Union; their shops having burned down some years ago and only partially rebuilt. The machinery of the shop was more or less damaged by the fire and has never been properly repaired. The D. M. N. & W. Ry. have been compelled therefore to purchase and place in the D. M. U. shops a number of necessary tools and up to date has rendered no bill for rental charge on same. However, the
728 condition of the shops is now so deplorable that at the annual meeting of the D. M. Union next month, the D. M. N. & W. will serve notice on the D. M. Union to place their shops in shape to make repairs in an economical and expeditious manner.

I have written at considerable length hoping that I can show you that the D. M. Union is acting fairly with all of its tenants and showing partiality to none.

Yours truly,

F. C. HUBBELL,
Prest.

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729 **Defendants' Exhibit 362.**

The Wabash Railroad Company.

Office
J. Ramsey, Jr. Vice-Prest.
& Genl. Manager.

St. Louis, Mo. Dec. 2nd, 1896.

Mr. F. C. Hubbell,
Pres't, D. M. U. Ry. Co.,
Dear Sir:—

Replying to your favor December 1st. The Keokuk & Western, according to their advertised schedule, have three trains

arriving and three trains departing from Des Moines, an average of 6 per day, excepting Sunday. This would be 156 trains per month, and on the basis proposed in your letter, they would pay 96 cents per train for the use of tracks and station, together with all of the expenses of ticket agent, light, heat, taxes, etc.

It strikes me that this is a very low charge and one which in all probability would be less per month to the K. & W. than the present cost of their passenger station terminal expenses.

I see no reason for placing such a low estimate on the value of the Des Moines Union Terminals, and I believe you can secure $250.00 per month from them, just as easily as $150.00.

Yours truly,

J. RAMSEY, JR.,
Vice-Prest & Genl Manager.

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730 **Defendants' Exhibit 362a.**

Office of
The Wabash Railroad Company,
195 Broadway.

New York, Dec. 28, 1896.

F. M. Hubbell, Esq., Secy.,
Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:—

Permit me to remind you of our understanding to the effect that you would have prepared at once a new agreement for the tenant companies of the Des Moines Union Railway Co. to sign, this new agreement being considered necessary on account of the foreclosure of the Des Moines & Northwestern. I understand that the agreement will be exactly as before, except that the time must be made to correspond with the life of the bonds, or to be made for a period to extend beyond their maturity.

I write now for the purpose of urging the immediate preparation of this agreement, as without it we cannot well dispose of our bonds. When it is ready please forward it to Colonel Blodgett, asking him to examine the same and to send it to me as soon as possible. I should not suppose it would take long to have the agreement prepared and as time in this case is of importance I hope you will see that the paper is

gotten under way at once. Perhaps you have already taken the matter in hand and if so, so much the better.

Yours truly,

O. D. ASHLEY,
President.

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731 **Defendants' Exhibit 363.**

December 31, 1896.

Mr. A. B. Cummins,

Dear Sir:—

Herewith I hand you copy of the Articles of Incorporation of the D. M. & Union Ry. Company, also copy of the terminal contract made by the D. M. Union with the Des Moines & St. Louis, the Des Moines N. W., and the St. Louis, Des Moines & Northern Companies.

Mr. Ashley is very anxious to have the Des Moines Union Company cancel the old contract and enter into a new one with the Des Moines Northern & Western R. R. Co. and the Des Moines & St. Louis R. R. Co. so as to strengthen the D. M. Union Bonds which he wishes to put on the market, the strength to come from the fact that the terminal company will have a specific obligation of the D. M. N. & W. R. R. Company to pay rent.

I wish you would prepare this new contract before you go to Cleveland, if possible. I submit the following suggestions, viz:

On page 1 of the present contract the extent of the present railway seems to be limited to the eastern boundary line of the city on the east, and to Farnham Street on the west. I suggest that there be no limit, either east or west.

On page 4, I think the last Five (5) lines of section 4, should be left out, they not being pertinent for the reason that there are no narrow gauge cars in the city.

Section 8. Can this not be left out entirely? It seems to me to be wholly unnecessary.

732 Section 11. When Sec. 11 is read in connection with the Articles of Incorporation, it occurs to me that this section is entirely unnecessary. Section 22. In reference to Sec. 22 stating the duration of the contract, I wish to say that it is understood that the new contract shall not run longer than the old one, viz., until May 1st, 1918.

Section 24. I think Sec. 24 needs considerable remodeling. In the first place, the Purchasing Committee owns 1/8 of the stock, the Des Moines, Northern & Western R. R. Co. 2/8, and F. M. Hubbell & Son 5/8. I think it is desirable to have the new contract recognize the ownership of the stock as it now exists, hence the last 7 lines of Sec. 24 are unnecessary as the Wabash Company and the D. M. N. & W. Company each being bound to always have a Director in the Des Moines Union Company, can decide whether or not new railroad companies shall be admitted. This section is at this time, making us considerable trouble in getting the approval, or consent to the contract recently made with the Great Western. We have not yet obtained the formal consent of the owners of the Des Moines & St. Louis Co., to the making of that contract.

In reference to Section 26, it seems to me that this section was rendered entirely obsolete by the adoption at a subsequent time, of the Articles of Incorporation, and there is but very little, if any, of it that is now adopted to our present condition.

Yours truly,

(Sgd.) F. M. HUBBELL, Secretary.

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733 **Defendants' Exhibit 364.**

December 31, 1896.

Mr. O. D. Ashley, President,
#195 Broadway, New York City.

Dear Sir:—

I have your letter of the 28th inst. urging the preparation of a new terminal contract between the Des Moines Union Railway Company on the one side and the Des Moines, Northern & Western R. R. Company and the owners of the Des Moines & St. Louis Road, as parties of the second part.

I have placed the papers in the hands of Mr. Cummins insisting that he prepare a new contract at once. As soon as it is finished I will forward it to Col. Blodgett.

Yours truly,

F. M. HUBBELL, Secretary.

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734 **Defendants' Exhibit 365.**

January 6th, 1897.

Mr. O. D. Ashley, President,
#198 Broadway, New York City.

Dear Sir:—

Referring to your letter of December 30th, in which you ask that we lose no time in the preparation of a new contract between the Des Moines Union Company and its tenant companies, will say that as I wrote you some days ago, the matter has been placed in the hands of Mr. Cummins, who has been urged to draw up a new contract as soon as possible.

The difficulty with Mr. Cummins seems to be this, he does not know with whom the contract is to be made, and he has written to Col. Blodgett asking for information on that subject.

I have in my hands a letter from Mr. Ramsey, dated January 1st, 1897, in which he says with reference to the Des Moines & St. Louis Road—"There are no officers or organization in existence. All of the property and franchises being held by a Committee, it seems to me their assent would be sufficient." This is in reference to the assent to the contract recently made with the Chicago Great Western Company.

Now if the Des Moines & St. Louis Company is extinct, the contract, it would seem, would have to be made by the Wabash Company, or by the Purchasing Committee. However, Mr. Cummins and Mr. Blodgett will no doubt settle it very soon.
I am hurrying it as fast as I can. If there is any de-
735 lay, it will be caused by Mr. Blodgett.

Yours truly,

F. M. HUBBELL, Secretary.

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736 **Defendants' Exhibit 365a.**

Office of
The Wabash Railroad Company.
195 Broadway.

New York, Jan'y 9, 1897.

F. M. Hubbell, Esq., Sec'y.,
Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:—

Yours of the 6th received. Mr. Ramsey is mistaken in saying that there is no organization of the Des Moines & St. Louis

R. R. Co. in existence. There is a board of directors and it can be called together without difficulty. Colonel How, the last President is dead, but, of course, the vacancy can be filled at the next meeting. The Purchasing Committee hold their title to this property through the ownership of the stock, and the corporation is *not* only in existence but must be kept so.

Colonel Blodgett has been here this week, but has now returned to St. Louis and it was understood between him and myself that he would at once call a meeting of the directors of the D. & St. L. in St. Louis. He will notify you and Mr. Cummins to this effect and ask you, probably, to go to St. Louis for one day in order to secure a quorum of the Directors. He has the whole programme marked out and I think will proceed to its execution at once. You will probably
737 hear from him early next week and I hope you and Mr. Cummins will be able to meet him in St. Louis, as he may request.

Meantime there is no reason why Mr. Cummins should not proceed with the new contract, counting upon the signature of the Des Moines & St. Louis Railroad.

I thank you for your active co-operation in the matter and hope we shall succeed in getting the new agreement under way without further delay.

Yours truly,

O. D. ASHLEY,
President.

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738 **Defendants' Exhibit 365b.**

Telegram.

St. Louis, Mo., Jan. 13, 1897.

F. M. Hubbell,
Des Moines, Iowa.

Will you be home Friday this week? If can get Martin and Cummins I want to have meeting board of directors Des Moines and St. Louis road.

W. H. BLODGETT.

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739 **Defendants' Exhibit 366.**

The Wabash Railroad Company.

Office
J. Ramsey, Jr., Vice-Prest.
& Genl. Manager.

St. Louis, Mo., Jany. 14th, 1897.

Mr. F. C. Hubbell,
Prest. D. M. U. Ry. Co.,

Dear Sir:—

I have your favor of the 12th relative to the C. & G. W. refusal to pay their proportion of the terminal expenses on passenger car wheelage.

Not having a copy of the C. & G. W. contract under which they have been operating in the past, I am not in a position to express any opinion regarding the equity of their claim, but unless their contract specifies to the contrary, it certainly seems to me that a through train should be counted in and out. This is the universal rule at all Union Stations, as the train is a train into the station bringing passengers in, and it is also a train out, taking passengers away from the city, and if I were you, I would certainly insist upon a settlement of these bills, unless, as I say above, the contract is to the contrary.

I think I would also object to submitting it to arbitration as it would not be fair to the other tenant lines to give the C. G. W. Co. an opportunity of securing different terms for the use of the property, than has been given to the other lines for years past.

As the C. G. W. Company have completed their contract with you for the use of the property for the next twenty-five years, I think you are in a position to meet "bluff" with
740 "bluff"; in other words, say to Mr. Stickney that unless he pays the bills as they have been rendered, that he cannot continue to use the Union Station under the old contract.

I think you would have the right to shut him out for refusal to pay bills rendered in accordance with the contract binding on all the tenants.

Yours truly,

J. RAMSEY, JR.,
Vice-Pres't & Gen'l Manager.

741

Defendants' Exhibit 366a.

The Wabash Railroad Company.

General Solicitor's Office.

Wells H. Blodgett, Genl. Solicitor.

St. Louis, Mo. Jan. 21, 1897.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—
After wiring you this morning, I found the stock book of the Des Moines & St. Louis road here. I send it to you by Pacific Express to-night, and would like to have you as secretary sign five or six certificates in blank, and then return book here or forward to Mr. Ashley in New York.

Yours truly,

WELLS H. BLODGETT,
Gen'l. Solicitor.

Dictated W.

742

Defendants' Exhibit 367.

February 3rd, 1897.

Col. W. H. Blodgett,
Genl. Sol'r Wabash R. R. Co.,
St. Louis.

Dear Sir:
I now enclose a contract prepared by Mr. Cummins, to be entered into by and between the Des Moines Union Ry. Company, the Des Moines & St. Louis R. R. Company, the Wabash R. R Company, and the Des Moines, Northern & Western R. R. Company.

Mr. Ashley wanted it sent to you for approval. As soon as it is approved if you will return it to me I will have it printed in the form of a pamphlet, and we will execute it in that form instead of the long sheet written in type.

If you have occasion to amend this contract, please do so as quickly as you can and return it to me, and if the amendments are agreed to we will proceed to print say one hundred copies, four of which we will execute as originals, one for each party to the contract.

Mr. Ashley is in a great hurry for this contract, and I therefore ask you to be as expeditious as possible.

Yours truly,

F. M. HUBBELL,
Secretary.

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743 **Defendants' Exhibit 367a.**

The Wabash Railroad Company.

General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Feb. 9, 1897.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

Herewith I return the minutes of the stockholders' meeting Des Moines and St. Louis Railroad Company, held January 25th, 1897, for the election of a board of directors.

I have no suggestions to make, aside from showing Mr. Cummins present by proxy, and that all the shares of stock (20,000) were represented at the meeting. Will you please have the minutes entered in the record book and then, I think, Mr. Ashley would like to have the book sent to him.

Mr. Ramsey leaves for New York to-night and will take with him for examination on the train the new contract with the Des Moines Union Railway Company, as prepared by Mr. Cummins. As soon as he returns it to me, I will write Mr. Cummins.

Yours very truly,

WELLS H. BLODGETT.

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744 **Defendants' Exhibit 368.**

2/18/97.

Mr. J. Ramsey, Jr.,
V. P. & G. M., Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Referring to the new terminal contract; I have seen the correspondence between you, Mr. Blodgett and Mr. Cummins. With respect to the Des Moines Union's revenue from rental and switching would say that this fund has always been controlled by the Terminal Company, and is the only money which

it has to use for other than strictly operating expenses. We therefore feel that the new contract should leave this fund the property of the Terminal Company. The rental and switching is a small item, and is now being used to pay our floating debt, consisting of $31,000 held by Commercial Bank of St. Louis, which will consume this fund for a good many years.

Yours truly,

F. C. HUBBELL,
Prest.

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745 **Defendants' Exhibit 369.**

The Wabash Railroad Company.

General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, January 21, 1897.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I will send you by tomorrow's mail proxies for all shares of stock in the Des Moines and St. Louis Railroad, excepting the two shares held by yourself and Mr. Cummins. This will enable you to hold the meeting on Monday January 25th, as provided for in the call made by the Board of Directors. I shall write Mr. Cummins requesting him to be present and render any assistance necessary in holding the meeting and making up the record.

I send you herewith names of the new directors to be elected at the meeting.

Yours very truly,

(Signed) WELLS H. BLODGETT.

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746 **Defendants' Exhibit 370.**

The Wabash Railroad Company.

Law Department.

For Convenience all
Business Communications
Should be Addressed:

St. Louis,

General Solicitor
The Wabash Railroad Co.,
St. Louis, Mo.

Names of Des Moines and St. Louis Directors to be elected at meeting to be held Monday January 25" 1897.

Thomas H. Hubbard
Edgar T. Welles
Ossian D. Ashley
John C. Otteson
C. J. Lawrence
H. K. McHarg
W. H. Blodgett
J. Ramsey Jr.
F. M. Hubbell

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747 **Defendants' Exhibit 371.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Mo. Jan. 22, 1897.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I send you herewith proxies to vote at the Des Moines & St. Louis Company's special meeting on January 25th, 1897, as mentioned in my letter of the 21st.

Yours truly,

(Signed) WELLS H. BLODGETT,
Gen'l Solicitor.

Dictated. Martin

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748 **Defendants' Exhibit 372.**

Know All Men By These Presents;

That I, Edgar T. Welles do hereby constitute and appoint F. M. Hubbell or A. B. Cummins, ~~Edwin Gould, or S. W. Fordyce,~~ Attorney or Agent for me, Special and in my name to vote as my proxy at the ~~Annual~~ Meeting of the Stockholders of the Des Moines & St. Louis ~~South-~~ road Des Moines, Iowa, ~~western~~ Rail~~way~~ Company, to be held at ~~St. Louis, Missouri,~~ Monday on ~~Tuesday, October 6, 1896~~. January 25, 1897.

And I do hereby authorize the persons above named, or either of them, to vote as my proxy at said meeting, or any ad-

journment thereof, according to the number of votes I should be entitled to vote if then personally present.

In witness whereof, I have hereunto set my hand and seal this 16 day of ~~September~~ January, one thousand eight hundred and ninety-seven. ~~six.~~

EDGAR T. WELLES. (L. S.)

Sealed and delivered in the presence of

J. C. Otteson.

Please have signature witnessed.

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749 **Defendants' Exhibit 373.**

Know all Men by These Presents, That we, the Wabash Purchasing Committee: O. D. Ashley, Secretary of the Wabash Purchasing Committee; H. S. Priest, Joseph Ramsey, Jr., George S. Grover, O. D. Ashley, Wells H. Blodgett and John C. Otteson, do hereby constitute and appoint F. M. Hubbell or A. B. Cummins, or either of them, Attorneys or Agents for us, and in our names to vote as our proxy at the Special Meeting of the Stockholders of the Des Moines and St. Louis Railroad Company, to be held at Des Moines, Iowa, on Monday, January 25th, 1897.

And we do hereby authorize the persons above named, or either of them, to vote as our proxy at said meeting, or any adjournment thereof, according to the number of votes we should be entitled to vote if then personally present.

In Witness Whereof, we have hereunto set our hands and seals this 16th day of January, one thousand eight hundred and ninety-seven.

WABASH PURCHASING COMMITTEE,
O. D. Ashley Sec'y (Seal)

O. D. ASHLEY,
Sec'y of the Wabash Purchasing Com. (Seal)

O. D. ASHLEY (Seal)
J. RAMSEY, JR. (Seal)
J. C. OTTESON (Seal)
WELLS H. BLODGETT (Seal)
H. S. PRIEST (Seal)
GEO. S. GROVER (Seal)

Sealed and delivered in the presence of:
B. C. Winston.

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750 **Defendants' Exhibit 374.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Feb. 1, 1897.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

My absence in Washington prevented an earlier reply to yours of the 26th.

In reply to your inquiry as to names of parties holding stock in Des Moines and St. Louis Railroad Company, I beg leave to say, that the total number of shares is 20,000, one share of which, at the date of the meeting, was held by each of the parties who signed the proxy forwarded to you, and 9,995 shares were held by O. D. Ashley, Trustee of the Wabash Purchasing Committee, and all the other shares were held by the Wabash Purchasing Committee, of which Mr. Ashley is the Secretary. Mr. Ashley, therefore, signed the proxy as Secretary for the Purchasing Committee and as trustee for the Purchasing Committee, and also for himself, as the holder of one share. In making up the record you can make it appear that you hold one share, Mr. Cummins one share & each of the parties signing the proxy one share; that O. D. Ashley held 9,995 shares as trustee for the Wabash Purchasing Committee, and that all the other shares (making 20,000 in all) were held by the Wabash Purchasing Committee, composed of O. D. Ashley, Thomas H. Hubbard and Edgar T. Welles.

751 Should you desire me to write up the record I will do so, if you will send down by express the minutes and record book. I will then return the book to you for signatures.

Very truly yours,

(Signed) WELLS H. BLODGETT.

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752 **Defendants' Exhibit 375.**

Feb. 18, 1897.

Col. W. H. Blodgett, Gen'l. Sol'r.
Wabash R. R. Co.,
St. Louis, Mo.

Dear Sir:—

Have your favor of the 16th inst. and have carefully considered the amendments that you propose to the terminal con-

tract, and the reasons which are stated in Mr. Ramsey's letter for the changes. I agree that if the relations between the Des Moines Union Co. and Wabash Co. were such as to enable the former to increase the rentals to be paid at its own pleasure, the agreement would be seriously defective; but I think that both Mr. Ramsey and yourself have overlooked the fact that the Wabash R. R. Co., or the Purchasing Committee for it, is the owner of one-eighth of the capital stock of the Des Moines Union; that no further stock can be issued without the affirmative vote of that part of the stock, or some part of it, that you represent; that it requires more than seven-eighths of all the stock to elect a Board of Directors, and that it requires the unanimous action of the Directors to authorize the transaction of any business except that which pertains to the ordinary operation of the property; that there is an Executive Committee provided for in these articles upon which the
753 Wabash always has had and always will have a representative; and that the articles cannot be amended without the consent of the one-eighth interest that you hold. The Des Moines Union Co. was reorganized in 1889 or 1890 for the express purpose of putting these safeguards into its Articles of Incorporation and enabling it to enter into a contract with those of its tenant companies which owned stock in the Des Moines Union Co., and not turn over the management of the company in form to the tenant companies. I quote some of the provisions of these articles:

Art. III contained the following:

"The remaining capital stock, to-wit: sixteen thousand shares or any part thereof, shall be issued by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued."

Art IV contains the following:

"The affairs of the corporation shall be managed and its business conducted by a board of directors composed of eight persons, who shall be elected by the stockholders at their regular annual meeting to be held at the office of the company in Des Moines, Iowa, on the first Thursday in January of each year; and they shall hold their offices for one year, and until their successors are elected and qualified; but at all future elections of directors it shall require the votes of more than seven-eighths of all the stock theretofore issued to elect any director."

"The Board of Directors shall have the power to author-
754 ize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other things as may be proper or necessary for the corporation to do; but with respect to the matters above mentioned and all other matters except the ordinary operation of the property, the Board can only act upon the affirmative vote of all its members."

I have no doubt that you will find at Mr. Ramsey's office a copy of these amended articles.

I observe that the substitute which you propose for the proviso to Sec. 1, and your substitute for Sec. 9, as well as the material interlineations save one, which I shall hereafter mention, have reference to a control to be exercised by the tenant companies over the Des Moines Co. I cannot but believe that when you consider the articles of incorporation you will agree with me that the changes need not be further considered.

With respect to the change in Sec. 4, which would require the Des Moines Co. to credit upon its expenses and disbursements the accounts received by it for switching charges, rental of houses and things of that character, Mr. Hubbell has written to Mr. Ramsey recalling to his attention the situation, which absolutely precludes the disposal of such revenues of the company in that way.

I have no objection to any assignee or successor of the
755 Des Moines, Northern & Western so that it shall be as broad and comprehensive as that which is applied to the Wabash. The language is different because of the peculiar arrangement between the Wabash and the Des Moines & St. Louis.

Awaiting your reply, I am,

(Signed) A. B. CUMMINS.

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756 **Defendants' Exhibit 376.**

Des Moines, Iowa, Feb. 24, 1897.

F. C. Hubbell, Pres.,
City.

Dear Sir:—

I have your favor of the 22nd inst. with respect to the Des Moines Union contract. I have a telegram from Col. Blodgett asking me to send him a copy of the amended articles of the company, which will go to-day, and assume that when he

has examined them he will reply to my letter in which I pointed out the protection his company would receive through them. When the draft is returned to me do not forget to make the suggestion with regard to putting in the gold clause.

Yours very truly,
A. B. CUMMINS.

757

Defendants' Exhibit 377.

Ex. "D" to Dep. of A. B. Cummins.

The Wabash Railroad Company.
General Solicitor's Office.
Wells H. Blodgett, Gen'l. Solicitor.

St. Louis, March 26, 1897.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I was so busy yesterday I could not get the amendments to the contract off last night. I now inclose them.

The first change is in the proviso to the granting clause in Section one. That, in the form in which I now present it, is intended to prohibit the Des Moines Company from hereafter making exclusive grants of any portions of the terminals without the written consent of the tenants. (2). It prohibits the Des Moines Company from admitting other tenants on different terms than those herein granted to the Wabash and Des Moines, Western and Northern without their consent, and (3) it prohibits the Des Moines Company from making leases of portions of said terminal grounds not now needed for railroad purposes, for more than six months, without the written consent of the tenant companies.

2nd. I send Section 3 in two forms, and I need not go into any detailed explanation of them. Number one is founded upon the theory, that the Des Moines Company may do a switching business during the whole period of the lease, paying, on a wheelage basis, the same proportion of interest charges, cost of maintenance and operating expenses, as
758 is paid by the tenants, and using its net revenue throughout the term in improving the property. That is the form suggested by Mr. Ramsey and myself.

Number two, presents the section as you and Mr. Ashley suggested. Under it you are to switch and handle cars for others than tenant companies, and collect the revenue, until

the net profits, together with the rentals from portions of the ground, amount to fifty thousand dollars, of which sum thirty-five thousand dollars is to be applied on the floating debt, and the balance used for a working fund. And after the fifty thousand dollars has been realized, all the net revenues from switching is to go to the tenant companies to reduce their expenses, on a wheelage basis.

These changes in the contract present the main features to which the other sections are to conform. I have not gone through the various sections in detail to see what changes, if any, will be needed. I understand, however, that if you accept the changes in Section one, and Section three in either of the forms in which that section is now presented, no further change need be made, excepting such as may be necessary to make the contract harmonious in all its parts. I do not know, of course, but what the phraseology of these amendments as I present them, can be improved upon, but I think they embody the essential ideas.

Mr. Ashley goes home tonight, but before leaving he examined carefully the amended sections, and he thought them drawn in accordance with the conclusions reached when you were here.

Very truly yours,

(Signed) WELLS H. BLODGETT.

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759 **Defendants' Exhibit 378.**

No. 1.

Exhibit F. to deposition of
Albert B. Cummins.

Section 3. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, which shall embrace every item of expense or liability of whatsoever name or character (excepting taxes, repairs and other expenses on such portions of said property as the Des Moines Company may have leased, or which it may claim the right to lease and collect and retain the rentals) there shall then be deducted therefrom the amount, if any, which other railway companies may be under obligations to pay by virtue of contracts for the use of said property, or parts thereof, and also all revenues and rentals due from individuals or companies for the enjoyment of privileges, or the use of space at, or in the passenger station, and also all the rentals due from every company or person whomsoever, for the use of railroad tracks, facilities, or privileges for the preceding month, and the re-

mainder shall be provided by the Des Moines & St. Louis Company, the Wabash Company, the Des Moines Northern & Western Company and the Des Moines Company, in gold coin of the United States of America, of, or equal to, the present standard of weight and fineness, in the proportion that the wheelage of each of said companies bears to the entire wheelage over said terminals during such preceding month, exclusive of the wheelage of the Chicago & G. W. Railway. And it is expressly understood, that for the purpose of ascertaining their said monthly liability, the total wheelage of all parties using said terminals, excepting the Chicago & G. W. Railway shall
760 be considered. And it is understood and agreed that the Des Moines Company shall have the right to make leases, as provided in section one of this contract, of such portions of said grounds as are not then required, of used for railroad or terminal purposes; but that said privilege of the Des Moines Company to make leases and collect and retain the revenues shall not include the right to grant any privilege, or the use of any space at or in the passenger station, or other buildings erected or used for railroad purposes, or the right to make any lease or contract for the use of any tracks or other railroad facilities. But it is agreed that none of the revenues of the Des Moines Company, derived from the rentals of such portions of said grounds as it is herein authorized to lease, or the revenues derived from tolls, or switching service performed, shall be considered in ascertaining the aggregate sum to be provided each month by the Des Moines Company and the lessees herein.

And it is further agreed that all revenues derived by the Des Moines Company from said rentals, tolls, or switching charges in excess of its proportion of said aggregate expenses, shall (after paying taxes on so much of said property as it is entitled to lease for its own benefit) be used by the Des Moines Company in paying its present floating indebtedness, not exceeding thirty-five thousand dollars; the establishment of a working capital, not exceeding fifteen thousand dollars, or in improving said terminal properties for the benefit of the parties using the same for railroad purposes, in such manner as the Executive Committee may direct.

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761 **Defendants' Exhibit 379.**

No. 2.

Exhibit E to deposition
of Albert B. Cummins.

Section 3. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section,

which shall embrace every item of expense or liability of whatsoever name or character (excepting taxes, repairs and other expenses on such portions of said property as the Des Moines Company may have leased, or which it may claim the right to lease and collect and retain the rentals) there shall then be deducted therefrom the amount, if any, which other railway companies which pay upon any other than a wheelage basis may be under obligations to pay by virtue of contracts for the use of said property, or parts thereof, and also all revenues and rentals paid by individuals or companies for the enjoyment of privileges, or the use of space at, or in, the passenger station, or other buildings erected and used for railroad purposes, and all the rentals due from every company or person whomsoever, for the use of railroad tracks, facilities, or privileges, for the preceding month; and the remainder shall be paid by the Des Moines & St. Louis Company, the Wabash Company, the Des Moines Northern & Western Company, in the gold coin of the United States of America of or equal to the present standard of weight and fineness, in the proportion that the wheelage of each of said companies bears to the entire wheelage of the tenant companies paying on a wheelage basis over said terminals during such preceding month.

762 And it is expressly understood and agreed, that the Des Moines Company reserves the right to switch, handle and transfer cars over said terminal tracks for other than tenant companies, to and from industries, and to and from other railroads with which its tracks connect, upon such terms and for such compensation as may be fixed by the Executive Committee; and it shall also have the right to make leases, as provided in Section One hereof, of such portions of its property as are not at the time required by the lessees herein, or either of them, for railroad or terminal purposes. And the Des Moines Company shall have the right to collect, and shall collect and retain all charges due for switching, handling and transferring such cars, and also all rentals due under such leases, until the aggregate of such collections amount to the sum of fifty thousand dollars ($50,000.) and out of the sum last aforesaid, not exceeding thirty-five thousand dollars ($35,000.) shall be applied to the payment of the present floating indebtedness of said Des Moines Company, and the balance shall belong to said Des Moines Company and constitute a working fund, to be expended from time to time in improving said terminal properties, for the benefit of the parties using the same for railroad purposes, in such manner as the Executive Committee shall direct.

It is further agreed that after said sum of fifty thousand dollars shall have been realized from the sources aforesaid all revenues thereafter derived from switching, handling and
763 transferring cars shall be credited monthly upon the bills of the tenant companies herein and such other tenant companies as may by subsequent contract become entitled thereto, and each of said tenant companies shall receive a credit for the percentage thereof that its wheelage for the month for which the credit is made, bears to the total wheelage, for said month, of all the companies entitled to participate in said revenues. But it is further understood and agreed, that after said sum of fifty thousand dollars shall have been realized, as aforesaid, all revenues thereafter derived from the rentals of such portions of said grounds as the Des Moines Company is herein authorized to lease, shall belong to said Des Moines Company and shall be used in improving said terminal properties for the benefit of the parties using the same for railroad purposes, in such manner as the Executive Committee shall direct. It is understood that the privilege reserved to the Des Moines Company of making leases of such portions of said property as are not at the time required by the lessees herein for railroad or terminal purposes, shall not be understood as including the right to grant any privileges, or the use of any space at or in the passenger station, and used, or the right to make any lease or contract for the use of any tracks or other railroad facilities or privileges.

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764 **Defendants' Exhibit 380.**

The Wabash Railroad Company.

Office
J. Ramsey, Jr., Vice Prest & Gen'l Manager.

St. Louis, Mo. March 26, 1897.

Personal.

Dear Mr. Hubbell:

After considerable trouble I have arranged matters, so as to give you the option between the two propositions as to switching &c. All other matters have, as I understand it, met your approval. The papers will go to you tonight, Col. Blodgett says, and I hope you will have them promptly accepted. If there is any further trouble, I shall despair of arriving at any new agreement, and shall feel inclined to drop the matter entirely, and let things take their course. I think this will be unfortunate for the D. M. Union Co., for as matters now stand, it will be useless to attempt to list the bonds, and this, in turn will make it hard to negotiate the

remaining lands for depot purposes. We can never realize the advantages which the D. M. U. R. Co. possesses until a commodious union station is built, and the longer the delay, the greater the injury to the enterprise will be.

I rely, therefore, not only upon prompt action on your part in regard to this new agreement, but upon your avoidance of petty conditions, which are of no substantial value as compared to the general purpose and effect of this new agreement.

Yours truly,

(Signed) H. H. ASHLEY.

F. M. Hubbell Esq
Des Moines Ia.

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765 **Defendants' Exhibit 381.**

Exhibit "A" to A. B. Cummins Deposition.

Office of
The Wabash Railroad Company,
195 Broadway,

New York, May 18, 1897.

F. M. Hubbell, Esq., Sec'y.,
Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:

I had an interview here on the 15th. with Mr. Ramsey and Col. Blodgett, and in accordance with our understanding at the end of the conference, they will go to Des Moines as soon as Col. Blodgett returns to St. Louis. They can probably arrange this for next week which begins on the 24th., and will notify you in time in order to arrive at some definite conclusion, if possible, as to the proposed new agreement between the Des Moines Union Railway Company and the tenant lines. This timely notice will enable you to arrange to have Mr. Cummins present, if you so desire it.

I read over a copy of the proposed form very carefully, and I could see nothing to which you could offer a serious objection. As to the allotment of the expenses in the freight department, I do not think it a matter of much consequence, so far as we are concerned, whether the calculation is made upon wheelage or tonnage basis, although I think the tonnage basis is the fairest and most approved method; but as to the distribution of expenses in the passenger department, there
766 can be no question but what the wheelage basis should be upon the passenger cars. It would not, perhaps, be a matter of much consequence, if we continue to use the pres-

ent "ramshackle" structure for a passenger station, but if we are to have a new and comparatively expensive station, it is obvious that a calculation upon a wheelage basis of both freight and passenger cars would be unfair to all parties. On this point I think Mr. Ramsey is right.

There are certain fundamental principles in an agreement of this character, which I think should govern all parties interested in the permanent success of this terminal station. The most important of these is in the adoption of provisions which now and hereafter shall give equally fair conditions to the tenant companies. It is, I presume, not only desirable to keep all the companies now participating in the terminal facilities; but equally important to offer fair inducements to the companies we may wish to bring into the same station. Now, if the wheelage basis is to include freight as well as passenger cars, what equality could there be among tenants who have separate freight stations, and those who have not? It would simply saddle the companies which use the freight accomodations of the Terminal Company with an undue proportion of the expenses of the passenger station. Under such conditions we should be unwilling to enter into an agreement to use a new station, if constructed.

I think upon reflection you will conclude that the wheelage basis of the passenger station, must be upon passenger
767 cars alone, in order to determine the contribution of each Company.

I consider an arbitration clause indispensable in an agreement of this kind, and see no good reason for your objection to it. It is in the present agreement and should be in the new.

I believe it to be your desire to promote the success of the Des Moines Union Railway Co. and I am heartily in accord with you in that respect; but, in my opinion, this object can only be secured by the adoption of liberal and perfectly fair terms to tenant companies. The moment it is suspected that advantages are sought for one Company over another, there will be friction, jealousy and obstruction. I do not accuse you of any such design, for I have always found you fair in the many transactions we have had together, but I think you should scrupulously avoid the consideration of terms which might lead to such a conclusion by others.

For these reasons I urge the prompt execution of an agreement which will be mutually fair and mutually satisfactory. Whatever concessions or changes, to which we have agreed thus far, have been in your favor, and I think I may claim to

have smoothed some of the matters which were in question, and which you considered essential to the financial interests of the Company. I hope, therefore, to see a similar spirit of conciliation on your part.

This is the last attempt I shall make to bring about a new agreement. If this fails we must simply stand upon
768 the old, and let things take their course.

I believe in the erection of a new and commodious passenger station, as the most important matter to be carried out, in order to ensure the permanent success of this enterprise. The longer this is delayed the more uncertain will be the future of the Terminal Company. Without a satisfactory agreement, embracing fair and equal terms, I am confident there will be much less progress in the development of this property than would otherwise attend it.

Much will, in my judgment, depend upon the policy now to be decided, as to whether this shall be an enterprise of rapid and substantial improvement, or one of slow and doubtful growth. The enterprise can be made attractive or repellant, according to the wisdom of its management. It has splendid advantages, but they will be neutralized unless properly and skilfully utilized.

Yours truly,

(Signed) O. D. ASHLEY, President.

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769 **Defendants' Exhibit 382.**

Ex. "C" to Dep. of A. B. Cummins. This is a copy of what we sent to Mr. Ramsey early in Feby.

This Agreement, made and entered into this 3rd day of February 1897, by and between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, (hereinafter termed the Des Moines Company), the Des Moines & St. Louis Railroad Company, a corporation organized and existing under the laws of the State of Iowa, (hereinafter termed the Des Moines & St. Louis Company), the Wabash Railroad Company, a corporation organized and existing under the Laws of the State of Missouri (hereinafter termed the Wabash Company), and the Des Moines, Northern & Western Railroad Company, a corporation organized and existing under the Laws of the State of Iowa, (hereinafter termed the Des Moines, Northern & Western Company) Witnesseth: That

Whereas the said Des Moines Company is the owner of a railway system in and about the City of Des Moines, Iowa, which system consists of valuable terminal facilities in the said City of Des Moines as hereinafter described; and

Whereas, the Des Moines & St. Louis Company is the owner of a line of railway terminating in the City of Des Moines; and

Whereas, the said Wabash Company operates the line of the said Des Moines & St. Louis Company under lease; and

Whereas the Des Moines, Northern & Western Company is the owner of and operates a line of railway terminating in the said City of Des Moines; and

770 Whereas, in order to prevent unnecessary expense, inconvenience, and loss, and in order to facilitate the public convenience and safety, it has become, for the mutual interest of the parties hereto, that the Des Moines & St. Louis Company, the Wabash Company and the Des Moines, Northern & Western Company shall have the use of the terminal facilities of the Des Moines Company as hereinafter prescribed and provided;

Now Therefore, in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto, each for itself and not jointly, as follows, to-wit:

Section 1. The Des Moines Company grants to the Des Moines & St. Louis Company, the Wabash Company, operating the said Des Moines & St. Louis Railroad, and the Des Moines Northern & Western Company, the use (in common with such railway companies as heretofore have or may hereafter enter into contract with the Des Moines Company) of its railway system, consisting of the terminal property aforesaid, including main and side-tracks, passenger and freight depots, depot grounds, lands, yards, shops, round houses and transfers, and all betterments, renewals, improvements and additions to the same, until May 1st, 1918.

Provided, however, that this grant shall not be construed to embrace any lands, tracks, yards, transfers or depots, of which the said Des Moines Company may heretofore have
771 granted or may hereafter grant the sole and exclusive use to another railway company or other railway companies. It is, however, understood and agreed that any such exclusive grant hereafter made shall not interfere with the reasonable use by the grantees herein of the said terminal facilities as they now exist.

Provided further, that such use shall at all times be subject to the reasonable regulation and control of the said Des Moines Company, which shall at all times manage and operate said terminal property in the interest and for the benefit of such railway companies as have acquired or may hereafter acquire the right to use the same.

And said Des Moines Company agrees to keep and maintain its said railway system in good condition and repair, and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such servants and employes, as shall be reasonably necessary for the conduct of its business and the moving and handling of cars, passengers and freight, for said several grantees herein named, and the housing and care of their engines; and the said Des Moines Company further agrees to switch all cars, handle all freight, house and care for all engines of the said several grantee companies, which may be delivered to it or which may come upon its said terminal property, in so far as the said companies may request it so to do.

And the said Des Moines Company further agrees that the use hereby granted of the said railway system and terminal facilities shall be without preference or unreasonable
772 precedence for or to itself or to any of the lessees of its said terminals in the matter of train time schedules, or the handling or switching of cars and trains and occupancy of depots, or the occupancy of said property or any part thereof, or in the service herein agreed to be performed; always, however, subject to such reasonable control and descretion by the said Des Moines Company as may be necessary to avoid confusion and expedite the management of its business.

Section 2. The aggregate amount to be paid by the said Des Moines & St. Louis Company, the Wabash Company and the Des Moines, Northern & Western Company to the Des Moines Company for the use hereinbefore granted and the services so to be performed, shall be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent. interest annually upon the mortgage bonds of the said Des Moines Company, whether now or hereafter issued, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as herein specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expense of maintaining renewing and repairing the property of the said Des Moines Company, including the maintenance, renewal, and repair of tracks, depots, round houses, shops, engine houses, tools, yards, transfers, etc., during the preceding month. And

in like manner there shall be ascertained the taxes or assessments, general or special, levied upon or against
773 the property of the said Des Moines Company and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of the railway system of the said Des Moines Company, including the operation of its main and side-tracks, freight and passenger depots, depot grounds, yards, transfers, shops, round houses and other properties, which is to include every liability created and every item of expense or disbursement incurred or made by the said Des Moines Company, whether herein specifically mentioned or not, including interest upon any floating debt, except the expense specified in section 7 hereof.

Section 3. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, which shall embrace every item of expense or liability of whatsoever name or character, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the Des Moines & St. Louis Company, the Wabash Company and the Des Moines, Northern & Western Company (in the gold coin of the United States of or equal to the present standard of weight of fineness) in the proportion that the wheelage of each of said tenant companies bears to the entire wheelage of all of said
774 companies during such preceding month. And it is expressly understood and agreed that none of the revenues of the Des Moines Company whether derived from rentals, tolls, switching services performed, or otherwise, except the rentals from other railway companies using said terminals or a portion thereof shall be deducted for the purpose of ascertaining the fair monthly aggregate.

The said Wabash Company for itself agrees to make the payment hereinbefore provided for at the times and in the manner prescribed so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the Des Moines & St. Louis Company its obligation to so pay, and all the obligations herein assumed by it shall at once determine and be and become the obligations of whatever company operates the said railroad; it being the intention that the obligations of this lease, so far as they pertain to the Des Moines & St.

Louis Railroad, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property hereby leased, to assume all the obligations herein undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And it is further agreed that the obligations herein assumed by the Des Moines, Northern & Western Company shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee or successor of the said Des Moines, Northern & Western Company in the
775 ownership or operation of the said Des Moines, Northern and Western Railroad.

And any company succeeding the Des Moines Northern & Western Company in such ownership or operation shall be held by the operation of trains over the said Des Moines, Northern & Western Railroad and upon the property hereby leased, to assume all the obligations herein undertaken by said Des Moines, Northern & Western Company.

Section 4. If the amount, or any part thereof, due from any other railroad company or companies for the use of the property herein demised, or any part thereof, shall not be paid when due, then the sum so due and unpaid shall on demand of the said Des Moines Company be paid to it by the tenant companies under this agreement on a wheelage basis as hereinbefore defined.

Section 5. The said Des Moines Company shall, on or before the tenth day of each month, or as soon thereafter as practicable, make out and present to each of the tenant companies herein an account showing the amount due from them respectively for the preceding month, and payment thereof shall be made within five days thereafter. All claimed omissions or errors in said accounts, or exceptions thereto, which may be taken by the tenant companies, shall be subsequently adjusted between the parties, but shall not delay the prompt payment of the accounts as rendered by the Des Moines Company.

Section 6. It is further agreed that if any one of the tenant companies herein named shall for any reason fail or refuse, for a period of thirty days after the same has become due
776 and has been demanded, to pay the sum or sums due from it under this contract as aforesaid, then the said Des Moines Company may take from any moneys in its hands

belonging to the said defaulting Company, or in the hands of its agents the amount of said sum or sums, and apply sufficient thereof to meet said demand or demands. Should the sum in the hands of the said Des Moines Company or its agents be insufficient to meet the amount due under this agreement, and the same shall still remain unpaid, said Des Moines Company shall have the right to exclude the said delinquent tenant from said premises, and the company so failing to pay shall at the option of the said Des Moines Company, forfeit all rights under this agreement and the said Des Moines Company may thereupon, with the consent of the remaining tenant companies herein, transfer and assign the rights of the company so failing, to any other party or parties, for such sum as it may determine, and the same may be thereafter held and enjoyed by said assignee or assignees; but it is understood and agreed that nothing herein shall prevent the said Des Moines Company from enforcing its claim or claims, against any delinquent lessee or lessees, by any proper action, either at law or in equity, to recover any amount which may be at any time due and unpaid, in the event that the said Des Moines Company shall so elect.

Section 7. The cost and expense of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping and washing and firing up, shall be borne by each of the tenant companies herein named in such
777 proportion as the number of road engines of each company in and out of said engine house during the period for which said cost and expense is made up bears to all the engines of the tenant companies in and out of the same.

All repairs to engines & cars shall be charged for and paid by each of said companies for which the work is done on the basis of actual cost of labor and material, and all services rendered, supplies and labor furnished to any of the tenant companies parties hereto for their own benefit, and which are not properly a portion of the joint expenses, shall be charged directly to said company on such equitable terms as may be agreed upon between the Superintendent of the Des Moines Company and the Superintendent of the Company to which the service is rendered.

Section 8. The said terminal property hereby leased shall be used by the said tenant companies for all their trains entering or departing from the said City of Des Moines, Iowa.

Section 9. The said Des Moines Company shall make, publish and enforce such rules and regulations for the use, management and operation of the said terminal property by all of the

tenant companies using the same as it from time to time may consider prudent and necessary.

Section 10. The Des Moines Company shall keep accurate books of account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance and repairs, and other disbursements upon and about the premises embraced in this agreement, and said books shall show
778 the amount of work done for and fuel or other material furnished to each of the said tenant companies, and the amount of fuel or other material received from each of said companies; and said books shall give such other details as will at all times enable the said tenant companies to make accurate settlements of their accounts as provided for in this agreement; and said books may at all proper and reasonable hours be examined and inspected by the respective Superintendents, Auditors or Treasurers of said tenant companies, or by an authorized accountant.

Section 11. The said Des Moines Company shall also keep an accurate record of all the engines and cars of each tenant company arriving at and departing from said terminal station or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched onto or from said terminals, for the benefits of the said tenant companies or others, and of all the engines which have been housed in said engine houses in each month; and as hereinbefore provided, said Des Moines Company shall furnish to the said tenant companies a full, true and detailed statement of all the expenditures made, and of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, all work done or repairs made, and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section 12. All damages which may be received by any
779 engine or engines, car or cars, while being moved by the said Des Moines Company for the aforesaid tenant companies or either of them at or upon any part of the premises embraced in this agreement shall be repaired by the Des Moines Company, and the cost of such repairs shall be borne and paid by the said tenant companies on a wheelage basis.

Section 13. All damages to property caused by any engine or engines, car or cars of the said tenant companies occupying said terminals while being switched, managed and controlled or under the management and control of the Des Moines Company, or by any imperfection in the track or tracks laid on said premises, and all injuries which may at any time be

received by any person or persons, including employes, in, about, around or upon said terminal station, depot grounds, tracks, yards, shops, round houses, transfers, etc., caused through or by the said Des Moines Company or any of its agents, officers or servants, shall, if settled at all, be adjusted and settled by said Des Moines Company, and the sum thus paid in settlement or settlements, or as damages if not settled, shall be considered as a part of the expenses of operating said terminals, and shall be divided and paid upon said wheelage basis as herein defined.

Provided, however, that the said tenant companies and each of them using said terminal facilities hereunder, shall at its own cost and expense bear, settle, and pay all damages to property belonging to the parties hereto or to third parties, and all injuries to persons when said damages or in-
780 juries are done to or by its own trains while said trains are being moved by its own engines and are being operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the employes or servants of the said Des Moines Company or by some imperfection in its track or tracks, machinery, tools, appliances, apparatus, etc.; and in case such damages or injuries are so occasioned by the act, negligence or fault of the servants of the said Des Moines Company, or by any imperfection in its said tracks, machinery, tools, appliances, apparatus, etc., then said payment or payments shall be made by the said Des Moines Company, and shall be considered as a part of the expenses of said terminals, and shall be divided and paid upon a wheelage basis as herein defined.

Section 14. It is further agreed by and between the said Des Moines Company and each of said tenant companies that either of said tenant companies may sell, assign and transfer to any one railway company all its right under this agreement, or it may mortgage to any one party all its interest and right under this contract; but it shall not subdivide, sublet, mortgage or assign to any other company or person a portion of its said rights and privileges herein, and any assignment mortgage or lease made by any one of said tenant companies which may be held sufficient to admit its assignee, mortgages, or lessee or their assigns to the possession of said property shall be held sufficient to exclude and shall exclude the
781 company making such lease, mortgage or assignment from its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as to prevent either of said tenant companies from contracting

to do the business or handling with its own engines the traffic or cars of any other railroad company to and from said city upon such terms as the said Des Moines Company may approve, provided the line of such other railroad company connects with the line of such tenant company not less than twenty miles from said City of Des Moines.

~~Section 15. Whereas, the several tenant companies herein named have obligated themselves severally to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used or to be hereafter issued and used by said Des Moines Company in purchasing, improving and equipping the terminal properties herein described.~~

~~Now Therefore, in consideration of the premises, the said Des Moines Company hereby agrees to and with each of the said tenant companies that it will not at any time hereafter issue or dispose of any of its said bonds except for the purpose of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in the said City of Des Moines or vicinity.~~

Section 15. Interest on bonds hereafter issued by the Des Moines Company shall not be reckoned under the first paragraph of section two hereof unless such bonds were issued with the consent of the party sought to be charged with such interest.

Section 16. The Directors of the Des Moines Company shall annually appoint an Executive Committee upon which the Wabash Company shall have a representative (to be selected by it) so long as said Wabash Company uses the terminal property hereunder.

Section 17. The salaries and wages paid to the officers, superintendents, agents, and employes of the Des Moines Company shall not be greater than the salaries and wages commonly paid for similar services in said locality; and for good cause shown the Des Moines Company shall discharge any superintendent, agent, or employe upon the written request of of either of the tenant companies.

Section 18. It is further understood and agreed that this contract is entered into in lieu of and as a substitute for a certain agreement entered into on the 10th day of May,
782 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the

said last named agreement is by the execution hereof forever terminated and all pending or unsettled accounts shall be settled and paid hereunder, and for the purpose of quieting all controversy with respect to the full execution and performance of the said last named contract by each of the parties thereto it is stipulated and agreed that the same has been fully performed, and that the capital stock of the said Des Moines Union Railway Company therein mentioned is now rightfully held as follows: to-wit:

The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, ... 500 Shares

The Des Moines, Northern & Western Railroad Company, ... 1000 Shares

F. M. Hubbell & Son, ... 2500 Shares

Of the above shares belonging to said Purchasing Committee two shares stand upon the books of the Company as follows: Joseph Ramsey, Jr., One Share, and H. L. Magee One Share.

Of the shares belonging to the Des Moines, Northern & Western Railroad Company two shares stand upon the books of the Company as follows: A. B. Cummins One Share, F. M. Hubbell One Share.

Of the shares belonging to the said F. M. Hubbell & Son five shares stand upon the books of the Company as follows:
783 F. M. Hubbell, one share H. D. Thompson, one share F. C. Hubbell, one share A. N. Denman, one share C. Huttenlocher, one share.

In Witness Whereof, the respective parties hereto have caused these presents to be signed by their respective Presidents and sealed with their corporate seals and attested by their respective Secretaries the day and year first above written.

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784 **Defendants' Exhibit 383.**

Exhibit B to deposition of Albert B. Cummins.

(Original Draft of D. M. U. Co. Contract with Wabash & D. M. N. & W.)

This Agreement, made and entered into this 3d day of February, 1897, by and between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, (hereinafter termed the Des Moines Company), the Des Moines & St. Louis Railroad Company, a corporation organized and existing under the laws of the State of Iowa (hereinafter termed the Des Moines & St. Louis Company), the Wabash Railroad Company, a corporation organized and existing under the laws of the State of Missouri, (hereinafter termed the Wabash Company), and the Des Moines, Northern & Western Railroad Company, a corporation organized and existing under the laws of the State of Iowa (hereinafter termed the Des Moines, Northern & Western Company), Witnesseth: That

Whereas the said Des Moines Company is the owner of a railway system in and about the City of Des Moines, Iowa, which system consists of valuable terminal facilities in the said City of Des Moines as hereinafter described; and

Whereas the Des Moines & St. Louis Company is the owner of a line of railway terminating in the City of Des Moines; and

Whereas the said Wabash Company operates the line of the said Des Moines & St. Louis Company under lease; and

Whereas the Des Moines, Northern & Western Company is the owner of and operates a line of railway terminating in the said City of Des Moines; and Whereas, in order to prevent unnecessary expense, inconvenience and loss, and in order to facilitate the public convenience and safety, it has be-
785 come for the mutual interest of the parties hereto that the Des Moines & St. Louis Company, the Wabash Company and the Des Moines, Northern & Western Company shall have the use of the terminal facilities of the Des Moines Company as hereinafter prescribed and provided;

Now Therefore, in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto, each for itself and not jointly, as follows, to-wit:

Section 1. The Des Moines Company grants to the Des Moines & St. Louis Company, the Wabash Company, operating the said Des Moines & St. Louis Railroad, and the Des Moines, Northern & Western Company, the use (in common with such railway companies as heretofore have or may hereafter enter into contract with the Des Moines Company) of its railway system, consisting of the terminal property aforesaid, including

main and side-tracks, passenger and freight depots, depot grounds, lands, yards, shops, round houses and transfers, and all betterments, renewals, improvements and additions to the same, until May 1st, 1918.

Provided, however, that this grant shall not be construed to embrace any lands, tracks, yards, transfers or depots of which the said Des Moines Company may heretofore have granted or may hereafter grant the sole and exclusive use to another railway company or other railway companies. It is, however, understood and agreed that any such exclusive grant hereafter made shall not interfere with the reasonable use by the grantees herein of the said terminal facilities as they now exist.

786 Provided further, that such use shall at all times be subject to the reasonable regulation and control of the said Des Moines Company, which shall at all times manage and operate said terminal property in the interest and for the benefit of such railway companies as have acquired or may hereafter acquire the right to use the same.

And said Des Moines Company agrees to keep and maintain its said railway system in good condition and repair, and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such servants and employes, as shall be reasonably necessary for the conduct of its business and the moving and handling of cars, passengers and freight, for said several grantees herein named, and the housing and care of their engines; and the said Des Moines Company further agrees to switch all cars, handle all freight, house and care for all engines of the said several grantee companies, which may be delivered to it or which may come upon its said terminal property, in so far as the said companies may request it so to do.

And the said Des Moines Company further agrees that the use hereby granted of the said railway system and terminal facilities shall be without preference or unreasonable precedence for or to itself or to any of the lessees of its said terminals in the matter of train time schedules, or the handling or switching of cars and trains and occupancy of depots, or the occupancy of said property or any part thereof, or in the service herein agreed to be performed; always, however, subject to such reasonable control and discretion by the
787 said Des Moines Company as may be necessary to avoid confusion and expedite the management of its busi-
ness.

Section 2. The aggregate amount to be paid by the said Des Moines & St. Louis Company, the Wabash Company and the Des Moines, Northern & Western Company to the Des Moines Company for the use hereinbefore granted and the services so to be performed, shall be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent. interest annually upon the mortgage bonds of the Des Moines Company, whether now or hereafter issued, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as herein specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining renewing and repairing the property of the said Des Moines Company, including the maintenance renewal and repair of tracks, depots, round houses, shops, engine houses, tools, yards, transfers, etc., during the preceding month. And in like manner there shall be ascertained the taxes or assessments, general or special, levied upon or against the property of the said Des Moines Company and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of the railway system of the said Des Moines Company, in-
788 cluding the operation of its main and side-tracks, freight and passenger depots, depot grounds, yards, transfers, shops, round houses and other properties, which is to include every liability created and every item of expense or disbursement incurred or made by the said Des Moines Company, whether herein specifically mentioned or not, including interest upon the (any) floating debt except the expense specified in Section 7 hereof.

Section 3. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, which shall embrace every item of expense or liability of whatsoever name or character, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the Des Moines & St. Louis Company, the Wabash Company and the Des Moines Northern & Western Company in the proportion that the wheelage of each of said tenant companies bears to the entire wheelage of all of said companies during such preceding month.

The said Wabash Company for itself agrees to make the payment hereinbefore provided for at the times and in the manner prescribed so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the Des Moines & St. Louis Company its obligation to so pay, and all the obligations herein assumed by it shall at once determine and be
and become the obligations of whatever company oper-
789 ates the said railroad; it being the intention that the obligations of this lease, so far as they pertain to the Des Moines & St. Louis Railroad, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company in such operation shall be held, by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property hereby leased, to assume all the obligations herein undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And it is further agreed that the obligations herein assumed by the Des Moines, Northern & Western Company shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee or successor of the said Des Moines, Northern & Western Company in the ownership or operation of the said Des Moines, Northern & Western Railroad.

Section 4. If the amount, or any part thereof, due from any other railroad company or companies for the use of the property herein demised, or any part thereof, shall not be paid when due, then the sum so due and unpaid shall on demand of the said Des Moines Company be paid to it by the tenant companies under this agreement on a wheelage basis as hereinbefore defined.

Section 5. The said Des Moines Company shall, on or before the tenth day of each month, or as soon thereafter as practicable, make out and present to each of the tenant companies herein an account showing the amount due from
790 them respectively for the preceding month, and payment thereof shall be made within five days thereafter. (All claimed omissions or errors in said accounts, or exceptions thereto, which may be taken by the tenant companies or either of them, shall be subsequently adjusted between the parties, but shall not delay the prompt payment of the accounts as rendered by the Des Moines Company.)

Section 6. It is further agreed that if any one of the tenant companies herein named shall for any reason fail or re-

fuse, for a period of thirty days after the same has become due and has been demanded, to pay the sum or sums due from it under this contract as aforesaid, then the said Des Moines Company may take from any moneys in its hands belonging to the said defaulting company or in the hands of its agents the amount of said sum or sums, and apply sufficient thereof to meet said demand or demands. Should the sum in the hands of the said Des Moines Company or its agents be insufficient to meet the amount due under this agreement, and the same shall still remain unpaid, said Des Moines Company shall have the right to exclude the said delinquent tenant from said premises, and the company so failing to pay shall, at the option of the said Des Moines Company forfeit all rights under this agreement, and the said Des Moines Company may thereupon, with the consent of the remaining tenant companies herein, transfer and assign the rights of the company so failing to any other party or parties for such sum as it may determine, and the same may be thereafter held and enjoyed by said assignee or assignees; but it is understood and agreed that nothing herein shall prevent the said Des Moines
791 Company from enforcing its claim or claims against any delinquent lessee or lessees by any proper action, either at law or in equity, to recover any amount which may be at any time due and unpaid, in the event that the said Des Moines Company shall so elect.

Section (7). The cost and expense of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping and washing and firing up, shall be borne by each of the tenant companies herein named in such proportion as the number of road engines of each company in and out of said engine house during the period for which said cost and expense is made up (bears to all the engines of the tenant companies in and out of the same)

792 All repairs to engines & cars shall be charged for and paid by each of said companies for which the work is done on the basis of actual cost of labor and material, and all services and facilities rendered, supplies and labor furnished to any of the tenant companies parties hereto for their own benefit, and which are not properly a portion of the joint expenses, shall be charged directly to said company on such equitable terms as may be agreed upon between the Superintendent of the Des Moines Company and the Superintendent of the company to which the service is rendered.

Section (8). The said terminal property hereby leased shall be used by the said tenant companies for all their trains entering or departing from the said City of Des Moines, Iowa.

Section (9). The said Des Moines Company shall make, publish and enforce such rules and regulations for the use, management and operation of the said terminal property by the the tenant companies using the same as it from time to time may consider prudent and necessary.

Section (10). The Des Moines Company shall keep accurate books of account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance and repairs and other disbursements upon and about the premises embraced in this agreement, and said books shall show the amount of work done for and fuel or other material furnished to each of the said tenant companies, and the amount of fuel or other material received from each of said companies; and said books shall give such other details as will at all times enable the said tenant companies to make accurate settlements of their accounts as provided for in this agreement; and said books may at all proper and reasonable hours be examined and inspected by the respective Superintendent, Auditors, or Treasurers of said tenant companies, or by an authorized accountant.

Section (11). The said Des Moines Company shall also keep an accurate record of all the engines and cars of each tenant company arriving at and departing from said terminal station or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched onto or from said terminals, for the benefit of the said tenant companies or others, and of all the engines which have been housed in said engine houses in each month; and as hereinbefore provided, said Des Moines Company shall furnish to the said tenant companies a full, true and detailed statement of all the expenditures made, and of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made, and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section (12). All damages which may be received by any engine or engines, car or cars, while being moved by the said Des Moines Company for the aforesaid tenant companies or either of them at or upon any part of the premises embraced in this agreement shall be repaired by the Des Moines Company, and the cost of such repairs shall be borne and paid by the said tenant companies on a wheelage basis.

Section (13). All damages to property caused by any engine or engines, car or cars of the said tenant companies occupying said terminals while being switched, managed and

controlled or under the management and control of the Des Moines Company, or by any imperfection in the track or tracks laid on said premises, and all injuries which may at any time be received by any person or persons, including employes, in, about, around or upon said terminal station, depot grounds, tracks, yards, shops, round houses, transfers, etc., caused through or by the said Des Moines Company or any of it agents, officers or servants, shall, if settled at all, be adjusted and settled by said Des Moines Company, and the sums thus paid in settlement or settlements, or as damages if not settled, shall be considered as a part of the expenses of operating said terminals, and shall be divided and paid upon said wheelage basis as herein defined.

Provided, however, that the said tenant companies and each of them using said terminal facilities hereunder, shall at its own cost and expense bear, settle and pay all damages to property belonging to the parties hereto or to third parties, and all injuries to persons when said damages or injuries are done to or by its own trains while said trains are being moved by its own engines and are being operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the employes or servants of
795 the said Des Moines Company or by some imperfection in its track or tracks, machinery, tools, appliances, apparatus, etc.; and in case such damages or injuries are so occasioned by the act, negligence or fault of the servants of the said Des Moines Company, or by any imperfection in its said tracks, machinery, tools, appliances, apparatus, etc., then said payment or payments shall be made by the said Des Moines Company, and shall be considered as a part of the expenses of said terminals, and shall be divided and paid upon a wheelage basis as herein defined.

Section (14). It is further agreed by and between the said Des Moines Company and each of said tenant companies that either of said tenant companies may sell, assign and transfer to any one railway company all its right under this agreement or it may mortgage to any one party all its interest and right under this contract; but it shall not subdivide, sublet, mortgage or assign to any other company or person a portion of its said rights and privileges herein, and any assignment, mortgage or lease made by any one of said tenant companies which may be held sufficient to admit its assignee, mortgagee or lessee or their assigns to the possession of said property shall be held sufficient to exclude and shall exclude the company making such lease, mortgage or assignment from its rights and privileges in and upon said property under this contract; but this

clause shall not be so construed as to prevent either of said tenant companies from contracting to do the business or handling with its own engines the traffic or cars of any other railroad company to and from said city upon such terms as the
796 said Des Moines Company may approve, provided the line of such other railroad company connects with the line of such tenant company not less than twenty miles from said City of Des Moines.

Section (15) Whereas the several tenant companies herein named have obligated themselves severally to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used or to be hereafter issued and used by said Des Moines Company in purchasing, improving and equipping the terminal properties herein described.

Now, therefore, in consideration of the premises, the said Des Moines Company hereby agrees to and with each of the said tenant companies that it will not at any time hereafter issue or dispose of any of its said bonds except for the purpose of purchasing with them or their proceeds additional terminal property or for improving or equipping that now owned by it in the said City of Des Moines or vicinity.

Section (16) It is further understood and agreed that this contract is entered into in lieu of and as a substitute for a certain agreement entered into on the 10th day of May, 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the said last named agreement is by the execution hereof forever terminated, and all pending or unsettled accounts shall be settled and paid hereunder and for the purpose of quieting all controversy with respect to the full execution and performance of the said last named contract by each of the parties thereto it is stipulated and agreed that the same has been fully performed
797 and that the capital stock of the said Des Moines Union Railway Company therein mentioned is now rightfully held as follows, to-wit:

The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.

The Des Moines, Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares.

Of the above shares belonging to the said Purchasing Committee two shares stand upon the books of the Company as

follows: Joseph Ramsey, Jr., one share. H. L. Magee one share.

Of the shares belonging to the said Des Moines, Northern & Western Railroad Company two shares stand upon the books as follows:

A. B. Cummins, one share.
L. M. Martin, one share.

Of the shares belonging to the said F. M. Hubbell & Son five shares stand upon the books of the Company as follows:

F. M. Hubbell, one share.
F. C. Hubbell, one share.
H. D. Thompson, one share.
A. N. Denman, one share.
C. Huttenlocher, one share.

798 In Witness Whereof the respective parties hereto have caused these presents to be signed by their respective Presidents and sealed with their corporate seals and attested by their respective Secretaries, the day and year first above written.

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799 **Defendants' Exhibit 384.**

Ex. "H" to A. B. Cummins Dep.

This Agreement made and entered into on this 21st day of July, 1897, by and between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the state of Iowa (hereinafter termed the Des Moines Company), the Des Moines & St. Louis Railroad Company, a corporation organized and existing under the laws of the state of Iowa (hereinafter termed the Des Moines & St. Louis Company), the Wabash Railroad Company, a corporation organized and existing under the laws of the state of Missouri (hereinafter termed the Wabash Company), and the Des Moines Northern & Western Railroad Company, a corporation organized and existing under the laws of the state of Iowa (hereinafter termed the Des Moines Northern & Western Company)

Witnesseth, That

Whereas the said Des Moines Company is the owner of a railway system in and about the city of Des Moines, Iowa, which system consists of valuable terminal facilities in the said city of Des Moines as hereinafter described; and

Whereas, the Des Moines & St. Louis Company is the owner of a line of railway terminating in the city of Des Moines; and

Whereas, the said Wabash Company operates the line of the said Des Moines & St. Louis Company under lease; and

Whereas, the Des Moines Northern & Western Company is the owner of and operates a line of railway terminating in the said city of Des Moines; and

Whereas, in order to prevent the unnecessary expense, inconvenience and loss, and in order to facilitate the public convenience and safety, it has become necessary for the mutual interests of the parties hereto, that the Des Moines & St. Louis Company, the Wabash Company and the Des Moines Northern & Western Company shall have the use of the terminal facilities of the Des Moines Company as hereinafter prescribed and provided;

Now Therefore, in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto, each for itself and not jointly, as follows, to-wit:

Section I. The Des Moines Company grants to the Des Moines & St. Louis Company, the Wabash Company, operating the said Des Moines & St. Louis Railroad, and the Des Moines Northern & Western Company the use (in common with such railway companies as heretofore have or may hereafter enter into contract with the Des Moines Company), of its railway system, consisting of the terminal property aforesaid, including main and side tracks, passenger and freight depots, depot grounds, lands, yards, shops, round houses and transfers, and all betterments, renewals, improvements, and additions to the same, until May 1st, 1918.

Provided, however, that this grant shall not be construed to embrace any land, tracks, yards, transfers or depots, of which the said Des Moines Company may have heretofore granted, or may hereafter grant, the sole and exclusive use to another railway company or other railway companies. It is understood and agreed, however, that no such exclusive grant shall be hereafter made to any railroad company, or for its use, without the written consent and approval of the grantees herein, their successors or assigns. It is also agreed that no other tenant Railway company shall be hereafter admitted by said Des Moines Company to the use of said terminals, or any part thereof, upon terms different from those contained in this agreement, without the written consent of the grantees

herein, their successors or assigns. But it is agreed that said Des Moines Company shall have, subject to the conditions of this agreement, the right to make leases of such portions of said grounds and premises as are not required for railroad or terminal purposes; but no such lease shall be made, for a period of more than six months, or for the erection or operation of elevators, warehouses, coal yards or manufacturing purposes, or for other similar uses without the written consent and approval of the grantees herein, and all such leases of portions of said property shall be terminated by said Des
802 Moines Company at the earliest practicable day after said tenant companies, or either of them, shall have given notice of a desire to use such grounds for railroad or terminal purposes.

(The proviso just inserted is on a piece of paper pasted on to the original draft. There is at the top of this piece of paper in the handwriting of Mr. F. M. Hubbell: "Sent copy of this to W. H. Blodgett March 29, 1897", and in typewriting in parenthesis; "Proposed as a substitute for the proviso on page 2.)

Provided further, that such use shall at all times be subject to the reasonable regulation and control of the said Des Moines Company, which shall at all times manage and operate said terminal property in the interest and for the benefit of such railway companies as have acquired or may hereafter acquire the right to use the same.

And said Des Moines Company agrees to keep and maintain its said railway system in good condition and repair, and to provide and maintain all such engines, machinery appliances, buildings and structures, and all such servants and employes, as shall be reasonably necessary for the conduct of its business and the moving and handling of cars, passengers and freight, for said several grantees herein named, and the housing and care of their engines; and the said Des Moines Company further agrees to switch all cars, handle all freight, house and care for all engines of the said several grantee companies, which
803 may be delivered to it or which may come upon its said terminal property, in so far as the said companies may request it so to do.

And the said Des Moines Company further agrees that the use hereby granted of the said railway system and terminal facilities shall be without preference or unreasonable precedence for or to itself or to any of the lessees of its said terminals in the matter of train time schedules, or the handling

or switching of cars and trains and occupancy of depots, or the occupancy of said property or any part thereof, or in the service herein agreed to be performed; always, however, subject to such reasonable control and discretion by the said Des Moines Company as may be necessary to avoid confusion and expedite the management of its business.

Section 2. The aggregate amount to be paid by the said Des Moines & St. Louis Company, the Wabash Company and the Des Moines, Northern & Western Company to the Des Moines Company for the use hereinbefore granted and the services so to be performed, shall be ascertained as follows,

1st. There shall be ascertained the amount required to pay five per cent interest annually upon the mortgage bonds of the said Des Moines Company, whether now or hereafter issued, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expense of maintaining, re-
804 newing and repairing the property of the said Des Moines Company, including the maintenance, renewal and repair of tracks, depots, round houses, shops, engine houses, tools, yards, transfers, etc., during the preceding month. And in like manner there shall be ascertained the taxes or assessments, general or special, levied upon or against the property of the said Des Moines Company and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of the railway system of the said Des Moines Company, including the operation of its main and side tracks, freight and passenger depots, depot grounds, yards, transfers, shops, round houses and other properties, which is to include every liability created and every item of expense or disbursement incurred or made by the said Des Moines Company, whether herein specifically mentioned or not, including interest upon any floating debt, except the expense specified in section seven hereof.

Section 3. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, which shall embrace every item of expense or liability of whatsoever name or character (excepting taxes, repairs and other

expenses on such portions of said property as the Des
805 Moines Company may have leased, or claims the right to lease and collect and retain the rentals) there shall then be deducted therefrom the amount, if any, which other railway companies that pay upon any other than a wheelage basis, may be under obligations to pay by virtue of contracts for the use of said property, or parts thereof, and also all revenues and rentals paid by individuals or companies for the enjoyment of privileges, or the use of space at, or in the passenger station, or other buildings erected and used for railroad purposes, and all the rentals due from every company or person whatsoever, for the use of railroad tracks, facilities or privileges, for the preceding month; and the remainder shall be paid by the Des Moines & St. Louis Company, the Wabash Company and the Des Moines Northern & Western Company, in the gold coin of the United States of or equal to the present standard of weight and fineness, in the proportion that the wheelage of each of said companies bears to the entire wheelage of the tenant companies paying on a wheelage basis over said terminals during such preceding month.

And it is expressly understood and agreed, that the Des Moines Company reserves the right to switch, handle and transfer cars over said terminal tracks for other than tenant companies, to and from industries, and to and from other railroads with which its tracks connect, upon such terms and for such compensation as may be fixed by the Executive Committee; and it shall also have the right to make leases,
806 as provided in section one hereof, of such portions of its property as are not at the time required by the lessees herein, or either of them, for railroad or terminal purposes. And the Des Moines Company shall have the right to collect, and shall collect and retain all charges due for switching, handling and transferring such cars, and also all rentals due under such leases, until the aggregate of such collections amount to the sum of fifty thousand dollars ($50,000) and out of the sum last aforesaid, not exceeding thirty-five thousand dollars ($35,000) shall be applied to the payment of the present floating indebtedness of said Des Moines Company, and the balance shall belong to said Des Moines Company and constitute a working fund, to be expended from time to time in improving said terminal properties, for the benefit of the parties using the same for railroad purposes, in such manner as the Executive Committee shall direct.

It is further agreed that after said sum of fifty thousand dollars shall have been realized from the sources aforesaid all revenues thereafter derived from switching, handling and

transferring cars shall be credited monthly upon the bills of the tenant companies herein and such other tenant companies as may by subsequent contract become entitled thereto and each of said tenant companies shall receive a credit for the percentage thereof that its wheelage for the month for which the credit is made, bears to the total wheelage for said month, of all the companies entitled to participate in said revenues.

But it is further understood and agreed that after said
807 sum of fifty thousand dollars shall have been realized as aforesaid, all revenues thereafter derived from the rentals of such portions of said grounds as the Des Moines Company is herein authorized to lease, shall belong to said Des Moines Company, and shall be used in improving said terminal properties for the benefit of the parties using the same for railroad purposes, in such manner as the Executive Committee shall direct.

It is understood that the privilege reserved to the Des Moines Company of making leases of such portions of said property as are not at the time required by the lessees herein for railroad or terminal purposes, shall not be understood as including the right to grant any privileges, or the use of any space at or in the passenger station, or other buildings erected and used for railroad purposes, or the right to make any lease or contract for the use of any tracks or other railroad facilities or privileges.

(Section 3 is pasted on to the original contract, and it is not possible to read what is under it, and it is stricken out. At the top of the page in the handwriting of Mr. F. M. Hubbell there is this: "Sent copy of this to W. H. Blodgett March 29, 1897".)

The said Wabash Company for itself agrees to make the payment hereinbefore provided for at the times and in the manner prescribed so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the
808 said Des Moines & St. Louis Company its obligation to so pay, and all the obligations herein assumed by it shall at once determine and be and become the obligations of whatever company operates the said railroad; it being the intention that the obligations of this lease, so far as they pertain to the Des Moines & St. Louis Railroad, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad and any company succeeding the Wabash Com-

pany in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property hereby leased, to assume all the obligations herein undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And it is further agreed that the obligations herein assumed by the Des Moines Northern & Western Company shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee or successor of the said Des Moines Northern & Western Company in the ownership or operation of the said Des Moines Northern & Western Railroad. And any company succeeding the Des Moines Northern & Western Company in such ownership or operation shall be held by the operation of trains over the said Des Moines Northern & Western Railroad and upon the property hereby leased, to assume all the obligations herein undertaken by said Des Moines Northern & Western Company.

809 Section 4. If the amount, or any part thereof, due from any other railroad company or companies for the use of the property herein demised, or any part thereof, shall not be paid when due, then the sum so due and unpaid shall on demand of the said Des Moines Company be paid to it by the tenant companies under this agreement on a wheelage basis as hereinbefore defined.

Section 5. The said Des Moines Company, shall on or before the tenth day of each month, or as soon thereafter as practicable, make out and present to each of the tenant companies herein an account showing the amount due from them respectively for the preceding month, and payment thereof shall be made within five days thereafter. All claimed omissions or errors in said accounts, or exceptions thereto, which may be taken by the tenant companies, shall be subsequently adjusted between the parties, but shall not delay the prompt payment of the accounts as rendered by the Des Moines Company.

Section 6. It is further agreed that if any one of the tenant companies herein named shall for any reason fail or refuse, for a period of thirty days after the same has become due and has been demanded, to pay the sum or sums due from it under this contract as aforesaid, then the said Des Moines Company may take from any moneys in its hands belonging to the said defaulting company, or in the hands of its agents the amount of said sum or sums, and apply sufficient thereof

to meet said demand or demands. Should the sum in
810 the hands of the said Des Moines Company or its agents be insufficient to meet the amount due under this agreement, and the same shall still remain unpaid, said Des Moines Company shall have the right to exclude the said delinquent tenant company from said premises, and the company so failing to pay shall at the option of the said Des Moines Company, forfeit all rights under this agreement, and the said Des Moines Company may thereupon, with the consent of the remaining tenant companies herein, transfer and assign the rights of the company so failing to any other party or parties, for such sum as it may determine, and the same may be thereafter held and enjoyed by the said assignee or assignees; but it is understood and agreed that nothing herein shall prevent the said Des Moines Company from enforcing its claim or claims, against any delinquent lessee or lessees, by any proper action, either at law or in equity, to recover any amount which may be at any time due and unpaid, in the event that the said Des Moines Company shall so elect.

Section 7. The cost and expense of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping and washing and firing up, shall be borne by each of the tenant companies herein named in such proportion as the number of road engines of each company in and out of said engine house during the period for which said
811 cost and expense is made up bears to all the engines of the tenant companies in and out of the same.

All repairs to engines and cars shall be charged for and paid by each of said companies for which the work is done on the basis of actual cost thereof to the Des Moines Company, and all services rendered, supplies and labor furnished to any of the tenant companies parties hereto for their own benefit, and which are not properly a portion of the joint expenses, shall be charged directly to said company on such equal and equitable terms as may be agreed upon between the Superintendent of the Des Moines Company and the Superintendents of the respective companies for which the services are rendered or the supplies furnished subject, however, to the approval of the Executive Committee.

Section 8. The said terminal property hereby leased shall be used by the said tenant companies for all their trains entering or departing from the said City of Des Moines, Iowa.

Section (12.) Said Executive Committee subject to the approval of the Board shall make, publish and enforce such rules

and regulations for the use, management and operation of said terminal properties including stations, depots, depot grounds, yards and tracks, by all the parties hereto as it may from time to time consider necessary.

Section (13.) The Des Moines Company shall keep accurate books of account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance and repairs, and other disbursements upon and about the premises embraced in this agreement, and said books shall show the amount of work done for and fuel or other material furnished to each of the said tenant companies, and the amount of fuel or other material received from each of said companies; and said books shall give such other details as will at all times enable the said tenant companies to make accurate settlements of their accounts as provided in this agreement; and said books may at all proper and reasonable hours be examined and inspected by the respective superintendents, Auditors or Treasurers of said tenant companies, or by an authorized accountant.

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Section (14.) The said Des Moines Company shall also keep an accurate record of all the engines and cars of each tenant company arriving at and departing from said terminal station or said depot grounds, transfers and yards and the cars of foreign roads that may be switched onto or from said terminals, for the benefits of the said tenant companies or others, and of all the engines which have been housed in said engine houses in each month; and as hereinbefore provided, said Des Moines Company shall furnish to the said tenant companies a full, true and detailed statement of all the expenditures made, and of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made, and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

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Section (15.) All damages which may be received by any engine or engines, car or cars, while being moved by the said Des Moines Company for the aforesaid tenant companies or either of them at or upon any part of the premises embraced in this agreement shall be repaired by the Des Moines Company and the cost of such repairs shall be deemed an operating expense and borne and paid by the said tenant companies on a wheelage basis.

Section (16.) All damages to property caused by any engine or engines, car or cars of the said tenant companies occupying said terminals while being switched, managed and controlled or under the management and control of the Des Moines Company, or by any imperfection in the track or tracks laid on said premises, and all injuries which may at any time be received by any person or persons, including employes, in, about, around or upon said terminal station, depot, grounds, tracks, yards, shops, round houses, transfers, etc., caused through or by the said Des Moines Company or any of its agents, officers or servants, shall if settled at all, be adjusted and settled by said Des Moines Company, and the sum thus paid in settlement or settlements, or as damages, if not settled, shall be considered as a part of the expenses of operating said terminals, and shall be divided and paid upon said wheelage basis as herein defined.

Provided, however, that the said tenant companies and
814 each of them using said terminal facilities hereunder, shall at its own cost and expense bear, settle, and pay all damages to property belonging to the parties hereto or to third persons and all injuries to persons when said damages or injuries are done to or by its own trains while said trains are being moved by its own engines and are being operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the employes or servants of the said Des Moines Company or by some imperfection in its track or tracks, machinery, tools, appliances, apparatus, etc., and in case such damages or injuries are so occasioned by the act, negligence or fault of the servants of the said Des Moines Company, or by any imperfection in its said tracks, machinery tools, appliances, apparatus, etc. then said payment or payments shall be made by the said Des Moines Company, and shall be considered as a part of the expenses of said terminals, and shall be divided and paid upon a wheelage basis as herein defined.

Section (17.) It is further agreed by and between the said Des Moines Company and each of said tenant companies that either of said tenant companies may sell, assign and transfer to any one railway company all its right under this agreement, or it may mortgage to any one party all its interest and right under this contract; but it shall not subdivide, sublet, mort-
gage or assign to any other company or person a por-
815 tion of its said rights and privileges herein, and any assignment, mortgage or lease made by any one of said tenant companies which may be held sufficient to admit its as-

signee, mortgagee or lessee or their assigns to the possession of said property shall be held sufficient to exclude and shall exclude the company making such lease, mortgage or assignment from its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as to prevent either of said tenant companies from contracting to do the business or handling with its own engines the traffic or cars of any other railroad company to and from said city upon such terms as the said Des Moines Company may approve, provided the line of such other railroad company connects with the line of said tenant company not less than twenty miles from said city of Des Moines.

Section (18.) Interest on bonds hereafter issued by the Des Moines Company shall not be reckoned under the first paragraph of section two hereof unless such bonds were issued with the consent of the party sought to be charged with such interest.

816 Section (19.) It is further understood and agreed that this contract is entered into in lieu of and as a substitute for a certain agreement entered into on the 10th day of May 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the said last named agreement is by the execution hereof forever terminated, and for the purpose of quieting all controversies with respect to the full execution and performance of said last named contract by each of the parties thereto it is stipulated and agreed that the same has been fully performed, provided however that all unsettled claims and accounts between the parties hereto shall be adjusted and settled in like manner as though they had arisen under this agreement, and that the capital stock of the said Des Moines Union Railway Company therein mentioned is now rightfully held as follows, to-wit:

The Purchasing Committee of the Wabash St. Louis & Pacific Railway Company, ... 500 Shares
The Des Moines, Northern & Western Railroad Company, ... 1000 Shares
F. M. Hubbell & Son, ... 2500 Shares

817 Of the above shares belonging to said Purchasing Committee two shares stand upon the books of the company as follows: Joseph Ramsey, Jr.; one share, and H. L. Magee, one share.

Of the shares belonging to the Des Moines, Northern and Western Railroad Company two shares stand upon the books of the company as follows: A. B. Cummins, one share and F. M. Hubbell one share.

Of the shares belonging to the said F. M. Hubbell & Son five shares stand upon the books of the company as follows:

F. M. Hubbell, one share, H. D. Thompson one share
F. C. Hubbell one share, A. N. Denman, one share
C. Huttenlocher, one share,

In Witness Whereof the respective parties hereto have caused these presents to be signed by their respective presidents and sealed with their corporate seals and attested by their respective secretaries the day and year first above written.

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818 **Defendants' Exhibit 385.**

Ex. "I" to A. B. Cummins, Dep.

This Agreement, made and entered into this (21) day of (July) 1897, by and between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, (hereinafter termed the Des Moines Company), the Des Moines & St. Louis Railroad Company, a corporation organized and existing under the laws of the State of Iowa, (hereinafter termed the Des Moines & St. Louis Company), the Wabash Railroad Company, a corporation organized and existing under the laws of the State of Missouri (hereinafter termed the Wabash Company), and the Des Moines Northern & Western Railroad Company, a corporation organized and existing under the laws of the State of Iowa (hereinafter termed the Des Moines Northern & Western Company) Witnesseth, That

Whereas the said Des Moines Company is the owner of a railway system in and about the City of Des Moines, Iowa,

which system consists of valuable terminal facilities in the said City of Des Moines, as hereinafter described; and

Whereas the Des Moines & St. Louis Company is the owner of a line of railway terminating in the City of Des Moines; and

Whereas the said Wabash Company operates the line of the said Des Moines & St. Louis Company under lease; and

Whereas the Des Moines Northern & Western Company is the owner of and operates a line of railway terminating in the said City of Des Moines; and

Whereas in order to prevent unnecessary expense, inconvenience and loss, and in order to facilitate the public
819 convenience and safety, it has become necessary, for the mutual interests of the parties hereto, that the Des Moines & St. Louis Company, the Wabash Company and the Des Moines, Northern & Western Company shall have the use of the terminal facilities of the Des Moines Company, as hereinafter prescribed and provided;

Now Therefore, in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto, each for itself and not jointly, as follows, to-wit:

Section I. The Des Moines Company grants to the Des Moines & St. Louis Company, the Wabash Company, operating the said Des Moines & St. Louis Railroad, and the Des Moines Northern & Western Company, the use (in common with such railway companies as heretofore have, or may hereafter enter into contract with the Des Moines Company) of its railway system, consisting of the terminal property aforesaid, including main and side tracks, passenger and freight depots, depot grounds, lands, yards, shops, round houses and transfers, and all betterments, renewals, improvements, and additions to the same, until May 1st 1918,

Provided, however, that this grant shall not be construed to embrace any lands, tracks, yards, transfers or depots, of which the said Des Moines Company may have heretofore granted, or may hereafter grant, the sole and exclusive use to another railway company or other railway companies. It is understood and agreed however, that no such exclusive grant shall be hereafter made to any railroad company, or for its use, without the written consent and approval of the grantees herein, their successors or assigns. It is also agreed
820 that no other tenant railway company shall be hereafter admitted by said Des Moines Company to the use

of said terminals, or any part thereof, upon terms different from those contained in this agreement, without the written consent of the grantees herein, their successors or assigns. But it is agreed that the said Des Moines Company shall have, subject to the conditions of this agreement, the right to make leases of such portions of said grounds and premises as are not required for railroad or terminal purposes; but no such lease shall be made for a period of more than six months, or for the erection or operation of elevators, warehouses, coal yards, or manufacturing purposes, or for other similar uses, without the written consent and approval of the grantees herein, and all such leases of portions of said property shall be terminated by said Des Moines Company at the earliest practicable day after said tenant companies, or either of them, shall have given notice of a desire to use such grounds for railroad or terminal purposes.

Provided further, that such use shall at all times be subject to the reasonable regulation and control of the said Des Moines Company, which shall at all times manage and operate said terminal property in the interest and for the benefit of such railway companies as have acquired or may hereafter acquire the right to use the same.

And said Des Moines Company agrees to keep and maintain its said railway system in good condition and repair, and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such servants and employes, as shall be reasonably necessary for the conduct of its
821 business and the moving and handliag of cars, passengers and freight, for said several grantees herein named, and the housing and care of their engines; and the said Des Moines Company further agrees to switch all cars, handle all freight, house and care for all engines of the said several grantee companies, which may be delivered to it or which may come upon its said terminal property, in so far as the said companies may request it so to do.

And the said Des Moines Company further agrees that the use hereby granted of the said railway system and terminal facilities shall be without preference or unreasonable precedence for or to itself or to any of the lessees of its said terminals in the matter of train time schedules, or the handling or switching of cars and trains and occupancy of depots, or the occupancy of said property or any part thereof, or in the service herein agreed to be performed; always, however, subject to such reasonable control and discretion by the said Des Moines Company as may be necessary to avoid confusion and expedite the management of its business.

Section II. The aggregate amount to be paid by the said Des Moines & St. Louis Company, the Wabash Company and the Des Moines, Northern & Western Company to the Des Moines Company for the use hereinbefore granted and the services so to be performed, shall be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent. interest annually upon the mortgage bonds of the said Des Moines Company, whether now or hereafter issued, one-twelfth of which, less any deduction herein-
822 after provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expense of maintaining, renewing and repairing the property of the said Des Moines Company, including the maintenance, renewal, and repair of tracks, depots, round houses, shops, engine houses, tools, yards, transfers, etc. during the preceding month. And in like manner there shall be ascertained the taxes or assessments, general or special, levied upon or against the property of the said Des Moines Company and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of the railway system of the said Des Moines Company, including the operation of its main and side tracks, freight and passenger depots, depot grounds, yards, transfers, shops, round houses and other properties, which is to include every liability created and every item of expense or disbursement incurred or made by the said Des Moines Company, whether herein specifically mentioned or not, including interest upon any floating debt, except the expense specified in section seven hereof.

Section III. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, which shall embrace every item of expense or liability of whatsoever name or character (excepting taxes, repairs and
823 other expenses on such portions of said property as the Des Moines Company may have leased, or claims the right to lease and collect and retain the rentals), there shall then be deducted therefrom the amount, if any, which other railway companies that pay upon any other then a wheelage basis, may be under obligations to pay by virtue of contracts for the use of the property, of said Des Moines Co. or parts thereof, including all rentals to be paid by the Chicago &

Great Western Ry. Co. and also all revenues and rentals paid by individuals or companies for the enjoyment of privileges, or the use of space at, or in the passenger station, or other buildings erected and used for railroad purposes, and all the rentals due from every company or person whomsoever, for the use of railroad tracks, facilities or privileges, for the preceding month; and the remainder shall be paid by the Des Moines & St. Louis Company, the Wabash Company, the Des Moines Northern & Western Company, in the gold coin of the United States of America, of or equal to the present standard of weight and fineness, in the proportion that the wheelage of each of said companies bears to the entire wheelage of the tenant companies paying on a wheelage basis over said terminals during such preceding month.

And it is expressly understood and agreed, that the Des Moines Company reserves the right to switch, handle and transfer cars over said terminal tracks for other than tenant companies, to and from industries, and to and from other railroads with which its tracks connect, upon such terms and for such compensation as may be fixed by the Executive Committee; and it shall also have the right to make leases, as provided in section one hereof, of such portions of its property as are not at the time required by the lessees herein, or either of them, for railroad or terminal purposes. And the Des Moines Company shall have the right to collect, and shall collect and retain all charges due for switching, handling and transferring such cars, and also all rentals due under such leases, until the aggregate of such collections amount to the sum of fifty thousand dollars ($50,000.) and out of the sum last aforesaid, not exceeding thirty-five thousand dollars ($35,000.) shall be applied to the payment of the present floating indebtedness of said Des Moines Company, and the balance shall belong to said Des Moines Company and constitute a working fund, to be expended from time to time in improving said terminal properties, for the benefit of the parties using the same for railroad purposes, in such manner as the Executive Committee shall direct.

824

It is further agreed that after said sum of fifty thousand dollars shall have been realized from the sources aforesaid all revenues thereafter derived from switching, handling and transferring cars shall be credited monthly upon the bills of the tenant companies herein and such other tenant companies as may by subsequent contract become entitled thereto and each of said tenant companies shall receive a credit for the percentage thereof that its wheelage for the month for which the credit is made bears to the total wheelage for said month, of all the companies entitled to participate in said revenues.

But it is further understood and agreed that after said sum of fifty thousand dollars shall have been realized as
825 aforesaid, all revenues thereafter derived from the rentals of such portions of said grounds as the Des Moines Company is herein authorized to lease, shall belong to said Des Moines Company and shall be used in improving said terminal properties for the benefit of the parties using the same for railroad purposes, in such manner as the Executive Committee shall direct.

It is understood that the privilege reserved to the Des Moines Company of making leases of such portions of said property as are not at the time required by the lessees herein for railroad or terminal purposes, shall not be understood as including the right to grant any privileges, or the use of any space at or in the passenger station, or other buildings erected and used for railroad purposes, or the right to make any lease or contract for the use of any tracks or other railroad facilities or privileges.

The said Wabash Company for itself agrees to make the payment hereinbefore provided for at the times and in the manner prescribed, so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the said Des Moines & St. Louis Company its obligation to so pay and all the obligations herein assumed by it shall at once determine and be and become the obligations of whatever company operates the said railroad; it being the intention that the obligations of this lease, so far as they pertain to the Des Moines & St. Louis Railroad, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any
826 company succeeding the Wabash Company in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property hereby leased, to assume all the obligations herein undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And it is further agreed that the obligations herein assumed by the Des Moines Northern & Western Company shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee or successor of the said Des Moines Northern & Western Company in the ownership or operation of the said Des Moines Northern & Western Railroad. And any company succeeding the Des Moines Northern & Western Company in such ownership or operation shall be held by the operation of trains over the said Des

Moines Northern & Western Railroad and upon the property hereby leased, to assume all the obligations herein undertaken by said Des Moines Northern & Western Company.

Section IV. If the amount, or any part thereof, due from any other railroad company or companies for the use of the property herein demised, or any part thereof, shall not be paid when due, then the sum so due and unpaid shall on demand of the said Des Moines Company be paid to it by the tenant companies under this agreement on a wheelage basis as hereinbefore defined.

Section V. The said Des Moines Company shall, on or before the tenth day of each month, or as soon thereafter as practicable, make out and present to each of the tenant companies herein an account showing the amount due from them respectively for the preceding month, and payment thereof shall be made within five days thereafter. All claimed omissions or errors in said accounts, or exceptions thereto,
827 which may be taken by the tenant companies, shall be subsequently adjusted between the parties, but shall not delay the prompt payment of the accounts as rendered by the Des Moines Company.

Section VI. It is further agreed that if any one of the tenant companies herein named shall for any reason fail or refuse, for a period of thirty days after the same has become due and has been demanded, to pay the sum or sums due from it under this contract as aforesaid, then the said Des Moines Company may take from any moneys in its hands belonging to the said defaulting company, or in the hands of its agents the amount of said sum or sums, and apply sufficient thereof to meet said demand or demands. Should the sum in the hands of the said Des Moines Company or its agents be insufficient to meet the amount due under this agreement, and the same shall still remain unpaid, said Des Moines Company shall have the right to exclude the said delinquent tenant company from said premises, and the company so failing to pay shall at the option of the said Des Moines Company, forfeit all rights under this agreement, and the said Des Moines Company may thereupon, with the consent of the remaining tenant companies herein, transfer and assign the rights of the company so failing, to any other party or parties, for such sum as it may determine, and the same may be thereafter held and enjoyed by the said assignee or assignees; but it is understood and agreed that nothing herein shall prevent the said Des Moines Company from enforcing its claim or claims against any delinquent lessee or lessees, by any proper action, either

828 at law or in equity, to recover any amount which may be at any time due and unpaid, in the event that the said Des Moines Company shall so elect.

Section VII. The cost and expense of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping and washing and firing up, shall be borne by each of the tenant companies herein named in such proportion as the number of road engines of each company in and out of said engine house during the period for which said cost and expense is made up, bears to all the engines of the tenant companies in and out of the same.

The cost and expense of operating and repairing the passenger station, including the cost of heating, lighting, cleaning and also the salaries and wages of all the agents and servants there employed, less any amounts paid by other tenants for use of said station, shall be borne by each of the tenant companies herein named, in such proportion as the number of passenger cars of each, in and out of said station during the period for which such cost and expenses are made up bears to the total number of passenger cars of all said tenant companies in and out of said station during said period.

The cost and expense of operating and repairing the freight house, including the cost of loading and unloading all freight handled at the request of either of the tenant companies herein named, and also the salaries and wages of all agents and servants there employed, by the Des Moines Company
829 shall be borne by each of the tenant companies herein named, in such proportion as the number of freight cars of each tenant company in and out of said terminals, during the period for which such cost and expenses are made up, bears to the total number of freight cars of each (said) tenant company in and out of said terminals during said period.

All repairs to engines and cars shall be charged for and paid by each of said companies for which the work is done on the basis of the actual cost thereof to the Des Moines Company, and all services rendered, supplies and labor furnished to any of the tenant companies, parties hereto, for their own benefit, and which are not properly a portion of the joint expenses, shall be charged directly to said company on such equal and equitable terms as may be agreed upon between the Superintendent of the Des Moines Company and the Superintendents of the respective companies for which the services are ren-

dered, or the supplies furnished, subject, however, to the approval of the Executive Committee.

Section VIII. The said terminal property hereby leased shall be used by the said tenant companies for all their trains entering or departing from said City of Des Moines, Iowa.

Section IX. The Directors of the Des Moines Company shall annually appoint an Executive Committee of three, upon which the Wabash Company, or its successors shall have a representative (to be selected by it), so long as (they, or either of them) use the terminal property hereunder.

Section X. The management of the depot grounds and terminal facilities, including station buildings, tracks, roundhouses, shops, etc., shall be in charge of a Superintendent, who shall be unanimously selected by the Executive Committee. Said Superintendent shall, in the performance of his duties, be governed by such reasonable regulations as may from time to time be established by said Executive Committee, approved by the Board of Directors.

Section XI. The salary of said Superintendent shall be fixed by the Executive Committee, subject to the approval of the Board, and the compensation of other agents and employes shall not be higher than is paid by railroad companies in the vicinity for similar services.

Section XII. Said Executive Committee, subject to the (approval of the) Board, shall make, publish and enforce such rules and regulations for the use, management and operation of said terminal properties, including stations, depots, depot grounds, yards and tracks, by all the parties hereto, as it may from time to time consider necessary.

Section XIII. The Des Moines Company shall keep accurate books of account of the various items of interest,
830 insurance, taxes, construction, improvement, operation, maintenance and repairs, and other disbursements upon and about the premises embraced in this agreement, and said books shall show the amount of work done for and fuel, or other material furnished to each of the said tenant companies, and the amount of fuel or other material received from each of said companies; and said books shall give such other details as will at all times enable the said tenant companies to make accurate settlements of their accounts, as provided in this agreement; and said books may at all proper and reasonable hours be examined and inspected by the respective Superintendents, Auditors or Treasurers of said tenant companies, or by an authorized accountant.

Section XIV. The said Des Moines Company shall also keep an accurate record of all the engines and cars of each tenant company arriving at and departing from said terminal station or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched on to or from said terminals, for the benefit of the said tenant companies or others, and of all the engines which have been housed in said engine houses in each month; and as hereinbefore provided, said Des Moines Company shall furnish to the said tenant companies a full, true and detailed statement of all the expenditures made, and of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made, and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

831 Section (15) All damages which may be received by any engine or engines, car or cars, while being moved by the said Des Moines Company for the aforesaid tenant companies or either of them at or upon any part of the premises embraced in this agreement, shall be repaired by the Des Moines Company, and the cost of such repairs shall be deemed an operating expense and borne and paid by the said tenant companies on a wheelage basis.

Section (16) All damages to property caused by any engine or engines, car or cars of the tenant companies occupying said terminals while being switched, managed and controlled or under the management and control of the Des Moines Company, or by any imperfection in the track or tracks laid on said premises and all injuries which may at any time be received by any person or persons, including employes, in, about, around or upon said terminal station, depot grounds, tracks, yards, shops, round houses, transfers, etc., caused through or by the said Des Moines Company or any of its agents, officers or servants, shall, if settled at all, be adjusted and settled by said Des Moines Company, and the sum thus paid in settlement or settlements, or as damages, if not settled, shall be considered as a part of the expenses of operating said terminals, and shall be divided and paid upon said wheelage basis, as herein defined.

Provided, however, that the said tenant companies and each of them using said terminal facilities hereunder, shall at its own cost and expense, bear, settle and pay all damages to property belonging to the parties hereto, or to third parties (persons) and all injuries to persons when said damages or injuries

832 are done to or by its own trains while said trains are being moved by its own engines and are being operated and controlled by its own crews, unless such damages or in-

juries are occasioned by the act, neglect or fault, of the employes or servants of the said Des Moines Company or by some imperfection in its track or tracks, machinery, tools, appliances, apparatus, etc.; and in case such damages or injuries are so occasioned by the act, negligence or fault of the servants of the said Des Moines Company, or by any imperfection in its said tracks, machinery, tools, appliances, apparatus, etc., then said payment or payments shall be made by the said Des Moines Company, and shall be considered as a part of the expenses of said terminals, and shall be divided and paid upon a wheelage basis, as herein defined.

Section (17) It is further agreed by and between the said Des Moines Company and each of said tenant Companies that either of said tenant companies may sell, assign and transfer to any one railway company all its rights under this agreement, or it may mortgage to any one party all its interest and right under this contract; but it shall not subdivide, sublet, mortgage or assign to any other company or person a portion of its said rights and privileges herein, and any assignment, mortgage or lease made by any one of said tenant companies which may be held sufficient to admit its assignee, mortgagee, or lessee, or their assigns to the possession of said property, shall be held sufficient to exclude and shall exclude the company making such lease, mortgage, or assignment from its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as
833 to prevent either of said tenant companies from contracting to do the business or handling with its own engines the traffic or cars of any other railroad company to and from said city upon such terms as the said Des Moines Company may approve, provided the line of such other railroad company connects with the line of such tenant company not less than twenty miles from said City of Des Moines.

Section (18) Interest on bonds hereafter issued by the Des Moines Company shall not be reckoned under the first paragraph of Section Two hereof, unless such bonds were issued with the consent of the party sought to be charged with such interest.

Section (19) It is further understood and agreed that this contract is entered into in lieu of and as a substitute
834 for a certain agreement entered into on the 10th day of May 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis,

Des Moines & Northern Railway Company, and the said last named agreement is, by the execution hereof, forever terminated, and for the purpose of quieting all controversies with respect to the full execution and performance of said last named contract by each of the parties thereto, it is stipulated and agreed that the same has been fully performed: Provided, however, that all unsettled claims and accounts between the parties hereto shall be adjusted and settled in like manner as though they had arisen under this agreement; and that the capital stock of the said Des Moines Union Railway Company therein mentioned, is now rightfully held as follows, to-wit:

The Purchasing Committee of the Wabash St. Louis & Pacific Railway Company, ... 500 Shares
The Des Moines, Northern & Western Railroad Company ..... 1000 Shares
F. M. Hubbell & Son ..... 2500 Shares

Of the above shares belonging to said Purchasing Committee two shares stand upon the books of the company as follows: Joseph Ramsey, Jr., One share, and H. L. Mager, One share.

Of the shares belonging to the Des Moines Northern & Western Railroad Company, two shares stand upon the books of the company as follows: A. B. Cummins, One share, and F. M. Hubbell, One share.

835 Of the shares belonging to the said F. M. Hubbell & Son, five shares stand upon the books of the company as follows:

F. M. Hubbell, One share H. D. Thompson One share.

F. C. Hubbell One share A. N. Denman One share.

C. Huttenlocher One share.

In Witness Whereof, the respective parties hereto have caused these presents to be signed by their respective Presidents, and sealed with their corporate seals and attested by their respective Secretaries, the day and year first above written.

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836 **Defendants' Exhibit 386.**

July 18, 1885.

Mr. O. D. Ashley, President,
Wabash R. R. Company,
New York, N. Y.

Dear Sir,—

There has been considerable delay in preparing the Statement of Condition of the Des Moines Union Railway Company, for the purpose of having its Bonds listed. However,

I have finally gotten together the statistics which I think you will need. I enclose them to you herein with this suggestion, that you look it over, and use the facts therein contained for the purpose of preparing a statement which will comply with the requirements of the Committee on Stock List.

When you have this statement prepared as you think will be satisfactory, if you will send it to me, I will have six copies gotten up in as good shape as I can, and will have them signed and sent to you without delay. I am unable to procure a better map of the city of Des Moines than the one which I now send to you. I have delineated in red the right of way owned by this Company, together with several pieces of acre property. It is as near accurate as possible to show on a map made on such a small scale.

Hoping that the facts which I now enclose will enable you to prepare a satisfactory statement, and very much regretting the delay, I am,

Yours truly,

(Signed) F. M. HUBBELL,
Secretary.

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857 **Defendants' Exhibit 387.**

Office of
The Wabash Railroad Company,
185 Broadway,

New York,
July 22, 1893.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I received your letter of the 19th inst. this morning. I had also expected the application papers for the Des Moines Union Railway Company, which you had previously advised me would be forwarded. I regret this as I am to leave town to-morrow to be gone for a week or ten days.

I shall not be able to see General Hubbard until my return.

Yours truly,

(Signed) O. D. ASHLEY,
President.

P. S. Des Moines Union Ry Co. papers just received. Will try to get them under way before I leave.

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838 **Defendants' Exhibit 388.**

The Wabash Railroad Company.

New York, Aug. 7, 1895.

F. M. Hubbell, Esq., Secretary,
Des Moines Union Ry. Co.,
Des Moines, Iowa.

Dear Sir:—

Your favor of the 18th of July with enclosure was received just on the eve of my departure for a short vacation, otherwise I would have replied before.

I enclose draft of application for listing of your bonds. In addition to this, it will be well for you to have prepared a blue print, which will show in some detail the land and tracks owned by the Terminal Co. This you or your representative can bring on at the proper time. Also please send the latest financial statement of the Company's condition. If there are any statements in this proposed application which are not true, please change them, as the examination made by the Committee is very searching, and it would not do to make any mistake. The Committee will also want copies of any agreements which you may have with the Tenant-Companies.

Please get the application into shape and we will present it and let you know when you shall be required to appear before the Committee,

Yours truly,

(Signed) O. D. ASHLEY,
President.

(Copy)

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842 **Defendants' Exhibit 389.**

Committee on Stock List.

New York Stock Exchange.

March 1st, 1895.

The Committee on Stock List meets each Monday at 3:15 P. M., and all applications to list new securities must be filed with the Secretary of the Exchange, on or before the Wednesday previous.

Requirements from Applicants.

In all cases of application for placing either Stock or Bonds of Railroad Companies on the List, it is required that there shall be filed as above stated Statement of the location and description of the property, and when possible a map should

be furnished. Statements should give Title of the Company; when organized, and by what authority; route from ..... to .....; miles of road completed and in operation, and contemplated extension; gauge; iron rails, steel rails, equipment; liabilities and assets; earnings; number of shares and par value; a list of its officers, etc.; office of the Company; transfer office and registry. If reorganization of an old road, the particulars should be stated. Six copies of this statement in type, or made by typewriter, and signed by an officer of the Company, should be furnished to the Committee.

When application is made to place the securities of any railroad corporation upon the List, the applicant must pre-
843 sent a certificate from a Civil Engineer stating the actual physical condition of the property at a recent date.

Where applications are made to list securities of a corporation, which has been insolvent and has been reorganized, this Exchange will require a full and complete Financial Statement of said corporation for a period covering at least one year before its reorganization; i. e., a detailed statement of its earnings and receipts from every source, a detailed account of all expenditures, and the amount of its outstanding indebtedness in detail of every description, and a balance sheet of its books; also the amount and description of the various securities issued by such reorganized corporation, and the purposes, in detail, for which they are issued.

Applications to place Bonds on the List (Six copies required) must give a description of the Bonds, viz.: The amount of the issue; the date of issue; the maturity; the par value of each kind of Bond issued; the series of numbers under each mortgage; the rate of interest; when payable; the place of payment; the place of transfer, if with privilege of registration; and the names of the trustees. Six copies of the mortgage and other printed documents must also be furnished, and the issue must be only on such portions of road as are actually completed.

The Committee must also be furnished with a certificate from the County Clerk of each County in which the mortgaged property is located, that such mortgage has been recorded in each of such Counties; or should the laws of the State
844 in which the same is located not require a record to be made in the several Counties, a certificate of the Secre-

tary of the State, of the proper record of the same; or a copy of the Mortgage with the certificates of record properly endorsed thereon, certified by the Trustee to be a true copy.

Applications to list securities of Industrial Companies must be accompanied with a copy of Charter or Act of Incorporation; By-Laws of the Company; opinion of Counsel that the Company has been legally organized and that the securities have been legally issued; a full description of the property, real, personal and leased; opinion of counsel that real estate owned is free and clear, except as to liens stated; appraisal of disinterested parties as to market value of real estate and personal property; report of responsible expert accountants, showing results of business each year for the period of at least two consecutive years if possible; and a balance sheet showing assets and liabilities of recent date.

Applications to list securities of other Companies must be accompanied with full information as to property, financial condition, and results of business as indicated above.

Each application must be accompanied by a fee of One Hundred Dollars, to cover the cost of printing and other expenses of the Committee, said fee to become the property of the Exchange, whether the application is accepted or rejected. On application for listing additional amounts of Stock or Bonds already on the List, the fee is Fifty Dollars.

845 Checks should be drawn to the order of the Chairman of the Committee on Stock List, to whom all applications should be addressed.

Trustees of Mortgages.

It is recommended that a Trust Company or other Corporation be appointed a Trustee of all Mortgages, but when a State Law requires a local individual Trustee, then a Trust Company or a Corporation be appointed as Co-Trustee.

The Committee does not approve of an officer of a corporation being a Trustee of its securities.

In all cases where two or more liens have been placed upon the property of any corporation seeking the listing of its securities upon the Exchange, each deed of trust must be made to a Trustee or Trustees separate and distinct from those to whom the other mortgages have been issued.

The Trustee must present a certificate acknowledging the acceptance of the trust and giving the numbers and amounts of Bonds executed in accordance with the terms of the Mort-

gage, and in case of additions, the Trustee must certify to the completion of the portion of the road covered by the additional Bonds.

It is requested that a Trustee shall furnish opinion of Counsel as follows:

"We have examined the Mortgage, dated .....18..., made by the ..... Company to the ..... Trust Company of ..... as Trustee, to secure an issue of ..... Bonds of said Company to an amount not to exceed $..... We find the action of the Directors and Stockholders in respect to this
846 Mortgage to be in conformity with the laws of the State of .....; and the Mortgage and Bonds therein provided for to be, in all respects, valid and binding obligations of the Company."

Engraved Certificates Required.

The face of every Bond, Coupon, or Certificate of Stock must be printed from steel plates which have been engraved in the best manner, with such varieties of work as will afford the greatest security against counterfeiting.

For each document or instrument there must be at least two steel plates, viz.: A Tint plate from which will be printed an anti-photographic color, so arranged as to underlie important portions of the face printing, and a Face plate containing the vignettes and lettering of the descriptive or promissory portion of the document, to be printed in black, or in black mixed with a color.

These two printings must be so made upon the papers that the combined effect of the whole, if photographed, would be a confused mass of lines and forms, to effectually secure against counterfeiting by scientific processes.

It is required that a sample of each issue of Stock or Bonds shall be shown to the Committee (to be left with the Committee, if possible), so that it may be ascertained whether proper precautions have been taken against forgery; and no form of Stock Certificate or Bond will be accepted unless it has been carefully engraved by some responsible Bank-Note Engraving Company, whose work is admitted by the Exchange.

847

Registration.

The Constitution of the Exchange provides that all active Stocks must be registered at some Institution satisfactory to the Committee; and each application must be accompanied by a letter from the Registrar stating the amount of

Stock registered at the time of application, and also by "The Form of Agreement with Registrars," duly executed, provided such form has not been already filed with the Committee.

It is required that the same Trust Company, or other satisfactory Agency, should not be both Registrar and Transfer Agent. The duties of such offices should be performed by different Companies or Agencies.

In any case of increase of Capital Stock, except for Convertible Bonds already listed, at least thirty days' notice of such increase must be given in writing to the Stock Exchange, and application must be made through the Committee on Stock List to the Governing Committee to have such new Stock declared a good delivery, and the Registrar is not authorized to register the new Stock until notified by this Committee that the Stock has been listed.

All Signatures upon Securities must be written. Stamped Signatures will not be accepted by the Committee.

Certificates of Stock.

In preparing Certificates of Stock, it should be borne in mind that the Power of Attorney endorsed upon the same must contain a full bill of sale, must be irrevocable, and should contain a power of substitution.

848 After any Stock has once been placed on the List, any change in the form of Certificate, or place of Registry must receive the consent of this Committee, or the Stock will be liable to be stricken from the List.

In any case, the Governing Committee may, if reasons for so doing shall appear to exist, refuse to make new issues of Stock a good delivery, and to allow dealings therein, or in the whole Capital Stock, or in the Bonds of any Company, either for a time or permanently, as the case may seem to require

Certificates of Deposit in Trust.

Institutions, Firms or Corporations which are depositaries of securities under plans of reorganization, protection or associate action, are requested to accept on deposit only such securities as are good delivery in this Exchange, provided, however, that in any case where said depositaries find it necessary to accept securities which are not a good delivery, they shall issue therefor a distinctive certificate which will indicate such fact.

When bonds are deposited with Institutions, Firms or Corporations, which are depositaries under plans of reorganiza-

tion, protection, or associate action, certificates therefor shall be considered as representing the deposit of coupon bonds. When certificates are issued for deposit of registered bonds, said certificates must bear on their face evidence of such fact.

Recommendations.

This Exchange recommends to the various corporations whose securities are here dealt in, that they shall print, publish and distribute to stockholders, at least fifteen days
849 prior to annual meetings, a full report of their operations during the preceding fiscal year; together with complete and detailed statements of all income and expenditures, and a balance sheet showing their financial condition at the close of the given period. And this Exchange urges the stockholders of the several corporations, to take such action as may be necessary for the accomplishment of this recommendation.

George W. Ely,
Secretary

SALEM T. RUSSELL,
Chairman.

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850 **Defendants' Exhibit 390.**

April 15, 1896.

Mr. O. D. Ashley, President,
Wabash R. R. Co., #195 Broadway,
New York, N. Y.

Dear Sir,—I have your letter of recent date, in regard to listing Des Moines Union Railway bonds.

In reply have to say we have had an engineer at work for several months making an accurate map of the Des Moines Union Ry. Company's property, locating its tracks, etc., the work being done by actual surveys and measurements of the ground. This map it is expected will be completed within a week or two, then we will have blue prints made of it in small sections so we can furnish the Committee of the Stock Exchange with a good map of the property. As I understand it, a map of the property is required, and the delay has been due to the fact that we wanted to furnish a good map. I will not lose sight of this matter, and hope in a very short time to have everything complete.

If you should say to me that the making of an accurate and elaborate map is not required, I could probably complete the other data and send it to you very soon.

Yours truly,

(Signed) F. M. HUBBELL,
Secretary.

851

Defendants' Exhibit 391.

The Wabash Railroad Company.

New York, April 18, 1896.

F. M. Hubbell, Esq., Pres't.,
Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:—

I have yours of the 15th. I do not remember any stipulation in the Stock Exchange circular which requires a map, as stated by you, but it may be that you are right. At all events as the work is well under way and can be completed within a short time, it will be advisable to wait until you can furnish it with the other information. When you are ready for this I will try to aid you in listing the bonds of the Des Moines Union Railway Co. The importance of this recognition by the Stock Exchange I think you fully appreciate.

Yours truly,

(Signed) O. D. ASHLEY,
President.

(Copy)

852

Defendants' Exhibit 392.

Sept. 28, 1897.

Mr. O. D. Ashley, President,
195 Broadway, New York.

Dear Sir:—

I have today sent to you another blue print showing the right-of-way and lands of the Des Moines Union Ry. Company, also a copy of the report which the Des Moines Union has just made to the Railroad Commissioners of Iowa. If this report is not what you want to give to the Committee of the Stock Exchange, then will you not please make out from this report such facts as you want to have furnished to the Committee of the Stock Exchange, and send it to me and I will sign and return it to you.

I also enclose herewith a request made by the Des Moines Union Company to the Committee of the Stock Exchange, to have 800 Des Moines Union Ry. Company bonds listed. As I understand it, you now have several copies of the terminal contract with the Chicago Great Western Company, copies of the terminal contract recently entered into by and between the Des Moines Union, the Wabash, and the Des Moines, Northern & Western Companies, two blue prints, a full report of the Company made to the Railroad Commissioners, and our applica-

tion to have the bonds listed, which I think is all that is required.

I now enclose draft on New York to your order for $100, which I understand is the amount required to be paid
853 to the Committee whether the bonds are listed or not. Kindly receipt and return the voucher to me, and oblige,

Yours truly,

(Signed) F. M. HUBBELL,
Secretary.

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854 **Defendants' Exhibit 393.**

Committee on Stock List,
New York Stock Exchange.

A-1971.

Des Moines Union Railway Company.

Des Moines, Iowa,
September 28, 1897.

The Des Moines Union Railway Company hereby respectfully asks to have placed on the stock list of the New York Stock Exchange 800 of its First Mortgage 5% Bonds for $1,000 each, Nos. 1 to 800, amounting to $800,00. The bonds bear semi-annual coupons, payable May and November 1, at the office of the Central Trust Co., New York. The bonds are secured by a first mortgage to Central Trust Company of New York, dated November 1, 1887, maturing November 1, 1917, bearing interest at the rate of 5 per cent per annum. The principal and interest of said bonds are payable in gold coin of the present standard. The principal may be registered at the office of the Wabash Railroad Company, 195 Broadway, New York.

The Des Moines Union Railway Company is a corporation organized in 1884 under the laws of the State of Iowa, with an authorized capital of $2,000,000 ($400,000 issued) shares of $100 each, and "the objects of the corporation and the general nature of the business to be transacted are the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, de-
pots, freight houses, railway shops, repair shops, stock
855 yards, and whatsoever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from

the line or depot of one railway to another, or from the various manufactories, warehouses, elevators, or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines; also to lease terminal facilities to and furnish and perform terminal services for all railways whose lines reach or pass through or near the said city of Des Moines; and the corporation shall possess all the powers conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use."

The Des Moines Union Railway Company is the absolute owner of a right-of-way across the original city of Des Moines from the east to west, a distance of four miles, together with 25 acres of land not laid out into lots, all of which is centrally located in said City of Des Moines.

The Company owns over five miles of main track and branches, 2 miles of second main track and 7 7/100 miles of yard tracks and sidings, the bridge across the Des Moines River, 3 switching engines, the passenger and freight depot, round houses, and other buildings appurtenant to the conduct of the business of the Company as now carried on.

The terminal facilities offered by this Company are at present shared by the Des Moines & St. Louis R. R. (owned by the Wabash R. R. Co.) the Chicago Great Western Railway, and the Des Moines, Northern & Western Railroad. Each of these companies for itself has agreed to pay monthly, as rental for the facilities used, a sum equal to one month's
856 interest on the outstanding bonds, besides they pay for their proportion of the expense of operation. In addition, the Company derives considerable revenue for switching cars for other railroads (not tenants) and in rents for the use of various portions of the property.

The office of the Company is at Des Moines, Iowa. Herewith find the following papers, viz: Six copies of mortgage, one of which bears the certificate of the Recorder of Polk County, Iowa, respecting the recording of same, and has attached the certificate of the Central Trust Company of New York, signifying its acceptance of the trust; blue print showing location of tracks and real estate of company.

857 RECEIPTS AND EXPENDITURES.
For year ending June 30th, 1897.

RECEIPTS.

Amount rec'd. from The Wabash R. R. Co. on wheelage basis	$ 31,251.14
" " " Des Moines N. & W. Ry. Co. " "	58,447.66
" " " Chicago G. W. Ry. Co. on a wheelage basis	47,190.71
" " for outside switching and rent of real estate	10,282.42
	$147,172.00

EXPENDITURES.

Interest paid on First Mtge. Bonds	$ 28,450.00
Taxes for year ending June 30th, 1897	6,260.25
Conducting Transportation	66,147.27
Maintenance of Way Structures	15,935.55
" " Equipment	13,679.33
General Expenses	6,390.11
	$136,889.51
SURPLUS	$ 10,282.49

GENERAL BALANCE SHEET.
FOR YEAR ENDING JUNE 30, 1897.

ASSETS.

Cost of Road & Equipment	$1053000.00
Material and Supplies on hand	5279.24
Accounts Receivable	29939.26
Cash in hands of Treasurer	16.61
	$1,088,235.11

LIABILITIES.

Capital Stock	$ 400,000.00
First Mortgage Bonds	628,000.00
Bills Payable	46,424.99
Pay Rolls, June 1897	7,739.17
Balance to credit Profit & Loss Acct	6,070.95
	$1,088,235.11

858 The Directors of the company are: J. Ramsey, Jr., Vice President and General Manager, Wabash R. R. Co., St. Louis, Mo.; H. L. Magee General Superintendent Wabash R. R. Co. St. Louis, Mo.; F. M. Hubbell, President Des Moines, Northern & Western R. R., Des Moines, Iowa; F. C. Hubbell, 1st Vice President and Superintendent D. M. N. & W. R. R., Des Moines, Iowa; H. D. Thompson, 2nd Vice President and Treasurer, D. M. N. & W. R. R., Des Moines, Iowa; A. B. Cummins, Solicitor D. M. N. & W. R. R., Des Moines, Iowa; A. N. Denman, Des Moines, Iowa; C. Huttenlocher, Des Moines, Iowa.

The officers of the Company are F. C. Hubbell, President; A. B. Cummins, Vice President, F. M. Hubbell, Secretary; H. D. Thompson, Treasurer.

Respectively yours,

DES MOINES UNION RAILWAY CO.
By F. M. Hubbell, Secretary.

This Committee recommends that $628,000 of the above-described First Mortgage 5% Gold Bonds of 1917, Nos. 1 to 628 inclusive, be admitted to the list.

W. H. GRANBERY,
Chairman.

Adopted by the Governing Committee, November 24, 1897.

GEORGE W. ELY, Secretary.

(Copy.)

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850 **Defendants' Exhibit 394.**

New York, Oct. 27, 1897.

Received From Des Moines Union Ry. Co., One Hundred Dollars, Fee to New York Stock Exchange with application of said Company, regarding 1st Mtg. Bonds.

Said fee to become the property of the Exchange, whether the application is accepted or rejected, in accordance with the rules of the Exchange.

$100.00

(Signed) F. W. GILLEY,
Treasurer.

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860 **Defendants' Exhibit 395.**

Office of
The Wabash Railroad Company,
195 Broadway,

New York,
October 2, 1897.

F. M. Hubbell, Esq., Secretary,
Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:

Your favor of the 28th ultimo and all papers enclosed therewith were duly received.

I return herewith voucher for $100 duly signed.

We will advise you later if any further documents are required by the Stock Exchange or if the form of your applica-

tion will have to be changed. The Exchange will require six copies of the application, "signed by an officer of the company" making the application. But you need not send them on until you hear from me.

We are under the impression here that a copy of the engraved bond was given to us by the bank note company which furnished the same, but we are unable to find it. If you have it in Des Moines will you please forward at once. If it is not there, please telegraph me upon receipt of this, at the same time letting me know the name of the company that did the work.

Yours truly,

(Signed) O. D. ASHLEY,
President.

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861 **Defendants' Exhibit 396.**

Office of
The Wabash Railroad Company,
195 Broadway,

New York,

Oct. 6, 1897.

F. M. Hubbell, Esq., Secretary,
Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:

Referring again to your letter of the 28th ult., I have returned to you to-day by express the report of the Iowa Commissioners and also your application to the Stock Exchange. You will notice that some additions have been made to the latter which seemed to be required to meet the latest rulings of the Stock Exchange. Kindly send me six signed copies of the application with a copy of the mortgage containing the County Clerk's certificate, your balance sheet and a statement of earnings and expenses for the fiscal year ending June 30, 1897. The latter statement should show all the sources of your receipts, of your earnings and expenses, and other payments. I do not mean that you should go into too great detail about the matter, but such as is ordinarily furnished.

When I get the above papers I will present the same to the stock Exchange immediately. I have the balance of the required documents here.

The rules of the Stock Exchange say "It is requested that a "Trustee shall furnish opinion of Counsel as follows:

862 "We have examined the Mortgage, date....., B.... "made by the.....Company to the....Trust Company "of.....as Trustee, to secure an issue of.....Bonds of said "Company to an amount not to exceed $..... We find the "action of the Directors and Stockholders in respect to this "mortgage to be in conformity with the laws of the State of ".....; and the mortgage and bonds therein provided for "to be, in all respects, valid and binding obligations of the "Company."

I am in hopes that they will not insist upon this and shall put it off until the last moment so as to avoid the expense, unless it is necessary.

Yours truly,

(Signed) O. D. ASHLEY,
President.

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863 **Defendants' Exhibit 397.**

October 13, 1897.

Mr. O. D. Ashley, President,
195 Broadway, New York.

Dear Sir:—

In accordance with your letter of the 6th inst. I now enclose you the following papers, viz.,

6 signed copies of application to S. T. Russell, Chairman Stock list Committee, New York Stock Exchange.

1 copy of the mortgage containing the County Recorder's Certificate.

1 balance sheet showing statement of earnings and expenses for the fiscal year ending June 30th, 1897.

I hope you will find these papers satisfactory.

Yours truly,

(Signed) F. M. HUBBELL, Secretary.

(In re listing D. M. Union bonds)
(on New York stock exchange.)

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864 **Defendants' Exhibit 398.**

Office of
The Wabash Railroad Company,
195 Broadway, New York,

Oct. 16, 1897.

F. M. Hubbell, Esq., Sec'y,
Des Moines Union Ry Co.,
Des Moines, Iowa.

Dear Sir:

Your favor of the 13th inst. with enclosures as stated received this morning. The applications will be presented to the Stock Exchange next week.

Yours truly,

(Signed) O. D. ASHLEY, President.

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865 **Defendants' Exhibit 399.**

Office of
The Wabash Railroad Company,
195 Broadway, New York,

Oct. 19, 1897.

F. M. Hubbell, Esq., Sec'y,
Des Moines Union Ry Co.,
Des Moines, Iowa.

Dear Sir:

I have just received from the Central Trust Company their certificate as Trustee, in which they state that they have "authenticated and issued" 628 of the First Mortgage Bonds. You have explained in a letter to Mr. Ashley the reason for the difference which exists between the balance sheet and the Central Trust Company's certificate; but in order to obviate an explanation to the Listing Committee of the New York Stock Exchange, it has been thought advisable here to add $59,000 to the cost of road and equipment in the general balance sheet and to increase the amount of First Mortgage Bonds issued from 569 to 628 inasmuch as the Stock Exchange, in view of the certificate of the Central Trust Company, will insist that the 59 bonds referred to are issued.

I enclose herewith new balance sheet and new statement of receipts and expenditures. You will note in the general balance sheet that I have consolidated the "Bills Payable" into one item and have called "Surplus Earnings" "Profit & Loss." You will note also a slight change made in the statement of

866 receipts and expenditures. This is thought best so as to make it appear on the face of the statement that the year's operation of the Company yielded a surplus above expenses, and dispenses with the explanation which you have made on your statement.

If you approve of these alterations will you be good enough to wire me on receipt of this letter so I can furnish the Stock Exchange with new statements made out, as corrected above.

Yours truly,

(Signed) J. C. OTTESON, Secretary.

P. S. Mr. Ashley desires me to say that there has been a small lot of bonds of the Des Moines Northern & Western offered here as low as 45. He thought you would like to know of this.

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867 **Defendants' Exhibit 400.**

October 23, 1897.

Mr. J. C. Otteson, Secy.,
#195 Broadway, New York.

Dear Sir:—

I have your letter of the 19th inst. and have just wired you as follows; "I approve of the alterations and new statement furnished in yours of the 19th inst." which I now confirm.

Our Auditor has made a new balance sheet showing statement of receipts and expenditures, in accordance with your corrections and I see no reason why the statement as prepared by you shall not be filed with the Committee of the Stock Exchange.

I note what you say about Des Moines, Northern & Western R. R. bonds being offered as low as 45. Please let me know how large a block was offered at that price and the name of the person who made the offer.

Yours truly,

(Signed) F. M. HUBBELL, Secretary.

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868 **Defendants' Exhibit 401.**

Form 104. 4-5-94. C. M. R. & Co. No. 8221.

The Des Moines Union Railway Company,

To O. D. Ashley
of New York, N. Y. Dr.

1897 October.	For money advanced to pay for listing Des Moines Union Ry. Company Bonds Nos. 1 to 800 inc. on New York Stock Exchange.	$100.00
	(First Mortgage Bonds amounting to (800.000)	

Approved, Approved, Audited for payment,
(Signed) (Signed) (Signed)
F. C. HUBBELL. J. A. WAGNER. E. G. MITCHELL,
President. Superintendent. Auditor.

Received Oct. 2, 1897 of the Des Moines Union Railway Company the sum of One Hundred Dollars ($100.00) in full for the above account.

(Signed) O. D. ASHLEY.

(Endorsed on back as follows:)

6332 Auditor's No. 8221 Treas. No. 6881
$100.00

Entered in October 1897.

The Des Moines Union Railway Co.

O. D. Ashley New York

Distribution of Account.

G. O. Expense 100.00

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869 **Defendants' Exhibit 402.**

The Wabash Railroad Company.

Office
J. Ramsey, Jr., Vice Pres't.
& Gen'l. Manager.

St. Louis, Mo., Mch. 20th '97.

Mr. F. C. Hubbell,
Pres't, D. M. U. Ry. Co.,

Dear Sir:—

Replying to yours of the 19th. I am hardly prepared to advise fully regarding the rebuilding of the D. M. U. shops,

as I am utterly in the dark as to the amount which would be received from the Insurance Company on account of the fire and damage to tools.

The character and dimensions of the shop necessary at Des Moines will depend entirely upon the work which is to be performed there, and naturally it would take a much larger and more expensive shop if all of the general road repair and machine work of the D. M. N. & W. is to be done there, than it would if the repairs of the D. M. U. Co. and such repairs to the engines of the tenant lines as are rendered necessary to take care of engines running in and out of that terminal, were simply taken care of.

If the requirements of the D. M. N. & W. system are to be met, then the D. M. N. & W. should pay such proportion of the cost of this shop and tools as would be fair and proper, and also pay either a fair rental for the general additional shop room and yard space required on account of these additional repairs, or such proportion of the general and other expenses of the shop as would justify the Des Moines
870 Union in going to this additional expense on account of the D. M. N. & W.

I do not wish to be small in regard to this matter but it is certainly only fair that the D. M. N. & W. should pay more for the special service it is receiving at the shop, etc. than it has been paying in the past.

Yours truly,

J. RAMSEY, JR.,
Vice-Prest. & Genl. Manager.

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871 **Defendants' Exhibit 403.**

May 8, 1897.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Replying to attached will say the monthly bills we render against your company show every item of expense at the round house and shops, including all work, material, and supplies which are charged against the Des Moines Union and Wabash Companies. Do I understand that you want us to make you a copy of bills rendered against the Des Moines, Northern & Western R. R. for labor and material on their engines? This, I feel, is hardly justified as each month you check our original record and have full access to the books of the company. The only objection I have to doing it is that it will

require another report to be made and as the several tenants are rather free in their requests for reports from us, we dislike to add a new report unless it is absolutely necessary. Please advise.

Yours truly,

F. C. HUBBELL,
Prest.

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872 **Defendants' Exhibit 404.**

July 24, 1897.

Wells H. Blodgett, Gen'l. Sol'r.
St. Louis, Mo.

My dear Colonel:—

I enclose to you three copies of the proposed ratification of the terminal contract. If it needs any amendment please make it, and afterwards have it executed in triplicate. Upon return to me I will have it executed by the Des Moines Union and Des Moines, Northern & Western, and then send you one completed instrument.

Yours very truly,

(Signed) A. B. CUMMINS.

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873 **Defendants' Exhibit 405.**

November 24, 1897.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

The attached papers were held in my office expecting to take this subject up with you personally when you were in Des Moines, but were overlooked, owing to your anxiety to get away.

Mr. Wheeler has a location free of rent on our tracks, furnished by F. M. Hubbell. Lumber or other material billed to him at Des Moines is placed on his switch and by him unloaded. He is a builder of bridges and deals in southern oak. When he makes a sale or when he needs some material for building his own bridges, he naturally reships from these yards. If the shipment goes forward via the C. G. W., Wabash, or D. M. N. & W. he has the privilege of loading without any charge for switching. If, however, he loads for the C. R. I. & P., C. B. & Q., or C. W. N. W. it is only fair that he pay a switching charge for the service. I am certain that this would be the rule under similar circumstances if Mr. Wheeler

was located on any of the other lines. We wish to do whatever we can to help your St. Louis business, but do not see why we should perform this kind of service free and it cer-
874 tainly is not a service which can be properly termed a wheelage item because of not going out over your road. The question would naturally arise how many wheels would we be entitled to charge. Please let me hear from you.

Yours truly,

F. C. HUBBELL, Prest.

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875 **Defendants' Exhibit 406.**

December 30, 1897.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Herewith I hand you form of proxy for the Purchasing Committee to execute appointing proper party to represent your Company at the annual meeting of the Des Moines Union Ry. Co. on January 6th, 1898. I trust you can sign for the Committee.

In this connection will say the only change in the Directors will be the election of Mr. Cyrus Kirk instead of Mr. A. X. Denman resigned. Yourself and Mr. Magee will be elected by the stock represented by our interest.

Yours truly,

F. C. HUBBELL, Prest.

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876 **Defendants' Exhibit 407.**

Feby. 7, 1898.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

To-day the City Council passed the Des Moines Union Depot Ordinance substantially the same as the copy which I sent to you in New York. The only amendment of interest provides that the east and west street running from Fifth to Sixth street shall be thirty feet wide instead of twenty-two feet. The Council wished to make the street thirty-six feet wide and passed the amendment in that way, but upon our absolute refusal to take the ordinance providing for a thirty-six foot

street, we agreed on thirty feet and they reconsidered the amendment and passed the ordinance that way.

I consider that we have a valuable franchise and that it is in better shape than any previous ordinance which we have ever introduced. The only party who could have made us any trouble on this ordinance is Kingman & Company owning lots 5 and 6 in block 9, Original Town of Fort Des Moines. They were here and made a very stubborn fight and in order to pull their fire, I to-day bought their property for our individual account, paying them $27,500.00 cash for the same. This may not be of any interest to you from a Wabash standpoint, yet it will result in relieving the terminal company from an expensive law suit.

The ordinance provides that we accept it within five days and as I wish to go east early this week, I shall file an
877 acceptance of same before I leave town in order to complete the contract. You will note the ordinance provides that the railway company will assume and pay all damages which abutting owners may succeed in establishing against the city. This is a common provision in all similar ordinances, but the Supreme Court of our state has for years held that there can be no damages as a matter of law. All the attorneys in Des Moines are agreed on this proposition, so we have nothing to fear from that section of the ordinance.

I will have the architect go ahead with the detail drawings at once, conforming the building to your suggestions made when Mr. F. M. Hubbell and myself were in St. Louis.

With respect to facilities during the building of the new station, would say we now have part of the permanent platforms in place and we can build in Sixth St. a wooden structure one story high, which these platforms will serve, which ought not to cost us to exceed three hundred to five hundred dollars, and which will be suitable for temporary waiting rooms and ticket room. We can move the present baggage room westerly from its present site and abandon the brick structure now occupied by us as a depot so that the contractors in building the new structure will not be interrupted in any way by the old building or the traveling public. I can so arrange the premises that our passengers can be kept from any dangerous contact with the materials or the operations connected with
878 building the new structure and when the new building is finished, we can tear down our temporary wooden structure and the material will all be useable. We will move all our offices out of the depot at an early day, taking some

quarters farther up town. I think Mr. Wagner can furnish space at the freight house for your dispatcher's office if you desire to avail yourself of the same.

I trust you will agree with our steps. If, however, you have any changes to suggest, please let me hear from you very promptly.

Yours truly,

F. C. HUBBELL,
Prest.

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879 **Defendants' Exhibit 407a.**

The Wabash Railroad Company.

Office.
J. Ramsey, Jr., Vice-President
& Genl. Manager.

St. Louis, Mo., June 15th, 1898.

Mr. F. M. Hubbell,
Sec. Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:—

Replying to yours of June 11th, The Wabash directors will vote in favor of the proposed contract with the Iowa Central Railroad Company for the use of the Des Moines Terminals, on the same conditions as they are used by the Wabash and Des Moines, Northern & Western Companies.

Yours very truly,

J. RAMSEY, Jr.,
Vice-President & General Manager.

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880 **Defendants' Exhibit 408.**

The Wabash Railroad Company.

Office.
J. Ramsey, Jr., Vice-President
& Genl. Manager.

St. Louis, Mo., October 18th, 1898.

Mr. F. C. Hubbell,
Prest. The Des Moines Union Railway,
Des Moines, Iowa.

Dear Sir:—

Mr. Martin has advised me that he is negotiating a contract with your company for the use of the Des Moines terminals,

which city he proposes to reach over the Wabash line for Cordova.

I would earnestly recommend that you enter into a contract with Mr. Martin on the same general terms and conditions, so far as they will apply to Mr. Martin's road as are contained in the contracts between the Des Moines Union Railway Co. and the Wabash and Des Moines, Northern and Western.

Yours very truly,

J. RAMSEY, Jr.,
Vice President and Genl. Manager.

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881 **Defendants' Exhibit 409.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, Nov. 16th, 1898.

F. M. Hubbell, Esq.,
President, D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

This will be handed you by Mr. E. W. Adams, who goes to Des Moines for the purpose of examining the right-of-way records of your road. Please furnish him with facilities for accomplishing his purpose.

Yours truly,

(Signed) ROSWELL MILLER,
President.

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882 **Defendants' Exhibit 410.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, Nov. 18, 1898.

F. M. Hubbell, Esq.,
Prest. D. N. & W. R. R. Co.
Des Moines, Ia.

Dear Sir:—

Our General Auditor, Mr. Winne, goes to Des Moines for the purpose of examining the books of the Des Moines, Northern & Western R. R. Co., Please furnish him the necessary

facilities for doing it; and also explain to him the condition in reference to rebates.

Yours truly,

(Signed) ROSWELL MILLER,
President.

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883 **Defendants' Exhibit 411.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, Nov. 22nd, 1898.

F. M. Hubbell, Esq.,
President, D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

In the contract between the Des Moines Union Railway Company, Des Moines & St. Louis Railroad Company, Des Moines & Northwestern Railway Company and St. Louis, Des Moines & Northern Railway Company you state that the Des Moines Union Railway Company operated a line of railway "extending from the eastern boundary line of said city to Farnham Street". I understand that the Des Moines Union property extends to 28th street. How is this?

Yours truly,

ROSWELL MILLER,
President.

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884 **Defendants' Exhibit 412.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, Nov. 22nd, 1898.

F. M. Hubbell, Esq.,
President, D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

Will you have the kindness to send to Mr. Myers all the deeds of your right-of-way on the Fonda line, and the maps, also all the records you have in regard to condemnation pro-

cedings; in short, all the records you have with relation to the right-of-way of the Fonda line; also, as far as you have them, of the Boone line.

Mr. Whittemore says he had a profile of the Boone line in his office in 1883 and returned it to the company. It has occurred to me that this profile, and possibly the map and other papers relating to the right-of-way of this line, may be with General Dodge. Won't you ask him whether he has them and, if so, get them from him.

Will you also have the kindness to send me the articles of association of the Des Moines Union Railway Company, with all amendments thereto.

Yours truly,

(Signed) ROSWELL MILLER,
President.

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885 **Defendants' Exhibit 413.**

F. M. Hubbell & Son.
Brokers.
Des Moines, Iowa.

Des Moines, Iowa, November 22nd, 1898.

Mr. Roswell Miller, President,
C. M. & St. P. Ry. Co.,
Chicago,

Dear Sir:

Referring to our conversation had on the 14th inst. you asked me to write you a letter stating my understanding of the terms of the trade pending between F. M. Hubbell & Son and your company. It is my understanding:—

1st. That the Chicago, Milwaukee & St. Paul Railway Company will give to F. M. Hubbell, F. C. Hubbell and H. D. Thompson annual passes each year during the lifetime of F. M. Hubbell, over its entire system, and any additions made thereto in the future. After his death, F. C. Hubbell and H. D. Thompson must take their chances upon receiving from your company such annual passes.

2nd. F. M. Hubbell & Son will offer to A. B. Cummins $1000. for his stock in the D. M. N. & W. R. R. Co. amounting to $62,500 par value, and if the offer is accepted by him, the stock shall be transferred to your Company, your company to furnish whatever revenue stamps that may be required to be placed on said certificates.

3rd. The stock in the D. M. N. & W. R. R. Co. represented by Certificate #6 for 3498 shares in the name of Roswell Miller, Trustee, to be immediately re-issued in the name of the C. M. & St. P. Ry. Co.

886

4th. Roswell Miller and F. M. Hubbell are to meet in New York on or about the 6th of December prox. and at that time and place the contract entered into on the 15th day of March, 1894, between Frederick M. Hubbell, individually and Frederick M. Hubbell & Son co-partners, the Chicago, Milwaukee & St. Paul Railway Company, and Roswell Miller, Trustee, is to be endorsed by Mr. Miller as President of the C. M. & St. P. Ry. Co., and as Trustee, to the effect that the contract has been complied with in all its terms, upon the part of F. M. Hubbell and F. M. Hubbell & Son.

5th. Simultaneously with the transaction set out in #4 F. M. Hubbell & Son for themselves, and for others whom they represent, will sell and deliver to your company D. M. N. & W. R. R. Co. first mortgage bonds to the amount of $2,150,000. par value, and shares of capital stock in said company to the amount of $1,392,600 par value, together with shares of said capital stock to the amount of $481,00 being part of the stock represented by Certificate #8, issued to Roswell Miller, Trustee, upon which the C. M. & St. P. Ry. Co. has an option to purchase, under the contract of March 15th, 1894, for a sum of money equal to 85% of the par value of the 2150 bonds, together with accrued interest on said bonds up to date of delivery thereof, which sum is to be paid to F. M. Hubbell & Son in cash at the National Park Bank

887

in the City of New York, and the above mentioned stock is to be then and there re-issued in the name of the C. M. & St. P. Ry. Co. that company to furnish the necessary revenue stamps for the transaction.

Please acknowledge receipt hereof, and confirm the same.

Yours truly,

F. M. HUBBELL.

888

Defendants' Exhibit 414.

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Chicago, Nov. 23rd, 1898.

F. M. Hubbell, Esq.,
President, D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

I am in receipt of your favor of the 22nd instant, stating the terms of the trade pending between F. M. Hubbell & Son and our company.

Your statement of your understanding of the terms is correct.

Yours truly,

ROSWELL MILLER,
President.

Defendants' Exhibit 414a.

The Wabash Railroad Company.

General Solicitor's office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Nov. 23, 1898.

Joseph Ramsey, Jr.,
Vice President & General Manager.

Dear Sir:—

I return herewith draft of contract between Des Moines Union Railway Company and Iowa Central Railway Company, for use of the Des Moines terminals. The contract, with one or two exceptions, seems all right.

Section 15 seems to introduce something new, and I do not know exactly what it means. It seems to contemplate the receipt of revenue by the Terminal Company from depot privileges, rents of offices in stations, switching, and for the use of real estate, and provides that those revenues shall be used by the Terminal Company either as a working capital; in the payment of its floating debt, or the enlargement or betterment of its terminal properties.

Now, if the Terminal Company, has, under its several contracts already made, revenues from the several sources named, it would seem all right for it to apply them to the discharge of the indebtedness named, or to the betterment of its terminals. But why put anything about that matter in this contract? The Terminal Company, like any other corporation, or individual, has the right, without any covenant to that effect with a tenant, to use its income in paying its debts, or improving its property. So, if that section is merely intended to give the Terminal Company the right to pay its own debts with its own money, I think it might as well be left out. If, on the other hand, this new section is intended by any sort of inference or construction, to confer upon the Terminal Company a right to collect rentals and make switching charges that are not authorized under contracts with its present tenants, then I think it might as well be omitted, because if anything is to be done that will change their agree-

ments or the relations of the present tenants to the Terminal Company, the matter is one to be taken up directly with the present tenants, and whatever changes are to be made, that are to affect them, should be made in their contracts, rather than in this one. As to whether there should be any changes in the existing contracts, I now express no opinion.

Again, there is apparently a conflict between Sections Two and Three and Section Sixteen of the agreement as written. Section 2 provides, "that at the expiration of each month there shall be ascertained the expense of maintaining, repairing, and renewing the terminal property, including the maintenance, repair and renewal of * * depots," which language includes, as I would think, both passenger depots and freight depots. The same section also provides that "there shall likewise be ascertained the costs and expenses, of every nature, connected with the operation of said terminal property including freight and passenger depots."

The 3rd section then provides that having ascertained these amounts, there shall be deducted from the sum of all said expenses, the rental paid by the "Great Western Company," and that the Iowa Company shall then pay that part of the remainder, which bears the same proportion to the whole of said remainder, that the wheelage of the Iowa Company bears to the entire wheelage of the Wabash Company, the Des Moines Northern & Western Company and the Iowa Company.

Now it seems to me as though the above sections 2 and 3 were complete and were intended to fix, among other things, the exact measure to which the Iowa Company was to contribute to the cost of maintaining, repairing, renewing and operating the Passenger Station.

But, you will notice, that in Section Sixteen the extent to which the Iowa Company is to contribute to the expenses of the Passenger Station, is specifically defined and limited to the items there enumerated. As to whether the covenants in Sections 2 and 3, or those in Section 16, should prevail, I express no opinion. I simply say, I do not think they are the same. If they are, the same, then one of them should be stricken out. And if they are not the same, and it is the desire to retain the provisions of Section 16, then Section 2 should be so amended as to make that fact clearly appear.

I think that might be done by inserting after the word "Company" in the first line of Sec. 2, the words, "except as

provided in Section 16." The first paragraph of Section 2 would then read as follows:

"Sec. 2. The Iowa Company, except as provided in Section 16, agrees to pay to the said Des Moines Company, monthly, a sum of money to be ascertained as follows, to-wit:"

682 Not being familiar with the reasons for the insertion of Section 16, I am not prepared to give any opinion with respect to it, but, in the absence of some very good reason, that has not occurred to me, I would think the contract more complete and satisfactory with Section 16 omitted.

Very truly yours,

WELLS H. BLODGETT.

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683 **Defendants' Exhibit 415.**

Des Moines, Northern & Western Railroad Company.

President's Office.

F. M. Hubbell,
President.

Des Moines, Iowa, November 26, 1898.

Mr. Roswell Miller, President,
C. M. & St. P. Ry. Co.,
Chicago.

Dear Sir:—

I have your two letters of November 22nd. We have sent to Mr. Myers all of the right of way deeds and condemnation proceedings that we have of the Fonda line and the Boone line, together with the record books of the right of way of both lines, also a map of the Fonda line. There is no map in existence of the Boone line.

I herewith enclose you a copy of the articles of incorporation of the Des Moines Union Railway Company.

In regard to the Des Moines Union Ry. Company's property, will say that it extends across the city of Des Moines as it existed prior to 1890, viz. from the east line of section 2, township 78, range 24, to west 28th street, a distance of 4 miles.

The recital in the terminal contract adopted May 10th 1889 is an error.

The Des Moines, Northern & Western Railroad extends from west 28th street to Fonda, with a branch from Clive to Boone.

Its total mileage is 145.643 miles. It owns $100,000. of
894 the capital stock of the Des Moines Union Railway Company, being one-fourth of all of the capital stock of that company outstanding.

Kindly acknowledge receipt.

Yours truly,

F. M. HUBBELL,
President.

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895 **Defendants' Exhibit 416.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, Nov. 28, 1898.

F. M. Hubbell, Esq.,
President D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

I am in receipt of your favor of the 26th inst. enclosing copy of the articles of incorporation of the Des Moines Union Railway Company, and note what you say in regard to the extent of the property of that company.

I expect to be in New York on December 8th.

I am informed by Mr. Bond that he has made a deal with General Dodge for the purchase of all his bonds at 85 and his stock, also the 29 bonds of the Dillon estate at 75, and he thinks that the bond owned by Humphreys, Terry and the Pullman Company, and others, will also be put in at 75. I have also an order, signed by Dodge upon F. M. Hubbell & Son, authorizing them to turn over all shares belonging to him, including the shares covered by the option which are held by me in trust. I shall take this with me to New York. I should be glad if you would send me a copy of the contract with the Postal Telegraph Company.

Yours truly,

ROSWELL MILLER.

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896 **Defendants' Exhibit 417.**

Chicago, Milwaukee & St. Paul Railway Company.

Secretary's Office. Subject: D. M., N. & W. Papers.

P. M. Myers,
Secretary.

Milwaukee, Nov. 28th, 1898.

Mr. F. M. Hubbell,
President D. M., N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

I am in receipt of two boxes which you sent to me by United States Express, one containing right of way deeds and papers of the Des Moines, Northern & Western R. R. Co., and the other containing plat book of the Fonda line, also two right of way record books, one of the Fonda line and the other of the Boone line.

Yours truly,

(Signed) P. M. MYERS,
Secretary.
C

E. W. C.

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897 **Defendants' Exhibit 418.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Chicago, Dec. 2nd, 1898.

F. M. Hubbell, Esq.,
President, D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

I observe that the contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company is only for 20 years. I think it should be for 50 years. Have you any objection to extending it for so long?

Yours truly,

(Signed) ROSWELL MILLER,
President.

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898 **Defendants' Exhibit 419.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller, President.

Chicago, Dec. 2nd, 1898.

F. M. Hubbell, Esq.,
President D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

Please send me copy of your express contract, and of any trackage contracts that you may have.

I understand from Mr. Myers that in many places the terminus of the Des Moines, Northern & Western road is stated as being at Farnham street in Des Moines. How is this?

Yours truly,

ROSWELL MILLER, President.

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899 **Defendants' Exhibit 420.**

Des Moines Northern & Western Railroad Co.

President's Office, Des Moines, Iowa.
F. M. Hubbell, President.

December 3, 1898.

Mr. Roswell, Miller, President,
C. M. & St. P. Ry. Co., Chicago.

Dear Sir:—

I have yours of the 2nd inst. asking for a copy of our express contract. I now enclose to you a copy of that contract.

In regard to the ownership of the road between Farnham Street and 28th Street, there is this to be said, that a part of the right-of-way was deeded to the St. Louis, Des Moines & Northern Ry. Company, and a part of it to the Des Moines Union Ry. Company. Another contract stands in the name of James F. How, as Trustee for the Des Moines & St. Louis R. R. Company, and certain other rights were acquired by the Des Moines & St. Louis R. R. Company, in a contract made with the Chicago, Rock Island & Pacific Ry. Company.

I will take with me to New York, a map of this portion of the road, showing as well as I can, about the right-of-way deeds.

As the Des Moines Union Ry. Company has title to by far the greater part of the right-of-way to 28th Street, it has been understood between the Des Moines Union Ry. Company and the Des Moines, N. & W. R. R. Company, that the Des Moines Union's property extends to 28th Street, and that the Des Moines, N. & W. R. R. Company's property commences at the same point.

900 We have no trackage contracts except the lease with the Des Moines Union Ry. Company, a copy of which we gave to your Mr. Adams.

Yours truly,

(Signed) F. M. HUBBELL.

Delivered a map of D. M. Union from 12th Str. to 28th Str. to Roswell Miller and Frank S. Bond in New York, Dec. 8, 1898. It had names of grantee on each tract.

(Signed) F. M. HUBBELL.

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901 **Defendants' Exhibit 421.**

Hotel Netherland
59th Street and 5th Avenue,
New York.

Hotel Imperial
Broadway & 32nd Street,
New York.

Hotel Walton
Broad and Locust Streets
Philadelphia

Stafford & Whitaker
Absolutely Fire-Proof.

Mansion House,
Buffalo, N. Y.

Dec. 8", 1898.

Dear Bro. & Son:

Miller got in this A. M., 11 o'clock and said he was ready to pay if I would write him a letter that the D. M. N. & W. R. R. Co. should have a contract with D. M. Union same as the present for 50 or 100 years. I told him that would not give the stock a chance to grow in value, besides I could not speak for Mr. Ramsey, that R. would no doubt want as good a contract as Miller got. Miller & Bond pressed me hard to sign a letter which would make the Union stock worthless in our hands. I was not willing to do it without consulting you. I have agreed to go and see Mr. Ramsey and try to make a 100 year contract, the compensation to be adjusted every 25 years, but it must also suit us. They thought we wanted the money so bad we would sign the letter. They had all of Dodge's

stock and all of Martin's stock and had it reissued to the C. M. & St. P.

Martin	276,200
Dodge	232,100
$	508,300
Their 40% is	1,749,000
Total owned by C. M. & St. P..	2,257,300
½ of all the stock is	2,186,250
C. M. & St. P. have a majority of ..	$71,050

and also owns $175,600 contributed by Martin & Dodge
902 toward the 15% so they can elect the next Board of Directors of D. M. N. & W. R. R. and two Directors of D. M. Union Ry. in Jany. They are anxious to have the lease made and I have told them that I would go right at it, but not in such a way as to make D. M. Union stock worthless. We must decide now what is necessary to make our stock valuable.

Yours truly,

(Signed) F. M. HUBBELL.

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903 **Defendants' Exhibit 422.**

Nov. 29, 1898.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
Chicago, Illinois.

Dear Sir:—

Enclosed herewith I hand you a copy of the contract of the D. M. Union Ry. Co. with the Chicago Great Western and a copy of the Gilcrest and of the Getchell contracts. I will endeavor to have Mr. Cummins write a short opinion respecting both contracts and will send it to you at St. Louis. He is very busy in the trial of some important cases at this time and it is very difficult to get to him. Would thank you very much for prompt reply from Chicago giving me your views.

Yours truly,

F. C. HUBBELL.
Pres.

904

Defendants' Exhibit 423.

Des Moines Union Railway Co.

F. M. Hubbell, Secy.
Des Moines, Iowa.

December 20, 1898.

Mr. J. Ramsey, Jr., V. P. & Genl. Mgr.,
Wabash R. R. Co., St. Louis, Mo.

Dear Sir:—

Hoyt Sherman, Assignee, made a deed to James F. How, Trustee, on the 26th of November, 1883, for the consideration of $2373.00 which deed is recorded in Book 138, Page 13, and covers about three-eighths of a mile of right-of-way in the west part of the city.

We find no deed to the Des Moines Union Railway Company for this piece of land. There was a declaration of trust signed by Mr. How about the year 1882. I wish you would send me a copy of this declaration of trust, and make any suggestions that you think will assist in perfecting the record title to this land, in the Des Moines Union Ry. Company.

Yours truly,

(Signed) F. M. HUBBELL,
Secretary.

905

Defendants' Exhibit 424.

The Wabash Railroad Company.

Office
J. Ramsey, Jr., Vice Pres't &
Gen'l Manager.

St. Louis, Mo., Dec. 21st, '98.

Mr. H. A. Lloyd,
Ass't Sec'y and General Claim Agent.

Dear Sir:

Referring to the attached letter from Mr. F. M. Hubbell, Secretary of the Des Moines Union Railway; can you furnish a copy of the deed of trust made by Mr. James F. How as herein referred to?

Yours truly,

(Signed) J. RAMSEY, JR.,
V. P. & G. M.

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906 **Defendants' Exhibit 425.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller,
President.

Chicago, Dec. 21st, 1898.

F. M. Hubbell, Esq.,
President, D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

I am in receipt of your favor of the 20th inst., and note that the matter of preparing the lease between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company is in the hands of Mr. Cummins. I hope he will expedite the matter.

What did Mr. Ramsey say about it?

Yours truly,

(Signed) ROSWELL MILLER,
President.

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907 **Defendants' Exhibit 426.**

Dec. 22nd, '98.

Mr. F. M. Hubbell,
Sec'y., Des Moines Union Ry.,
Des Moines, Ia.

Dear Sir:

Replying to your favor of the 20th inst., I beg to invite your attention to the next attached from our Ass't. Secretary regarding the declaration of trust about which you are making inquiry. Note that he is unable to find any record of it from the particulars given in your letter. Will you kindly give the further information asked for by him and that may enable him to locate it.

Yours truly,

J. RAMSEY, Jr.,
V. P. & G. M.

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908 **Defendants' Exhibit 427.**

The Wabash Railroad Company.

Henry A. Lloyd,
Asst. Secretary and General Claim Agent.

St. Louis, Dec. 22, 1898.

Mr. J. Ramsey, Jr.,
Vice President & General Manager.

Dear Sir:—

Neither this office nor the Chief Engineer's Dept. can find the declaration of trust referred to by Mr. F. M. Hubbell in

the accompanying correspondence, covering ⅜ mile of right of way in west part of the City of Des Moines. If Mr. Hubbell can furnish us a better description, giving say the city blocks, if any which are traversed by the right of way, or will give us a description of the property as set out in the deed recorded in Book 138, page 13 we will make an effort to locate it. The only declaration of trust executed by James F. How, trustee, referred to in any records in this office is dated July 19, 1887, and was sent to Mr. W. S. Lincoln Chief Engineer, by Col. How himself on November 27th, 1891, and the property Mr. Hubbell is inquiring about may be included in that declaration of trust but that fact can not be ascertained until a more definite description of the lots and blocks is given.

Yours truly,
(Signed) H. A. LLOYD,
Asst. Secretary.

909

Defendants' Exhibit 428.

Des Moines Union Railway Co.

F. M. Hubbell, Secy.
Des Moines, Iowa.

December 23, 1898.

Mr. J. Ramsey, Jr., V. P. & Genl. Manager,
Wabash R. R. Company, St. Louis, Mo.

Dear Sir:—

I have yours of December 22. The description of the land conveyed by Hoyt Sherman, Assignee, to James F. How, Trustee, dated November 26th, 1883, recorded in Polk County records Book 138, Page 13 is as follows:

"Commencing at a point on the section line eighteen hundred and eighty-three feet south of northwest corner of Section No. Eight in Township No. Seventy-eight (78) North Range No. Twenty-four (24) West; thence north 61½° east on a line parallel to and fifty (50) feet from the center line of the St. Louis, Des Moines and Northern R. R. Track as now constructed Five Hundred and Seventy-eight (578) feet; thence north 64½° east Eight Hundred (800) feet; thence north Fifty-eight 58° east Eight Hundred Seventy-two (872) feet to the east line of lot No. Four (4) of the Official Plat of the North West quarter of said Section No. Eight (8); thence south along said line One Hundred and Twenty-five (125) feet to the north line of the right of way of the C. R. I. & P. R. R. Co.; thence south 55° West along said right of way line (which is 50 feet from center of track) Twenty-three hundred and Thirty (2330)

feet to the Section line; thence north along the Section line Three Hundred and fifteen (315) feet to the place of beginning."

I think there was a declaration of trust signed by Mr. How, dated January 2, 1882. I have not a copy of it but I find among the records of the Des Moines Union Company, notice of the existence of such a declaration of trust.

If you find that the declaration of trust dated July 19, 1887 covers the description above given, I would be obliged to you if you would furnish me a copy of that declaration of trust.

I herewith return the letter of Mr. Lloyd.

Yours truly,
(Signed) F. M. HUBBELL, Secretary.

enc.

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910 **Defendants' Exhibit 429.**

The Wabash Railroad Company.

Office.

J. Ramsey, Jr.,
Vice President & Gen'l Manager.

St. Louis, Mo., Dec. 24th, 1898

Col. W. H. Blodgett,
General Solicitor.

Dear Sir:—
Please note the attached from Mr. Hubbell.

Can you turn up the declaration of trust signed by Mr. How, dated January 2nd, 1882, covering the property referred to in Mr. Hubbell's letter?

Yours very truly,

(Signed) J. RAMSEY, Jr.,
Vice-President and Gen'l. Manager.

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911 **Defendants' Exhibit 430.**

Terminal Contract.

between the

Des Moines Union Railway Co.

and the

Des Moines, Northern & Western Railroad Company.

This Agreement, made and entered into this..... day of December, A. D. 1898, by and between the Des Moines Union

Railway Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter termed "Des Moines Company", party of the first part, and the Des Moines, Northern & Western Railroad Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter termed "Des Moines, Northern & Western Company," party of the second part, Witnesseth: That

Whereas the Des Moines Company now owns and operates a terminal line of railway in the City of Des Moines, Iowa, extending from the east line of Section two (2), Township seventy-eight (78), Range twenty-four (24), in said city of Des Moines, westward to West Twenty-eighth Street in said City, and has acquired or constructed main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses, and other terminal facilities, and intends to
912 acquire and construct other facilities of that character; and

Whereas the said terminal facilities of the Des Moines Company, or a portion thereof, are now used by each of the following named railroad companies, to-wit: The Wabash Railroad Company, the Chicago Great Western Railway Company and the Des Moines, Northern & Western Railroad Company, under contracts heretofore executed; and

Whereas there now exists a contract, entered into on the 10th day of May, 1888, by and between the said Des Moines Company, the Des Moines & St. Louis Railroad Company, The Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and continuing for a period of thirty years from the 1st day of May, 1888, providing for the use of said terminal facilities and the compensation to be paid therefor, which last named contract was modified in part and confirmed in part by an agreement entered into on the 31st day of July, 1897, between the said Des Moines Company, the Wabash Railroad Company and the said Des Moines, Northern & Western Company; and

Whereas the parties hereto desire to enter into a contract looking to the use of the said terminals by the said Des Moines, Northern & Western Company for a period of thirty years from and after the expiration of the said agreement so entered into on the 10th day of May, 1889, and expiring
913 on the 30th day of April, A. D. 1918, to the end that during the said period of thirty years the said Des Moines, Northern & Western Company may have and enjoy the right to use the said terminal railway of the said Des Moines Company, or a part thereof, under the terms and conditions hereinafter set forth, and in common with such rail-

way companies as may have now acquired or may hereafter acquire the right to use the same, and so make the terminals of the said Des Moines Company the terminals of the said Des Moines, Northern & Western Company during the whole of said period.

Now Therefore, in consideration of the premises and the mutual covenants and undertakings herein contained, it is agreed between the parties hereto as follows, to-wit:

Section 1. The said Des Moines Company, in consideration of the payments to be made to it by the said Des Moines, Northern & Western Company as hereinafter specified, hereby grants to the said Des Moines, Northern & Western Company the use, for a period of thirty (30) years beginning on the 1st day of May, 1918, in common with such other railway companies as now have or may hereafter acquire the right to use the same, of its said terminal railway, with all the facilities and appurtenances thereunto belonging, except that part of said terminal property, the exclusive use of which has been heretofore granted to the Chicago Great Western Rail-
914 way Company under and by virtue of an agreement entered into between the said Des Moines Company and the said Chicago Great Western Railway Company, bearing date July 2nd, A. D. 1896.

The above grant shall include the use of the passenger station buildings now in existence or hereafter constructed, and shall include the right to receive and discharge passengers and baggage, the right to receive and discharge express matter, the use of the said passenger stations by passengers, and the services of the necessary employes, baggagemen and ticket agents, but shall not extend beyond the ordinary use of stations for passenger traffic. It shall also include such terminal tracks, switches, buildings, structures and appurtenances as shall be hereafter added to the said terminal property; provided, however, that if the said Des Moines Company shall exclusively lease any hereafter acquired property to any railway company which may enter said terminals after the date of this contract, no part of the cost of such property shall be considered in determining the rental to be paid by the said Des Moines, Northern & Western Company as hereinafter specified and provided.

And the said Des Moines Company agrees to keep and maintain said terminal property in good condition and repair, and to provide and maintain all such engines, machinery, appli-
ances, buildings and structures, and all such servants
915 and employes, as shall be reasonably necessary for the conduct of its business and the moving and handling of

the cars, passenger and freight, of the said Des Moines, Northern & Western Company, and the housing and care of its engines; and the said Des Moines Company further agrees to switch all cars, handle all freight, and house and care for all engines of the said Des Moines Northern & Western Company which may be delivered to it or which may come upon its said property, in so far as the said Des Moines, Northern & Western Company may request it so to do.

Sec. 2. The said Des Moines, Northern & Western Company agrees that it will, in each month of the said period of thirty years, pay to the said Des Moines Company in the manner hereinafter specified a sum of money to be ascertained as follows, to-wit:

First. There shall be ascertained each month the amount required to pay five per centum upon the whole cost to the said Des Moines Company of its said terminal property as it then exists, and one-twelfth thereof, less any deduction hereinafter provided for, shall be payable monthly during the said period to the said Des Moines Company as hereinafter specified; and for the purpose of fixing a basis for the ascertainment of such cost it is expressly agreed between the parties hereto that the cost of the said terminal property at the date of the execution of this contract is One million, one
916 hundred and forty-nine thousand, seven hundred and thirty-one and nine-one-hundredths ($1,149,731.09) dollars, and in ascertaining the cost in the several months during the said period of thirty years there shall be added to the said sum of One million, one hundred and forty-nine thousand seven hundred and thirty-one and nine-one-hundredths ($1,149,731.09) dollars the cost of all additions and betterments made after the date hereof; and it is further expressly agreed by the parties hereto that such additions and betterments shall embrace all those expenditures of the said Des Moines Company which are ordinarily and according to the custom of railway companies charged to Construction Account, and that hereafter the said Des Moines Company shall keep a Construction Account in the regular books according to the said custom and practice, and the said account as shown by the said books shall be accepted by the parties in any controversy respecting such subject as prima facie evidence of the cost of the said terminal property from and after the date of this contract; provided always that the said sum of One million, one hundred and forty-nine thousand, seven hundred and thirty-one and nine-one-hundredths ($1,149,731.09) dollars is agreed upon finally and conclusively as the cost of the said terminal property at the date of this contract.

Second. At the expiration of each month of said period
917 or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining, repairing and renewing the terminal property of the Des Moines Company, including the maintenance, repair and renewal of tracks, depots, round houses, engine houses, and all and every kind of property owned and used by the Des Moines Company during the preceding month; and in like manner there shall be ascertained the taxes, general or special, levied upon or against all the property of the Des Moines Company and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

Third. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal property, including freight and passenger depots, depot grounds, round houses, transfers, tracks, and every other property or appurtenance thereof, which is to include every item of expense or disbursement incurred or made by the Des Moines Company not hereinbefore mentioned.

Sec. 3. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other tenant railway companies may then be under obligations to pay to the Des Moines Company for the use of the herein demised property, or parts thereof, for the preceding
918 month, and the said Des Moines Northern & Western Company shall pay the remainder to the said Des Moines Company; said payments to continue monthly, as aforesaid, during the said period of thirty years, and all payments herein provided for shall be made in gold coin of the United States of or equal to the present standard of weight and fineness.

Sec. 4. If the amount or any part of the amount due from a railway company or railway companies using or occupying the said terminal property under a contract or contracts with the said Des Moines Company is not paid when due, then the sum so due and unpaid shall also, on demand of the said Des Moines Company, be paid to it by the said Des Moines, Northern & Western Company, and if it is thereafter paid by such other company or companies, then the same shall be refunded to the said Des Moines Northern & Western Company.

Sec. 5. The Des Moines Company shall, on or before the tenth day of each month of said period, or as soon thereafter as practicable, make up and present to the Des Moines, Northern & Western Company an account showing the amount due

hereunder for the preceding month, and payment thereof shall be made within ten days thereafter.

Sec. 6. If the said Des Moines, Northern & Western Company shall for any reason fail or refuse, for a period of sixty days after the account is rendered as aforesaid and the same is due, to pay any of the several sums provided in this contract to be paid, then the Des Moines Company may take from any money in its hands or in the hands of its agents belonging to the Des Moines, Northern & Western Company the amount so due, and apply sufficient thereof to meet said demand or demands, and if the sum so taken be insufficient to pay the amount due under this agreement, and the same shall still remain unpaid, the Des Moines Company shall have the right to forfeit, cancel and annul this contract; but it is expressly understood and agreed that nothing herein contained shall prevent the Des Moines Company from enforcing its demand or demands against the said Des Moines Northern & Western Company by any proper action, either at law or in equity, or from recovering the amount which may at any time be due or unpaid, if it shall so elect.

Sec. 7. The management of the said terminal property, including stations, buildings, tracks, round houses, shops, etc., shall be in charge of a Superintendent of the Des Moines Company, who shall in the performance of his duties be governed by such regulations as may from time to time be established by the Des Moines Company. The salary of said Superintendent and the compensation of other agents and employes of the Des Moines Company shall not be higher than are paid by railway companies in the vicinity for similar services.

Sec. 8. It is mutually agreed that the use hereby granted of the said terminal property to the said Des Moines,
920 Northern & Western Company shall be without preference or unreasonable precedence for or to the Des Moines, Northern & Western Company, or any lessee using or occupying the said terminals, in the matter of train schedules or in the handling or switching of cars and trains, and the occupancy of depots or the occupancy of said property or any part thereof, so far as respects the services herein agreed to be performed; always, however, to be subject to such reasonable control and discretion by the Des Moines Company as may be necessary to avoid confusion and to expedite the management of the business; and the said Des Moines Company shall from time to time make, publish and enforce such rules and regulations for the use, management and operation of said terminal property by all the parties using the same as may be reasonable, and as it may from time to time consider necessary.

Sec. 9. The Des Moines Company shall keep accurate books of account showing in detail all the expenditures made by it, and said books shall give such details of the business of the said Des Moines Company as will at all times enable the parties hereto to make accurate settlements of their accounts as provided for in this agreement; and said books may at all reasonable and proper hours be examined and inspected by the Superintendent of the said Des Moines, Northern & Western Company, or by any competent accountant in its employ. The said Des Moines Company shall also keep
921 such record as will enable it at all times to ascertain the amount paid to it or becoming due to it under contracts from other railway companies for the use of the said terminals or any part thereof, to the end that it may at all times be accurately known what amounts, if any, are to be deducted in each month of the said period from the entire sum ascertained in the manner provided for in Section 2 hereof.

Sec. 10. All damages which may be received by any engine or engines, car or cars, of either party hereto, while being switched by the said Des Moines Company at or upon any part of the premises embraced in this agreement, shall be repaired by the Des Moines Company for the party to whom such rolling stock belongs, and the cost of such repairs shall enter into the sum to be ascertained as provided in Sec. 2 hereof.

Sec. 11. All damages to property other than as above described caused by any engine or engines, car or cars, of any railway using said terminals, or by any imperfection in the track or tracks laid upon said premises, and all injuries which may at any time be received by any person or persons in, around, about or upon said premises, shall, if settled at all, be settled and adjusted by the Des Moines Company, and the sum or sums thus paid in settlements shall enter into the sum so to be ascertained under Section 2 hereof. Pro-
922 vided however that no settlement involving more than five hundred dollars shall be made of any claim for personal injury or death except with the consent and approval of the said Des Moines Northern and Western Company. (The preceding underscored words are in the handwriting of Roswell Miller.) And Provided, further that the said Des Moines, Northern & Western Company shall at its own sole cost and expense bear, settle and pay all damages to property belonging to itself, to the said Des Moines Company, or to third persons, and all injuries to persons, when said damages or injuries are done to or by its own trains while said trains

are being moved by its own engines and operated and controlled by its own crews, unless such damages or injuries are occasioned by the neglect or fault of the servants of the Des Moines Company, or by some imperfection in its track or tracks, and in case such damages or injuries are occasioned by the act, negligence or fault of the Des Moines Company, or by any imperfection in said tracks, then settlements and payments shall be made by the Des Moines Company as in this section first provided.

Sec. 12. All persons employed and paid, either permanently or temporarily, by said Des Moines Company in the maintenance and operation of said terminals, shall be deemed and taken to be the employes and servants of the Des Moines Company only.

Sec. 13. The Des Moines, Northern & Western Company agrees that it will, during the whole of the said period
923 of thirty years, use the said terminals for all its passenger and freight trains destined to or departing from said City of Des Moines, Iowa.

Sec. 14. The revenue of the Des Moines Company from depot privileges, rents of offices in Union Station, or other depots, switching, passenger business done on its own behalf and rents from real estate, and miscellaneous earnings shall belong absolutely to the said Des Moines Company, and shall not be considered in the ascertainment of the sum provided for in Section 2 hereof. (Opposite this section on the margin are the words: in the handwriting of Mr. F. M. Hubbell: "Objected to by Roswell Miller, Dec. 27 1898")

Sec. 15. It is further agreed that if the said Des Moines Company shall hereafter be required to construct, or if it shall desire to construct a viaduct or viaducts over or under any of its tracks upon any public street or alley for the protection or convenience of the public, or if by municipal, legislative or other legal action it shall be required to make changes or modifications in any of its said tracks, bridges and appurtenances for the safety and convenience of the public, then the cost of constructing any such viaduct or of making any such change or modification shall be entered in said Construction Account, and shall be considered and held to be a part of the cost of the said terminal property.

924 Sec. 16. If at any time there shall arise any dispute with reference to any account rendered by the said Des Moines Company to the said Des Moines, Northern & Western Company, all claimed omissions or errors in such account or accounts, and all exceptions thereto which may be taken by the said Des Moines, Northern and Western Company, shall

be subsequently adjusted between the parties, but shall not delay the prompt payment of the said account or accounts as rendered by the said Des Moines Company.

Sec. 17. In case any difference shall hereafter arise between the parties hereto concerning the management of said terminal station, depots, grounds, yards, tracks and other terminal facilities of the said Des Moines Company, with respect to any matter not herein provided for or concerning any other matter or thing connected therewith but not herein expressly provided for, or concerning any of the accounts of said Des Moines Company, such differences shall be referred to three competent men experienced in railroad management, who shall, as soon as practicable after they are chosen, proceed to examine and determine what would be just and equitable for each of said parties to do in and about the matter in dispute. Each party shall choose one of said arbitrators and the two thus chosen shall select the third arbitrator and the decision in writing of a majority of said arbitrators
925 with respect to the matter submitted shall be furnished to and be thereafter binding upon each of the said parties. Provided, however, that such differences shall have no effect on the course of business at said terminal station, depot grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, and such settlements and payments as are herein provided for shall be made as before, until the matter in dispute shall be determined by the said arbitrators, and thereupon such payments or restitution shall be made as may be required by the decision of said arbitrators. (Opposite this section on the margin are the words in the handwriting of Mr. F. M. Hubbell: "Mr. Geo. R. Peck prepared a new section No. 17 which is hereto attached. Mr. Miller objected to this one. F. M. Hubbell.")

Sec. 17. In case any difference shall arise between the parties hereto concerning the management of said terminal station, depots, grounds, yards, tracks and other facilities of the said Des Moines Company, or in respect to the accounts of said Des Moines Company, or in respect to any other matter or thing growing out of this contract or the relations of the parties hereto under the same, such differences shall be referred to three competent men, experienced in railroad management, to be selected as hereinafter provided. That is to say, the party desiring an arbitration shall name one competent person to act as arbitrator, and shall notify, in
926 writing, the opposite party of such selection, and said opposite party shall, within thirty days from the receipt of such notice, name a second competent person as arbi-

trator, and the two persons so named as arbitrators shall, within fifteen days thereafter, name a third competent arbitrator. If either party shall for thirty days after being notified of the selection by the other party of an arbitrator neglect or refuse to appoint a second arbitrator, then the arbitrator first appointed may select a second arbitrator, and the two arbitrators so selected shall select a third. The three arbitrators shall, as soon as practicable after they are chosen, proceed to examine and determine the matter in dispute, and shall decide what is just and equitable in respect thereto, and a decision in writing of a majority of said arbitrators with respect to the matter submitted shall be furnished to and be thereafter binding and obligatory upon each of said parties. Provided, however, that such differences shall have no effect on the course of business at said terminal station, depot grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, and such settlements and payments as are herein provided for shall be made as before, until the matter in dispute shall be determined by the said arbitrators, and thereupon such payments or restitution shall be made as may be
927 required by the decision of said arbitrators. (This second section 17 is in the handwriting of Mr. F. M. Hubbell, at the bottom of which are the words: "This Section No. 17 was prepared by Geo. R. Peck as a substitute for #17 as drawn by Mr. Cummins Dec. 27, 1898. F. M. H.)

(The said second section 17 is pasted onto the original contract immediately after the first section of that number.)

In Witness Whereof the respective parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their respective Presidents, and attested by their Secretaries respectively, the day and year first above written.

By .....
President.

Attest:

.....
Secretary.

By .....
President.

Attest:

.....
Secretary.

(Attached to the contract and immediately preceding it is attached the following):

This terminal contract between the Des Moines Union Railway Company and the Des Moines Northern & Western Railroad Company was prepared by A. B. Cummins at the instance of Roswell Miller, President of the Chicago, Milwau-
928 kee & St. Paul Railway Company. Mr. F. M. Hubbell presented it to Mr. Miller and his attorney, George R Peck, December 27th, 1898 and it was agreed to by Mr. Miller, excepting Section #14 which he wanted left out, and Section #17 was also objected to and Mr. Peck prepared a substitute for it, which is hereto attached.

With these changes made, Mr. Miller expressed himself as satisfied with the contract.

(Signed) F. M. HUBBELL.

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929 **Defendants' Exhibit 431.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller, President.

Chicago, Dec. 30th, 1898.

F. M. Hubbell, Esq.,
President, D. M. N. & W. R. R. Co.,
Des Moines, Iowa.

Dear Sir:—

At the annual meeting of the Des Moines, Northern & Western Railroad Company I desire that the following persons be elected directors: F. M. Hubbell, F. C. Hubbell, A. J. Earling, P. M. Myers, C. A. Goodnow, W. G. Collins and J. F. Gibson.

In the Des Moines Union, in which I understand we are entitled to two directors, I desire that the directors named by us shall be C. A. Goodnow and J. F. Gibson.

Yours truly,

(Signed) ROSWELL MILLER, President.

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930 **Defendants' Exhibit 432.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l. Solicitor.

St. Louis, Dec. 31, 1898.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

The attached correspondence has been referred to me by Mr. Ramsey. For some reason I seem to have forgotten all

about this piece of land conveyed by Hoyt Sherman to Col. How. It is my recollection that How conveyed everything to the Wabash Railroad Company, and that the Wabash Company then conveyed all to the Terminal Company. But if I understand you correctly, the record shows the conveyance of the property by Sherman to How, and no subsequent conveyance by How to any one. If that is the case, I think the matter can be arranged. I think the deed to J. F. How, 'Trustee', is the same as a deed to How individually, and that a release from Mrs. How and her two sons (both of whom are of age), would cure everything, and I believe they would be willing to sign a release if the circumstances were explained to them.

Please return the papers with any suggestions you may have to make with respect to the matter. We cannot find the declaration of trust referred to in the correspondence as having been executed by Col. How, July 19th, 1887, and the probabilities are it was burned in our office fire in October, 1897.

Very truly yours,

(Signed) WELLS H. BLODGETT.

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931 **Defendants' Exhibit 433.**

Des Moines Union Railway Co.

F. M. Hubbell, Secy.

Des Moines, Iowa.

January 3, 1899.

Mr. Wells H. Blodgett, Genl. Solicitor,
Wabash R. R. Company,
St. Louis, Mo.,

Dear Sir:

I have yours of December 31st, ult, with papers attached. I have prepared and now enclose a new description of the premises, which I suggest be used by you in procuring a deed from the heirs of Mr. How.

I also enclose a blank quit-claim deed for your information as to what kind of an acknowledgment to a deed, is required in this State. If the heirs of Col. How are willing to use any stronger language than the words "Quit-claim" you can insert the words "We hereby sell, convey and quit-claim."

I herewith return all papers.

Yours truly,

(Signed) F. M. HUBBELL,
Secretary.

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932 **Defendants' Exhibit 434.**

The Wabash Railroad Company.

General Solicitor's Office,
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Jan. 9, 1899.

F. L. O'Leary, Esq.,
Treasurer, Building.

Dear Sir:—

On the 26th of November, 1883, Hoyt Sherman, as assignee, conveyed to Jas. F. How, as trustee, a strip of land in Des Moines about $\frac{3}{8}$ of a mile in length, for the sum of $2373.00. It seems that Col. How never executed any deed to the Wabash Company or to the Terminal Company, for which the purchase was made, and in so far as the records show, the title is now in his heirs. I think Mrs. How and her two sons will be willing to execute a conveyance to the Terminal Company, but before asking them to do so, I would like, if possible, to find the check given by the Wabash Company to Hoyt Sherman. All those Terminal properties at Des Moines that were conveyed to Col. How as trustee, were paid for on Wabash vouchers and checks, and no doubt you will find this one among the checks issued in November 1883, provided your records for that period are still accessible.

Your very truly,

(Signed) WELLS H. BLODGETT.

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933 **Defendants' Exhibit 435.**

The Wabash Railroad Company.

General Solicitor's Office,
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Jan. 23, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

Yours of the 21st received. I think there will be no trouble in getting quit claim, as I have now found the original vouchers to Hoyt Sherman, showing he was paid for the property by the Wabash Company. I also found letter from Col. How to Runnells, directing deed to be made to him (How) as trustee.

How about the Terminal bonds? I want to get five of them, and want to get them cheap. If any more are issued, let me know.

Very truly yours,

(Signed) WELLS H. BLODGETT.

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934 **Defendants' Exhibit 436.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, March 7, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

Please find inclosed a quit claim deed from Mrs. James F. How and her two sons, to the strip of land in Des Moines, conveyed some years ago by Hoyt Sherman to James F. How, trustee. The deed is made to the Wabash Railroad Company, but my recollection is that the Wabash Railroad Company has already granted the property to the Des Moines Union Railway Company, so that this release will inure to the benefit of the Union Railway Company, same as though made directly to it. I have not the conveyances before me, but if any release or conveyance is necessary from the Wabash Company, you can let me know.

I also send you the original correspondence relating to the purchase and the vouchers and checks showing that the Wabash, St. Louis & Pacific Railway Company paid Mr. Hoyt Sherman for the property.

Very truly yours,

(Signed) WELLS H. BLODGETT.

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935 **Defendants' Exhibit 437.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, March 18, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I have today sent to Mr. Ashley quit-claim deed from Wabash Co., to Des Moines Union Ry. Co., for the bonds bought from

Hoyt Sherman. There is no danger that our new mortgage on Des Moines Division will in any event cloud your title to that tract. Will write you fully on Monday.

Very truly yours,

(Signed) WELLS H. BLODGETT.

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936 **Defendants' Exhibit 438.**

Quit Claim Deed.

Form 3.

Know all Men by These Presents:

That Mrs. Eliza A. How, James Eads How and Louis How, sole legal heirs of the Estate of James F. How, deceased, of the County (City) of St. Louis and State of Missouri in consideration of the sum of One Dollar, in hand paid by the Wabash Railroad Co. of the County of ..... and State of ..... do hereby Quit Claim unto the said Wabash Railroad Co. all our right, title and interest in and to the following described premises, situated in Polk County and State of Iowa, to-wit:

Commencing at a point on the section line eighteen hundred and eighty-three (1883) feet south of northwest corner of Section No. Eight (8) in Township No. Seventy-eight (78) North Range No. Twenty-four (24) West; thence north 61½° east on a line parallel to and fifty (50) feet from the center line of the Des Moines Union Railway Company's track as now constructed five hundred and seventy-eight 578) feet; thence north 64½° east eight hundred (800) feet; thence north 58° east eight hundred and seventy-two (872) feet to the east line of lot No. Four (4) of the Official Plat of the North West Quarter of said Section No. Eight (8); thence south along said line one hundred and twenty-five 125) feet to the north line of the right-of-way of the C. R. I. & P. Ry. Co.; thence south 55° west along said right-of-way line of said C. R. I. & P. Ry. Co. (which is fifty feet from center of track) twenty-three hundred and thirty (2330) feet to the Section line; thence north along the Section line three hundred and fifteen 3315) feet to the place of beginning."

937 And the said ..... hereby relinquishes her right in and to the above described premises.

Signed this 1st day of February, 1899.

ELIZA A. HOW (Seal)
JAMES EADS HOW (Seal)
LOUIS HOW (Seal)

State of Missouri,
City of Saint Louis—ss.

On this 1st day of February, A. D. 1899, before me personally appeared Mrs. Eliza A. How (widow) James Eads How and Louis How who declare themselves to be single and unmarried and to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

(Seal) G. E. WETZEL, JR.,
Notary Public in and for said City.

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938 **Defendants' Exhibit 439.**

Know all Men by These Presents: That the Wabash Railroad Company, a consolidated corporation of the states of Missouri, Illinois, Indiana, Ohio and Michigan, in consideration of the sum of One Dollar in hand paid by the Des Moines Union Railway Company, a corporation of the State of Iowa, has quit claimed and released, and by these presents it does quit claim and release unto the said Des Moines Union Railway Company, all its right, title, interest and estate in and to the following described premises, situated in Polk County, and State of Iowa, to-wit:

Commencing at a point on the section line eighteen hundred and eighty-three (1883) feet south of north-west corner of Section No. eight (8) in Township No. seventy-eight (78) North Range No. twenty-four (24) West; thence north 61½ east on a line parallel to and fifty (50) feet from the center line of the Des Moines Union Railway Company's track as now constructed five hundred and seventy-eight (578) feet; thence north 64½ east eight hundred (800) feet; thence north 58 east eight hundred and seventy-two (872) feet to the east line of Lot No. four (4), of the Official Plat of the North-west quarter of said Section No. eight (8); thence south along said line one hundred and twenty-five (125) feet to the north line of the Right of Way of the C. R. I. & P. Ry. Co.; thence south 35 west along said Right of Way line of said C. R. I. & P. Ry. Co. (which is fifty feet from center of track), twenty-three hundred and thirty (2330) feet to the Section line; thence north along the section line three hundred and fifteen
939 (315) feet to the place of beginning.

In Testimony Whereof, the Wabash Railroad Company has caused these presents to be signed in its name

by its President and attested by its corporate seal, this 20th day of Mch. A. D. 1899.

THE WABASH RAILROAD COMPANY,
By O. D. Ashley,
President.

Attest
J. C. Otteson,
Secretary.
(Seal)

State of New York,
City and County of New York—ss.

Be it remembered, that on this 21st day of March, A. D. 1899, before me, the undersigned, a Notary Public within and for said City and State, came O. D. Ashley, President of the Wabash Railroad Company, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing, as President of said Wabash Railroad Company, and who acknowledged the same to be his voluntary act and deed as President of said Wabash Railroad Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand
940 and affixed my official seal the day and year first above written.

(Seal)
CHARLES W. FLINT,
Notary Public N. Y. Co.

(Five revenue stamps attached.)

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941 **Defendants' Exhibit 440.**

Subject: D. M. N. & W. and D. M. U. R. R.

Des Moines, Northern & Western Railroad Company.
Secretary's Office.

Milwaukee, Jan. 16th, 1899.

Mr. F. C. Huidekl,
Des Moines, Iowa.

Dear Sir:—

If you have any printed copies of the contract between the Des Moines, Northern & Western Railroad Company and the Des Moines Union Railroad Company, I wish you would send me as many as you can conveniently spare, as I have to furnish

copies to all officers who are concerned in the operation and accounts of that road.

Yours truly,

(Signed) P. M. MYERS, Secretary.

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942 **Defendants' Exhibit 441.**

June. 16, 1899.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

The D. M. N. & W. occupy six rooms in the New Union Station for office purposes and I have told Mr. Earling that I thought fifty dollars per month would be a fair rental for the same. The Wabash occupy one office in the depot for your dispatcher. I would like to have you say what you consider a fair rental for same, in view of the rental charged the D. M. N. & W. for the six rooms they occupy.

Yours truly,

F. C. HUBBELL, Prest.

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943 **Defendants' Exhibit 442.**

The Wabash Railroad Company.

Office.

J. Ramsey, Jr., Vice-Prest. and Genl. Manager.

St. Louis, Mo.
6th Road, January 19th, 1899

Mr. F. C. Hubbell,
Prest. Des Moines Union Ry. Co.
Des Moines, Iowa.

Dear Sir:—

Replying to yours of the 16th.

If $250.00 per month is a fair rental for the rooms occupied by the D. M. N. & W. one-sixth of that, or $8.33 per month, ought to be a fair rental for the one room occupied by the Wabash. However, I will have our General Superintendent look into this matter, and advise you as to his opinion.

Yours very truly,

J. RAMSEY, Jr.,

Vice-Pres't. and Gen'l Manager.

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944 **Defendants' Exhibit 443.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Roswell Miller, President.

Chicago, Feb. 18th, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

There is one share of Des Moines, Northern & Western stock standing in your name, one in the name of your son, and one in Mr. Thompson's name. The two shares in the name of yourself and son it is necessary that you should hold as directors. That in the name of Mr. Thompson I do not think there is any necessity for him to hold. Will you please return it to me, and also hold yourself in readiness to return the two shares of stock held by yourself and son when required.

Yours truly,

(Signed) ROSWELL MILLER, President.

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945 **Defendants' Exhibit 444.**

Telegram.

Received at 222 Fourth St., Des Moines. Mch. 10

76 CH. KT. 110 53 10h.
St. Louis, Mo. 10th 99.

F. M. Hubbell,
Des Moines, Iowa.

If I send you written consent of Des Moines Union Railway Company and of Des Moines Northern and Western to Execution of mortgage by Wabash Company to Continental Trust Company of its stock in Des Moines Union and the terminal contracts along with Des Moines and St. Louis railroad will you sign such consent and return to me?

WELLS H. BLODGETT.

12.59 p. m.

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946 **Defendants' Exhibit 445.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l. Solicitor.

St. Louis, March 11th 1889.

F. M. Hubbell Esq
Des Moines Iowa

Dear Sir. I am much obliged for your dispatch of yesterday saying if I would send documents you would attend to getting formal consent of Des Moines Union Ry. Co. to our mortgage of contracts and stock, to Continental Trust Company.

I now send you papers as follows:

1st. The proxies of Mr. Ramsey and Mr. Magee to vote at meeting of Board Des Moines Union Ry. Co.

2nd. Resolution of Board of Des Moines Union Ry. Co. authorizing President to execute consent of Company to the assignment.

3rd. The written consent of Des Moines Union Ry. Co. to the assignment of the contracts and shares of stock.

The form of the mortgage is such as to make these papers necessary. After you have signed we will take the matter up with President of Des Moines Northern & Western Company at Chicago.

We are anxious to perfect these details as soon as practicable, and will greatly appreciate your early attention to the matter.

With kindest personal regards I remain,

Yours Very Truly,

(Signed) WELLS H. BLODGETT.

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947 **Defendants' Exhibit 446.**

Whereas, on or about the 10th day of May, 1889, the Des Moines Union Railway Company, as party of the first part, entered into a contract with the Des Moines and St. Louis Railroad Company, the Des Moines and Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, as parties of the second part, wherein and whereby said first party granted to said second parties the right to use, upon the terms and conditions therein set forth, the tracks, stations and terminal properties of said first

party in and near the city of Des Moines in the state of Iowa; and,

Whereas, the Des Moines and Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company have ceased to own or operate the respective railroads that were owned and operated by them at the time said contract was made, and the Des Moines, Northern and Western Railroad Company has become the owner of and now operates the lines of railroad which were formerly owned and operated by the said Des Moines and Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company; and

Whereas, on or about the 31st day of July, 1897, said contract was by an agreement of that date, ratified, confirmed and adopted as a contract between the said Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines, Northern and Western Railroad Company; and,

948 Whereas, in a certain mortgage made by the Wabash Railroad Company to the Continental Trust Company of the City of New York, dated on or about the first day of January, 1899, the Wabash Railroad Company, to secure the bonds in said mortgage described, has granted and conveyed to said Trust Company the Des Moines and St. Louis Railroad, extending from the city of Des Moines to Albia, in the state of Iowa, and all its leasehold rights and previleges to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company, in or near said city of Des Moines, including also the rights and interests of the Wabash Railroad Company in and to said terminal contract, dated the 31st day of July, 1897, and in and to said other contract, dated the 10th day of May, 1889; and,

Whereas, it is provided in said mortgage that both said contracts shall be deposited with and assigned to the Continental Trust Company of the City of New York by the Wabash Railroad Company, and that such assignment of said contracts shall be made with consent of said Des Moines Union Railway Company, and with the consent of said Des Moines, Northern and Western Railroad Company, as the assignee or successor of the Des Moines and Northwestern Railway Company and of the St. Louis, Des Moines and Northern Railway Company; and

Whereas, the Wabash Railroad Company has also in its said mortgage, granted and conveyed to said Continental Trust Company of the city of New York, five hundred shares of the

capital stock of said Des Moines Union Railway Company of the par value of one hundred dollars each; and,

949 Whereas, it is provided in said mortgage that the Wabash Railroad Company shall deposit with, or cause to be delivered to and deposited with said Continental Trust Company of the city of New York, duly endorsed in blank, said five hundred shares of the capital stock of said Des Moines Union Railway Company, and shall also file with said Trust Company the consent of the Des Moines Union Railway Company and the consent of the Des Moines, Northern and Western Railroad Company to said assignment or mortgage to said Continental Trust Company of said five hundred shares of the capital stock of the Des Moines Union Railway Company;

Now Therefore, in consideration of the premises, the Des Moines Union Railway Company and the Des Moines Northern and Western Railroad Company, and each of them, do hereby consent to any assignment that has been made or that may be hereafter made by the Wabash Railroad Company of said two contracts, and of its rights under the same, to the Continental Trust Company of the city of New York, as provided for in said mortgage, and said Des Moines Union Railway Company, and said Des Moines, Northern and Western Railroad Company have consented and do hereby consent to all assignments or conveyances that have been made, or that may be hereafter made by the Wabash Purchasing Committee to the Wabash Railroad Company, or that have been made or may be hereafter made by the Wabash Railroad Company to the Continental Trust Company of the City of New York, of said five hundred shares of stock in accordance with
950 the terms of said mortgage and in order to give effect to its provisions.

In Testimony Whereof, the Des Moines Union Railway Company and the Des Moines, Northern and Western Railroad Company have hereunto subscribed their corporate names by their respective Presidents, and caused these presents to be attested by their corporate seals this 14th day of March, A. D. 1899.

DES MOINES UNION RAILWAY COMPANY,

(Seal) By H. D. Thompson,
Vice President.

Attest:

F. M. Hubbell,
Secretary.

THE DES MOINES NORTHERN AND WESTERN RAILROAD COMPANY,

(Seal)

By A. J. Earling,
President.

Attest:

P. M. Myers,
Secretary.

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951 **Defendants' Exhibit 447.**

Assignment of Contracts.

Wabash Railroad Company to Continental Trust Company of the City of New York.

Whereas, The Wabash Railroad Company has in its certain mortgage made on or about the 1st day of January, 1899, to secure the payment of the principal and interest of a series of bonds amounting in all to One Million Eight Hundred Thousand Dollars ($1,800,000), known as its "First Mortgage Gold Bonds, Des Moines Division," conveyed to the Continental Trust Company of the City of New York, Trustee, all its leasehold rights and privileges to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in and near the city of Des Moines, including also its rights and interests in and to a certain terminal contract dated July 31, 1897, and made by and between the Des Moines Union Railway Company, The Wabash Railroad Company and the Des Moines, Northern & Western Railroad Company, and also in and to another contract dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines & St. Louis Railway Company, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company; and

Whereas, It is provided in said mortgage that said Wabash Railroad Company shall deposit with said Continental Trust Company the above mentioned terminal contract dated the
31st day of July, 1897, between the Des Moines Union
952 Railway Company, The Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company, and also the above mentioned contract dated the 10th day of May 1889, between the Des Moines Union Railway Company,

the Des Moines & St. Louis Railway Company, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and that said Wabash Railroad Company will assign and transfer to said Continental Trust Company all its rights and interests in and to said contracts.

Now, Therefore, In consideration of the premises and of the sum of One Dollar to The Wabash Railroad Company paid by the Continental Trust Company of the City of New York, the receipt whereof is hereby acknowledged, The Wabash Railroad Company has assigned and set over, and by these presents it does assign and set over unto said Continental Trust Company, Trustee, and its successors and assigns forever, all its rights and interests in and to the two contracts aforesaid, to be held by said Trust Company in all respects upon the terms and conditions of said trust as created and defined in the mortgage aforesaid, and in further compliance with the terms of said mortgage The Wabash Railroad Company hereto attaches the original contract aforesaid, dated May 10, 1889, and delivers the same herewith to the Continental Trust Company of the city of New York, Trustee, and also attaches a certified copy of the aforesaid contract dated July 31, 1897, the original thereof having been lost or destroyed.

953 In Testimony Whereof, The Wabash Railroad Company has caused these presents to be signed by its President and attested by its Secretary, and has caused the corporate seal of said Company to be hereunto affixed this 17th day of March, A. D. 1899.

(Seal) O. D. ASHLEY, President.

J. C. Otteson, Secretary.

City of New York,
County of New York,
State of New York—ss.

On the 18th day of March, 1899 before me a Notary Public for the city and county of New York, resident in said City and County of New York, appeared Ossian D. Ashley, to me personally known, who, being by me duly sworn, did say: That he is the President of The Wabash Railroad Company above named, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by the authority of its Board of Directors; and said Ossian D. Ashley acknowledged the said instrument to be the voluntary act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 20th day of March, 1899.

(Seal) CLARENCE D. ASHLEY,
Notary Public for the city and county of New York in the state of New York, resident in said city and county and state of New York.

954 **Defendants' Exhibit 448.**

The Wabash Railroad Company.

General Solictor's Office.
Wells H. Blodgett, Gen'l. Solicitor.

St. Louis. Mar. 20, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:—

I wrote you Saturday that I had prepared and sent to Mr. Ashley a quit-claim deed from the Wabash Railroad Company to Des Moines Union Railway Company, for the tract of land in Des Moines acquired from Hoyt Sherman. I now write to say there is not the least danger that our new mortgage will cast a cloud on your title to that tract. The mortgage only conveys to the Trust Company the Des Moines & St. Louis Railroad 'as the same now is or may be hereafter constructed or operated in the State of Iowa, commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southerly direction through the counties of Polk, Marion and Monroe to the town or city of Albia in said county of Monroe, a distance of about 67 miles ..... and also all the leasehold rights and privileges of the Wabash Company to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in or near said City of Des Moines, including also the rights and interests of the Wabash Com-
955 pany in and to a certain terminal contract, dated the 31st day of July, 1897, and made by and between the Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines, Northern & Western Railroad Company, and in and to another contract dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines and St. Louis Railway Company, the Des Moines and Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company'."

I think it might be well, however, for you to hold the quit-claim deed from Mrs. How and her sons until Mr. Ashley has executed and returned the quit-claim deed from the Wabash Company to the Des Moines Union Railway Company, and if, in the meantime, the new Wabash mortgage is placed on record, and you and Mr. Cummins think it would be better not to record the deed I sent you from Mrs. How and her sons to the Wabash, and afterwards record the quit-claim deed from the Wabash to your company, I will then take the matter up with Mrs. How and her sons, and endeavor to have them execute the new deed directly to your company, without passing the title through the Wabash Company. It is rather a delicate matter, however, and I would rather not ask them to execute a new conveyance without it seems really necessary to do so. It will not be any trouble to secure a new conveyance from Mrs. How and one of the sons, but the other son has very queer notions about such things. He refuses to accept any portion of his father's estate, and it is quit difficult to get him to sign any paper which seems to imply that he has any interest, by inheritance or otherwise, in anything that belonged to his father. This latter information I give to you privately, so that you may know my reasons for pre-
956 ferring to work the matter out without obtaining from him any further conveyance.

Very truly yours,

(Signed) WELLS H. BLODGETT.

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957 **Defendants' Exhibit 449.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, March 23, 1899.

F. M. Hubbell Esq
Des Moines Iowa

Dear Sir. I am in receipt of yours of yesterday, concerning quit claim deed from Wabash Railroad Co. to Des Moines Union Ry. Co., for tract of land in Des Moines conveyed by Hoyt Sherman to James F. How, trustee.

I herewith inclose same, and request that you put same on record at once. I do not, as I have already written, think the new Wabash mortgage would cloud the title of the Terminal Company, but to save all question on that point I have asked Mr. Cummins to hold the mortgage until your quit claim is re-

corded. As soon as that is done, please inform Mr. Cummins and oblige

Yours Very Truly,

(Signed) WELLS H. BLODGETT.

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958 **Defendants' Exhibit 450.**

Telegram.

Received at 222 Fourth St., Des Moines. Mch 23-1899

134. CH. QI. RO. 8-Dh.

St Louis Mo. 23rd-99.

F. M. Hubbell,
Des Moines, Iowa.

Deed from Wabash Company mailed to you today.

W. H. BLODGETT.

232p

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959 **Defendants' Exhibit 451.**

Telegram.

Received at 222 Fourth St., Des Moines.

85 CH. QI RO 52 Dh. Mch 25

St. Louis, Mo. 25th-99.

F. M. Hubbell,
Des Moines, Ia.

Mr. Eearling does not seem inclined to execute consent. Says he does not understand contracts, and that he has written you. Will you wire him your views at our expense? The sale of the whole issue of bonds is depending on this one thing, as title will not be passed without it.

W. H. BLODGETT.

12:58pm.

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960 **Defendants' Exhibit 452.**

Des Moines, Northern & Western Railroad Company.

Secretary's Office.

Milwaukee, April 22nd, 1899.

Mr. F. C. Hubbell,
Des Moines, Iowa.

Dear Sir:

By order of the President a special meeting of the Board of Directors of this Company is called to be held at his of-

fice, (Old Colony Bldg., Chicago), at 2:30 o'clock P. M. of Monday, the 24th inst., for the purpose of considering the proposal of the Chicago, Milwaukee & St. Paul Ry. Co. to buy the railroad and property of this Company, and if such proposal be accepted, then to consider and approve a form of deed to be executed by this Company, conveying its railroad and property to said Chicago, Milwaukee & St. Paul Ry. Co., and also for the purpose of calling a meeting of this Company to consider and approve said deed and authorize its execution and delivery. At the same meeting the Directors will be called upon to approve the "Consent" which was a few days since given to the Wabash Company to mortgage its interest in the Des Moines Union Railway Company. While we should be very happy to see you, it will not be necessary for you to be present unless it is entirely convenient.

Yours truly,

(Signed) P. M. MYERS,
Secretary.

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961 **Defendants' Exhibit 453.**

Des Moines, Northern & Western Railroad Company.

Secretary's Office.

Milwaukee, April 22nd, 1899.

Mr. F. M. Hubbell,
Des Moines, Iowa.

Dear Sir:

By order of the President a special meeting of the Board of Directors of this Company is called to be held at his office, (Old Colony Bldg., Chicago), at 2:30 o'clock P. M. of Monday, the 24th inst., for the purpose of considering the proposal of the Chicago, Milwaukee & St. Paul Ry. Co. to buy the railroad and property of this Company, and if such proposal be accepted, then to consider and approve a form of deed to be executed by this Company, conveying its railroad and property to said Chicago, Milwaukee & St. Paul Ry. Co., and also for the purpose of calling a meeting of this Company to consider and approve said deed and authorize its execution and delivery. At the same meeting the Directors will be called upon to approve the "Consent" which was a few days since given to the Wabash Company to mortgage its interest in the Des Moines Union Railway Company. While we should

be very happy to see you, it will not be necessary for you to be present unless it is entirely convenient.

Yours truly,

(Signed) P. M. MYERS,
Secretary.

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962 **Defendants' Exhibit 454.**

September 25, 1899

Mr. Ramsey, Jr., V. P. & Genl. Manager,
Wabash Railroad Company,
St. Louis, Mo.

Dear Sir:—

Mr. F. M. Hubbell was in Chicago last Thursday and had an interview with Messrs. Roswell Miller and A. J. Earling, at which time those two gentlemen stated that they would be unwilling to consent to the approval of the lease now pending between the Des Moines Union Railway Company, and the C. B. & Q. and Keokuk & Western R. R. companies, unless the Des Moines Union Company would give to the C. M. & St. P. Ry. Company a lease for 50 years. They fear that at the end of the present lease, May 1st 1918, the Directors who are then managing the Company will not deal fairly with them in making a lease for the further use of the premises, hence take the position above stated, that they will approve no other leases until they get one approved for themselves. Do you approve of the position they take in the matter, or are you and Mr. Magee willing to approve the lease as now prepared? An early answer will greatly oblige.

Messrs. Miller and Earling must think a new lease to their Company would be of very great value, if they are willing to forego for a period of 18 years, their portion of the rents which undoubtedly would be received from the Keokuk & Western, C. B. & Q., C. & N. W., and C. R. I. & P. Ry companies.

963 Assuming that the Burlington and its proprietary Road would pay on an average of.....$6,500 per annum
The C. & N. W. Ry. Co.,..... 9,000 " "
The C. R. I. & P. Ry. Co. say,.....15,000 " "

Total,.....$30,500 per annum

the C. M. & St. P. Ry. Company's share of these rents, would be, on the present wheelage, about 75% or $22,875, thus it seems that the C. M. & St. P. Ry. Company is willing to lose $22,875 annually rather than not get an extension of its pre-

ent lease for a period of 32 years beyond the time when the present lease expires.

Yours truly,

(Signed) F. C. HUBBELL, President.

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964 **Defendants' Exhibit 455.**

The Wabash Railroad Company.

Office.

J. Ramsey, Jr., Vice-Prest. & Genl. Manager.

St. Louis, Mo. September 27th, 1899.

Mr. F. C. Hubbell,
President, The Des Moines Union Railway Company,
Des Moines, Iowa.

Dear Sir:—

I have yours of the 25th relative to the position taken by Messrs. Miller and Earling of the St. Paul regarding the extension of their lease of the Des Moines Union property.

I have not given this subject sufficient attention to make a definite and decided reply to your question. There is much that might be said in favor of the extension of the lease to the Wabash and the C. M. & St. P. for a period of fifty years and it seems to me that the Des Moines Union Company would be glad to have the lease extended. While I would favor the extension of both of these leases, I am not prepared to take the position held by Mr. Earling, namely, that no other lease should be executed unless our leases are extended. The execution of leases to other companies may be of sufficient importance to the Wabash and the St. Paul to justify their approval of such lease even if their own leases are not extended, and yet, as the St. Paul and the Wabash Companies are now, and will be for the next nineteen years, in the position of guaranteeing to the Des Moines Union Company the rentals
965 and expenses of the entire property regardless of whether new lines should continue to use the property or not, it seems to me that the Des Moines Union Company, in recognition of the position of our respective companies, should be perfectly willing to extend the leases of both companies for the period suggested by Mr. Earling.

Yours very truly,

J. RAMSEY, Jr.,

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966 **Defendants' Exhibit 456.**

These figures made by Mr. Earling Oct. 17, 1899.

Interest to be paid as follows:

C. G. W.	$12,500.00
C. M. & St. P.	13,000.00
Wabash	5,000.00
C. B. & Q.	3,000.00
North-Western	4,000.00
	37,500.00

Bonded debt, including floating debt.

$750,000.00 Interest $37,500.00

Balance of amount paid by C. B. & Q. and C. & N.-W. to be applied to dividend. This for first ten years.

Next 13 years, apply $6,000 more to dividend from surplus earnings.

Mr. Earling would not say what he wanted for the last 25 yrs. but would talk it over with Mr. Myers on one of their trips.

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967 **Defendants' Exhibit 457.**

We presented this to Mr. Earling Oct. 17, 1899.

Memoranda for new Contract.

1st. New contract to take effect at once, eliminating the right to lessee to prevent leases to other roads.

2nd. The rental to be based on the cost of the property at this time, of $800,000 with all additions for the next 15 years, at the end of which period the capital stock is to receive a dividend of 5%.

3rd. The guaranty clause to be eliminated and one to be substituted which shall make each company rightfully occupying the terminals, alone liable for its share of rental.

4th. The arrangement provided for in No. 2 to continue 25 years after which time rental is to be fair, just and reasonable, but upon a basis not less than the preceding 10 years.

5th. Details to be agreed upon hereafter.

6th. The Articles of Incorporation to be amended so as to allow a majority to control the corporation.

7th. Surplus earnings to be used during the first term to add to and improve the property.

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928 **Defendants' Exhibit 458.**

Chicago, Milwaukee & St. Paul R'y Company.

Office of Second Vice-President,
Chicago, Ill.

Memo by Mr. Earling, Oct. 17, 1899.

1st. 10 years St. P. & Wab. guarantee 5 pr. ct. on cost of property not including stock.

All rentals from roads now or hereafter using D. M. W. Ry. to be applied as credits.

The next 15 years St. P. & Wab. guarantee 5 pr. ct. on cost of property including capital stock.

All rentals from roads and individuals & revenue derived from switching & otherwise to be applied as credits.

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929 **Defendants' Exhibit 459.**

Memoranda.

Offer I made to Mr. Earling in Chicago, Octo. 17, 1899.

For the first period of 10 years the Saint Paul and Wabash to pay as rent 5% on the cost of the property, not including the capital stock, and are to have credit for all rents paid by the Burlington, North Western, Great Western, and Rock Island companies.

For the second period of 15 years the Saint Paul and Wabash to pay as rent 5% on the cost of the property, including the capital stock, and are to have credit for all rents paid by the Burlington, North Western, Great Western, and Rock Island companies.

For the third period of 25 years the Saint Paul and Wabash to pay as rent 5% on the cost of the property, including the capital stock, and are to have credit for one-half of the rent paid by the Burlington, North Western, Great Western, and Rock Island companies.

Surplus earnings to be used during the whole time to pay on floating debt, to acquire more property, build more track, for working fund, and other legitimate purposes.

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970 **Defendants' Exhibit 460.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Chicago, December 18th, 1899.

Mr. F. C. Hubbell,
President D. M. U. Ry.,
Des Moines, Iowa.

Dear Sir,

Your letter of the 16th is at hand. I am prepared to assent to the closing of the proposed contract with the C. B. & Q. whenever the D. M. U. Ry. Co. is prepared to extend its contract with the St. Paul Company for the use of its terminals on a fair basis. The small amount which the C. B. & Q. is to pay for the use of the D. M. U. Co's facilities is no inducement to us unless we can get a long time contract.

Yours truly,

A. J. EARLING,
President.

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971 **Defendants' Exhibit 461.**

Chicago, Dec. 18, 1899.

Mr. F. C. Hubbell,
Prest., D. M. U. Ry.,
Des Moines, Iowa.

Dear Sir:—

Your letter of the 16th is at hand. I am prepared to assent to the closing of the proposed contract with the C. B. & Q. whenever the Des Moines Union Railway Company is prepared to extend its contract with the St. Paul Company for the use of its terminals on a fair basis. The small amount which the C. B. & Q. is to pay for the use of the D. M. U. Co's. facilities is no inducement to us unless we can get a long time contract.

Yours truly,

(Signed) A. J. EARLING,
Prest.

COPY.

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972 **Defendants' Exhibit 462.**

Jany. 4, 1900.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

At the annual meeting of the D. M. Union to-day Mr. Earling brought up the subject of a track from the eastern ter-

mines of the D. M. Union to connect with the Christy and Carbondale coal mines. The C. M. & St. P. Road is short of coal for engine purposes and are desirous of increasing their supply from the Des Moines fields. The amount of track to be built is approximately three miles. The engineering difficulties are very slight. The principal expenses will be rails, ties, and the cost of the right of way. We estimate roughly the right of way at $6,000 and the cost of the track at $16,000 making a total of $22,000. The C. M. & St. P. people tell us that they can take from Des Moines for engine purposes thirty cars per day every day in the year. This will very materially increase the wheelage of that road, and will be a very desirable thing both for the D. M. Union and also for your road because the larger the wheelage of the C. M. & St. P. road the less of the expense of the terminals will fall on the Wabash. If you favor this, will you kindly give me your prompt authority for us to go ahead with the work of securing the right of way. We would like to take the winter months for securing the right of way in hopes that we
973 can get it for considerably less than our estimate and then be able to commence the work of building the road the first thing in the summer.

Yours truly,

F. C. HUBBELL,
Prest.

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974 **Defendants' Exhibit 463.**

Jany. 25, 1900.

Mr. A. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Further replying to yours of the 6th would advise in our proposed extension to the Carbondale mine, we contemplate having our main line at its present eastern terminus and taking a direct easterly course to the mines. This will not require us to use any of the Wabash track. Since writing my letter of the 4th we have been looking up the question of right of way and find that it will not be as expensive as stated in my letter of the 4th. I now think that $4,000 ought to cover the cost of the right of way. Would thank you to give me an early reply regarding the proposed new track.

Yours truly,

F. C. HUBBELL,
Prest.

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975 **Defendants' Exhibit 464.**

Jany. 25, 1900.

Mr. A. J. Earling,
Prest. C. M. & St. P. Ry.,
Chicago, Ill.

Dear Sir:—

We are making some progress in getting the right-of-way for the proposed track to the Carbondale mine and believe that the right of way will not be a very serious item. We have had no definite reply from Mr. Ramsey respecting this track, and I hope you will call it to his attention at an early day. If we are to get the right of way at the right price, we should gather it in as opportunity presents.

Yours truly,

F. C. HUBBELL,
Prest.

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976 **Defendants' Exhibit 465.**

Jany. 27, 1900.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

My first letter to you on the subject of the Carbondale extension stated the estimated cost of the same, which estimate was made by Mr. Earling and the balance of the directors who were in attendance at the annual meeting. I wrote you in my letter of the 25th that the cost of the right of way would probably be less than the estimate, as we have already opened negotiations for some of the right of way and think we can acquire it at private sale before it is known that it is wanted for railroad purposes. We had this line surveyed some two or three years ago and it is not necessary for us at this time to resurvey it. It is desirable to pick up the right of way quietly.

If the extension is made it naturally would be a part of the D. M. Union and business originating upon it would be handled by the D. M. Union the same as other business and would result in increasing the total wheelage of the terminal, company very materially. This, I think, I explained to you. This increase in the C. M. & St. P. wheelage would result in that Company paying a proportionately larger wheelage and inasmuch as wheelage in our company covers every item of
977 expense, you can readily see that while the investment of the D. M. Union will be in the neighborhood of $20,000 the C. M. & St. P. Company will be paying their proportion

of interest and all other expenses and charges upon the whole terminal by reason of using this extension. We, as directors and owners of the terminal company feel that it is a good thing for the company and strongly recommend the proposed extension.

In my opinion there should be no charge made for the haul from the mines to the city because the cost of handling this coal would be very much less per car than any other class of business which the terminal company handles for its tenants, while the C. M. & St. P. road would pay the same wheelage upon this coal traffic that it pays on other business which costs the terminal company more to handle.

Yours truly,

F. C. HUBBELL,
Prest.

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978 **Defendants' Exhibit 466.**

St. Louis, Jan'y 29, 1900.

F. C. Hubbell:

As I am advised by Mr. Earling that he will not attend the meeting to-morrow and that his representative will oppose the execution of the contracts referred to, it will not be worth my while to go up. While I would like to see the other roads in the terminals, I will vote on this question as the St. Paul. Therefore nothing definite would result from the meeting.

(Signed) J. RAMSEY, JR.

(Copy)

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979 **Defendants' Exhibit 467.**

Jany. 29, 1900.

J. Ramsey, Jr.,
St. Louis, Missouri.

The proposed contract is strictly in accordance with your views as expressed to us and your sanction was had before contract was agreed upon. We now ask that you vote in accordance with your previous authority and not place the Des Moines Directors in an embarrassing position. We believe the Chicago Directors will not oppose the contract as they will not like to be placed in an unfavorable light before the Des Moines Public by offering unreasonable objections to the occupancy of the Union Depot by all the railway companies which Des

Moines so much desires. I trust you will come or send a proxy to ratify the contract.

F. C. HUBBELL.

(Copy)

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980 **Defendants' Exhibit 468.**

St. Louis, Jan'y 29, 1900.

F. C. Hubbell:

I am in favor of getting all the lines at Des Moines into the Union Station, but I think Mr. Earling's position is a proper one, namely, that no new line should have any better contract than is held by the present Companies who are really the guarantors of the whole Des Moines terminal expenses and fixed charges. The Wabash has now only one vote in the board and could not prevent the ratification of the contract if the St. Paul directors should be in favor of it. It is therefore not necessary for me to attend the meeting.

(Signed) J. RAMSEY, Jr.

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981 **Defendants' Exhibit 469.**

Jany. 30, 1900.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.
St. Louis, Mo.

Dear Sir:—

Replying to yours of the 29th respecting the proposed extension to Carbondale, will say at the meeting of the directors to-day the subject was more fully discussed and now the proposition is in this shape. The C. M. & St. P. people will furnish the rail and ties and Hubbell, Son & Co. will furnish the money to buy the right of way, grade the road and the necessary labor and material to complete it. The D. M. Union will make a charge of $1.50 per loaded car for each loaded car handled over the proposed extension until the $1.50 car will reimburse the C. M. & St. P. road and Hubbell, Son & Co. for the amount of their advances, together with interest on the same; after which the charge of $1.50 per car shall cease and traffic shall be handled over this track thereafter in the same manner as over any other part of the terminal property. Under this arrangement the D. M. Union will become the owner of over two miles of very productive and valuable railroad without it costing the D. M. Union a penny. This is certainly getting something for nothing. It is Mr. Earling's idea to build the track with new heavy rail and first class ties and therefore the track will not be expensive to maintain for many

years. Under this arrangement there will be nothing
982 added to your burdens for interest charge and the cost, as I have previously explained, of handling this coal traffic will be less per car than the other wheelage handled by the D. M. Union. Therefore, you will see, no hardship is placed on the Wabash Co. nor upon the D. M. Union Company. If with this understanding you will consent to the arrangement, I will have a proper form of resolution prepared in accordance with this letter and send it to you for your approval.

Yours truly,
F. C. HUBBELL, Prest.

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983 **Defendants' Exhibit 470.**

The Wabash Railroad Company.

Office.

J. Ramsey, Jr., Vice Pres't. and Gen'l Manager.

St. Louis, Mo. January 31st, 1900.

Mr. F. C. Hubbell,
President, The Des Moines Union Ry. Co.,
Des Moines, Iowa.

Dear Sir:—
I have yours of the 30th.

The proposition of the St. Paul Road and of Hubbell, Son & Co. to furnish the right of way, rails, cross ties, etc., the cost of which is to be refunded to these parties from revenues received from the operation of the extension, does not change the question an iota. It practically amounts to borrowing the money from these two parties, instead of issuing bonds or getting it in some other way. The result will be same, namely: that this extension which will be of no value whatever to the Wabash Company will afterwards be operated partly at the expense of the Wabash Railroad, as all of the expense of the operation of that branch will be divided on the same basis as the cost of operating the present terminal, and that is, on the wheelage basis, and the Wabash will pay its full proportion of the branch expenses on every car it handles in and out of Des Moines, without getting one carload of traffic out of the extension.

The interest charge on the cost of this extension, the cost of operating it with a reasonable profit to the Des
984 Moines Union Ry. should be borne by the traffic handled on the branch and a proper charge either per car or per

ton for business to and from the St. Paul Road or any other connection, should be made, as well as on all local coal traffic to and from the City of Des Moines. I will oppose its construction and operation on any other basis, as far as I can.

Yours very truly,

(Signed) J. RAMSEY, Jr.

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985 **Defendants' Exhibit 471.**

After the expiration of the present contract the St. Paul Company agrees that one-fourth of the amount paid for rentals by other companies than those now occupying the Des Moines Union shall be taken by the Des Moines Union for the purpose of paying dividends, provided that these dividends shall not exceed 5 per cent., and that any surplus earnings which shall accrue over and above the rental paid by the St. Paul and Wabash shall also go to the payment of dividends; that there shall be no limit to the dividends paid by these surplus earnings. Surplus earnings to mean rentals of offices, rentals of real estate and switching charges, less the actual cost of switching, and less taxes levied upon the property rented, because it is not used for railroad purposes.

Handed to me by Mr. Miller Jany. 31, 1900.

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986 **Defendants' Exhibit 472.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Chicago, February 12th, 1900.

Mr. F. C. Hubbell,
President D. M. U. Ry.,
Des Moines, Iowa.

Dear Sir,

Concerning the right of way for a track to the Carbondale mines. I have written Mr. Ramsey to learn on what basis he is willing that the Des Moines Union shall purchase the right of way and construct the proposed track. I prefer that nothing shall be done until I can hear from him and obtain his assent.

Truly yours,

(Signed) A. J. EARLING,
President.

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987 **Defendants' Exhibit 473.**

Feby. 17, 1900.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Replying to yours of the 16th would advise that the D. M N. & W. in the past and the C. M. & St. P. Ry. in the present pay to the D. M. Union Ry. Co. $1.50 per car for every car going to the Carbondale mines. This $1.50 is the amount which the D. M. Union Ry. pays to the Wabash Company under the trackage contract existing between the Wabash and the D. M. Union. I enclose herewith a rough sketch, which is not even drawn to a scale, but which will, I think, explain the trackage question relating to the Carbondale. I have marked upon the plat with an "X" the east end of the D. M. Union Ry. where it connects with the Wabash, and have also marked with an "X" the point known as "Ross Junction", it being about two miles between the two points named and it is for the trackage over these two miles that the Wabash receives $1.50 per car. The Carbondale Coal Co. built all of the track from Ross Junction to their mine and maintain the same. With this situation made plain to you, I will endeavor to answer the balance of your questions.

988 Answer to question. 1. The D. M. Union made no extension and therefore paid no money on account of it.

#2. The total number of cars handled from the Carbondale mines since our arrangement was made is 15,187. Of this number the D. M. Union has taken on an average about two or three cars per day for engine coal, which engine coal is used not only for their own use, but for the Wabash and C. M. & St. P. engines, which are coaled at Des Moines. A very small number of cars, possibly five a month, are brought to Des Moines on the basis of twenty cents per ton and the balance go out over the C. M. & St. P. road for Sioux City and other Missouri River points. It would be quite a task and take several days to give you the exact number of cars handled in each way.

I cannot quite understand your third question. Do you wish to know the revenue of the C. M. & St. P. on coal which has been billed out over that line from the Carbondale? If so, I do not know whether it would be proper for me to furnish it. As to, the revenue received by the D. M. Union for such coal, as has come to Des Moines locally, I can have this information figured up for you and will send it to you in two or three days, as quickly as we can make it up. As

to the passenger traffic, it amounts to only ten or fifteen dollars, being a charge which we have made on two or three occasions for switching a carload of miners out to the mines.

As to the fourth question will say there is no possible expense to the D. M. Union for the maintenance, operation and taxes on the so-called Carbondale branch.

989

As to the fifth question, there was no resolution of the Board necessary.

Yours truly,

F. C. HUBBELL,
Prest.

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990 **Defendants' Exhibit 474.**

Feby. 19, 1900.

Mr. J. Ramsey, Jr.,
V. P. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

The following is a statement of the revenues received by the D. M. Union for handling coal between Carbondale mines and Des Moines:

Year	1895.....	$ 190.90
"	1896.....	2722.66
"	1897.....	970.43
"	1898.....	860.60
"	1899.....	704.83
		$5449.42

Yours truly,

F. C. HUBBELL,
Prest.

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991 **Defendants' Exhibit 475.**

Feby. 22, 1900.

Mr. J. Ramsey, Jr.,
V. P. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Replying to yours of the 20th respecting the Carbondale coal traffic would advise the statement furnished you of revenue of the D. M. Union is for coal handled between the Carbondale mines and Des Moines for consumption in Des Moines, or in your own words "it is local coal".

You are correct in your understanding that no extra charge is made against the D. M. N. & W. beyond the toll per car for use of the Wabash track.

Replying to your next question, the Carbondale track was built by the Carbondale people. They pay the taxes and all maintenance. We simply use it in handling the coal traffic. The carbondale does not pay to the D. M. Union anything on account of the D. M. Union handling the Carbondale coal.

Answering the next paragraph of your letter will say your understanding is correct of the manner in which the wheelage of the old D. M. N. & W. (now the C. M. & St. P. Ry.,) has been counted in handling the Carbondale coal traffic. Answering the last part of this paragraph will say if a Wabash car comes into Des Moines and is switched to the C. R. I. & P. to go to some industry or unloading tracks, the D. M. Union does not count this movement in your wheelage account. Soon after you assumed the management of the Wabash road, the subject of the Carbondale business was quite thoroughly
992 gone into and it was our understanding that the manner of handling it was entirely satisfactory and I personally feel that the way it is now being handled is a fair method. I base my opinion, as explained to you, upon the ground that the cost of handling the Carbondale coal traffic is much less per car than handling the miscellaneous business of the D. M. Union and further more the wheelage charge which the C. M. & St. P. Ry. now pays added to the $1.50 per car which goes to your Company, is all that the traffic will bear and any further charge upon this business would simply result in diverting all of it to the C. R. I. & P. who also have access to the Carbondale mines.

It is the desire of the D. M. Union to be fair between its tenants and any modification in the method of counting the Carbondale wheelage, which the C. M. & St. P. Ry., will accept will be entirely satisfactory to us.

Yours truly,

F. C. HUBBELL,
Prest.

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993 **Defendants' Exhibit 476.**

The Wabash Railroad Company.

Office,
J. Ramsey, Jr., Vice-Prest.
& Genl. Manager.

St. Louis, Mo., April 4th, 1900.

Mr. F. C. Hubbell,
President The Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:—
I have yours of March 31st.

As I understand your letter and plan attached, the warehouse of the Luthe Hardware Company is to be located on property belonging to F. M. Hubbell & Sons, and that the twelve foot strip which is to be used for the side track to said warehouse is to be located on the east side of the warehouse building and on the land of F. M. Hubbell & Sons.

If this understanding of mine is correct, why should not Hubbell & Sons furnish the right of way for this track for a nominal rental,—say $1.00 per annum—to the Des Moines Union Railway Company. These are the conditions which we would naturally expect to be complied with by any other party wishing a private siding on their own land to a warehouse. $816.00 for a 12 foot frontage is pretty nearly $70.00 per front foot.

Yours very truly,

J. RAMSEY, Jr.

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994 **Defendants' Exhibit 477.**

May 26, 1900.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—
Replying to your message in reference to the track of the Luthe building, will say we recognize that fifteen feet would be a better right of way than twelve feet, but cars and engines can be operated on twelve feet of ground and as land is valuable at this point, we thought it best not to leave out any more ground than possible. In other parts of our yard we have put tracks in on twelve foot centers. The track in question will not be a private siding but will be used not only by Luthe Bros. but also by the Des Moines Bale Tie Co. and by Pease Bros. This track can be extended farther

north and in fact the people north of us are asking us if we cannot so arrange.

The lot on which this track is to go was bought by Hubbell, Son & Co. and we are only asking the D. M. Union to reimburse us for this actual cost, and the price is much below the real value of the lot. We believe that this track will be one of the best of the D. M. Union's business tracks. I fully recognize the justice of your position that tracks should be put in on right of way furnished free as a general rule, and no doubt you are aware that we have given to the
995 D. M. Union a considerable amount of right of way without any expense to the Union, some of this right of way being worth at the time we gave it, a very large sum of money. The fact that we stand ready to furnish the Union right of way free in our manufacturers' addition and are willing to build buildings for factories and wholesale business or furnish them substantial assistance to build their own buildings, is the main reason that the D. M. Union Railway is coming so fast into prominence at Des Moines. It has now been four or five years since any buildings have been built, requiring railway facilities, on any other road than the Des Moines Union. You will certainly recognize that it has taken a great deal of work on our part, besides a very liberal policy, to make this kind of a record.

Yours truly,

F. C. HUBBELL,
Prest.

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996 **Defendants' Exhibit 478.**

Feby. 4, 1901.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Missouri.

Dear Sir:—

Herewith I hand you a blue print showing the tracks of the Des Moines Union as they now exist between West Seventh street and West Eleventh street. Perhaps you are not aware of it, but we have had a very long and bitter litigation with the Getchell & Martin Manufacturing Company, who are the owners of Lots three and four in block 4, lots one, two, seven and eight in block nine, lots one and two and the east half of lots seven and eight in block fourteen. Some years ago we made a contract with these people to put a track in the east and west alley north of their property and afterwards adopted this track for our south main line. They sued us to compel us to remove the track entirely from the

alley, on which point they were beaten in the district court, but the court held that we could not use this south track for a main line but only for a side track. This case is now pending in the supreme court. The very best that we can hope from the supreme court is an affirmation of the decision of the lower court. Therefore in any event we are reduced to a single main line from our Passenger station to West Tenth street.

We are under contract with the Chicago Great Western to maintain a double main line at this point and in de-
997 priving them of this track we are in fact violating our contract with them. They have been more than usually patient with us in this case, which has now run a number of years, but the time will certainly come in the near future when they will insist on our furnishing a double main line. This can only be done by our making a compromise with Getchell and Martin. In my opinion a better trade can be made at the present moment than at any time since the litigation commenced.

We asked for authority from the Railroad Commissioners, and obtained it, to condemn a strip of ground fourteen feet wide off of the north side of the Getchell and Martin property, but have never dared to invoke the aid of a jury because we were afraid the damages would be assessed so very high as to give Getchell and Martin another club to use on us. For example;

On Lots three and four, block four, is the Getchell and Martin planing mill, and fourteen feet off of this property would damage it to the extent of $10,000.00

We estimate a strip fourteen feet wide off of Lots two and seven, in block nine, and lot two, block fourteen, would be assessed at about $3500. each, ... 10,500.00

North thirty-nine feet of the east half of lot seven, block fourteen, ... 1,000.00

$21,500.00

This would be a very heavy damage and at the same time, would give the Des Moines Union a very small amount of additional room for tracks.

998 The only plan which seems to be possible to bring about an adjustment of this controversy, on a basis which is not prohibitive, is to buy of Getchell and Martin all of lots one, two, seven and eight in block nine, lots one and two and

the east half of lots seven and eight, in block fourteen, and have this consideration cover the damage to the mill property; thus settling the whole controversy.

Looking to the future, I believe the Des Moines Union should own all of the property between West Eighth and West Eleventh streets, and between the Des Moines Union tracks and the present Chicago, Rock Island and Pacific tracks, but this would be a very large expenditure for the Des Moines Union to make at the present time, and I do not urge it, but only suggest it to you. Therefore, if the Des Moines Union could buy the north thirty-nine feet off of lots two and seven, in block nine, the north thirty-nine feet of lot two and the north thirty-nine feet of the east half of lot seven in block fourteen, F. M. Hubbell Son & Company will buy the balance of the Getchell and Martin property west of Eighth street. The Des Moines Union by buying the thirty-nine feet in question, would be enabled to put two team tracks thereon with a sufficient and commodious driveway between them to serve the two tracks. At the same time they would be getting rid of the damage to the mill property, and also will have acquired the east and west alley at this point, which is sixteen and one-half feet wide.

I do not know on just what terms I can buy this prop-
999 erty. Our negotiations with Getchell and Martin have run over a number of months and their price at the commencement of the negotiation was $8,000 per lot for the six principal lots ..... $48,000.
and for the east half of lot seven, block fourteen, ... 4,000.

Total ..... $52,000.

I have gradually beaten them down until I feel confident they would sell all of that property for $36,000 and I suggested to them on Saturday that I would recommend we buy the property on the basis of $33,000.

The property in question is the most desirable warehouse location in Des Moines. It also could be made the best site for team tracks that it is possible for the Des Moines Union to obtain. Mr. Calkins is quite familiar with this controversy, and also with the real estate in question. I understand that Mr. Calkins is of the opinion we need some additional team tracks at the present time.

Getchell and Martin wish to make improvements upon their mill property to increase their facilities, and if they should do so, before our controversy is settled, it will simply result in increasing the damages which we would have to pay, should

we resort to condemnation. They wish to make these improvements during the early spring, in order to have the benefit of the increased space for their summer business. Therefore it is desirable that we come to an early decision on this
1000 question. If you are coming west soon, I hope you will find it possible to come to Des Moines and look over the situation on the ground. If you cannot come, I would like to have something definite from you at an early day.

For your information will say that F. M. Hubbell, Son & Company own all of the property not owned by Getchell & Martin, between west Eighth and west Eleventh streets.

Yours truly,

F. C. HUBBELL, Prest.

Copy to Mr. Goodnow.

1001 **Defendants' Exhibit 479.**

The Wabash Railroad Company.

Office.

J. Ramsey, Jr. Vice-Prest. & Genl. Manager.

St. Louis, Mo., February 12th, 1901.

Mr. F. C. Hubbell,
President, The Des Moines Union Railway,
Des Moines, Iowa.

Dear Sir:—

Replying to yours of February 4th.

If the St. Paul Company is willing to purchase the Getchell and Martin property between Eighth and Tenth streets, the Wabash Company will also agree to the purchase. I am in favor, however, of purchasing all of the property referred to instead of purchasing the 39 feet as suggested by you and permitting Hubbell & Sons to purchase the remainder. My experience in the Des Moines and other terminals has convinced me that it is not wise to purchase property piece meal when you are convinced that ultimately you will require the entire property, and if we buy part of this property to-day and Hubbell & Sons buy the other part, it will be but a few years until we will have to buy the rest of it from Hubbell & Sons.

However, the difficulty which confronts us in the Des Moines terminal proposition is the raising of the funds to make these and other purchases and the improvements which are necessary on the property. The stockholders expect the tenants, which in this case are the St. Paul and Wabash Companies

only, to furnish all of the money necessary to take care
1002 of the growth of the property and yet the stockholders decline to make such extensions of the leases of the tenant companies as would justify them in furnishing the money necessary to pay for the increased facilities. In plain words, the tenants are expected to furnish all the money and in a comparatively few years the property which they have purchased and paid for will belong to the stockholders of the Des Moines Union Company, and the present tenants will be, to a certain extent, at the mercy of the stockholders in the making of new leases. If Mr. Hubbell will agree to the proposition which has been made by Mr. Earling and myself of an extension of the present leases of the St. Paul and Wabash Companies, I think matters will work much more smoothly at Des Moines and that there will be but very little difficulty in providing for future requirements.

Yours very truly,

J. RAMSEY, Jr.,
Vice-President & Genl' Manager.

1003 **Defendants' Exhibit 480.**

February 16, 1901.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Replying to yours of the 12th will say that I am glad that you are in favor of buying all of the property in question instead of the 39 feet. It was the policy of the Wabash in the past to buy as little real estate in Des Moines as possible, and that was why I suggested that the D. M. Union purchase the 39 feet and Hubbell, Son & Co. the balance. There is of course a little difficulty respecting the method of raising funds for the uses of the D. M. Union. However, the five-eighths of the stock represented by Hubbell Son & Co. are ready to advance their full quota of the money. They have always done this in the past, and in fact have put up most all of the money which has gone into the D. M. Union Ry. Co. they having bought of you practically all of the bonds which you have had of the company at a time when the bonds had no market and Hubbell, Son & Co. in recent years have furnished all of the money which has been needed by the company from time to time. We have worked in season and out of season for the good of the D. M. Union, and we believe that its present prosperous condition is almost wholly due

to our money and our labor. It is not the policy of Hubbell, Son & Co. to treat the Wabash and the C. M. & St. P. Companies in any but a fair manner. We have never
1004 knowingly done anything to injure the two Companies. We have never refused to give the Wabash and C. M. & St. P. a long contract, and are willing to enter into negotiations with you at once looking to a long termed contract. We wish to treat your companies as partners in this property, and it will be our aim to offer you a new contract on such a basis as one partner should in fairness offer to another. If you and the C. M. & St. P. Co. think that the time has arrived for the making of a new contract, I suggest that the negotiations be opened that it may be discovered who among us are willing to do the fair thing.

Yours truly,

F. C. HUBBELL,
President.

1005 **Defendants' Exhibit 481.**

April 25, 1901.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Herewith I hand you a clipping from a newspaper from which you will note that the Chicago & North Western are about to construct a new passenger station at Des Moines and we are told it will be a very handsome one. In case this building is built it will then give all the railroads entering Des Moines independent and sufficient passenger stations so that the Des Moines Union cannot expect to get any additional revenue by reason of other railroad tenants. This loss to the Des Moines Union for rental and also for maintenance is a direct loss to your company and the St. Paul company not only as stockholders in the Des Moines Union, but as tenants, because all the money paid to the Union by tenant companies is deducted from your bills and tends to make them that much smaller.

We are well aware that there is a disposition to allow no other companies to enter the Union station until the Wabash and St. Paul roads are given new contracts and upon a basis which we as stockholders in the Des Moines Union cannot concede. The Des Moines interests shall continue to work for what we believe to be the best interests of the terminal company and are willing to make all reasonable concessions to your company and the St. Paul Company. We

believe that you agree with us in reference to the ad-
1006 mission of other tenants and regret that you feel it is to your interests to concur in the policy of the St. Paul road with reference to Des Moines Union affairs. The admission of new tenants into the Des Moines Union at the present moment to us is only to gratify a sentiment long cherished to have a Union Station at Des Moines not only in name, but in fact because we all understand that the rentals will go to the Wabash and St. Paul Companies.

Pardon me for again bringing this subject to your attention. I have felt that it is a duty that I owe to the Des Moines Union to do everything possible to further its prosperity and I have also felt that it is my duty to advise your company and the St. Paul company of this step of the North Western road. If the Chicago & North Western and the Chicago, Burlington & Quincy Roads were occupying our station on a fair rental basis, it would relieve your company and the St. Paul Company from all passenger expense at Des Moines. Even in these times of great prosperity it seems strange that any railroad can refuse such a chance. I feel that the only chance to influence Mr. Earling will be through you and I greatly hope for your cooperation as I feel that this is the last opportunity to bring about an agreement.

Yours truly,

F. C. HUBBELL,
President.

1007 **Defendants' Exhibit 482.**

March 16, 1901.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Before replying to your last letter respecting the Carbondale situation, I would again like to ask you whether or not you will sell to the D. M. Union either the whole or an undivided half interest in your main line from our present terminus to Ross Jct. If this can be accomplished, I think we will be able to bring about an agreement with the C. M. & St. P. Road for the manner of handling the expense of operating the track.

Yours truly,

F. C. HUBBELL.
President.

1008 **Defendants' Exhibit 483.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the President.

Chicago, March 25th, 1901.

Mr. F. C. Hubbell,
President, Des Moines Union R'y. Co.,
Des Moines, Iowa.

Dear Sir:—

Replying to your letter of March 16th: The St. Paul Company is not willing to become a party to the construction of a track paralleling the Wabash Railroad. I have always felt that, if the business should ever become large enough to justify it, Mr. Ramsey would be willing to reduce his trackage charge to a fair basis. Furthermore, I do not believe it is good policy to parallel other roads.

Yours truly,

(Signed) A. J. EARLING, President.

1009 **Defendants' Exhibit 484.**

The Wabash Railroad Company.

Office.

J. Ramsey, Jr., Vice-Prest. & Genl. Manager.

St. Louis, Mo. On Line, May 2nd, 1901.

Mr. F. C. Hubbell,
President, The Des Moines Union Ry. Co.,
Des Moines, Iowa.

Dear Sir:—

I have yours of April 25th.

You are no more in favor of having all railroad lines use the Union Station at Des Moines than I am and I would be very glad to see this result brought about. At the same time I am constrained to agree with Mr. Earling that the present tenant companies, which have carried the burdens of the property all these past years and which to-day, and for the remaining period of their leases, are forced to guarantee the Des Moines Union Company against the failure of other companies to pay rentals or other charges, are entitled to as good terms and as long time leases as would be given by the Des Moines Union Company to any other road. Your proposed lease to the Burlington was actually for a period of fifty years on a very low (comparatively speaking) rental, and yet you decline to extend the period of the St. Paul and Wabash leases so that these com-

panies would be protected by a lease equal to that of the Burlington. In my opinion, this request of the St. Paul and the Wabash is not an improper nor an unreasonable one.
1010 The St. Paul and the Wabash, up to the present time, have been the companies which have built up the terminals, have carried all of its fixed charges, have furnished a large amount of the cash required for improvements and additions, and they are entitled to consideration at least equal to that given to outside companies which you now wish to get into the station.

I would be very glad to have this matter arranged so as to secure the use of this station by all lines while, at the same time, protecting the interests of your present tenants.

Yours very truly,
J. RAMSEY, Jr.

1011 **Defendants' Exhibit 485.**

May 6, 1901.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.,
St. Louis, Mo.

Dear Sir:—

Replying to yours of the 2nd respecting the Des Moines Union situation would advise that the C. B. & Q. contract was only for a period of seventeen years, or the exact date that your own contract expires. I have tried to make this point clear to you in previous letters, but you are evidently still under a misapprehension as to the terms of the C. B. & Q. contract. In the original draft of the contract it did provide for a longer period, but the C. B. & Q. waived that point and were willing to take a contract for seventeen years. This being the case, and as all the money which the C. B. & Q. was to pay was to go to your company, and the St. Paul company, and inasmuch as you concurred in all the original negotiations of the C. B. & Q. contract it seems to me that it satisfies every objection which you have raised to the contract.

Referring to the burdens which you have mentioned that the Wabash and St. Paul have had to carry for so long a period, would call your attention to the fact that the St. Paul road did not become interested in the Des Moines Union property until about two years ago and to our minds the St. Paul road has had no burdens to carry. As to the burdens carried by your own line I have in part explained the past history to you.

Would further state that in the organization of the Des
1012 Moines Union the Wabash received a very large "rake off" and it was this transaction, coupled with others which followed while the Wabash was still a dominent factor in the company that loaded the Des Moines Union with debts and during the first years of the company when it was recognized by all that the company had been overloaded and that the bonds were not a good security, F. M. Hubbell & Son bought most of the bonds held by the Wabash at a price above the market value of the bonds. However this is all ancient history and to my mind ought not to enter much into our considerations in making a new contract.

You and Mr. Earling both seem to think that the guaranty (so called) of the Wabash and St. Paul is a very serious matter to your companies and of very great value to the Des Moines Union. We do not consider the guaranty of any more value to us than your simple agreement to pay your rentals and in the new contract with your company we will leave out the feature of the guaranty so as to eliminate at the start one of the features on which you and Mr. Earling have dwelt at such length.

Mr. Goodnow has asked me to go to Chicago this week to take up with him the question of a new contract, and while we feel that it is not advisable for the Des Moines Union to enter into a new contract with your company or the St. Paul company at this time in view of the fact that we have a contract which will not expire for seventeen years, nevertheless I shall go to Chicago and endeavor to outline a contract which will be acceptable to the Des Moines directors. Inasmuch as
1013 any new contract if made with your company will give the Wabash and the St. Paul the benefit of any money paid to the Des Moines Union under the C. B. & Q. contract, is it not very desirable that we renew our negotiations with the C. B. & Q. and endeavor to secure them at once? Even though Mr. Goodnow and I can agree on the general plan of the new contract it will in the nature of things take a long time to consummate it as all these contracts do and it seems to me that the making of the C. B. & Q. contract should be urged while the C. B. & Q. company are in the humor to trade. After having secured the C. B. & Q. I believe we will be able to get a very much higher rental from the C. & N. W. because the C. & N. W. need our station both for their competitive business with the St. Paul and also because of their very large interchange business with the C. B. & Q.

Yours truly,

F. C. HUBBELL, President.

1014 **Defendants' Exhibit 486.**

The Wabash Railroad Company.

Office.
J. Ramsey, Jr., Vice-Prest.
& Genl. Manager.

St. Louis, Mo., May 16th, 1901.

Mr. F. C. Hubbell,
President, The Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:—
I have your letters of May 6th and 15th relative to contracts for the Des Moines Union passenger station.

I would be very glad to see the Northwestern as well as the Burlington company use our Union Station, but, as I have stated in previous correspondence, I do not feel that the use of this station by other lines will be of sufficient direct benefit to the Wabash to justify our sacrificing any of our present rights or accepting any terms and conditions for an extended lease which would not fully protect the Wabash in all of its interests. I have been waiting since the receipt of yours of the 6th to hear from you as to the result of your interview with the St. Paul people in Chicago relative to the new lease. I would be very glad to have from you an outline of the new lease which you propose.

Yours very truly,

J. RAMSEY, JR.
Vice-President & General Manager.

1015 **Defendants' Exhibit 487.**

May 17, 1901.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash, R. R.,
St. Louis, Missouri.

Dear Sir:—
Replying to yours of the 16th will say I made two trips to Chicago in the interest of a new contract with your company, and the St. Paul Company, and at the end of the second trip Mr. Goodnow told me that Mr. Earling had decided that his company would not make a new contract with us at present but that it looked more favorable for the St. Paul company to

consent to the C. B. & Q. and C. & N. W. Companies entering our station and that is the present situation of the case.

Yours truly,

F. C. HUBBELL,
President.

1016 **Defendants' Exhibit 488.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of the General Superintendent.

Chicago, June 4th, 1901.

Mr. F. C. Hubbell,
President, Des Moines Union Ry.,
Des Moines, Iowa.

Dear Sir:—
Replying to your letters of the 28th ult.

We will consent to giving the C. B. & Q. the joint use of the Des Moines Union Passenger station at the rental previously agreed upon, providing the contract is not to continue for a longer period than that of the contract with the Wabash and St. Paul Companies, and also providing the general terms of the contract are satisfactory to the St. Paul Company.

Truly yours,

(Sgd) C. A. GOODNOW,
General Superintendent.

1017 **Defendants' Exhibit 489.**

The Wabash Railroad Company.

General Offices.

St. Louis, Mo., January 24, 1902.

Mr. J. Ramsey, Jr.,
President.

Mr. F. C. Hubbell,
President, Des Moines Union Ry. Co.,
Des Moines, Iowa.

Dear Sir:—
Referring to yours of Jan. 14th.

Before approving of this arrangement for the Schwarzchild & Sulzberger building, I would like to know what the building

will cost. If it is not too large an amount, it ought to be raised by the Des Moines Union Company on regular loan.

Yours very truly,

J. RAMSEY, JR.
President.

1018 **Defendants' Exhibit 490.**

February 1, 1902.

Mr. J. Ramsey, Jr.,
Prest. Wabash R. R.,
St. Louis, Missouri.

Dear Sir:—

Referring to yours of January 24th with reference to our building for Schwarzchild and Sulzberger will say we constructed a building for the Cudahy Packing Company to all intents and purposes the same as S. & S. will require and it cost us fifty-five hundred dollars. It has been the usual practice for F. M. Hubbell, Son & Co. to advance the money to build these buildings and as soon as the rents from the building reimburse Hubbell, Son & Co. then the rents and the building belong to the Des Moines Union. If the Des Moines Union could spare the funds of course it would be my choice to have them build the building with their own money, but as you will recall the Des Moines Union is always in need of funds for its ordinary operation. The rental which S. & S. would pay us we consider very remunerative, and at the same time we would secure their business which makes it doubly attractive. The C. M. & St. P. people have given their authority and expressed their willingness that the funds for building the buildings be advanced by Hubbell, Son & Company. This last however is a matter of detail and either plan is agreeable to us. Please advise promptly as S. & S. advised they will send their men to Des Moines in a very short time to close this trade.

Yours truly,

F. C. HUBBELL,
Prest.

1019 **Defendants' Exhibit 491.**

The Wabash Railroad Company.

General Offices.

J. Ramsey, Jr.
President.

St. Louis, Mo. February 3, 1902.

Mr. F. C. Hubbell,
President Des Moines Union Railway,
Des Moines, Iowa.

Dear Sir:—

Referring to yours of Feb. 1st, relative to S. & S. building. I am in favor of putting up the building for the Schwarzchild & Sulzberger Company and have no objection to Hubbell, Son & Co. advancing the money to put up the building. There should be, however, a proper agreement drawn between Hubbell, Son & Co. and the Des Moines Union Railway Company covering this matter, fixing the rate of interest to be paid, etc.

Yours very truly,

J. RAMSEY, Jr.
President.

1020 **Defendants' Exhibit 492.**

The Wabash Railroad Company.

General Offices.

J. Ramsey, Jr.
President.

St. Louis, Mo. February 26, 1902.

Mr. F. C. Hubbell,
President Des Moines Union Railway,
Des Moines, Iowa.

My dear Sir:—

I have received copy of the Des Moines "Leader" of February 22nd containing item headed "New Terminal Station."

The item places the Wabash in a position of being opposed to the development of Des Moines by the construction of new railroads, also as being opposed to the admission of other railroads to the use of the Des Moines terminals.

Therefore, I think I am entitled to know from you if the item referred to has your endorsement.

It also strikes me that you cannot in good faith, as President of the Des Moines Union Railway, either develop a new

terminal in opposition to the Des Moines Union or even encourage any such opposition.

I think under the circumstances I am entitled to a full reply from you on the subject.

Yours very truly,

J. RAMSEY, Jr.,
President.

1021 **Defendants' Exhibit 493.**

March 3, 1902.

Mr. J. Ramsey, Jr.,
Prest. Wabash R. R.,
St. Louis, Missouri.

Dear Sir:—

Replying to yours of the 26th of February, will say that the article which appeared in the "Leader" of February 22nd, was wholly without authority from us and without our knowledge and came as a great surprise to us. I do not in any way endorse the same. We did not deny the statements in the paper, because it has never been our policy to take any notice of newspaper items. It is true that the article places the Wabash company in a wrong light, but if you feel that a denial is desirable, I suggest that it come directly from your company, or that you write me just what kind of a denial you desire.

Referring to the latter part of your letter relating to our good faith with respect to the management of the Des Moines Union will say I had hoped that our past record would be a sufficient proof of our loyalty to our company as officers and directors. We never have voted, nor have we ever done anything knowingly that would injure the Des Moines Union Railway Company nor have we ever before had any one intimate to us that our intentions were of doubtful propriety.

I wrote to you and also to Mr. Goodnow at some length on September 20, 1901, urging you to favor a contract
1022 with the Iowa Falls road, and also urging you to induce Mr. Earling to modify his position. I have at different times since September, by correspondence and personally, urged the C. M. & St. P. officers to consent to the Des Moines Union entering into an arrangement with the Iowa Falls road for freight terminals and I hand you herewith a copy of the last letter which I received from Mr. Goodnow, showing that they still refuse to alter their position. I again

desire to suggest that you write to Mr. Earling to withdraw his positive refusal to allow the Iowa Falls road to use our terminals for freight purposes. As stated in my letter of September 26th, our firm owns the necessary property to furnish the Iowa Falls road a very ample convenient, and desirable terminal, including the necessary ground for storage, shops, round house, etc. We have bought this property very carefully and propose to allow the Iowa Falls road, or any other road seeking entrance into Des Moines, to use our property on very liberal terms. This so-called "new terminal company" will not be in opposition to the Des Moines Union because we propose to only offer it to such roads as cannot get facilities from the Des Moines Union. You certainly will recognize that our interests in Des Moines make it necessary that a railroad, seeking entrance into Des Moines, should have ample and cheap terminal facilities, and we have placed ourselves in a position to take care of all new comers, and we cannot see wherein we act in bad faith, if we only trade with such railroads as the Des Moines Union refuse to receive. On the contrary, we, who represent a majority of the stockholders of the Des Moines Union, feel that an injustice has been done us and our Company in refusing both the Iowa Falls Company and the C. R. & Q. Company. I should be pleased to have you write me and state to me candidly what the objections are to our position. Your answer to my letter of September 20th, did not indicate to us that you considered our position wrong, and inasmuch as we have put forth so much effort in the upbuilding of the Des Moines Union, we feel entitled to a candid expression from you.

1023

Yours truly,

(Signed) F. C. HUBBELL, Pres't.

Copy.

1024

Defendants' Exhibit 494.

The Wabash Railroad Company.

General Offices.

J. Ramsey, Jr., President.

St. Louis, Mo. March 5, 1907.

Mr. F. C. Hubbell,
President, Des Moines Union Railway,
Des Moines, Iowa.

Dear Sir:—

I beg to acknowledge receipt of yours of March third.

While in the first paragraph of your letter you seem to deny the correctness of the newspaper article referred to in my let-

ter of February 25th and in the second paragraph seem hurt by what I say regarding bad faith in the management of the Des Moines Union and say you have never voted or ever done anything knowingly to injure the Des Moines Union Railway Company, the balance of your letter goes on outlining to a certain extent your position and you say "we have placed ourselves in the position to take care of all new comers and we cannot see wherein we have acted in bad faith if we only trade with such railroads as the Des Moines Union refuse to receive" and further "This so called 'new terminal company' will not be in opposition to the Des Moines Union because we propose to only offer it to such roads as can not get facilities from the Des Moines Union."

From the above, it is evident to me that the newspaper article was based on facts and that Hubbell & Sons have organized either a new terminal company or are preparing to offer terminal facilities to new roads in competition with the
1025 Des Moines Union. In your first paragraph you admit "it is true that article places the Wabash in a wrong light" but at the same time, by not having denied the correctness of the statement, at least so far as the Wabash is concerned you seem to be perfectly willing to allow the Wabash Company to be put in a wrong light before the people of Des Moines practically through information which has evidently come from either your office or from those conversant with your plans for new terminal facilities.

By reference to the correspondence passing between us on the subject of the Des Moines, Iowa Falls & Northern Company using the Des Moines terminals, I need only refer you to my letter of September 24th in which I use the following language: "I am in favor of admitting this road or any other road to the use of the Des Moines terminals on the same terms and conditions as the use of them is granted to the present tenants". This was also the position of the Wabash Company relative to the C. B. & Q.

So far as I understand Mr. Earling's views on this question of admitting other roads to the use of the terminals, he stands on exactly the same ground as the Wabash does, namely, that any other company can be admitted on the same terms and conditions as the Wabash and St. Paul companies. This condition of the admission of new companies is strictly in accordance with the contract which the Des Moines Union Company entered into with the present tenant lines and the present tenants are not asking anything outside of their contract rights

when they insist that that term and condition be com-
1026 plied with.

By reference to Mr. Earling's letter of March 25th addressed to you, you will find the only objection he urged at that time against the admission of the Des Moines, Iowa Falls & Northern was that that road was purely a paper road and had no existence, and in his opinion it would be "time enough to consider the making of a contract with that company when it has a road in actual operation."

As you well know, the only difference really between the tenant lines and Hubbell & Sons (owners of the controlling stock interest in the Des Moines Union) is that the tenant companies object to the admission of other companies to the use of these terminals at a less rental and on better terms than those held by the present tenants for the purpose of increasing the value of the stock of the company at the expense of the present tenants.

You ask me to state candidly what the objections are to your position. I will give them as requested, candidly: You are the president of the Des Moines Union and as such President you have no right, officially or personally to encourage, aid or abet in the slightest manner the construction or development of any other terminal company in the city of Des Moines. If you wish to do so, you should resign your position of president and allow some one, whose sole interest would be that of the Des Moines Terminal Company and the protection of the rights of the tenant companies under the contract existing between the Des Moines Company and the tenant lines.

Yours very truly,
J. RAMSEY, Jr., President.

1027 **Defendants' Exhibit 495.**

March 7, 1902.

Mr. J. Ramsey, Jr.,
Prest. Wabash R. R.,
St. Louis, Missouri.

Dear Sir:—

Replying to yours of the 5th, and answering the first part of your letter will say that we did not feel that we had authority to make a public denial for the Wabash Company respecting its attitude towards the Des Moines Union Railway Company. In my letter to you of the third, I asked you either to make a denial yourself, or to send me the form of denial which you

would like to have made by us. We have never said that the Wabash were opposing the admission of other roads to the Des Moines Union Terminals.

Answering the latter part of your letter will say we understand perfectly that your company is willing to allow the Iowa Falls or any other road to use our terminals under the same terms and conditions with yourselves and the C. M. & St. P. Company, but your understanding respecting Mr. Earling's views on this subject is entirely wrong. Mr. Earling has positively refused to allow the Iowa Falls road to use any part of the Des Moines Union Terminals for freight purposes under any circumstances. It is not a question of rental. He simply refuses to consider any proposition for freight terminals.

Yours truly,

F. C. HUBBELL,
President.

1028 **Defendants' Exhibit 496.**

Jan'y 14, 1902.

Mr. J. Ramsey, Jr.,
V. P. & G. M. Wabash R. R.
St. Louis, Missouri.

Dear Sir:—

Merrs. Schwarzchild & Sulzberger, pork packers of Kansas City are asking for a location upon our tracks, for a distributing house the same as Armour, Swift and other packers have. They are asking us to build a building for them the same as the one we constructed for Cudahy Packing Co., a few years ago. We are charging Cudahy eighty dollars per month for a lease of ten years. We will provide in the S. & S. lease for the right on our part to cancel the lease at any time on six months notice, in case we need the ground for railroad purposes the same as is now provided in the Cudahy lease. It is our opinion that we will not need this ground for tracks within the ten years period and possibly much longer, and we believe that this is a desirable acquisition for the Des Moines Union to secure.

In order that it might not cost the Des Moines Union any money, will say that F. M. Hubbell Son & Company are willing to advance all the money that it will cost to build the building and will take the rents from the building as they are paid by S. & S. until the rents repay Hubbell, Son & Company for the money advanced with interest. after which time the building will belong to the Des Moines Union, free and clear and the

rents will belong to the Des Moines Union. I would like to have as early answer as possible to this proposition.

Copy to Mr. Goodnow.

Yours truly,

F. C. HUBBELL, Prest.

1029 **Defendants' Exhibit 497.**

Chicago, Milwaukee & St. Paul Railway Co.

Office of General Manager.

Chicago, March 9th, 1903.

Mr. J. A. Wagner,
Superintendent, D. M. U. R'y.,
Des Moines, Iowa.

Dear Sir:—

Referring to the proposed extension to the Carbondale mines as outlined in Mr. Hubbell's letter of last May, I beg to say that we have definitely decided that we do not care to entertain this proposition. There is no way of telling how long we shall want to get coal from the Carbondale mines and it may be that the time will be limited, and besides that we do not care to enter into any arrangements for extension of the Des Moines Union property until the old surplus earning proposition has been entirely disposed of.

Yours truly,

(Signed) H. R. WILLIAMS,
General Manager.

1030 **Defendants' Exhibit 498.**

The Wabash Railroad Company.

General Offices.

St. Louis, Mo., March 11, 1903.

Mr. J. Ramsey, Jr.,
President.

Mr. F. C. Hubbell,
President, Des Moines Union Railway,
Des Moines, Iowa.

Dear Sir:—

Replying to your letter of February 10th.

In my opinion, the Wabash Company would not be justified in selling its track and right of way between the Carbondale

Junction and the Des Moines Union road, nor in selling a one-half interest in it. I think the trackage now charged is reasonable. If you have any proposition to make in connection with it, however, I will be glad to consider it.

Yours very truly,

(Signed) J. RAMSEY, JR.
President.

1031 **Defendants' Exhibit 499.**

The Wabash Railroad Company.

General Offices.

E. B. Pryor,
Assistant to President,
Executive Department.

St. Louis, Mo. March 27th, 1903.

Mr. J. A. Wagner,
Supt., Des Moines Union Ry. Co.,
Des Moines, Ia.

Dear Sir:—

Referring to our conversation of today, I have to advise you that I will at once proceed to draw up a new contract between the Wabash Railroad Company and the Des Moines Union Railway Company, on the lines as agreed upon between us, namely, to allow your company the use of the main track of the Wabash Railroad Company from the point of connection (with) the tracks of the Union Company to a point of connection with the switch tracks to be laid by the Carbondale Coal Company at or near Old Hastie. The contract will be for a period of five years, with the privilege of renewal for five years additional, with the right on the part of the Wabash Railroad Company to cancel the contract at any time after the expiration of the first five years upon giving six months' written notice to the Des Moines Union Railway Company.

The Des Moines Union Railway Company to transport the cars over the track with its own motive power and the compensation to the Wabash Railroad Company to be the sum of
1032 $1.00 for each loaded car and 50c for each empty car transported over the said track in either direction; this rate to apply whether the cars are destined to the switch at Ross Junction or the new switch to be established near Old Hastie.

The contract will also provide that your company may be at liberty to change the track connection at Ross Junction,

making the connection on the south side of the trestle instead of the north side, as now located.

Yours truly,

(Signed) E. B. PRYOR.

1033 **Defendants' Exhibit 500.**

This Agreement made and entered into this 27th day of March, A. D. 1903, by and between the Wabash Railroad Company, party of the first part, and the Des Moines Union Railway Company, party of the second part, Witnesseth: That

Whereas, the party of the second part, in order to reach the tracks of the Carbondale Coal Company, located east of the City of Des Moines, desires the use of the main track of the party of the first part, extending from the point of connection with the track of the party of the second part, to the points of connection with the said switch tracks of said Carbondale Coal Company, at what is known as Ross Junction, and at or near what is known as Old Hastie, as shown upon the blue print hereto attached, marked Exhibit A., and made a part of this agreement, for the handling of coal from the mines of said Coal Company;

Now Therefore, in consideration of the covenants and stipulations herein set forth, the parties hereby agree, each with the other, as follows:—

First. The party of the first part hereby grants unto the party of the second part the right to use its said main track and appurtenances, as shown in red upon said blue print, for the purpose of moving loaded and empty cars to and from the lines and tracks of said Coal Company, as shown on said blue print, with its own engines and crews.

The party of the second part shall also have the right to change the present switching connection at Ross Junc-
1034 tion so as to make the connection on the south side of the trestle at said point, as indicated on said blue print and shall have the right to make the connection near Old Hastie, either from the east or west as shown on said blue print.

Second. The party of the second part agrees in consideration of the rights herein given it, to pay to the party of the first part, for the use of said track, the sum of One Dollar ($1.00) for each loaded car, and Fifty Cents ($.50) for each empty car transported over said track by the motive power of said second party, in either direction, and whether destined

to or transported from the coal switch at said Ross Junction, or the switch near Old Hastie, which payment shall be made to the party of the first part at the end of each month, during the continuance of this agreement.

Third. The party of the second part will also pay all mileage which may be charged for cars moved over said track by its engines and crews, and will re-imburse said first party for any and all payments of money that it may be required to make on this account.

Fourth. It is further understood and agreed between the parties hereto that this agreement governs only the business which the party of the second part proposes to move to and from the said switch tracks of said Coal Company, and no other.

Fifth. All trains of the party of the first part shall at all times have precedence over trains of the party of the second part in the use of said track, and said party of the second part shall be subject to and governed by the time schedules and rules and regulations of the party of the first part, in the use of said track.

1035

Sixth. All property transported by the party of the second part over the tracks of the party of the first part, shall be at the risk of the party of the second part. The said second party assumes all risk and responsibility for damage or injury to persons or property transported or owned by it, growing out of or caused by any imperfection of said tracks and appurtenances, or misplacements of switches, or for any damage to stock or injury that may occur to persons while walking on the said track by being struck by trains of said second party, as well as all risks of damage or injury to persons or property growing out of or caused by fire set out by the locomotives of the said second party, or for any other damage that may arise from the movement of the trains handled by said party of the second part.

In cases of damages or injuries to persons or property occurring on the trains of either party while on the said track, the proper officer of the said first party shall adjust and settle same, and a release shall be made to both companies, providing that the said first party shall not make any settlement of a claim which the party of the second part is to pay under the provisions hereof, without consultation with the proper officers of the said second party.

The said party of the second part promises and agrees to protect and save harmless the said party of the first
1036 part against any claims or demands on account of injuries to persons or property transported by it and also against any claims or demands on account of any injuries to any employes of the party of the second part, and promises to repay the party of the first part any sums which it may be required to disburse because of such claims. It will also pay to said party of the first part full compensation for any injury to persons or property for which the said first party may be held liable by reason of the negligence or want of care or caution of the servants or employes of the party of the second part, or by reason of the use by the said second party of defective machinery or appliances. Provided, however, that any damage arising from the carelessness of the sole employes of the party of the first part, shall be paid by the said first party.

When any injury or damage to persons or property shall be caused by the operation of trains over the track hereinbefore described, and it cannot be determined which party is responsible therefor, the cause shall be regarded as concealed, and the compensation made to the party injured shall be apportioned to and paid by the parties hereto in equal parts.

Seventh. This agreement shall continue in full force and effect for a period of five (5) years from the date hereof, with the privilege to the party of the second part and renewal for five (5) years additional, provided, notice is given to the party of the first part that such renewal is desired, not less than three (3) months prior to the termination of this agreement; and the party of the first part reserves the right to can-
1037 cel this agreement at any time after the expiration of said first term of five (5) years, upon giving six (6) months' written notice to the party of the second part of its intention so to do.

Eighth. That all questions arising under this agreement which cannot be amicably adjusted by the proper officers of the parties hereto, shall be finally settled by arbitration, as is customary between railroad Companies.

In Witness Whereof, the parties hereto have caused these presents to be signed by their duly authorized officers, the day and year first above written.

THE WABASH RAILROAD COMPANY,
(Seal) By J. Ramsey, Jr., President.

Pryor.

Attest:
E. B. Pryor,
Assistant Secretary.

THE DES MOINES UNION RAILWAY COMPANY,
By H. D. Thompson, Vice President.

(Seal)
Attest:
F. M. Hubbell, Secretary.

1038 **Defendants' Exhibit 501.**

The Wabash Railroad Company.

General Offices.
St. Louis, Mo. April 9th, 1903.

E. B. Pryor,
Assistant to President.
Executive Department.

Mr. J. A. Wagner,
Supt., Des Moines Union Ry. Co.,
Des Moines, Ia.

Dear Sir:—
I hand you herewith, in duplicate, new contract covering the use of Wabash tracks from the connection between the Wabash and the Des Moines Union Railway to Ross Junction and Old Hastie. If the contract is satisfactory to your company in its present form, have it executed and return to me and I will then have it executed on the part of the Wabash Railroad Company.

Yours truly,
(Signed) E. B. PRYOR.

1039 **Defendants' Exhibit 502.**

The Wabash Railroad Company.

General Offices.

St. Louis, Mo. September 22nd, 1903.

E. B. Pryor,
Assistant to President.
Executive Department.

Mr. J. A. Wagner,
Superintendent Des Moines Union Ry. Co.
Des Moines, Ia.

Dear Sir:—
Referring to our conversation of to-day we are willing to make a contract with you to allow the Des Moines Union Rail-

way Company to run its cars and engines from the point of connection between the Des Moines Union Railway and the Wabash, as shown at point marked "A" on blue print attached hereto, down to your new gravel pit at point marked "B" on the enclosed blue print, and will make a charge against your company for such trackage at the rate of 50c per loaded car, empties free. If this meets with the approval of your company advise me to that effect and I will have regular contract drawn up.

Yours truly,
(Signed) E. B. PRYOR.

1040 **Defendants' Exhibit 503.**

This Agreement made and entered into this 14th day of October, A. D. 1903, by and between the Wabash Railroad Company, party of the first part, and the Des Moines Union Railway Company, party of the second part, Witnesseth That

Whereas the second party, under a certain contract, dated the 27th day of March, 1903, is operating its cars and engines to the so-called Carbondale mines, east of the city of Des Moines; and,

Whereas, the second party desires a further use of the main track of the party of the first part, extending from the point of connection with the track of the party of the second part to the center of East Thirtieth Street in the city of Des Moines, as shown upon the blue print hereto attached, marked Exhibit "A" and made a part of this contract for the purpose of handling gravel.

Now Therefore in consideration of the covenants and stipulations herein set forth, the parties hereby agrees each with the other as follows:

First: The party of the first part hereby grants unto the party of the second part the right to use its said main tracks and passing tracks, and appurtenances, as shown in red upon said blue print, for the purpose of moving loaded and empty cars, with its own engines and crews, to and from the lines and tracks of the second party, which said second party proposes to hereafter construct and maintain.

1041 Second. The second party agrees in consideration of the rights herein given it, to pay to the party of the first part, for the use of said tracks and appurtenances, the sum of fifty cents for each loaded car (empties free) transported over said tracks by the motive power of the second party, in

either direction, and whether destined to or transported from said switch tracks, herein proposed to be constructed by the second party, which payments shall be made to the party of the first part at the end of each month, during the continuance of this agreement.

Third: The party of the second part will also pay all mileage which may be charged for cars moved over said tracks by its engines and crews, and will reimburse said first party for any and all payments of money that it may be required to make on this account.

Fourth: It is further understood and agreed between the parties hereto that this agreement governs only the business which the party of the second part proposes to move to and from said switch tracks of the second party and no other.

Fifth: All trains of the party of the first part shall at all times have precedence over trains of the party of the second part in the use of said tracks, and said party of the second part shall be subject to and governed by the time schedules, rules and regulations of the party of the first part in the use of said tracks.

Sixth: All property transported by the party of the second part over the tracks of the party of the first part, shall be at the risk of the party of the second part, and re-
1042 sponsibility for damage or injury to persons or property transported or owned by it, growing out of or caused by any imperfection of said tracks and appurtenances, or misplacements of switches, or for any damage to stock or injury that may occur to persons while walking on the said tracks by being struck by trains of said second party, as well as all risks of damage or injury to persons or property growing out of or caused by fire set out by the locomotives of the said second party, or for any other damage that may arise from the movement of the trains handled by said party of the second part.

In case of damage or injuries to persons or property occurring on the trains of either party while on the said tracks, the proper officer of the said first party shall adjust and settle same, and a release shall be made to both companies, providing that the said first party shall not make any settlement of a claim which the party of the second part is to pay under the provisions hereof, without consultation with the proper officers of the said second party.

The said party of the second part promises and agrees to protect and save harmless the said party of the first part

against any claims or demands on account of injuries to persons or property transported by it, or to its employees, and also against any claims or demands on account of any injuries to any employees of the party of the second part, and promises to repay the party of the first part any sums which it may be required to disburse because of such claims. It will also pay to said party of the first part full compensation for any injury to persons or property for which the
1043 said first party may be held liable by reason of the negligence or want of care or caution of the servants or employees of the party of the second part, or by reason of its failure to observe the conditions and requirements of this agreement, or by reason of the use by the said second party of defective machinery or appliances. Provided, however, that any damage arising solely from the carelessness of the sole employees of the party of the first part, shall be paid by the said first party.

When any injury or damage to persons or property shall be caused by the operation of trains over the track hereinbefore described, and it cannot be determined which party is responsible therefor, the cause shall be regarded as concealed, and the compensation made to the party injured shall be apportioned to and paid by the parties hereto in equal parts.

Seventh: This agreement shall continue in full force and effect until the first day of May, 1918.

Eighth: That all questions arising under this agreement which cannot be amicably adjusted by the proper officers of the parties hereto, shall be finally settled by arbitration, as is customary between railroad companies.

In Witness Whereof, the parties hereto have caused these presents to be signed by their duly authorized officers, the day and year first above written.

THE WABASH RAILROAD COMPANY,
By J. Ramsey, Jr., President.

Attest:
E. B. Pryor,
Asst. Secretary.

1044 DES MOINES UNION RAILWAY COMPANY,
By F. C. Hubbell,
President.

Attest:
F. M. Hubbell,
Secretary.

1945 **Defendants' Exhibit 504.**

Subject; Rents, etc. D. M. U. Ry. Co.

Chicago, Milwaukee & St. Paul Railway Co.

Office of Comptroller.
860 Old Colony Building.

H. G. Haugan,
Comptroller.

Chicago, March 7th, 1904.

Mr. J. A. Wagner, Supt.,
Des Moines Union Railway Company,
Des Moines, Iowa.

Dear Sir:—

I understand that at the Des Moines Union station there are a number of offices rented, also news stand, lunch room, and other privileges which are not accounted for in your monthly statements and bills. I believe you are also collecting rents on certain property on which we have to pay our proportion of taxes.

I do not remember having seen any statement or account of rents collected by your company.

It seems to me that these rents, etc. should be applied towards paying part of the operating expenses similar to the manner in which the business is conducted at the Union Depots at Chicago, Omaha, St. Paul and Kansas City.

Yours truly,

H. G. HAUGAN,
Comptroller & Land. Commr.

289 R

1946 **Defendants' Exhibit 505.**

Des Moines, March 22d, 1904.

Mr. H. G. Haugan,
Comptroller & Land Commissioner C. M. & St. P. Ry.,
Chicago, Ill.

Dear Sir:—

Replying to your letter of March 7th, our auditor sends your Mr. Winne each month a statement of all rentals of the character to which you refer. These rentals have nothing whatever to do with the proportion of the expense to be paid by your company. Our monthly bills against you for such expenses are made out in strict accord with our terminal contract. We have frequently in the past few years, explained

the matter to the various officials of your company in response to their inquiry.

Yours truly,

J. A. WAGNER,
Superintendent.

1047 **Defendants' Exhibit 506.**

December 13, 1905.

Mr. F. A. Delano,
Pres't. Wabash R. R.
Chicago, Illinois.

Dear Sir:—

The annual meeting of the Stock-holders and Directors of the Des Moines Union will occur on January 4th. You will recall that at our last meeting in Chicago it was decided that all Directors and Stockholders should be represented at this meeting, and in view of the fact that it takes the unanimous vote of all Stock-holders and Directors to transact business, I urge that at this annual meeting a full representation be had.

The Constructing Quartermaster at the Army Post writes me nearly every day respecting our proposed track and they are doing all they can to help us with the Department in Washington.

I have been to St. Paul and talked with Mr. A. B. Stickney and he is willing to use our new bridge and give us a crossing over his main line in South Des Moines, without installing an interlocker, and will pay us twenty-four hundred dollars a year rental for the use of our bridge. While this rental is, in our opinion, inadequate, yet I would be inclined to take this amount in case we are not able to induce them to pay us a larger rental.

I believe we should increase our Capital stock at the annual meeting, as suggested by Mr. McKenna, in order that we may be able to issue bonds or other evidence of indebtedness that will be legal. With the small amount of stock now out-
1048 standing we cannot legally increase our indebtedness.

I am therefore pursuing our negotiations with the several industries in South Des Moines and am assuming that affirmative action will be taken on this at our annual meeting.

Inasmuch as Mr. F. M. Hubbell desires to leave Des Moines as soon as this meeting is over, I trust that it may be had on the regular day and am writing you this long in advance in

hopes that the date will be convenient for all parties. Kindly acknowledge receipt, at your early convenience, advising me.

Yours truly,
(Signed) F. C. HUBBELL, Prest.

Copy to Mr. McKenna.

1049 **Defendants' Exhibit 507.**

December 13, 1905.

Mr. E. W. McKenna,
2nd Vice Prest. C. M. & St. P. Ry.
Chicago, Illinois.

Dear Sir:—

The annual meeting of the Stock-holders and Directors of the Des Moines Union will occur on January 4th, 1906. You will recall that at our last meeting in Chicago, it was decided that all Directors and Stockholders should be represented at this meeting, and in view of the fact that it takes the unanimous vote of all stock-holders and Directors to transact business, I urge that at this annual meeting a full representation be had.

The Constructing Quartermaster at the Army Post writes me nearly every day respecting our proposed track and they are doing all they can to help us with the department in Washington.

I have been to St. Paul and talked with Mr. A. B. Stickney and he is willing to use our new bridge and give us a crossing over his main line in South Des Moines, without installing an interlocker, and will pay us twenty-four hundred dollars a year rental for the use of our bridge. While this rental is, in our opinion, inadequate, yet I would be inclined to take this amount in case we are not able to induce them to pay us a larger rental.

I believe we should increase our Capital Stock at the annual meeting, as suggested by you, in order that we may be able to issue bonds or other evidence of indebtedness that
1050 will be legal. With the small amount of stock now outstanding, we cannot legally increase our indebtedness.

I am therefore pursuing our negotiations with the several industries in South Des Moines and am assuming that affirmative action will be taken on this at our annual meeting.

Inasmuch as Mr. F. M. Hubbell desires to leave Des Moines as soon as this meeting is over, I trust that it may be had on the regular day and am writing you this long in advance in hopes that the date will be convenient for all parties. Kindly acknowledge receipt at your early convenience advising me.

Yours truly,
(Signed) F. C. HUBBELL, Prest.

(Copy to Mr. Delano.)

1051 **Defendants' Exhibit 508.**

Chicago, Milwaukee & St. Paul Railway Co.

Secretary's Office.

Subject: Stock—Des Moines Union Ry. Co.

E. W. Adams, Secretary.

Milwaukee, January 4th, 1906.

Mr. H. D. Thompson,
Vice President, Des Moines Union Railway Company,
Des Moines, Iowa.

Dear Sir:—

I enclose certificates of the Des Moines Union Railway Company, as follows:

No. 38, in name of A. J. Earling,....1 share.
No. 39, in name of H. R. Williams,..1 share.

Mr. E. W. McKenna, our Second Vice President, informs me that he and Mr. W. J. Underwood will be elected tomorrow to represent our Company on the Board. Will you please issue new certificates to Mr. McKenna and Mr. Underwood in lieu of the ones enclosed, and return them to me?

Yours very truly,
(Signed) E. W. ADAMS, Secretary.

1052 **Defendants' Exhibit 509.**

The Wabash Railroad Company.

The Wheeling & Lake Erie Railroad Co.

The Wabash Pittsburg Terminal Railway Co.

Office of the President

F. A. Delano, President. Western Union Building Chicago.

Geo. G. Yeomans, Ass't to the President. December 3rd, 1906.

Mr. F. C. Hubbell,
President, Des Moines Union Railway Co.,
Des Moines, Ia.,

Dear Sir:—

Referring to the matter of the proposed Army Post track:

Our people are of the opinion that if this line is built, it should be done by the Des Moines Union Railway Company, and if the tenant companies advance the funds with which to build the line, the Des Moines Union Railway Company should issue its bonds to cover the cost, and turn them over to the tenant companies to reimburse them for the amounts so advanced.

We are strongly of the opinion that the cost of the line should not be paid for from the so called "Surplus Earnings Account".

Yours truly,

(Signed) F. A. DELANO.

1053 **Defendants' Exhibit 510.**

The Wabash Railroad Company.

General Officers.

E. B. Pryor, Vice-President. St. Louis, Mo., February 29th, 1908.

Mr. J. A. Wagner,
Superintendent, Des Moines Union Ry. Co.,
Des Moines, Ia.

Dear Sir:—

I have delayed answering your letter of February 7th, asking for renewal of the contract between the Wabash Railroad Company and the Des Moines Union Railway Company covering

the use of Wabash track from Des Moines to Ross Junction and Hastie, until I could hear from President Delano.

I am today in receipt of a letter from him to the effect that we will be willing to renew the contract for a period of five years on the basis of $1.25 for each loaded car and 50 cents for each empty car.

If these terms are satisfactory, please advise me and I will have new contract prepared.

Yours very truly,

(Signed) E. B. PRYOR.

1054 **Defendants' Exhibit 511.**

The Wabash Railroad Company.

The Wheeling & Lake Erie Railroad Co.

The Wabash Pittsburg Terminal Railway Co.

F. A. Delano, President.

Office of the President, Western Union Building Chicago.

Geo. G. Yeomans, Ass't to the President.

On the Line, March 20th, 1908.

Mr. J. A. Wagner,

Superintendent, Des Moines Union Ry., Des Moines, Iowa.

Dear Sir:

Referring to your visit at my office:

I find that there are important commercial considerations in reference to the trackage rate on Carbondale coal; and as I telegraphed you, I want to reconsider the proposition which we talked of.

The low trackage rate which we are giving you operates to enable you to make a very low commercial rate on this coal into Des Moines, and the coal comes in direct competition with coal from our mines at Tracey, Dunreath and other points, and demoralizes all the rates at Des Moines. We do not see why we should give a low trackage rate so as to enable you to demoralize our rate situation. If you will charge regular Iowa Distance Tariff rate from these mines, that will be satisfactory to us, and we will give you a trackage rate, say adjusted on a

tonnage basis, which will give you a handsome profit.
1055 We would rather have a division of the rate than to have a trackage rate on a per car basis; but the thing that is important to us is getting the rate situation adjusted. It does not help us at all to make a little money out of trackage on this business, if by reason of it, we lose money on the handling of all coal going into the Des Moines market.

Yours very truly,

L. 17 (Signed) F. A. DELANO.

1056 **Defendants' Exhibit 512.**

St. Louis, April 6, 1908.

Mr. F. A. Delano,
President, Chicago.

Dear Sir:

Yours of the 24th with copy of Mr. J. A. Wagner's letter of the first to you, in which he states that he is at a loss to understand wherein the $5.00 switching rate which they make from the Smith Lowe Mines at Carbondale to Des Moines, can in any way affect the rate on commercial coal into Des Moines.

I think this $5.00 has a material effect on our rates on coal for the C. M. & St. P. The Wabash and Des Moines (Union) are competitors for the C. M. & St. P. tonnage, and the Wabash rate was last year 32½ cents, 40 tons to the car, or $13.00 per car. The Des Moines Union rate, 40 tons, $5.00 per car; difference in favor of the Smith Lowe Co., of $8.00 per car, this difference on tonnage from our mines to the C. M. & St. P. on 5,000 cars would amount to $40,000.00.

Our operators claim to have lost about $15,000.00 last year and have stated that we would either have to make them a lower rate or they would close the mines.

Our Operators also put in quite a lot of commercial tonnage at Des Moines on which they are obliged to make a very low price because of the low rate from the Smith Lowe Mines, and the local competition of the mines located in Des Moines.

As to the trade in Des Moines: I understand it costs about 60 cents per ton to haul from the mines to point of consumption, and we have no chance to compete against the wagon trade except to industries having side tracks, and in such cases, at distance tariff rate of, for five miles, 30 cents on lump and 25 cents on fine coal, we have an advantage over the wagon mine. I believe that the Des Moines can get the Iowa Distance Tariff rates for five miles, of 30 cents on lump and 25 cents on

fine coal, on all of their trade at Des Moines, and that therefore, they can afford to pay us a much better trackage rate than they have been paying and probably, at the same time, get more money out of the business themselves.

The C. R. I. & P. also have track connection with these mines, and I am informed that they make no less than the Iowa Distance Tariff rates from the mines into Des Moines.

Yours truly,

(Signed) D. O. IVES.

1057 **Defendants' Exhibit 513.**

The Wabash Railroad Company.

The Wheeling & Lake Erie Railroad Co.

The Wabash Pittsburg Terminal Railway Co.

Office of the President
Western Union Building
Chicago

F. A. Delano
President

Geo. G. Yeomans
Ass't to the President

April 18th, 1908.

Mr. J. A. Wagner,
Superintendent, Des Moines Union Railway Co.,
Des Moines, Iowa.

Dear Sir:—

Referring to yours of April 15th: As I said to you before, we are a good deal more concerned with the maintenance of our tariff rates in Iowa than we are with any revenue out of trackage, and rather than have our rates demoralized and held down by low switching charges which you are making, we would forego the revenue we are making out of trackage altogether.

I would suggest, however, that you put in regular Iowa Distance Tariff, namely thirty cents per ton on lump coal, and twenty-five cents per ton on fine coal; that you pay us one-third of the earnings on this business at a minimum of $2.00 per loaded car, and make no charge for empty cars.

Yours very truly,

(Signed) F. A. DELANO.

L. 2

1058 **Defendants' Exhibit 514.**

The Wabash Railroad Company.

General Offices.

St. Louis, Mo., November 13th, 1908.

E. B. Pryor,
Vice-President.

Mr. F. C. Hubbell,
President, Des Moines Union Ry. Co.,
Des Moines, Ia.

Dear Sir:—
Referring to your letter of November 1st:

I have to advise you that the Wabash Railroad Company does not want to do anything to stop the development of the Des Moines property or prevent the locating of industries there, and we are perfectly willing to agree to the construction of the track to the Cement Plant, the expense of which is to be charged to Capital Account on the books of the Des Moines Union Company and provided for by some means other than the use of the surplus earnings, which we claim to belong to the tenant companies.

Very truly yours,

(Signed) E. B. PRYOR.

1059 **Defendants' Exhibit 515.**

July 19, 1895.

Mr. O. D. Ashley, President,
Wabash R. R. Co., 195 Broadway,
New York, N. Y.

Dear Sir,—
It was understood between us that you would obtain from Gen. Hubbard an opinion as to whether the Purchasing Committee was liable to Polk & Hubbell for the Committee's failure to carry out its contract with our late firm.

The particular objection was the Committee's failure to transfer 1/4 of the terminal property at Des Moines, free of encumbrance. If you have not obtained Gen. Hubbard's opinion, please do so at as early date and let me know what it is.

Yours truly,

(Signed) F. M. HUBBELL.

1060 **Defendants' Exhibit 516.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Mo. Nov. 23, 1895.

W. A. Park, Esq.,
Atty., Des Moines, Iowa.

Dear Sir:—

An attachment suit was brought recently in the District Court of your city by the Des Moines Northern and Western Railway Company, and the Des Moines Union Railway Company vs. James F. Joy, O. D. Ashley, Thomas H. Hubbard and Edgar T. Welles, constituting the Wabash Purchasing Committee. The action is for breach of covenant contained in a certain contract under which the Purchasing Committee conveyed, or agreed to convey, to Polk & Hubbell, the Des Moines Northwestern Railroad and an interest in certain Des Moines terminal properties.

They claim that the committee contracted to give them a clear title, and that some of the property was incumbered. An attachment has been issued and levied on the interest of the Committee in the Des Moines & St. Louis railroad. The amount involved is between twenty-seven and twenty-eight hundred dollars. Mr. Cummins, who represents the plaintiffs, has said he would take no default for a few days, but the time will expire very soon, perhaps Monday.

I have written to New York for instructions concerning a settlement, but have received no reply, and it is neces-
1061 sary to have an answer in at once. Will you please take charge of the case and file an answer on Monday, or see Mr. Cummins and get the time for answering extended by stipulation. The Committee may think the proper thing to do, will be to make the plaintiff prove their case. They are trustees and may consider it their duty to do so. What I want is to prevent a default until I hear from them with respect to their wishes in the premises.

Wire me on Monday whether you receive this and will attend to the matter.

Very truly yours,

(Signed) WELLS H. BLODGETT.

1062 **Defendants' Exhibit 517.**

The Wabash Railroad Company.

General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Jan. 11, 1897.

W. A. Park, Esq.,
Atty., Des Moines, Iowa.

Dear Sir:—

I have been absent in the East for ten days, and only returned to my office this morning. On my table I find yours of the 8th, and in reply beg leave to say, that Mr. James F. Joy is dead, and I would think notice thereof should be given to the plaintiff. In regard to the questions involved in the litigation, I think the first one is the one you state concerning the title acquired by the plaintiffs in the contracts. Should that be held against us, then a question arises on the construction of the contracts themselves. I know that what the Purchasing Committee intended to convey free from all incumbrances, was the stock, and not the lots and real estate owned by the Company. That was certainly the understanding of every member of the Wabash Purchasing Committee throughout the negotiations and correspondence, and that is the point on which the Purchasing Committee have always relied for their defense, and that is a point in the case which they want fully presented, and on which they desire to take the opinion of the Court. I have not got the contract before me to-day, but will endeavor to examine it and write you more fully by to-morrow's mail.

Very truly yours,

WELLS H. BLODGETT.

1063 **Defendants' Exhibit 518.**

The Wabash Railroad Company.

General Solicitor's Office.
Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Oct. 2nd, 1899.

Bailey, Ballrich & Preston,
Attorneys,
Des Moines, Iowa.

Gentlemen:—

I am just home from my vacation, and find on my table yours of August 11th, reporting disposition made of case, Des

Moines, Northern and Western R. R. Company vs. James F. Joy, et al. You enclosed copy of entry you had prepared, making final disposition of the matter in the District Court. If that entry was made, you may send us an account for your services to date, or write us on the subject.

I also congratulate you upon your success, as I remember the disadvantage under which you took charge of the litigation.

Very truly yours,

(Signed) WELLS H. BLODGETT.

1064 **Defendants' Exhibit 519.**

In the District Court of Iowa, in and for Polk County.

Des Moines, Northern & Western Railroad Company and Des Moines Union Railway Company,

#7614. vs. Law.

James F. Joy, O. D. Ashley, Thos. F. Hubbard and Edgar T. Welles.

Petition Filed Oct. 1, 1895.

The plaintiffs for cause of action state;

That they are corporations existing under the laws of the State of Iowa, having their principal places of business at Des Moines, in the County of Polk in said State. That the defendants are a Purchasing Committee associated together prior to the year 1886 for the purpose of purchasing various railroad properties to be sold under foreclosure of certain mortgages executed by the Wabash, St. Louis & Pacific Railway Company.

That prior to the year 1885 the Des Moines Northwestern Railway Company had executed a mortgage upon its property, which consisted of a line of railway extending from Farnham street in the City of Des Moines, Iowa, to Fonda in the county of Pocahontas in said State to secure the payment of certain railway bonds issued by the said Wabash, St. Louis & Pacific Railway Company, and had also executed a lease of its said property for a long term of years to the said Wabash, St. Louis & Pacific Railway Company. That at the same time
1065 what is known as the "terminals" in Des Moines, consisting of the property of the Des Moines Union Railway Company, as it now is known, which had been then constructed, and which was a part of a railway known as the Des Moines & St. Louis Railway, extending from Farnham street in the said City of Des Moines to Albia in the County of Monroe and State

of Iowa, had been mortgaged by the said Des Moines & St. Louis Railway Company to secure railway bonds issued by the said Wabash, St. Louis & Pacific Railway Company.

The plaintiffs further state that prior to the 9th day of October 1886, suits to foreclose the mortgages which had so been executed upon the property of the Des Moines Northwestern Railway Company and upon the terminal property, being a part of the property of the Des Moines & St. Louis Railway Company, and the said properties were about to be sold at said foreclosure sale, the proceedings therefor being then pending in the Circuit Court of the United States, in and for the Southern District of Iowa, Central Division. That thereupon the said defendants, acting under the name and style of the "Purchasing Committee" of the Wabash, St. Louis & Pacific Railway Company, entered into negotiations with a certain co-partnership then doing business in the City of Des Moines, Polk County, Iowa, known as Polk & Hubbell, and composed of F. M. Hubbell and J. S. Polk, looking to the sale by the said defendants to the said Polk & Hubbell of a one-fourth interest in said terminal property and the entire property of the Des Moines Northwestern Railway Company. As a conclusion to said negotiations the said Polk & Hubbell on the 9th day of October, 1886, made to the defendants a
1066 written proposition, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof; and thereafter, on the 9th day of October, 1886, three of said defendants, to-wit: O. D. Ashley, Thos. H. Hubbard and Edgar T. Welles, accepted the said proposition in and by a written communication, a copy of which is hereto attached, marked Exhibit "B" and made a part hereof. That thereafter, and on the 10th day of September, 1887, the said Polk & Hubbell and all of the defendants entered into a certain supplementary written agreement touching the same subject-matter, a copy of which is hereto attached, marked Exhibit "C" and made a part hereof.

The plaintiffs further state, that pursuant to said written agreement so entered into the said Polk & Hubbell purchased and entered into possession of the said property formerly belonging to the Des Moines Northwestern Railway Company, and, as agreed upon between themselves and the said defendants, a railway corporation known as the Des Moines & Northwestern Railway Company was organized, to which corporation all the rights and interests acquired by the said Polk & Hubbell in and by their said contract with the defendants were transferred and set over and the said company being so organized, took possession of the said property lying between Farnham street and Fonda, issued its bonds as provided in

said agreement, and for a long time operated said property. That after the said purchase was completed as aforesaid, it was mutually agreed between the said Polk & Hubbell, the Des Moines & Northwestern Railway Company and the
1067 defendants that what was known as the "terminal" property, that is to say, so much of the property formerly belonging to the Des Moines & St. Louis Railway Company as lay between Farnham Street in the City of Des Moines upon the west and twenty-second street in the City of Des Moines upon the east, should be held and owned by a separate corporation; and thereupon, and during the year 1887, the whole of said property was conveyed to the Des Moines Union Railway Company, a corporation which had theretofore been organized, and the said Des Moines & Northwestern Railway Company received the one-fourth interest in the said terminal property mentioned in the said contract by the delivery to it of one-fourth of the mortgage bonds issued by the said Des Moines Union Railway Company, and one-fourth of its capital stock.

The plaintiffs further state, that among other properties there was conveyed and transferred to the said Des Moines Union Railway Company under the said agreement lot seven (7), block fifteen (15), in the original town of Fort Des Moines. That at the time the said conveyance and transfer was so made there was a mortgage upon said property, which mortgage had been a lien thereon prior to the time of the acquisition of the lot for railway purposes, in the sum of Four Thousand Dollars ($4,000.00,) which mortgage the Des Moines Union Railway Company on or about the first day of January, 1894, was compelled to pay. That the total amount paid by the said Des Moines Union Railway Company in payment and satisfaction of the said mortgage, which was at the time of the
1068 said agreement a lien upon the said property, was Eleven Thousand Nine Hundred Seventy-four and 84/100 dollars ($11,974.84).

The plaintiffs further show that a certain right of way being a part of said terminal property upon which the railway was then being operated, through lots fifty-three (53) and fifty-four (54), Brooks & Co's Addition to the City of Des Moines, was found not to have been acquired, and the said Des Moines Union Railway Company was compelled to acquire the same at a cost to it of Seven Hundred and sixty-six Dollars ($766.00), that being the lowest sum for which the same could be obtained.

The plaintiffs further state, that the said Des Moines Union Railway Company has been compelled to pay rent for a cer-

tain switch known as the distillery switch, with interest, amounting to Fourteen Hundred Eighty-five and 88/100 Dollars ($1485.88). That said switch was a part of the property operated by the terminal company, and should have been free of any lien or incumbrance.

The plaintiffs further state, that of the above named payments the Des Moines & Northwestern Railway Company or its assigns has been compelled to pay the sum of Twenty-seven Hundred Eighty-one and 68/100 Dollars ($2781.68) which, if the said terminal property had been free and clear of incumbrance, would not have been required to be paid.

The plaintiffs further state, that the Des Moines, Northern & Western Railroad Company, one of the plaintiffs herein, is now the owner of all the rights, interest, claims and demands hereinbefore set forth arising in favor of the said Des Moines & Northwestern Railway Company.

1069 Plaintiffs further state, that the defendants are non-residents and each of them is a non-resident of the State of Iowa.

Wherefore plaintiffs demand judgment against the defendants in the sum of twenty-seven Hundred Eighty-one and 68/100 Dollars ($2781.68), with interest from ..... and costs of suit.

They further pray that a writ of attachment may issue against the lands and tenements, goods and chattels, rights and credits of the defendants.

CUMMINS & WRIGHT,
Attys. for Plff.

State of Iowa,
Polk County—ss.

F. M. Hubbell being first duly sworn, upon his oath says, that he is the President of the Des Moines, Northern & Western Railroad Company; that he has read the foregoing petition, and verily believes the statements therein contained are true.

F. M. HUBBELL.

Subscribed and sworn to before me this 30th day of September, 1895.

(Seal)

J. P. HEWITT,
Notary Public, Polk County, Iowa.

1070

Exhibit "A"

New York, October 9, 1886.

To the Purchasing Committee
of the Wabash, St. Louis & Pacific Ry. Co.

Gentlemen:—

We make the following proposition in regard to the Des Moines Northwestern Railway: The mortgage to be foreclosed to cover all advances made by the Wabash Company to the D. M. N. W. Ry. Co. A good and perfect title free from all liens and incumbrances (including all claims the Receivers may have against it) to be made to Polk & Hubbell for said railway (and all its property, rights, franchises, all its interest in the equipment), and a one-fourth interest in the terminal property at Des Moines and 5037 shares of stock in the D. M. N. W. Ry. Co.

Upon the delivery of the property above named in the condition as to title as above specified, Polk & Hubbell are to pay the Committee a $450,000 first mortgage 5% bond. The issue to be only $450,000, and to be secured by a first mortgage on the property conveyed, to-wit: on that part of said railway lying between Farnham street in Des Moines and the town of Fonda and equipment. To run two years from the time the title is delivered to Polk and Hubbell, and to be redeemable at their option at any time before maturity upon payment of principal and accrued interest, and if paid within one
1071 year from the time the title is delivered to Polk and Hubbell, then $450,000 cash shall discharge said mortgage and debt. Polk and Hubbell to have all the stock of the new company. As soon as the contract is completed Polk and Hubbell are to make arrangements to standard gauge the road. If accepted, the details and plan of carrying out the above is to be agreed upon and embodied in a contract to be signed by the necessary parties.

POLK & HUBBELL.

1072

Exhibit "B"

New York, October 9, 1886.

The foregoing proposition is satisfactory to us, and we agree as a Committee acting under the contract of July 15th, 1885, between ourselves and certain bondholders, to take all measures in our power to have the same fully performed.

(Signed) O. D. ASHLEY.
THOS. H. HUBBARD,
EDGAR T. WELLES.

1673 This Memorandum of Agreement made and entered into this 10th day of September, A. D. 1887, by and between Messrs. Polk & Hubbell, parties of the first part, and James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, as a Purchasing Committee under contract of July 15th, 1885, parties of the second part, Witnesseth:

That whereas, under date of October 9th, 1886, the parties to this agreement entered into a certain conditional contract for the foreclosure and sale of the Des Moines Northwestern Railway, as shown by copy of proposition of the first party hereto and acceptance of the second party hereto, attached to this agreement and made part hereof;

And Whereas, in pursuance of said contract said foreclosure and sale is to take place as provided in said agreement, and said parties of the first part expect and intend to become purchasers at said sale;

Now Therefore, it is further agreed between the parties above named, as follows:

1st. For the purpose of enabling Messrs. Polk & Hubbell to bid in the Des Moines Northwestern Railway at the foreclosure sale above referred to, the Committee will furnish to said Polk & Hubbell the general mortgage bonds required to make payment of said bid, so far as the same may be required and can be used in that way; the cash payment required by the decree shall be advanced by Messrs. Polk & Hubbell
1674 and credited upon the purchase price of the property above mentioned.

2nd. A decree of foreclosure and sale shall be entered as soon as possible after the first day of the next term of the Circuit Court of the United States for the Southern District, Central Division of Iowa. Messrs. Polk & Hubbell will see that the amount of the cash payment is made as small as possible, and to that end will negotiate for a reduction of the Master's fees and other costs, so far as the same can be obtained. The day of sale shall, moreover, be made as soon as possible.

3rd. The requirement of the agreement hereto annexed, for the delivery to the Committee by Messrs. Polk & Hubbell of a bond for $450,000, shall be satisfied by the delivery of such bond secured by first mortgage as provided in proposition of October 9th, 1886, executed by a new corporation organized for that purpose, and holding the property disposed of at such sale.

4th. As soon as practicable after the signing of this stipulation the Des Moines Northwestern Railway shall be turned

over to Messrs. Polk & Hubbell, and thenceforth regarded as having been transferred under the contract hereto annexed.

5th. Simultaneously with the execution and delivery of said bond the Committee will convey to Messrs. Polk & Hubbell, or their assignees, the one-fourth interest in the terminal property at Des Moines, and will transfer also 5037 shares of stock of the Des Moines Northwestern Railway Company, and also all the interest of the parties of the second part in the equipment of said Des Moines Northwestern Railway. It is hereby understood that the rolling stock of the New
1075 York & Pacific Car Trust Association is not included in this agreement.

Simultaneously with the conveyance above mentioned of one-fourth interest in the terminal property at Des Moines, the same shall be mortgaged back to the Purchasing Committee for the further security of the said $450,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, the bonds and stock received from the Terminal Company in exchange for said one-fourth interest shall be transferred in lieu of the property to Messrs. Polk & Hubbell, or their assignees, or transferred by them to the Committee, to be held by the Committee as a further security for the payment of the $450,000. above mentioned.

6th. The transfer of the bonds mentioned in paragraph one of this agreement, to Messrs. Polk & Hubbell, and the execution and delivery of the bond and mortgage mentioned in paragraph three, shall be consummated, if possible on the same date as the delivery of the Master's deed to Messrs. Polk & Hubbell, or their assignees; said mortgage being recognized as a purchase money mortgage.

POLK & HUBBELL.

Purchasing Committee: JAMES F. JOY,
O. D. ASHLEY,
THOS. H. HUBBARD,
EDGAR T. WELLES.

1076 State of Iowa,
Polk County—ss.

F. M. Hubbell being first duly sworn, upon his oath says, that he is the President of the Des Moines, Northern & Western Railway Company, one of the defendants in the above suit. That the defendants are non-residents of the State of Iowa, and that each of them is a non-resident of said State, and that personal service of the original notice herein cannot

be made upon the said defendants, or either of them within this State.

F. M. HUBBELL.

Subscribed and sworn to by the said F. M. Hubbell this day of September.

(Seal)

J. P. HEWITT,
Notary Public, Polk County Iowa.

The plaintiffs elect to have the original notice herein published in the Des Moines Leader, a newspaper published in the City of Des Moines, Polk County, Iowa.

CUMMINS & WRIGHT,
Attys. for Plff.

Let the publication be made as requested.

J. G. JORDAN, Clerk.

By Edwin Hutt, Deputy.

1077 **Defendants' Exhibit 520.**

In the District Court of Iowa, in and for Polk County.

Des Moines Northern & Western R. R. Co., et al., Plaintiff,

vs.

James F. Joy, et al.,

Defendants.

Amendment to Petition.

Filed Dec. 23, 1896.

Comes now the plaintiff, the Des Moines Northern & Western Railroad Company, and in response to the motion to make its petition more specific filed herein January 26th, 1896, avers that the Des Moines & Northwestern Railway Company acquired the interest of the said Polk & Hubbell in the said contract with the defendants in the following manner: At the time the said contract was made with the said defendants it was agreed by and between the membership of the firm of Polk & Hubbell that all the rights and property acquired by them under and by virtue of the said contract with the Purchasing Committee should be assigned and conveyed to a corporation to be organized known as the Des Moines & North-

western Railway Company, and if said agreement had been carried out the one-fourth interest in the said terminal property set forth in the original petition would have been so conveyed and transferred to the Des Moines & Northwestern Railway Company. That before the said agreement was
1078 executed it was modified as follows, to-wit: That an independant corporation known as the Des Moines Union Railway Company should be organized, which should become the owner of the said terminal property, and that in lieu of the undivided interest in the said terminal property which was to be so conveyed by the said Polk & Hubbell to the said Des Moines & Northwestern Railway Company the said Des Moines & Northwestern Railway Company should have and receive one fourth of the capital stock of the said Des Moines Union Railway Company. That in pursuance of such modified agreement the Des Moines & Northwestern Railway Company was organized, and received a conveyance of all said property except the terminal property, and the Des Moines Union Railway Company was organized, and issued to the Des Moines & Northwestern Railway Company upon the verbal order of the said Polk & Hubbell one-fourth of its capital stock; and thereupon the said Polk & Hubbell verbally assigned and transferred, in addition to the said one-fourth of the capital stock of the Des Moines Union Railway Company, all the rights and interests which they had acquired in or pertaining to the said terminal property from the defendants, and under the contract set forth in the original petition; and in that manner the said Des Moines Northwestern Railway Company became the owner of the cause of action which is herein set out.

Answering the second requirement of the said motion, the said plaintiff says that in December, 1891, the Des Moines & Northwestern Railway Company, pursuant to the statutes of Iowa, consolidated all its rights, properties, privileges,
1079 franchises, cause of action and stock with a corporation known as the Des Moines & Northern Railway Company, and the said consolidated company issued its bonds in an amount not necessary to herein state, and secured the same by a mortgage upon all its property, including the one-fourth of the capital stock of the Des Moines Union Railway Company, and including the said cause of action against the defendants. That thereafter the said mortgage was foreclosed in the Circuit Court of the United States for the Southern District of Iowa, Central Division, and all the property embraced in the said mortgage, including the cause of action herein was sold at public sale under an execution in the said foreclosure proceedings. That at such sale the said property, including the said cause of action, was purchased by a Purchasing Committee

composed of G. M. Dodge, F. M. Hubbell and F. C. Hubbell. That thereafter the present plaintiff, being a corporation known as the Des Moines Northern & Western Railroad Company, was organized in accordance with the laws of the State of Iowa, and the said Purchasing Committee sold, assigned and transferred to the plaintiff by a written instrument all the property that it had acquired at the said foreclosure sale; and thus

(Signed) CUMMINS, HEWITT & WRIGHT,
Attys. for Plaintiff.

this plaintiff became the owner of the cause of action set forth in the petition arising out of the contract with the defendants.

Answering the third of the requirements of said motion, the said plaintiff respectfully shows that it is fully answered in the foregoing answers to the first and second requirements.

1080 State of Iowa,
Polk County—ss.

F. C. Hubbell being first duly sworn, upon his oath says that he is the Superintendent of the Des Moines, Northern & Western Railroad Company; that he has read the foregoing amendment to the petition and verily believes the statements therein contained are true.

(Signed) F. C. HUBBELL.

Subscribed and sworn to before me this 21st day of December, 1896.

(Signed) CRAIG T. WRIGHT,
Notary Public, Polk County, Iowa.

1081 **Defendants' Exhibit 521.**

In the District Court of Iowa in and for Polk County.

Des Moines, Northern & Western Railroad Company, et al.,	:	#7614 Law
Plaintiffs.	:	
vs.	:	
James F. Joy, et al.,	:	Answer.
Defendants.	:	

Come now defendants, O. D. Ashley, Thomas F. Hubbard and Edgar T. Welles, and for answer to the plaintiffs' petition as amended, say:

That said defendant James F. Joy, died prior to January, 1897.

That they admit that the plaintiffs are corporations organized under the laws of Iowa, and having their principal place of business at Des Moines, Iowa.

That they admit that defendants are non-residents of the state of Iowa.

That they admit that these defendants with said James F. Joy were constituted a "Purchasing Committee" under a contract dated July 15, 1885, between themselves and certain bondholders of Wabash, St. Louis & Pacific Railway Company, but deny that their powers and duties are correctly or fully set forth in the petition.

That they admit that these defendants with said James F. Joy in their capacity as a "Purchasing Committee", as defined in said contract appointing them and not otherwise, did on or about the 10th day of September, 1887, enter into certain written agreements with Polk and Hubbell for the sale of certain stock and bonds of the Des Moines Northwestern Railway Company, and certain stock and bonds of the Des
1082 Moines Union Railway Company. That whether the copies Exhibits "A", "B" and "C" are true copies of said written agreements, or of them, these defendants have neither knowledge or information sufficient to form a belief.

That they deny that they intended to, or did, or were, by said Polk & Hubbell, understood to agree to warrant the title of said terminal property, or to incur either personally, or as a "Purchasing Committee" or on behalf of their principals, liability whatever in respect to defects in title or incumbrances upon said terminal property.

That they deny that they are either personally or as a "Purchasing Committee", or on behalf of their principals, liable or indebted to plaintiff in the sum of $2781.68, or in any other sum or amount, whatever.

That they deny that plaintiffs are, or ever were the owners of the claims sued on.

That they deny each and every allegation in the petition not herein admitted.

Wherefore, defendants demand judgment for costs.

BAILY & BALLEINGH,
Attorneys for defendants.

1083 **Defendants' Exhibit 522.**

In the District Court of the State of Iowa in and for Polk County.

Des Moines Northern & Western Railroad Company,
vs.
James F. Joy, O. G. Ashley, Thos. F. Hubbard and Edgar T. Wells.

Defendants are a purchasing committee of the bondholders of the old Wabash System, and as such bought in the property covered by the mortgage securing the payment of said bonds. Under date of October 9, 1886, Polk & Hubbell made to said Committee a proposition relating to one piece of the property formerly embraced in the Wabash system, and covered by the mortgage thereon. The following is a copy of so much of said proposition as is material to the present issue:

"New York, Oct. 9, 1886.

To the Purchasing Committee of the Wabash, St. Louis & Pacific Ry. Co.

Gentlemen:—We make the following proposition in regard to the Des Moines Northwestern Railway. The mortgage to be foreclosed to cover all advances made by the Wabash Company to the D. M. N. W. Ry. Co. A good and perfect title free from all liens and incumbrances (including all claims the Receivers may have against it) to be made to Polk & Hubbell for said Railway (and all its property, rights, franchises, all its interest in the equipment) and a one-fourth interest in the terminal property at Des Moines and 5037 shares of
1084 stock in the D. M. N. W. Ry. Co. Upon the delivery of the property above named in the condition as to title as above specified, Polk & Hubbell are to pay the committee a $450,000 first mortgage five per cent bonds."

This proposition was accepted by the committee and its terms were afterwards carried out in so far as the conveyance of the property and the payment therefor is concerned. Polk & Hubbell claim to have assigned and transferred all that they acquired by said transaction to the plaintiff. Since the conveyance by the committee, it has developed that upon one piece of the property included in what is in the proposition termed the "Terminal property," there was a mortgage, one-fourth of which plaintiff has paid, and it seeks to recover the money thus paid with interest.

It is insisted by defendants, that they did not undertake to convey the one-fourth interest in the terminal property free and clear of all liens, that that undertaking applied to the D. M. N. W. Ry. Why it should apply to that property, and not to the other, is not apparent on the face of the proposition. It is certain that Polk & Hubbell were contracting for some property without liens or incumbrances. The language is "A good and perfect title free from all liens and incumbrances * * * to be made to Polk & Hubbell for said railway * * * * and a one-fourth interest in the terminal property." It is argued that the use of the "interest" indicates that Polk & Hubbell were to take the property as it stood. Ordinarily the word "interest" is used to indicate less than the whole of a thing. If I say I own a half interest in a farm, it cannot be reasonably contended that I have claimed to own one-half of
1085 it, subject to incumbrances. Indeed, it seems to me, that such a construction of the word would be both unnatural and unreasonable. If, however, there can be any doubt as to the correctness of this construction of the clause of the proposition under consideration, when it is considered in connection with what follows, there can be none. The next clause of the contract, it will be noticed provides that "upon the delivery of the property above named in the condition as to title as above specified, Polk & Hubbell are to pay", etc. What was the property above named? Certainly the one-fourth interest in the terminal property was a part of it. If this be true, then beyond all question the title to that property was to be delivered as above provided, to-wit, "free and clear from all incumbrances." I conclude that the "terminal property" equally with the property designated as the D. M. N. W. Ry. "was to be free of liens and incumbrances."

II

Defendants insist, that plaintiff has not shown, that it is the owner of whatever rights Polk & Hubbell acquired in the "terminal property" under their contract with the purchasing committee, and that it has not shown a right to maintain an action thereunder.

Before proceeding to a consideration of the evidence upon this question, it may be premised that the Des Moines Union Ry. Co. is a corporation organized by the parties interested
in the terminal property, for the purpose of taking,
1086 holding and operating that property.

Mr. Hubbell of the firm of Polk & Hubbell was a witness upon the hearing of this cause, and no witness contro-

verted any statement made by him. His testimony upon this question was as follows:

Polk & Hubbell obtained from the purchasing committee a contract for the purchase of the railway, and the terminal property, and in some way they turned their rights under the contract over to the new railway company that was organized. I think that was by an oral transaction. The rights that Polk & Hubbell obtained in all the property, whether the terminal or the railroad, was assigned and transferred by Polk & Hubbell to the Des Moines & Northwestern Ry. Co. I do not remember how it was done. We did not consider it was our individual property. As soon as the company was organized everything we had obtained from the purchasing committee was passed over to the railroad company. (Q) You may state whether the one-fourth of the bonds of the Des Moines Union Ry. Co. were issued to the Des Moines & Northwestern Railroad Company at the order of Polk & Hubbell and with their consent and knowledge? (A) They were. The bonds were issued to the purchasing committee, and when the purchasing committee essayed to comply with the contract to give to Polk & Hubbell or their assignees its shares in the Des Moines Union, it was done by the purchasing committee giving to the Des Moines & Northwestern Ry. Co. 112 Des Moines Union bonds * * * and when the stock of the Des Moines
1087 Union Ry. Co. was issued one-fourth of it was issued to the Des Moines & Northwestern Ry. Co. and it has been held by that company or its successors until the present and has been voted by that company.

From the first that quarter interest in the stock of the Des Moines Union Ry. Co. has always been recognized by everybody who had any connection with the company whatever, as the property of the Des Moines & Northwestern Ry. Co. and the firm of Polk & Hubbell either in writing or otherwise transferred to the Des Moines Northwestern Ry. Co. the one-fourth interest in the terminal property. The purchasing committee and its members knew that the Des Moines & Northwestern Ry. Co. was holding one-fourth interest in the bonds of the Des Moines Union Ry. and a one-fourth interest in its stock, as the one-fourth interest in the terminal property which they agreed to sell and deliver to Polk & Hubbell. The Des Moines & Northwestern Ry. Co. paid the entire purchase price of the property by Polk & Hubbell bought of the purchasing committee."

The foregoing leaves no room to doubt that the Des Moines & Northwestern Ry. Co. acquired all the rights of Polk & Hubbell under the contract with the purchasing committee. That corporation executed a mortgage to the Metropolitan Trust

Co. to secure the payment of certain bonds issued by it, which mortgage covered among other property "a one-fourth interest in the capital stock of the Des Moines Union Ry. Co. This mortgage was foreclosed and upon sale thereunder Messrs. G. M. Dodge, F. M. Hubbell and F. C. Hubbell as a purchasing committee bought in the entire property, including said
1088 interest in the capital stock of the Des Moines Union Ry. Co. Thereafter the plaintiff company was organized and the Messrs. Dodge & Hubbell conveyed to it all the property by them purchased under the foreclosure sale.

What did it take under such conveyance? Certainly a one-fourth interest in the Capital Stock of the Des Moines Union Railway Company, and nothing more. The Des Moines Northwestern Railway Company doubtless had a right of action against the defendants under the terms of the contract entered into by them with Polk & Hubbell, but such right of action was not included in the mortgage to Metropolitan Trust Co. and did not pass under the foreclosure thereof.

A judgment must be entered against plaintiff for costs.

1089 **Defendants' Exhibit 523.**

In the District Court of Iowa in and for Polk County.

Des Moines, Northern & Western	:	
	:	
Railroad Company, Plaintiff,	:	
	:	
vs.	:	
	:	#7614. Law.
	:	
	:	Judgment.
	:	
James F. Joy, et al., Defendants.	:	

This cause was heretofore tried to the court without a jury, the plaintiff appearing by Cummins, Hewitt & Wright, its attorneys, and the defendants appearing by Baily, Ballerich & Preston, their attorneys. The court having heard the evidence and arguments of counsel took the case under advisement.

And now, to-wit, on this 5th day of August, 1899 this cause came on for decision and judgment. The court being fully advised in the premises finds for the defendant and against the plaintiff.

It is therefore ordered and adjudged that plaintiff's cause of action be and it is denied and this action dismissed at the

merits; that the attachment be discharged and the attached property released therefrom, and that defendants have and recover from plaintiff, Des Moines Northern and Western Railroad Company, the costs of this action as taxed by the clerk, and that execution issue therefor.

1090 **Defendants' Exhibit 523a.**

Whereas since the execution of the terminal agreement to which this is appended as a supplement, the Des Moines & Northern Railway Company, has become the owner of the railway extending from Des Moines, Iowa, to Boone, Iowa, formerly owned by the St. Louis, Des Moines & Northern Railway Company, and has become substituted in said contract in the stead of the said St. Louis, Des Moines & Northern Railway Company,

Whereas the said Des Moines & Northern Railway Company has entered into a trackage contract with the owner of the line of railroad, extending from Des Moines, Iowa, southeasterly to Harvey, Iowa, known as the Des Moines & St. Louis Railroad, and

Whereas the said Des Moines & Northern Railway Company expects to transport coal over said Des Moines & St. Louis Railroad, through Des Moines to points upon the line of the Des Moines & Northern Railway, and to points upon the connections of said last named company, using in the passage of trains through Des Moines, the tracks of the Des Moines Union Railway Company, and

Whereas it is believed that for such traffic, (which is understood to be the movement of coal trains directly through the said City of Des Moines, without switching or handling, and their operation by the engines and crews of the said Des Moines & Northern Railway Company), there should be a different method of computing wheelage, in order to ascertain the
1091 amount which should be apportioned to the said Des Moines & Northern Railway Company, of the expense of the terminal property.

It Is Therefore Now Agreed by and between all the parties to said contract, of which this is a supplement, as follows to-wit:

That in making the apportionment and division of the cost and expense provided in said contract to be made, all coal trains and cars loaded upon the line of said Des Moines & St. Louis Railroad, moved by the engines of the said Des Moines & Northern Railway Company, and passing through Des

Moines Northward, and for all empty coal trains or coal cars destined to points on the line of the Des Moines & St. Louis Railroad, for the purpose of taking on loads of coal wheelage shall be computed as follows:

1st. Upon all such coal cars and coal trains, whether loaded or empty, but one wheelage for each trip shall be reckoned for their passage over the said tracks of the Des Moines Union Railway Company, that is to say, one wheelage for the loaded cars or trains going northward, and one wheelage for the empty cars or trains going southward.

2nd. The wheelage of the said Des Moines & Northern Railway Company, reckoned as above, for such coal cars and trains and empty coal cars and trains, shall not share in all the costs and expense of said terminal property as provided in said contract to which this is a supplement, but such wheelage shall be limited to the following items of
1092 expense, namely:

(a) To one third of the yearly interest upon the bonds of said Des Moines Union Railway Company, and one third of the taxes; but if bonds shall be issued for the purpose of building a new passenger depot, they shall be excluded.

(b) To the entire expense of the road department, in which it is understood there is to be included the salaries of train dispatches and crossing watchmen. It is agreed that the renewal of bridges and the proposed extension of the tracks to connect with the Des Moines & Kansas City Railroad, shall not, for the purpose of this contract, be considered as falling within the meaning of the phrase "road department."

It is, however, further agreed that the cost of keeping the bridge over the Des Moines River in repair shall, as long as the same is used, be taken as a part of the expense of the "road department"; and if during the continuance of this contract a new bridge is built over said river, to take the place of the one now in use, although the traffic herein provided for is not to bear any part of the expense of the new bridge, nevertheless, there shall be thereafter, during the continuance of this contract, be added each month to the expense of the road department, for the purpose of computing wheelage on said traffic, a sum which shall be equal to the average monthly expense of keeping said bridge in repair after the execution of this contract, and before said new bridge is built.

1093 3rd. In the items of expense mentioned in the preceding paragraph, the wheelage of the said Des Moines & Northern Railway Company above described, and reckoned as above provided, shall share with the other users of said

property, and the amount thus found to be due shall be billed to the Des Moines & Northern Railway Company, and paid by it as provided in said original contract.

4th. This contract shall continue and be in force for the period of eighteen months from and after its execution, and at the end of said period shall cease and determine.

In Witness Whereof the several corporations, parties hereto, have caused their corporate names to be hereunto signed by their duly authorized officers, and their respective seals to be hereto attached, with due attestation by their respective secretaries, this 15th. day of May, 1880.

(Seal)
Attest:
F. M. Hubbell,
Secretary.

DES MOINES UNION RAILWAY COMPANY,
By G. M. Dodge, President.

(Seal)
Attest:
F. M. Hubbell,
Secretary.

DES MOINES & ST. LOUIS RAILROAD COMPANY,
James F. Dow, President.

(Seal)
Attest:
A. N. Denman,
Secretary.

DES MOINES & NORTHWESTERN RAILWAY,
By F. M. Hubbell, President.

(Seal)
Attest:
L. M. Martin,
Asst. Sec'y.

DES MOINES & NORTHERN RAILWAY COMPANY,
By A. B. Cummins, V. President.

1091 **Defendants' Exhibit 524.**

This Agreement, Made and entered into this second day of June, 1880, by and between the Des Moines Union Railway Company, a corporation organized under the laws of the State of Iowa, and having its principal place of business at Des Moines, Iowa, party of the first part and the Chicago, St. Paul & Kansas City Railway Company, a corporation organized under the laws of the State of Iowa, party of the second part, Witnesseth; that

Whereas, the said party of the first part is the owner of valuable terminal facilities in the City of Des Moines, Iowa, consisting of main and side tracks, freight and passenger depots, depot grounds, lands, yards, sheps, round houses, transfers, and other property connected with the operation of railways extending from the eastern boundary line of said city to Farnham Street in the western part thereof, and

Whereas the party of the second part is the owner of and operates a line of railway extending to, from and through the said City of Des Moines, and

Whereas, said second party is desirous of obtaining the right to use said terminals or a portion thereof in connection with its said line of railway, and

Whereas, it is understood that the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company have by contract acquired the right to use said terminals,

1025 Now Therefore, in consideration of the premises and the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows, to wit;

Section One:—

That the party of the first part grants to the party of the second part the use (in common with such railway companies as heretofore have, or may hereafter enter into contract with the party of the first part) of its terminal property aforesaid, including tracks, passenger and freight depots, round houses, shops, buildings and structures and all betterments, renewals, improvements of and additions to the same for the term of three years from and after the first day of June, 1880; and thereafter until the same shall be terminated by one year's written notice by either of the parties hereto, but such notice shall not be given until after the expiration of said period of three years; but such use shall at all times be subject to the reasonable regulation and control of the party of the first part, which shall at all times manage and operate said terminal property in the interest and for the benefit of such railway companies as may acquire the right to use the same; and said first party agrees to keep and maintain its said terminal property in good condition and repair and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such servants and employes as shall be reasonably necessary for the conduct of its business and the moving and handling of cars, passenger and freight, of said second party and the housing and care of its en-

1026 gines; and said first party further agrees to switch all cars, handle all freight, house and care for all engines of said second party which may be delivered to it or which may come upon its said terminal property, in so far as said second party may request it so to do; and said first party further agrees that the use hereby granted shall be without preference or unreasonable precedence for or to itself or any of the lessees of said terminals in the manner of train time,

schedules or the handling or switching of cars and trains and occupancy of depots or the occupancy of said property or any part thereof or in the service herein agreed to be performed, always however, subject to such reasonable control and direction by the party of the first part as may be necessary to avoid confusion and expedite the management of the business of the party of the first part.

Section Two:—

The party of the second part agrees to pay to the party of the first part monthly, a sum of money to be ascertained as follows to-wit:

1st:—There shall be ascertained the amount required to pay five per cent upon the mortgage bonds of the party of the first part, one twelfth of which shall be payable monthly as hereinafter specified.

2nd:—At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining the property of the party of the first part including the renewal, maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month, not exceeding original cost of construction, and in like man-
1897 ner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd:—There shall be likewise ascertained the costs and expenses of every nature, connected with the operation of said terminal station, freight and passenger depots, depot grounds, tracks, round houses, transfers and other properties which is to include every item of expense or disbursement reasonably incurred or made by the party of the first part not hereinbefore mentioned except the expense specified in section four hereof.

Section three;—

Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, the party of the second part shall pay to the party of the first part, that proportion thereof that the wheelage of the party of the second part bears to the entire wheelage of all the railway companies using said terminal facilities, during such preceding month; and it is expressly agreed and understood that in computing wheelage three narrow guage cars shall be taken as the equivalent of two standard guage cars, and that the term wheelage as used in this contract means that three narrow

guage cars are to be accepted as the equivalent of two standard guage cars; and it is further expressly agreed and understood that in computing the wheelage of the party of
1098 the second part, its through passenger trains which pass from its main line east of the Des Moines River to the depot, of the party of the first part, and are returned to said main line over the same track to proceed to their destination shall for each trip be reckoned as though they had come but once upon the said terminal property.

Section Four;—

The costs and expenses of operating the engine houses and their appurtenances and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping, washing and firing up, shall be divided, and the party of the second part shall pay such proportion thereof as the number of road engines of the party of the second part in and out of said engine house shall bear to the whole number of road engines in and out thereof during the period for which said costs and expenses are made up. All repairs to engines of the party of the second part shall be paid for on the basis of the actual cost of labor and material. And all services rendered and supplies and labor furnished to the party of the second part for its own benefit and which is not properly a portion of the joint expenses of said terminals shall be charged directly to and paid by said party of the second part on such equitable terms as may be agreed upon between the superintendent of the party of the first part and the superintendent of the party of the second part.

Section Five;—

The party of the first part shall on or before the 10th
1099 day of each month or as soon thereafter as practicable, make up and present to the party of the second part an account showing the amount due hereunder for the preceding month, and payment thereof shall be made within fifteen days thereafter.

Section Six:—

It is further agreed between the parties hereto that if the party of the second part shall, for any reason, fail or refuse for a period of sixty days after the same is due and the said account rendered as aforesaid, to pay the several sums as provided in this contract to be paid, then the party of the first part may take from any moneys in its hands or in the hands of its agents the amount so due and apply sufficient thereof to meet the demands, and if the sum so taken be insufficient to

pay the amount due under this agreement and the same shall still remain unpaid, said first party shall have the right to forfeit cancel and annul this contract, but it is expressly understood and agreed that nothing herein contained shall prevent the party of the first part from enforcing its said demands against the party of the second part by any proper action at law or in equity or from recovering the amount which may be at any time due and unpaid if it shall so elect.

Section Seven:—

The management of the terminal property shall be in charge of a superintendent, appointed by the party of the first part, and it is agreed that neither his compensation nor that of other agents and employes shall be higher than is ordinarily paid by railroad companies in the vicinity for similar serv-
1100 ices.

Section Eight:—

Said terminals shall be used by the party of the second part for all its regular passenger trains, destined to departing from or passing through said City of Des Moines, and shall be used by all the freight cars of said second party, carrying freight to or from said City of Des Moines, except such freight as may be destined to and from industries on the line of second party's railway.

Section Nine:—

The party of the first part shall keep accurate books of account showing in detail all the expenditures made by it on account of the various items of interest, insurance, taxes, renewals, improvements, operation, maintenance, repairs and other disbursements embraced in this agreement upon and about said premises, so that the parties hereto at all times may be enabled to make accurate settlement of their accounts as provided in this agreement, and said books may at all reasonable and proper hours be examined and inspected by the superintendent, auditor, treasurer or authorized accountant of said second party.

Section Ten:—

The said party of the first part shall also keep an accurate record of all cars and engines of each railway company using said terminals and arriving at or departing from said terminal station, grounds, transfer and yards, and the cars
1101 of foreign roads that may be switched upon or from said terminals for the benefit of any railway occupying said terminal property, and of all the engines which have been

housed at said engine houses in each month and as hereinbefore provided said first party shall furnish to the second party hereto, a full, true and detailed statement of all the expenditures made of all the fuel and other supplies used, of all the cars and engines received, handled or switched, of all the work done or repairs made, and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section Eleven:—

All damages which may be received by engines or cars while being switched by the party of the first part at or upon any part of the said terminal property, shall be repaired by the party of the first part, and the cost of such repairs shall be borne and paid as a part of the expenses of the operation of said terminal property and divided upon a wheelage basis as herein defined.

Section Twelve:—

All damages to property caused by any engine or engines, car or cars of the railroad companies occupying said terminals while being switched, managed, controlled, or under the management and control of the party of the first part, or by any imperfection in the track or tracks laid on said premises, and all injuries which may at any time be received by any
1102 person or persons in, around, about, or upon said terminal station, depot grounds, tracks, yards, round houses, transfers &c., caused through or by the party of the first part or any of its agents, officers or servants, shall if settled at all be adjusted and settled by said first party, and the sums thus paid in settlement or settlements shall be considered as a part of the expenses of operating said terminals and shall be divided and paid upon said wheelage basis as herein defined; provided, however, that the party of the second part and each railway company using said terminal facilities, shall at its own cost and expense bear, settle and pay all damages to property belonging to the parties hereto, or to third parties, and all injuries to persons, when said damages or injuries are done to or by its own trains while said trains are being moved by its own engines and are being operated and controlled by its own crews unless such damages or injuries are occasioned by the act, neglect, or fault of the servants of said first party or by some imperfection in its track or tracks; and in case such damages or injuries are so occasioned by the act, negligence or fault of the servants of the said first party, or by any imperfection in its said tracks, then settlements and payments shall be made by said first party and shall be considered

as a part of the expenses of operation of said terminals and shall be divided and paid upon the basis of wheelage as herein defined.

Section Thirteen:—

It is further expressly agreed that the party of the second part shall not be required to share in the interest upon
1103 bonds of party of first part in excess of five hundred thousand dollars, except that if party of first part builds a new passenger station or depot, party of second part will share from the time the same is ready for occupancy, in the interest of bonds issued to pay for the same, not exceeding the sum of one hundred and twenty-five thousand dollars, additional to said five hundred thousand dollars; provided, further, that no bonds shall be issued or sold for purposes other than enlarging, bettering or improving said terminal property or the payment of some expense connected therewith.

Section Fourteen:—

All matters of difference between the parties hereto which may arise from time to time under the provisions of this contract shall be settled by arbitration—each party selecting one disinterested person; and in case the parties so selected fail to agree, they shall select a third party, and the decision of the majority of the arbitrators shall be final and binding on both parties hereto. And it is further agreed that the arbitrators herein provided for shall be selected within thirty days from date of written notice from one party to the other of a desire to have a matter arbitrated; and in case either party fail or refuse to select one arbitrator on its behalf within thirty days from date on which notice in writing, has been given, then the party desiring the arbitration shall select two disinterested persons, and if they can not agree, they shall select a third. The decision of the majority of the arbitrators, so selected, shall be binding; and in case the arbitrators fail to agree, or fail to choose a third party, or fail to render a decision
1104 within thirty days from the date on which the matter at issue has been submitted to them in writing there shall be a new board of arbitration selected as herein provided for; and this shall be done from time to time and as often as may be desired by either party hereto, until a decision is rendered. All matters at issue to be arbitrated shall be submitted to the arbitrators in writing.

Provided however, that such arbitration and difference shall have no effect upon or interrupt the course of business at said

terminal station, grounds, yards, &c., until the final decision of said arbitrators, but such business shall continue to be transacted, settlements and payments as herein provided for shall be made as before until the matter in dispute shall be adjusted by said arbitrators, and thereupon such payments or restitutions shall be made as said arbitrators shall by their decision determine to be just and in accordance with justice and fair dealing under this contract.

In Witness Whereof the respective parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed and attested by their secretaries respectively, the day and year first above written.

(Seal) THE DES MOINES UNION RAILWAY COMPANY,
By F. M. Hubbell, & A. B. Cummins, Committee.

Attest:
F. M. Hubbell,
Secretary.

1105 CHICAGO, ST. PAUL & KANSAS CITY RAILWAY COMPANY,
By A. B. Stickney,
President.

Attest:
John L. Pratt,
Asst. Secretary.

1106 **Defendants' Exhibit 525.**

Des Moines, May 14, 1894.

The within contract is hereby extended from and after June 1st, 1894, until the expiration of three months' notice by either party of the desire to terminate the same. Except that the first paragraph of Section two (2) shall be modified so as to read as follows:

There shall be ascertained the amount necessary to pay five 5%, per cent interest upon $569,000 mortgage bonds of the party of the first part, and eight per cent 8%, interest on $50,775 of floating debt, one-twelfth of which shall be payable monthly as hereinafter specified.

And the further modification that if the first party during the continuance of this contract, shall admit Companies not now using said leased property, the monthly payments made by said company, or Companies, shall be deducted from the amount payable by the present lessees, and the remainder shall

be apportioned and paid by the present lessees on the basis of wheelage, as heretofore.

DES MOINES UNION RAILWAY CO.
By F. C. Hubbell,
President.

Attest,
F. M. Hubbell
Sec'y.

L. M. Martin
Executive Committee.

Chas. M. Hays,
Vice Pres't &
Gen'l Manager,
Wabash Railroad Company.

CHICAGO GREAT WESTERN RY. CO.
By A. B. Stickney,
President.

1107 **Defendants' Exhibit 526.**

Contract and Lease.

Des Moines Union Railway Company,
Des Moines, Iowa,
to the
Chicago, Great Western Railway Company,
St. Paul, Minn.

1108 Lease.

This Agreement, Made and entered into this 2d day of July, 1896, by and between The Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, and having its principal place of business at Des Moines, Iowa, hereinafter called "The Des Moines Company" and The Chicago Great Western Railway Company, a corporation organized and existing under the laws of the State of Illinois, hereinafter called "The Chicago Company," Witnesseth, That

Whereas, The Des Moines Company is the owner of valuable terminal facilities in the City of Des Moines, Iowa, consisting of main and side tracks, freight and passenger depots, depot grounds, lands, yards, shops, round houses, transfers, and other property connected with the operation of railways, and

Whereas, The Chicago Company is the owner of and operates a line of railway extending from Kansas City, Kansas, through the city of Des Moines, Iowa, to St. Paul and Minneapolis in the State of Minnesota, and Chicago in the State of Illinois, and

Whereas, The Chicago Company is desirous of obtaining the right to use in a manner and under the conditions here-
1109 inafter set forth, a portion of said terminal property in connection with its said line of railway, and

Whereas, It is understood that the Des Moines & St. Louis Railroad Company (being now operated by the Wabash Railroad Company) and the Des Moines Northern & Western Railroad Company have acquired the right to use said terminals, and that it is the purpose and intent of The Des Moines Company to admit other railway companies to the use of said terminals upon such terms as to it may seem just, not, however, in conflict with the provisions hereof.

Now Therefore, In consideration of the premises and the mutual covenants and agreements hereinafter contained, it is agreed by and between The Des Moines Company and The Chicago Company, parties hereto, as follows, to-wit:

§ 1. The Des Moines Company agrees to maintain its present connection with the track of the Des Moines & Kansas City Railway Company at a point a short distance north of the Raccoon River.

§ 2. The Des Moines Company grants, subject to the conditions hereinafter provided, and for the term of twenty-five years from and after the date hereof, to The Chicago Company, the use in common, with such railway companies, and in all other respects under the same terms and conditions, as heretofore have or may hereafter acquire the right to use said terminals, of a single main track from the point
1110 of connection with the Des Moines & Kansas City Railway Company hereinbefore described, through the City of Des Moines to the existing connection with the main track of The Chicago Company in East Des Moines.

It is further agreed that so much of the main track so above described as lies west of West Seventh Street in the City of Des Moines, and east of the point where the said main track diverges to the south in order to make the connection with the Des Moines & Kansas City Railway, shall be laid with its center line not farther north than seven and one-half feet from the south line of the east and west alley between Cherry and Vine Streets.

It is further agreed that whenever the business shall require it, The Des Moines Company shall lay a second main track between said connection with the track of The Chicago Company in East Des Moines and the point of connection with the Des Moines & Kansas City Railway which said second main track between West Seventh Street and the point

of divergence toward the south shall be laid with its center line fifteen feet north of said first main track. When so constructed it shall be included within this lease as above provided for the first main track.

The Des Moines Company further grants, subject to the conditions herein provided, and for a like term, to The Chicago Company, the use, in common, and in all other respects under the same terms and conditions, with such railway companies as heretofore have or may hereafter acquire the right to use said terminals, of all main, spur and side tracks, bridges, turn outs, and cross-overs now owned and
1111 operated by The Des Moines Company, lying east and south of the aforesaid connection between the main line of The Des Moines Company and the main line of The Chicago Company in East Des Moines, as well as the right to reach the same from the main line of The Des Moines Company. Also the side tracks, branch and spur tracks now owned and operated by The Des Moines Company leading into the track running southward toward the Raccoon River, and which are south of the Chicago, Rock Island & Pacific Railway. Provided, The Des Moines Company shall have the right to take up or change its main tracks, side tracks, branch and spur tracks, or the use thereof, if by so doing the business is not materially impeded.

The Des Moines Company further grants, under the conditions herein provided, and for a like term, to The Chicago Company, the use in common, with such other railroad companies as heretofore have or may hereafter acquire the right to use said terminals, of a proper and suitable track lying west of the connection in Block Eighteen (18), H. M. Hoxie's Addition to Des Moines, for a distance of one thousand feet; such use on the part of The Chicago Company to be for the purpose of switching into and upon the exclusive tracks of The Chicago Company hereinafter described. Also the use in common as aforesaid and in all other respects under the same terms and conditions of all tracks connecting the line of The Des Moines Company with the lines of other railway companies in Des Moines, and used for the purpose of interchanging cars.

1112 It is further provided that the said second main track shall be constructed at once from the center of Block Four (4), in the original town of Fort Des Moines, westward to the point of divergence in Block Eighteen (18), H. M. Hoxie's Addition to Des Moines, and The Chicago Company shall have the exclusive right to use the same until the business done upon the terminals demands its use as a second main line; and The Des Moines Company shall have the sole

right to determine when such demand exists. Provided, that until such necessity arises, The Des Moines Company may upon days of unusual traffic exclude The Chicago Company from said second main line, and if it shall desire so to do, it shall give to the said Chicago Company twenty-four hours notice of its desire to use the same.

§ 3. The Des Moines Company further grants, under the conditions herein provided, and for a like term, and subject to the same terms and conditions except as herein expressly modified, to The Chicago Company, the use in common, with such railway companies as heretofore have or may hereafter acquire the right to use the same, of all the passenger stations on the main lines herein leased, including platforms, platform tracks, and baggage rooms, as now or hereafter constructed, upon the terminal property of The Des Moines Company. Said use shall include the right to receive and discharge passengers and baggage, the right to receive and discharge express matter, the use of the passenger station or stations by passengers, and the services of the necessary baggage
1113 men and ticket agents, but shall not extend beyond the ordinary use of a station for passenger traffic. The Des Moines Company agrees that it will, within two years from the date hereof, build a new passenger station sufficient to accommodate the needs of the companies using such terminals, the cost of which, within the above limitations, shall be determined by The Des Moines Company. It is expressly understood and agreed that the entire revenue which may be derived from the use of any such station or stations by news stands, parcel rooms, telegraph and telephone offices, dining rooms, lunch rooms, barber shops, express and transfer offices, or any other offices, and all other uses, shall belong exclusively to The Des Moines Company.

§ 4. The Des Moines Company, subject to the conditions herein provided, and for a like term of twenty-five years, grants to The Chicago Company the exclusive use of the following real property, viz: Lot Three (3) in Block Fourteen (14), except so much thereof as lies north and seven and one-half feet distant from the center line of the north team track; also so much of Lot Six (6) in Block Fourteen (14) as lies south of the line drawn from the southwest corner thereof to a point on the east line thereof forty feet north of the southeast corner of said lot, and Lots Three (3) and Six (6) in Block Nine (9), except so much from all of said lots, or parts of lots, as may be necessary for the second main track hereinbefore described; also Lots Four (4) and Five (5) in Block Nine (9) except that The Des Moines Company shall have

the right whenever it may elect, to build, use and oper-
1114 ate a track across the northwest corner of said Lot Five (5) connecting with the said north track at the west side of Ninth Street and running on a suitable line for the purpose of crossing Cherry Street and reaching property on the north side of said street; and the right of joint use of the lead track from said western side of Ninth Street to the main track at Tenth Street, to switch to and from above described track. All of said above described real estate being in H. M. Hoxie's Addition to Fort Des Moines; also Lots One (1), Two (2), Seven (7) and Eight (8), in Block Four (4) in the Original Town of Fort Des Moines, except so much of said Lots Two (2) and Seven (7) as may be necessary for the said second main track hereinbefore described.

The Des Moines Company hereby reserves any of the real estate now owned by it and unoccupied by tracks not herein expressly leased to The Chicago Company for the purpose of building an exclusive switching yard for its own use, or the use of its present or future railroad tenants; and also reserves the right to acquire additional real estate for that purpose.

§ 5. The Des Moines Company agrees to construct as soon as practicable, two team tracks across Lot Three (3) in Block Fourteen (14), and Lots Three (3) and Six (6) in Block Nine (9), H. M. Hoxie's Addition to Des Moines, and Lots Two (2) and Seven (7) in Block Four (4) in the Original Town of Fort Des Moines, the center line of the southerly
1115 of said tracks to be fifteen feet distant from the center line of the aforesaid second main track, and the center line of the northerly of said team tracks to be twenty-nine feet north of the center line of the other. The Des Moines Company further agrees to pave the roadway between the said team tracks either with brick or granite, and if it elects to pave with granite, The Chicago Company agrees to haul the granite necessary for the construction of said pavement from St. Paul or Minneapolis to Des Moines free of charge. The Des Moines Company further agrees to connect the said two team tracks with the said main lines.

The Des Moines Company further agrees that The Chicago Company may build, according to such plans as it may adopt, a freight house upon Lots One (1) or Eight (8), or both, in said Block Four (4), Original Town of Fort Des Moines, and that when the same is constructed it will pay to The Chicago Company twelve thousand five hundred dollars ($12,500) of the cost thereof, and The Chicago Company agrees to bear all the expense of the construction of said freight house over and above the said sum of twelve thousand five hundred

dollars ($12,500). The Chicago Company agrees that it will maintain at its own expense the said freight house and keep the same in as good condition as when built, ordinary wear and tear excepted. It further agrees to keep the same fully insured in good and responsible companies, and if a loss occurs thereunder the insurance shall be used in rebuilding the said freight house. The Chicago Company further agrees that if such freight house be burned or otherwise destroyed
1116 it will rebuild the same at its own expense, and such new building shall be of at least equal cost with the one so destroyed.

The Chicago Company hereby assents to the vacation of west Sixth Street and waives all claims for damages by reason of such vacation, this assent to become effective whenever desired by The Des Moines Company.

§ 6. The Des Moines Company grants, under the conditions herein provided, to The Chicago Company, and for a like term of twenty-five years, the exclusive right to use the tracks to be constructed under the provisions of the last preceding section, save and except that it is agreed between the parties hereto that there shall be a joint use of the connection and north team track in Lots Three (3) and Six (6), Block Fourteen (14), H. M. Hoxie's Addition to the City of Des Moines, for the purpose of reaching a spur track running through the west half of Lot Five (5), Block Nine (9), H. M. Hoxie's Addition to the City of Des Moines, as provided for in Section Four hereof.

The Des Moines Company further grants under the conditions herein provided, to The Chicago Company, for a like term of years, the exclusive use of all the property now owned by it between the Des Moines River and the Chicago & Northwestern connection, and seven and one-half feet north of the present main tracks of The Des Moines Company.

§ 7. The Des Moines Company agrees that it will, upon request, switch the cars of The Chicago Company to,
1117 upon and from all its switches or side tracks, except regular team and freight house tracks situated between West Fifth St. and the aforesaid connection between the main lines of the two companies in East Des Moines, at one dollar and fifty cents ($1.50) per car, provided, that this provision shall not embrace side tracks and switches hereafter constructed by The Des Moines Company, unless the Chicago Company elects to have the benefits of the same under this agreement. The Chicago Company agrees that it will upon request switch the cars of The Des Moines Company and its present tenant companies to and from private industries lo-

cated on the switches laid upon the property hereby exclusively leased to The Chicago Company, or extensions thereof, at one dollar and fifty cents ($1.50) per car, and further agrees that it will switch for The Des Moines Company and its present tenant companies, cars from the south side of the Raccoon River loaded with brick or coal at two dollars ($2.00) per car.

§ 8. The Des Moines Company covenants and agrees with The Chicago Company to maintain in proper condition for railway purposes all the tracks and appurtenances hereby leased, except the freight house to be built by The Chicago Company.

§ 9. The Chicago Company, in consideration of the grants and provisions hereof, agrees to pay to The Des Moines Company in the manner and at the times hereinafter specified, the following sums, to-wit:

1118 1st. An annual rental of twelve thousand dollars ($12,000) to be paid in monthly installments in advance upon the first day of each and every month during the said term, in gold coin of the United States of America of or equal to the present standard of weight and fineness.

2d. The sum of two thousand seven hundred and seventy-six dollars ($2,776) annually, payable monthly as hereinafter provided, which sum shall be in lieu of any and every contribution of The Chicago Company toward the general expense of The Des Moines Company, provided, however, that The Chicago Company agrees to pay The Des Moines Company whenever ascertained, one-third of the actual expense including attorneys' fees and costs, of bringing or defending any proceedings at law, or in equity before any court or other legal commission or tribunal, the decision of which would affect expenditures of The Des Moines Company.

3d. One-third of the actual cost and expense to The Des Moines Company during the term aforesaid, of all flagmen, gatemen, policemen, switch tenders, and of repairing, maintaining, renewing, changing and replacing all the existing railway tracks, bridges, and appurtenances (except buildings and general expenses of The Des Moines Company) and all tracks, bridges and appurtenances hereafter constructed and brought within the operation of this lease, and personal injuries to employes while engaged in the track department, or injuries to persons or property growing out of the conducting of the track department.

1119 4th. One-third the interest at current rates on long time loans by solvent railway companies, not exceeding

as such one-third, two per centum per annum, upon the actual cost of constructing such changes in or protections or conveniences to the public or modifications of said tracks, bridges and appurtenances (except buildings) as may be required by municipal, legislative or other legal action, or which may be deemed necessary for the most economical or convenient use of said tracks and other appurtenances except buildings; such payments to be made monthly in advance in the gold coin of the United States of America of or equal to the present standard of weight and fineness.

5th. One-third of all taxes or assessments, special or otherwise, and public charges of every kind and nature that shall or may be taxed or assessed against The Des Moines Company or its property during the aforesaid term of years.

6th. One-third of the interest of five per centum per annum upon the cost of any passenger station or stations that may be hereafter constructed by The Des Moines Company, including the cost of tracks, and appurtenances constructed, or additional real estate acquired for the same, provided, that in no event shall The Chicago Company be required to pay under this item more than fifteen hundred dollars ($1,500) per annum, such payments to be made monthly in advance in the gold coin of the United States of or equal to the present standard of weight and fineness.

7th. One-third of any amounts paid by The Des Moines
1120 Company for personal injuries, loss or damage to property, including expenses incident thereto, and one-third of the actual cost and expense of The Des Moines Company during the term of this lease in operating, repairing, maintaining and renewing the passenger station or stations now existing, or hereafter constructed, except general expenses, while said station or stations are occupied by not more than three tenant railway companies, but if more than three tenant railway companies shall occupy said stations, then one-half of the total amount paid by such additional companies for the use thereof, either as rental or as a proportion of operating expenses, or both, shall be deducted each month from the total cost of the maintenance and operation of said passenger station and The Chicago Company shall pay one-third of the remainder.

§ 10. The Des Moines Company shall keep accurate books of account showing in detail all the expenditures made by it on account of the various items of interest, insurance, taxes, renewals, changes, operation, maintenance, repairs, and other disbursements embraced in this agreement upon and about said premises, so that the parties hereto may at all times

be able to make accurate settlement of the accounts as provided herein, and said books may at all reasonable and proper hours be examined and inspected by the Superintendent, Auditor, Treasurer, or other authorized accountant of said Chicago Company. The Des Moines Company shall on or before the 10th day of each month, or as soon thereafter
1121 as practicable, make up and present to The Chicago Company an account showing the amount due hereunder for the preceding month, and payment thereof shall be made within fifteen days thereafter at the office of The Des Moines Company in the City of Des Moines, save and except with respect to the items numbered first, fourth and sixth of Section Nine, which payments shall be made monthly in advance as hereinbefore provided. All claimed omissions or errors in said accounts, or exceptions thereto, which may be taken by The Chicago Company, shall be subsequently adjusted between the parties, but shall not delay the prompt payment of the accounts as rendered by The Des Moines Company.

§ 11. In the event that The Des Moines Company shall hereafter construct any additional tracks for the purpose of reaching any private industry or public warehouse, other than a railway freight depot, notice shall be given to The Chicago Company in writing of such construction, and if The Chicago Company desires that such additional tracks be included under the terms of this lease, it shall have the right to so include the same by giving notice in writing of such election, addressed to the President of The Des Moines Company at Des Moines, Iowa, within ninety days after notice is so given by The Des Moines Company. The right acquired with respect to such additional tracks, if The Chicago Company elects to acquire any rights in the same, if located between West Tenth Street and the junction of the main lines in East Des Moines, shall be to have its cars switched thereon
1122 at one dollar and fifty cents ($1.50) per loaded car, but if located south and east of the junction of the main lines in East Des Moines or east of the line of The Des Moines Company and south of the Chicago, Rock Island & Pacific Railway in West Des Moines, the right shall be a common use as hereinbefore described. The Chicago Company shall pay monthly in advance in the gold coin of the United States of or equal to the present standard of weight and fineness, for such additional tracks so brought within the provisions of this lease, an additional rental of two per centum per annum on the cost of the same, including the real estate which it may become necessary to acquire in order to provide for such construction.

§ 12. The Des Moines Company hereby covenants and agrees to obtain an insurance policy or policies in good responsible

fire insurance companies, covering any passenger stations now existing or hereafter constructed, the premiums paid upon such insurance to be charged against the parties hereto upon the same basis as hereinbefore set forth for the operation and maintenance of said station or stations, and keep such policies renewed from time to time during the life of this indenture, and in case of partial or total loss by fire, the proceeds realized from such policy or policies shall be applied by The Des Moines Company in repairing, renewing or replacing the structure or structures so partially or wholly destroyed and in the event that the amount realized from the insurance is not sufficient to renew or replace the
1123 structure, the shortage shall be charged as an expense of said passenger station.

§ 13. The Des Moines Company hereby covenants and agrees that each and all the ticket agents from time to time employed in the passenger stations for the sale of tickets for said Des Moines Company and the tenant companies, shall before they enter upon their duties as such, give an indemnifying bond for their faithfulness in service, or shall be covered by a policy from a Guaranty Company in good standing, and such indemnifying bond or insurance policies shall be renewed from time to time as occasion may require during the life of this indenture. The premiums or expenses relating thereto borne by The Des Moines Company shall form part of the operating expenses of the passenger station, and in the event of any loss or defalcation occurring the money or moneys collected or received from such bond of indemnity or insurance policies shall be apportioned by The Des Moines Company among the several companies in proportion to the loss sustained by each. A compliance with the above provision shall relieve The Des Moines Company of all liability from any such loss or defalcation.

It is further provided that The Des Moines Company shall not continue in its employment any employe connected with the joint occupation of the property, who, for good reasons shown by The Chicago Company, is objectionable to said company, but the right of determining the fitness of
1124 any such employe to remain in his position shall be with The Des Moines Company.

§ 14. It is mutually agreed that all time cards, rules, regulations, and orders for the movement and operation of trains, cars and engines, and for the beneficial enjoyment of the property, the joint, concurrent or common use of which is embraced in this lease, shall be made and promulgated from time to time by The Des Moines Company, and the movement of trains, cars and engines, upon said property shall be un-

der the immediate direction of the Superintendent or other proper officer or agent of The Des Moines Company, but such time cards, rules, regulations and orders shall be reasonable, just and fair to all parties using said property, without preference or discrimination in favor of or against either, but passenger trains of all kinds shall have the right of way and precedence over all other trains and kinds of business upon said property, and The Des Moines Company shall have the general control, management and supervision over the property owned and controlled by it which may be used in common with other railway companies, and the right to enforce proper discipline of employes of The Chicago Company using any of the tracks or property of The Des Moines Company, in common with any of the other railway companies now, or hereafter, using said tracks or property, and in the event The Chicago Company fails or refuses to enforce against any of its employes the penalties prescribed by The Des Moines Company, The Des Moines Company shall have absolute
1125 right to bar said employes from the tracks and property of The Des Moines Company, which are used jointly.

§ 15. The Chicago Company hereby covenants and agrees that it will not, during the term of this lease, use any part of the main track or tracks for switching purposes, further than shall be reasonably necessary to set in and take out cars to and from side tracks in the ordinary course of business, nor do such switching in a manner which shall delay or hinder the passenger or freight trains, or unnecessarily delay the switching crews, of any or either of the parties hereto, or any other companies heretofore or hereafter granted the right to use said facilities by The Des Moines Company or its assigns.

§ 16. It is understood and agreed that the use hereby granted by The Des Moines Company to The Chicago Company, is solely for the business of The Chicago Company destined to, or from or passing through Des Moines, and does not include the right on part of The Chicago Company to switch any car or cars, save in loading or unloading its own freight, and in making up its own trains. The right of switching for hire is expressly reserved to The Des Moines Company.

§ 17. It is understood and agreed that The Chicago Company shall not assign or sublet either or all the rights and privileges hereby granted, or enter into any contract
1126 with any other railroad company by which the latter is given any right whatsoever to use any part of the said terminal property. Nor shall the said Chicago Company have the right to do the business of any other railroad

company over the said terminal property or any part thereof by effecting a junction between the line or lines of The Chicago Company and any such other railroad company, at or near the City of Des Moines. This section, however, shall not be construed to prevent the transfer of this lease to the successor, assignee or grantee of The Chicago Company, which shall by such succession, assignment or grant become the owner or operator of the line of railway now owned and operated by The Chicago Company, provided, that in no event shall any company owning or operating any of the railway lines now in Des Moines become entitled to any of the rights and privileges herein granted.

§ 18. The Chicago Company as lessee, hereby covenants and agrees that it will, and it does hereby assume all risk of and all liabilities for injury and damage to persons or to its own property, or to the property of third parties, caused by its trains, cars or locomotives operated by its crews over the railway tracks or bridges covered by this indenture, or caused by any officers, agents or servants employed in the management, running or operating of its trains, cars or locomotives in any manner whatever, or caused by the officers, agents or servants of the grantor and lessor in charge of any interlocking systems, bridges, gates, switches, turn tables or other appliances or devices in any manner whatsoever con-
1127 nected with the operation of the leased property, and in any manner having to do with the management, starting, moving, running or operating of the trains, cars or locomotives of said Chicago Company, or caused by the making or giving of the time cards, rules, regulations, signals and orders, in any manner having to do with the management, starting, moving, running or operating of said trains, cars or locomotives of said Chicago Company, and shall and will during the continuance of this lease save and keep harmless the grantor and lessor from all claims, demands, loss or damage on account thereof. And the Chicago Company as lessee, hereby further covenants and agrees that it will and hereby does assume all risk and all liability for injury or damage to persons, or to its own property, or to property of third parties, caused by its trains, cars or locomotives, by reason of or growing out of defects in the right of way, roadbed, track or tracks, bridges or culverts, or insufficiency of the fences or lack of fences along the right of way of the railway and tracks covered by this indenture, or the failure to erect or build sign boards or gates, or cattle guards or other protections at highway or street crossings in compliance with law, or the failure to erect interlocking systems or other safety appliances at railway crossings, connections or intersections, or the erection or construction of fences, sign boards,

gates, cattle guards, interlocking systems, or other safety appliances or protections which do not fully conform to law, and it shall and will during the continuance of this lease save and keep harmless the grantor and lessor from
1128 all claims, demands, loss or damage on account thereof, but if the grantor and lessor shall fail to repair defects in the tracks or bridges within a reasonable time after notice in writing so to do, specifying such defects, or shall fail to build or erect such fences, sign boards, gates, cattle guards, interlocking systems or other safety appliances as may be required by law, or to repair the same, if needing repairs, within a reasonable time after notice in writing so to do, specifying the places where such fences, sign boards, gates, cattle guards, interlocking systems or other safety appliances should be erected or repairs thereon are needed, or the changes necessary to make the same conform to the requirements of law, the grantee and lessee may repair such defects in the track or bridges and erect such fences, sign boards, gates, cattle guards, interlocking systems or other safety appliances, or repair the same, or change the same so as to conform to law, at the cost and expense of the grantor and lessor, subject to the provisions herein contained as to the divisions of the cost and expense of maintenance, renewal and repairs.

And The Chicago Company as lessee, hereby further covenants and agrees that in case any action or actions, suit or suits shall be commenced by any party or parties against the grantor and lessor growing out of any such damage or injury as aforesaid, said grantor may give written notice of the same to the lessee and thereafter the lessee shall attend to the defense of the same and save and hold harmless said lessor from all expenses, counsel fees, costs, liabilities, disbursements, recoveries, judgments and executions in any manner
1129 growing out of, pertaining to or connected therewith.

All damages caused by either of the parties to the property of the other by the negligence of officers, agents, servants, or employes shall be borne and paid by the party whose officers, agents, servants, or employes negligently cause such damage, except as hereinbefore provided.

It is further agreed that if damage is caused to the property owned by or in the possession of either party, or to the employes of either party, or to passengers carried by either party, by the joint negligence of the officers, agents, servants or employes of both, such damage shall be borne and paid by the party whose property or employe is so damaged, or who is in the possession of the property and carrying the passenger so damaged, except as hereinbefore provided.

In the event of a recovery in any suit brought for such damage against the other, the party liable hereunder shall make reimbursement, including all costs, attorneys' fees and expenses, but the party so liable hereunder shall have the right, and it shall be his duty upon notice, to conduct the defense to any such suit, and it shall be bound by any judgment rendered therein.

§ 19. It is agreed that all the covenants and agreements herein contained shall be binding upon the respective parties hereto, their successors and assigns, and all the grants herein contained shall run to The Chicago Company, its
1130 successors and assigns, but this shall not be construed as authorizing The Chicago Company to sublet any of the privileges hereby conveyed it to another railway company except as hereinbefore provided.

§ 20. It is further agreed between the parties hereto that if The Chicago Company shall for any reason fail or refuse for a period of sixty days after the same is due and the said account rendered as aforesaid, to pay the several sums as provided in this contract to be paid, then The Des Moines Company may take from any moneys in its hands or in the hands of its agents, the amount so due, and apply sufficient thereof to meet the demands, with interest thereon at seven per centum from due date, and if the sums so taken be insufficient to pay the amount due under the agreement,and the same shall still remain unpaid, said Des Moines Company shall have the right to forfeit, cancel and annul this contract, but it is expressly understood and agreed that nothing herein contained shall prevent The Des Moines Company from enforcing its said demands against The Chicago Company by any proper action at law or in equity, or from recovering the amount, which may be at any time due and unpaid, if it shall so elect.

§ 21. It is further agreed between the parties hereto that at the expiration of this lease, or any renewal thereof by lapse of time, The Chicago Company shall have the right to renew the same three times for a further period of twenty-five years at each renewal, upon the conditions, provisions
1131 and stipulations herein contained, save and except the compensation agreed to be paid by The Chicago Company for the use of the property herein demised. The compensation for each succeeding period of twenty-five years shall be a fair, reasonable and just compensation for the use enjoyed, and if the same cannot be agreed upon by the parties it shall be determined by a Board of Arbitrators consisting of three persons, one of whom shall be chosen by The Des Moines Company, one by The Chicago Company, and the

two thus chosen shall select a third, and the award of such arbitrators shall be rendered within thirty days after the expiration of this lease, and shall be final and conclusive. And it is further stipulated and agreed that the said arbitrators in determining the compensation to be paid for the ensuing period will assume that The Chicago Company shall have the rights and privileges with respect to said terminal property hereby granted and no other.

§ 22. It is further agreed that for the convenience of the parties there shall be made as soon as practicable, a map showing the terminal property of The Des Moines Company, with all its tracks and appurtenances, and also showing the tracks and appurtenances herein agreed to be constructed for the exclusive use of The Chicago Company. Said map shall be made in duplicate and be authenticated with the signatures of the Chief Engineers or Presidents of the respective companies, and when so prepared and authenticated shall be used by the parties hereto for the purpose of more
1132 fully showing the location and relation of the property herein described.

In Witness Whereof the parties have by their respective Presidents and Secretaries, thereunto duly authorized signed the names and attached the seals of the said Des Moines Union Railway Company, and the said Chicago Great Western Railway Company, the day and year first above written.

DES MOINES UNION RAILWAY CO.,
(Seal) By F. C. Hubbell, President.

Attest:

F. M. Hubbell, Secretary.

CHICAGO GREAT WESTERN RAILWAY CO.,
(Seal) By A. B. Stickney, President.

Attest:

R. C. Wright, Secretary.

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1133

Defendants' Exhibit 526a.

Terminal Contract.

between the

Des Moines Union Railway Company

and the

Iowa Central Railway Company.

This Agreement, made and entered into this fifth day of January A. D. 1899, by and between the Des Moines Union Railway Company, a Corporation organized and existing under the laws of the State of Iowa, and hereinafter termed "Des Moines Company", party of the first part, and the Iowa Central Railway Company, a Corporation organized and existing under the laws of the State of Illinois, and hereinafter termed "Iowa Company", party of the second part, Witnesseth: That

Whereas the Des Moines Company owns and operates a terminal line of railway in the City of Des Moines, Iowa, extending from the east line of Section two (2), Township seventy-eight (78), Range twenty-four (24) in said City of Des Moines, westward to West Twenty-eighth Street in said City, and has acquired or constructed a large number of main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities and intends to acquire and construct other facilities of that character as the demands of business may require; and

Whereas the terminal facilities of the Des Moines Company are already used by the Wabash Railroad Company,
1134 the Des Moines, Northern & Western Railroad Company and the Chicago Great Western Railway Company, under contracts heretofore executed; and

Whereas the said Iowa Company now owns and operates certain lines of railway in the State of Iowa and proposes to extend said lines to the City of Des Moines, either by construction of new lines or lease of lines now entering Des Moines; and

Whereas the Iowa Company is desirous of acquiring the right to use the said railway of the Des Moines Company or a part thereof under the terms and conditions hereinafter set forth, and in common with such railway companies as may now use the same or to which the right may hereafter be granted,

and so make the terminals of the Des Moines Company the terminals of the Iowa Company in the City of Des Moines;

Now, therefore, in consideration of the premises and the mutual covenants and undertakings herein contained, it is agreed between the parties hereto as follows, to-wit:

Section 1. The Des Moines Company, in consideration of the payments to be made to it by the Iowa Company, as hereinafter specified, hereby grants to the Iowa Company the use in common with such other railway companies as now have or may hereafter acquire the right to use the same, of its said terminal railway, with the facilities and appurtenances thereunto belonging, except that part of said terminal property, the exclusive use of which has been heretofore granted to
1135 the Chicago Great Western Railway Company under and by virtue of an agreement entered into between the said Des Moines Company and the said Chicago Great Western Railway Company, bearing date July 2nd, 1896. The use of the new passenger station now in course of construction shall include the right to receive and discharge passengers and baggage, the right to receive and discharge express matter, the use of the passenger station by passengers, and the services of the necessary baggagemen and ticket agents, but shall not extend beyond the ordinary use of a station for passenger traffic. And the Des Moines Company agrees to keep and maintain said terminal property in good condition and repair and to provide and maintain all such engines, machinery, appliances, buildings and structures and all such servants and employees as shall be reasonably necessary for the conduct of the business and the handling and moving of cars, passenger and freight, of the said Iowa Company, and the housing and care of its engines. And the said Des Moines Company further agrees to switch all cars, handle all freight and house and care for all engines of said Iowa Company which may be delivered to it, or which may come upon its said premises in so far as the said Iowa Company may request it so to do. Provided, that the Des Moines Company may exclusively lease any hereafter acquired property to any railway which may enter said ter-
1136 minals after the date of this contract, and if any such exclusive lease or leases be made, no part of the interest upon the cost of such property, or bonds issued therefor, shall be charged to the Iowa Company.

Sec. 2. The Iowa Company, except as provided in Section 15, agrees to pay to the said Des Moines Company monthly a sum of money to be ascertained as follows, to-wit:

First. There shall be ascertained the amount required to pay five per cent. interest upon the mortgage bonds and floating debt of the Des Moines Company, one-twelfth of which, less any deduction hereinafter provided for shall be payable monthly, as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expense of maintaining, repairing and renewing the terminal property of the Des Moines Company, including the maintenance, renewal and repair of tracks, depots, round houses, engine, houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes general or special levied upon or against said property and paid during the preceding month or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the cost and expenses of every nature connected with the operation of said terminal property, including freight and passenger de-
1137 pots, depot grounds, round houses, transfers, tracks and every other property or appurtenance thereof, which is to include every item of expense or disbursement incurred or made by the Des Moines Company, not hereinbefore mentioned, except the expenses specified in Section Five (5) hereof.

Section 3. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount if any which railway companies other than the Des Moines Northern & Western Railroad Company and the Wabash Railroad Company may be under obligation to pay by virtue of contracts for the herein demised property or parts thereof for the preceding month and the Iowa Company shall pay that part of the remainder which bears the same proportion to the whole of said remainder that the wheelage of the Iowa Company bears to the entire wheelage of said Des Moines Northern & Western Railroad Company, the Wabash Railroad Company and the Iowa Company, during such preceding month.

Section 4. If the amount or any part of the amount due from Companies other than the Des Moines Northern & Western Railroad Company, the Wabash Railroad Company and the Iowa Company is not paid when due, then its proportion of the sum so due and unpaid shall also on demand of the said Des Moines Company be paid to it by the said Iowa Company on a wheelage basis as hereinbefore defined.

1138 Section 5. The costs and expenses of operating the engine houses and their appurtenances and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping, washing and firing up shall be divided and the Iowa Company shall pay such proportion thereof as the number of road engines of the said Iowa Company in and out of said engine house shall bear to the whole number of road engines in and out thereof, during the period for which said costs and expenses are made up. All repairs to the engines of the Iowa Company shall be paid for on the basis of actual cost labor and material and all services rendered, supplies and labor furnished to the Iowa Company for its own benefit and which are not properly a portion of the joint expenses of said terminals shall be charged directly to and be paid by the Iowa Company on such equitable terms as may be agreed upon between the superintendents of the said Companies.

Section 6. The Des Moines Company shall on or before the 10th day of each month or as soon thereafter as practicable, make up and present to the Iowa Company an account showing the amount due hereunder for the preceding month, and payment thereof shall be made within ten days thereafter.

Section 7. The management of the said terminal property, including stations, buildings, tracks, round houses, shops, etc., shall be in charge of a superintendent of the Des Moines Company, who shall in the performance of his duties be governed by such regulations as may from time to time be estab-
1139 lished by the Des Moines Company, the salary of said superintendent and the compensation of other agents and employees of the Des Moines Company shall not be higher than are paid by railway companies in the vicinity for similar services.

Section 8. It is further agreed that the use hereby granted of the said terminal property to the Iowa Company shall be without perference or unreasonable precedence for or to the Des Moines Company, the Iowa Company or any of the lessees of the said terminals in the matter of train schedules or the handling or switching of cars in trains and occupancy of depots or the occupancy of said property or any part thereof in the service herein agreed to be performed; always however to be subject to such reasonable control and discretion by the Des Moines Company as may be necessary to avoid confusion and to expedite the management of the business. And the Des Moines Company shall from time to time make, publish and enforce such rules and regulation for the use, management and operation of said terminals by all the parties using the same

as may be reasonable and as it may from time to time consider necessary.

Section 9. The Des Moines Company shall keep accurate books of account showing in detail all the expenditures made by it on account of the various items of interest, insurance, taxes, operation, maintenance, renewals and repairs, and other disbursements upon and about the premises embraced in this agreement; and the said books shall show the amount
1140 of work done for and fuel or other material furnished to the said Iowa Company and such books shall give such other details as will at all times enable the parties hereto to make accurate settlement of their accounts, as provided in this agreement, and said books may at all reasonable and proper hours be examined and inspected by the superintendent, auditor or treasurer of the Iowa Company or by any competent accountant in its employ. The said Des Moines Company shall also keep an accurate record of all the engines and the engines and cars of each tenant railway using said terminals and paying therefor on a wheelage basis, coming upon or leaving said terminals, and of all the engines which have been housed at said engine houses in each month and as herein-before provided said Des Moines Company shall furnish to the Iowa Company a full, true and detailed statement of all the expenditures made and of all the fuel and supplies used, delivered and received of all the cars and engines received, handled or switched, of all work done or repairs made and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section 10. All damages which may be received by any engine or engines, car or cars of either party hereto while being switched by the Des Moines Company at or upon any part of the premises embraced in this agreement shall be repaired for the party to whom such rolling stock belongs, and the cost of such repair shall be borne and paid on a wheelage basis
1141 as herein defined.

Section 11. All damages to property other than as above described caused by any engine or engines, car or cars of any railway using said terminals or by any imperfection in the track or tracks laid upon said premises and all injuries which may at any time be received by any person or persons in, around, about or upon said terminals, shall, if settled at all, be adjusted and settled by the Des Moines Company and sums thus paid in settlement or settlements shall be borne and paid upon a wheelage basis, as herein defined. Provided, however, that the Iowa Company shall at its own sole cost and expense bear and settle and pay all damages to property belong-

ing to itself to the Des Moines Company or to third persons, and all injuries to persons when said damages or injuries are done to or by its own trains while said trains are being moved by its own engines and operated and controlled by its own crew, unless such damages or injuries are occasioned by the act, neglect or fault of the servants of the Des Moines Company, or by some imperfection in its track or tracks, and in case such damage or injuries are occasioned by the act, negligence or fault of the servants of the Des Moines Company or by any imperfections in said track their settlements and payments shall be made by the Des Moines Co. as in this Section first provided.

Section 12. All persons employed and paid either permanently or temporarily by said Des Moines Company in the maintenance and operation of said terminals shall be deemed and taken to be the employees and servants of the Des Moines Company.

1142 Section 13. The Iowa Company agrees that if it enters Des Moines it will use the said terminals for all its passenger or freight trains destined to or departing from said City of Des Moines.

Section 14. The revenue of the Des Moines Company from depot privileges, rents of offices in the Union Station or other depots, switching, passenger business done on its own behalf and rents from real estate and miscellaneous earnings shall be used by the said Des Moines Company either as working capital or in the payment of its floating debt or the enlargement or betterment of its said terminal property.

Section 15. It is agreed that the amount paid by the Iowa Company upon the basis hereinbefore defined for the passenger station or stations shall be its share upon a wheelage basis, of the following items, to-wit:

1st. Interest at 5% per annum upon the cost of the passenger station or stations not including the real property upon which said station or stations are or may be situated.

2nd. Interest at five per cent per annum upon the cost of tracks and appurtenances constructed especially for the passenger station or stations, as distinguished from tracks used for general terminal purposes.

3rd. The maintenance, renewal and operation, including insurance, of such passenger station or stations.

Section 16. It is further agreed that the several covenants, conditions and stipulations herein contained shall be mutually

binding upon the respective parties hereto their succes-
1145 sor, successors and assigns for the term of twenty (20) years from the first day of May, A. D. 1898, unless this contract shall be sooner terminated by consent of the parties hereto or by reason of the provisions hereof.

Section 17. It is further agreed that inasmuch as the Iowa Company have not yet built its proposed extension it shall have until the 1st day of July, A. D. 1900, to determine whether this contract shall become binding and operative upon the parties hereto and shall on or before the date last aforesaid give notice in writing to the Des Moines Company of its action in that respect; but it is understood and agreed that if the said Iowa Company shall enter Des Moines as a railway on and using the Des Moines Company's terminals on or before the 1st day of July, A. D. 1900, it shall become bound by the terms and provisions hereof without further notice.

Section 18. In case any difference shall hereafter arise between the parties hereto concerning the management of said terminal station, depots, grounds, yards, tracks and other terminal facilities of the said Des Moines Company with respect to any matter not herein provided for or concerning any other matter or thing connected therewith, but not herein expressly provided for, such differences shall be referred to three competent men, experienced in railroad management, who shall, as soon as practicable after they are chosen, proceed to examine and determine what would be just and equitable for each of said parties to do in and about the matter in dispute. Each party shall choose one of said arbitrators and the two
1146 thus chosen shall select the third arbitrator and the decision in writing of a majority of said arbitrators with respect to the matter submitted shall be furnished to and be thereafter binding upon each of the said parties. Provided, however, that such differences shall have no effect on the course of business at said terminal station, depot, grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, such settlements and payments as are herein provided for shall be made as before until the matter in dispute shall be adjusted by the said arbitrators, and thereupon such payments or restitutions shall be made as may be required by the decision of said arbitrators.

In Witness Whereof, the respective parties hereto have caused their corporate seals to be hereunto affixed and these presents to be signed by their respective Presidents and

attested by their Secretaries, respectively the day and year first above written.

(Seal) DES MOINES UNION RAILWAY COMPANY,
By H. D. Thompson, Vice President.

Attest: F. M. Hubbell, Secretary.

(Seal) IOWA CENTRAL RAILWAY COMPANY,
By E. J. Kimball, Its President.

Attest: S. Swenson Jones, Secretary.

1145 Des Moines, Iowa, Feb'y. 14, 1899.

I, F. M. Hubbell, Secretary of the Des Moines Union Railway Company, hereby certify that on this day at a meeting of the Directors of this Company, the following resolution was passed by the unanimous vote of all of the Directors:

Resolved, by the Board of Directors of the Des Moines Union Railway Company that the contract bearing date January 5th, 1899, entered into by and between the Des Moines Union Railway Company and the Iowa Central Railway Company, which contract has been signed by their respective Presidents and Secretaries, with the seals of the respective Companies thereto attached, be and the same is hereby ratified, approved and in all respects confirmed on the part of the Des Moines Union Railway Company, and the Secretary of this Company is hereby authorized to attach to the said contract a certified copy of this resolution.

(Seal) F. M. HUBBELL, Secretary.

1146 **Defendants' Exhibit 527.**

Contract and Lease.

Des Moines Union Railway Company

Des Moines, Iowa

to the

Chicago, Burlington & Quincy Railroad

Company.

1147 *Lease.*

This Agreement, Made and entered into this 3rd day of September, A. D. 1901, by and between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, first party, and the Chicago,

Burlington & Quincy Railroad Company, a corporation organized and existing under the laws of the State of Illinois, second party, Witnesseth, That

Whereas, The first party is the owner of a Union Passenger Station located between West Fifth and West Seventh Streets in the City of Des Moines, Iowa, and

Whereas, The second party, which owns and operates two lines of railroad entering said city, desires to join in the common use of the aforesaid Union Passenger Station, located on the premises shown on the two plats hereto attached and made a part hereof, which plats, for the purpose of identification, bear the signatures of J. A. Wagner and C. M. Levey.

Now Therefore, In consideration of the premises and of the covenants and undertakings hereinafter set forth, it is agreed as follows:

Article I.

The first party shall acquire the right-of-way for and build a good and sufficient track from the existing track of the first party near the place marked "A" to a connection with
1148 the main track of the second party near the place marked "B" on said plat No. 1, said track so to be built being shown in red thereon. The second party shall, at its sole cost and expense, furnish, put in and maintain the frog and switch used in connecting said track, so to be built, with said main track of the second party. The second point of connection between the tracks of the parties hereto shall be at the point marked "C", on said plat No. 1, and the second party shall, at its sole cost and expense, maintain the frog and switch used in making said connection.

Article II.

Section 1. The first party hereby grants to the second party the right to pass over, use and enjoy, in common with the first party and the railroad companies now or hereafter admitted to such common use and enjoyment, each and all of the track or tracks of the first party shown in red on said plats for the purpose of entering, departing from or passing through said Union Passenger Station with the passenger, baggage, mail or express cars or trains of the second party, and the engines used in handling the same, including like cars of other companies when in a train of the second party. Said use shall also include the right to pass from said Union Passenger Station with said trains, cars, or engines after arrival, and to bring said trains, cars or engines to said Union Passenger

Station prior to departure, with either road or switch engines. Trains doing both passenger and freight business, commonly called "mixed" trains, and the engines handling the same, shall be entitled to the rights and privileges provided for passenger trains, if all freight cars are cut out of said mixed trains before they enter upon the tracks of the first party.

Sec. 2. The first party hereby grants to the second party the right to use and enjoy, in common with the first party and the railroad companies now or hereafter admitted to such common use and enjoyment, the said Union Passenger Station, together with all side tracks, switches, cross-overs, train sheds, buildings, structures, fixtures, appliances, and other things like or unlike the foregoing enumeration, whether herein specifically enumerated or not, connected or used with or appertaining to said Union Passenger Station and all additions and improvements thereof, for the following purposes: For receiving and discharging passengers, baggage, mail, or express; for storing baggage; as a place for passengers to await the arrival and departure of trains; for the sale of tickets; and for all such uses and purposes, like or unlike the foregoing enumeration, whether herein specifically enumerated or not, as such premises are or shall be used for by other tenant companies of the first party in the transaction of the passenger business of a railroad company. It being expressly understood and agreed that the second party may use the aforesaid Union Passenger Station, with its side tracks, switches, cross-overs, train sheds, buildings, structures, fixtures, appliances, and other things like or unlike the foregoing enumeration, whether herein specifically enumerated or not, and which are connected or used with or appertaining to said Union Passenger Station and all additions and improvements thereof, for any other use or purpose that may be contemporaneously accorded or permitted any other railroad company entering the said Union Passenger Station in caring for or handling its passenger business.

Sec. 3. The premises and property, the use and enjoyment of which, in common with other railroads as hereinbefore provided, are granted by this agreement to the second party, are hereinafter designated as "Terminal Facilities."

Sec. 4. The use and enjoyment of "terminal facilities" hereinbefore granted, for which the monthly sum of $500 is hereinafter made full compensation and rental, is and shall be at all times confined to trains, cars and engines routed to or from said Des Moines, over the said two existing lines of the second party, and over none other.

Sec. 5. If, however, the second party shall hereafter desire like use and enjoyment of said "terminal facilities" for its trains, cars or engines from or to any other line of railroad which it may hereafter acquire, control, or operate (hereinafter for this purpose styled "additional trains, cars, and engines," and "additional line"), it shall be entitled to and is hereby granted such like use and enjoyment for and in respect to all such additional trains, cars and engines, to the same extent, and, (except as hereinafter further provided) upon the same terms and conditions as hereinbefore provided and granted in respect to its trains, cars and engines routed as aforesaid. The said second party shall and will, in every such case, pay to said first party not only said monthly sum of $500, but shall, each month, therewith pay, in respect to every such additional car, such additional compensation and rental as shall equal the quotient of $500 divided by the whole number of cars which were during the next preceding month routed as aforesaid solely over said existing lines; for all purposes of such additional compensation and rental every engine of said second party of whatever line, entering or leaving said "Terminal Facilities," shall be reckoned as three cars.

Sec. 6. The first party hereby also grants to the second party the right to run a telegraph wire into said Union Passenger

Station, and to use the same for the dispatching of
1151 passenger and mail trains and for the handling of such passenger and mail business at the city of Des Moines. The first party shall furnish the operator to operate said wire, but the second party assumes and agrees to hold the first party harmless from all damage caused by the negligence of any such operator with respect to any order or message relating to the movement of engines or trains upon the tracks of the second party.

Article III.

The first party shall employ and pay all ticket agents, baggage men, depot masters, flagmen, switch and crossing tenders, and all other men needed to care for and operate said Terminal Facilities, and to properly serve and handle the passenger and baggage business of the second party at said Union Passenger Station, and the second party shall be entitled to the services of said employes for such purposes. The first party shall not, however, except as hereinafter expressly provided, be required to furnish train or engine crews or engines for handling or moving said cars, trains or traffic. The second party shall, except as herein otherwise expressly provided, move and handle with its own engines and crews, all trains and cars

which it may bring upon the tracks of the first party hereunder.

Employes of the second party shall throw the switches for the accommodation of its engines, cars, and trains, where the said tracks of the first party join the tracks of the second party, near the places marked "B" and "C".

Employes of the first party shall flag all railroad or street crossings, if required by law or by ordinance or regulations of the City of Des Moines, and shall throw all other switches and operate all signals for the passage of the passenger trains of the second party, in or out of the Union Passenger
1152 Station, but shall not be required to do such work for engines of the second party moving cars not containing passengers, which do not belong to said passenger trains, except at places where the first party have employes regularly employed in doing such work.

The first party shall heat said Union Passenger Station and keep the same, and all walks, train sheds, platforms, and premises adjacent thereto, or used in connection therewith, clean, safe and free from all unnecessary obstructions, and properly lighted.

The first party shall cause said Union Passenger Station, together with the ticket offices and baggage rooms therein contained, and the premises adjacent thereto, to be opened and ready to serve the public such a length of time before and after the arrival and departure of the trains of the second party as may be reasonably required by the second party.

Article IV.

The first party shall keep and maintain said Terminal Facilities and all improvements and additions thereto in good condition and repair, and shall make improvements in and additions thereto whenever reasonably necessary for the prompt, convenient, and proper handling of the business of the second party.

Article V.

If by reason of increase in business or a substantial change in said Terminal System, it shall be necessary for the first party to change the tracks to be used by the second party, the first party shall have the right to change the same or
1153 substitute other or different tracks therefor, provided that such changed, other, or different tracks shall afford the same or equally as good facilities to the second party in the transaction of its business.

Article VI.

The first party shall require every employe at said Union Passenger Station, who sells tickets, before entering upon his duties, to give a good and sufficient indemnifying bond to the second party for the faithful performance of his duties; such bond to be in such an amount, so conditioned, and with such sureties as may be reasonably required by the second party. Such employes shall be required to renew said bonds from time to time as occasion may require. The second party shall pay the premium for procuring such bonds, and the first party shall not be liable for any loss or damage on account of the unfaithfulness of any such ticket agent.

Article VII.

If the baggage or express matter handled by the second party shall be in carload lots, the loading or unloading of which would unreasonably obstruct the platform at said Union Passenger Station, the first party may, if it so elects, furnish at its own cost and expense, a convenient side-track near said Union Passenger Station and easily accessible to teams, where it may require such loading or unloading to be done. The switching of said cars to and from said side-track shall be promptly done by the first party at one dollar and fifty cents per loaded car.

No charge for empty cars.

1151 Article VIII.

If said Terminal Facilities, or any part thereof, shall be destroyed or damaged, the first party shall, at its sole cost and expense, promptly rebuild or repair the same, the time for completion of such work in no event to exceed nine months from the date of such destruction or damage; and shall also furnish for the use of the second party, temporary and adequate facilities in place of those destroyed or damaged, which said temporary facilities shall during the period said premises are being rebuilt or repaired, be accepted by the second party as a full equivalent for the said original Terminal Facilities. If the first party shall fail or neglect to promptly commence and diligently prosecute such repairs or rebuilding, the second party shall have the option to cancel and forever terminate this agreement.

Article IX.

So long as the first party maintains a passenger station in the City of Des Moines east of the Des Moines River, the second party shall, without additional cost, have the right to use such station, in common with such other railroad companies

as now have or may hereafter acquire the right to use the same, and to receive such service as the party of the first part may render at such station to passenger trains.

Article X.

The said second party shall and will pay to the said first party, on the fifteenth day of each month, as full compensation and rental for the uses, rights, and privileges in and by this contract granted; firstly, for the use and enjoyment of
1155 said terminal facilities, during the then next preceding month in respect to trains, cars, and engines routed as aforesaid solely over said two existing lines, the monthly sum of $500; and secondly, such further sum, if any, as shall be requisite to satisfy and discharge any and all additional compensation and rental which shall, during such preceding month, have accrued by virtue of Section 5 (five) of Article II hereof; all which payments shall be made in lawful money of the United States at the office of the Treasurer of said first party in said City of Des Moines.

Article XI.

It is agreed that all time cards, rules, regulations and orders, for the movement and operation of trains, cars and engines, and for the beneficial enjoyment of the property, the joint, concurrent or common use of which is embraced in this agreement, shall be made and promulgated from time to time by the first party. The movement of trains, cars, and engines upon said property shall be under the immediate direction of the Superintendent or other proper officers or agent of the first party, but such time cards, rules, regulations and orders shall be reasonable, just, and fair to all parties using said property, without preference or discrimination in favor of or against either; but passenger trains of all kinds shall have the right of way and precedence over all other trains and kinds of business upon said property. Changes in the rules or regulations shall not be made except upon reasonable notice to the second party. The first party shall have the general control, management, and supervision over said Terminal Facilities, and the right to enforce proper discipline of employes of the second party using any of the tracks or property of the first party in com-
1156 mon with any of the other railroad companies now or hereafter using said Terminal Facilities, and in the event that the second party shall fail or refuse to enforce against any of its employes the penalties prescribed by the first party, the first party shall have the absolute right to bar said employes from said Terminal Facilities.

All receipts at said Union Passenger Station for tickets sold for or on account of the second party, and all receipts for excess baggage carried or to be carried over roads owned or controlled by the second party, shall be remitted to the second party at such times and in such manner as said second party may direct. The employes of the first party shall keep the records and make reports concerning the business of the said second party as may be required by the second party.

Article XII.

All the employes of the first party shall be removed on good cause shown. The second party shall have the right to place a suitable clerk, at its own cost and expense and for a limited time, not exceeding thirty days in any one period, in the ticket office of said Union Passenger Station, with power to observe and make note of the course of ticket sales and the conduct of the ticket agents herein provided to be employed, with a view of determining whether said ticket agents preserve the strictest equality and impartiality in respect to the second party, as herein intended. If the second party shall request the removal of a ticket agent, and the first party shall fail or refuse to remove him, the validity of the course shown shall be determined by the Board of Reference, herein provided for, and in the event of such reference, if the first party shall fail to appoint a member within five days after notice in writing from
1157 the second party, then the first party shall remove the ticket agent of whom complaint is made.

Article XIII.

Section 1. The party of the second part hereby agrees to assume all risks of all loss, damage or injury which shall in any manner occur in or upon any track, building, or premises, any use whereof is hereinbefore granted, whether to its property, or to property in its custody, or to its passengers, or to its employes, or which third persons or the property of third persons shall there suffer by reason of the movement of any of its engines, cars, or trains as fully in all respects as if it had then been in the exclusive use and control of such track, building or premises; excepting only such loss, damage and injury as shall be caused by gross negligence of employes solely of the party of the first part; and, except only as aforesaid, the party of the second part hereby agrees to save the party of the first part harmless from all such loss, damage and injury, from all liability claimed therefor, and from all consequent cost and expenses. Provided, however, and the parties hereto expressly covenant and agree that in case of a collision between their respective engines, cars or trains, while on any of the premises

aforesaid, the party, whose employes are alone in fault, shall be solely responsible for and settle and pay for the entire loss and damage caused thereby; and shall so save the other party harmless therefrom; and that in case such collision is caused by the fault of employes of both parties or by the fault of any joint employe or employes, or in case the cause of the collision is so concealed that it cannot be determined whose employe or employes were in fault, each party shall bear and pay all the loss and injury which its own property or property in
1158 its custody, or its employes or passengers may have suffered in consequence thereof.

SEC. 2. The party of the second part shall and will at all times, and it does hereby agree to indemnify the party of the first part against all claims for loss or damage growing out of the acts or neglects of the ticket sellers and baggage handlers at the Passenger Station aforesaid, so far as such acts or neglects shall be connected with or concern the business of the party of the second part transacted thereat; and from all claims for loss of or damage to any baggage or express matter which the party of the second part may bring to said station, or which may be delivered thereat for transportation by its trains, no matter how such loss or damage may occur.

Article XIV.

If either party shall fail to carry out or perform this agreement, or any part thereof, the other party shall have the option of terminating the same. Before such option accrues, the party desiring to terminate the agreement shall give notice in writing to the other party of its intention so to do, with the reasons therefor. If within sixty days, thereafter the party in default has complied with the provisions of this agreement so as to be no longer in default, the option to terminate the same shall not accrue; if otherwise, the party giving such notice may, after said sixty days, terminate this agreement by a further written notice to the other party.

If at any time, by operation of law or because of the process, order, or decree of any court, either of the parties hereto, or any receiver or trustee therefor, shall have the right or option to terminate this agreement before its expiration, then the other party shall have a like right and option.

1159 ## Article XV.

So long as this agreement shall remain in force and effect, no difference which may arise as to the construc-

tion or performance of the terms, covenants, or conditions of this agreement shall affect, while it remains undetermined, the use or enjoyment of the said Terminal Facilities, or the rights or privileges herein conferred, in the manner in which the parties have heretofore enjoyed such use. Such use shall continue and settlements and payments shall be made as before the existence of such difference. When such difference shall finally be settled, by reference or otherwise, payments and settlements shall be made by the respective parties as may be required by the award of the referees, or as provided in the agreement of adjustment, as the case may be.

Article XVI.

If any controversy shall arise as to the construction of this contract, or any violation of its provisions, or in respect to the performance of any duties which it may be claimed it imposes, or as to any amount claimed to be due under its provisions, such controversy shall be submitted to three disinterested persons experienced in railway operation, as a Board of Reference. One member of said Board shall be selected by each party. The two thus chosen shall select a third, and the finding of said Board of Reference, or a majority of them, made in writing shall be final and conclusive on the parties hereto.

Article XVII.

This agreement shall be and remain in force from 1902
1160 to May 1st, 1908, unless sooner terminated in the manner hereinbefore provided.

Article XVIII.

The first party shall warrant and defend the second party in the quiet and undisturbed use and enjoyment of said Terminal Facilities as in this agreement contemplated, and of the rights and privileges herein sought to be conferred, and shall hold the second party free from all taxes, levies, assessments or other public charges levied, assessed or charged against the said property or franchise of the first party, and free from all taxes, levies or assessments levied or assessed upon the second party because or by reason of the fact that said Terminal Facilities are used and enjoyed by the second party, or by reason of the fact that the trains of the second party are operated over the tracks or property of the first party, but not including any franchise tax which may be levied or assessed against the second party.

Article XIX.

The grants, covenants and agreements herein contained shall run to and be binding upon the parties hereto, their successors, legal representatives and assigns; but nothing herein contained shall be construed as authorizing the second party to sub-let the rights or privileges hereby granted or conferred to any other railroad company.

1161 In Witness Whereof, the parties hereto have caused their corporate names and seals to be hereunto, and to one other original, affixed, all on the day and year first above written.

DES MOINES UNION RAILWAY COMPANY,
Seal. By H. D. Thompson, Vice-President.
Attest:
F. M. Hubbell, Secretary.

CHICAGO, BURLINGTON & QUINCY RAILROAD CO.,
Seal. By Geo. B. Harris, President.
Attest:
T. S. Howland, Secretary.

1162 **Defendants' Exhibit 528.**

Contract and Lease.

Des Moines Union Railway Company.

Des Moines, Iowa

To The

Des Moines, Iowa Falls & Northern Railway Company.

1163 Lease.

This Agreement, Made this 22d day of July, 1902, by and between the Des Moines Union Railway Company, first party, and the Des Moines, Iowa Falls & Northern Railway Company, second party, each a corporation organized and existing under the laws of the State of Iowa, Witnesseth as follows:

The first party is the owner of a Union Passenger Station between West Fifth and West Seventh Streets, in the City of Des Moines, Iowa, and of certain railroad and side tracks in said city, which, with building, structures, fixtures, appliances and other things connected or used therewith or appertaining thereto, constitute a system which the first party uses and operates for the purpose of affording terminal facilities to railroads entering said city; and

That the second party as owning and operating such a railroad, desires to participate in the common use of certain of the aforesaid terminal facilities for the purposes of its passenger business only, and in the manner hereinafter provided;

Now Therefore, In consideration of the premises and of their mutual and dependant covenants and agreements hereinafter contained, the said parties hereby agree as follows:

Article I.

1164 The second party shall and will at its sole cost and expense, acquire the right of way for and build a track from the existing tracks of the first party to a connection with the main track of the second party at or near the Great Western Junction in East Des Moines; which connecting track shall be so located and built that in connection with the existing tracks of the first party, it will furnish ingress and egress for the passenger trains of the second party to and from said Union Passenger Station. The second party shall and will, at its sole cost and expense, furnish, put in and maintain the frog and switch to be used in so connecting the said connecting track of the second party.

Article II.

The first party hereby grants to the second party the right to use and enjoy, solely for the purposes of the passenger business of the second party, and in common with the first party and other railroad companies now or hereafter admitted to such common use and enjoyment, the said Union Passenger Station and all the aforesaid terminal facilities of the first party designed or customarily used for passenger business and located upon the premises shown on the plat hereto attached and made part hereof (which plat also shows the proposed connecting track provided for in Article I hereof), together with all buildings, structures, fixtures, appliances and other things designed or customarily used for passenger business, connected therewith or pertaining thereto, and all additions and improvements thereof; together with the services of all employes engaged in the care or operation thereof; all whereof are hereinafter referred to and designated as "said Passenger Terminal Facilities." Such use and enjoyment shall be in the manner, subject to the limitations, and only for the purposes hereinafter set forth:

1165 (a) For the passage and accommodation of all passenger engines, trains and traffic of the second party, express, mail, and baggage cars in such trains included, except such thereof as shall in arriving or in departing, run

over any branch or extension hereafter built by the second party and connected with the present tracks of the second party at a point less than fifteen miles from said Union Passenger Station; any mixed train of the second party (carrying passengers and freight), and the engine hauling the same shall be considered entitled to the rights and privileges hereinbefore provided for passenger engines and trains, if all freight cars shall be cut out of such mixed train before entering upon any track of the first party;

(b) For receiving and discharging passengers, baggage, mail and express matter to and from the passenger trains of the second party, for storing baggage, for use as a place for passengers to await the arrival or departure of such trains, for the sale of tickets, and for all such other and further uses and purposes as in the transaction of railway passenger business such premises and facilities are ordinarily used;

(c) For the right to run a telegraph wire or wires into said Union Passenger Station, and to use the same in dispatching passenger and mail trains and in handling passenger, baggage, mail and express business of the second party at said city. The first party shall furnish an operator to operate such wire or wires, but the second party assumes and hereby agrees to save harmless the first party from all damages, claims and demands which shall arise out of any negligence of any such operator with respect to any order or message relating to the movement of any engine or any train upon any track of the second party.

Article III.

The first party shall, at its sole cost and expense, furnish, 1166 supply and pay all ticket agents, baggage men and depot masters and all other help needed to operate said passenger terminal facilities or to properly serve and handle the passenger and baggage business of the second party at said Union Passenger Station; but the first party shall not, except as hereinafter expressly stipulated, be required to furnish any train or engine crew or any engine for handling or moving any passenger car, train or traffic of the second party. Except as hereinafter otherwise expressly provided, the second party shall and will furnish all such engines and all such engine and train crews as shall be required to haul, switch and handle its cars and trains.

The first party shall at its sole cost and expense heat said Union Passenger Station, and keep the same and all walks, train sheds, platforms and premises adjacent thereto or used in connection therewith in good repair, clean and free from

unnecessary obstructions, and shall cause said Union Passenger Station, together with the ticket offices and baggage rooms therein contained, and the premises adjacent thereto, to be open and ready to serve the public, for such length of time before and after the arrival and departure of each passenger train of the second party as shall be by it reasonably required.

Article IV.

The first party shall, at its sole cost and expense, make improvements in and additions to said passenger terminal facilities, whenever the same shall, by reason of increase in business or the admission of other railroad companies to the use and enjoyment thereof, become reasonably necessary for the convenient, economical, prompt and efficient handling of the passenger business or traffic of the second party, and shall
1167 at its sole cost and expense at all times, maintain and keep said passenger terminal facilities and such improvements and additions thereto in good condition and repair.

Article V.

The first party shall require its ticket and baggage agent at said Union Passenger Station to give reasonable bonds for the performance of their duties, which bonds shall contain suitable provisions to protect the second party; in case of a deficiency in the accounts of any such ticket or baggage agent, the first party shall apportion such deficiency on the basis of the cash receipts of all railroad companies using said station from the time when the accounts of such agent were last checked in their interest, and will without delay prosecute the bond by him given and pay over any sum or sums which may be recovered thereon, less the expenses of collecting the same, in accordance with the apportionment made as aforesaid.

Article VI.

If express matter there handled by the second party shall be in carload lots, the loading or unloading of which would unreasonably obstruct the platforms at said Union Passenger Station, the first party may, if it so elects, furnish at its own cost and expense a convenient side track near said Union Passenger Station and easily accessible to teams, where it may require such loading or unloading to be done. The switching of such cars to and from such side track shall be promptly done by the first party at the rate of One Dollar and Fifty Cents ($1.50) for each loaded car, but without charge for empty cars; and for all such switching the second party will pay monthly, at such rate, upon presentation of a bill therefor.

1168

Article VII.

If said passenger terminal facilities or any part thereof, shall be destroyed or damaged, the first party shall at its sole cost and expense, promptly rebuild or repair the same within nine months from the date of such destruction or damage, and shall also meanwhile furnish for the use of the second party, adequate temporary facilities in the place of those destroyed or damaged; which said temporary facilities shall, while the said premises are being rebuilt or repaired, be accepted by the second party as a full equivalent for the original terminal facilities so destroyed or damaged. If the first party shall neglect or fail promptly to commence and diligently to prosecute such repair or rebuilding, the second party may at its option, cancel and forever terminate this agreement.

Article VIII.

So long as the first party shall maintain a passenger station east of the Des Moines River, in said city, the second party shall, without additional cost, have the right to use such station, in common with such other railroad companies as now have or may hereafter acquire the right to use the same, and there to receive such service as the party of the first part may at such station at the same time render to passenger trains generally.

Article IX.

So long as the second party shall not run to or from said Union Passenger Station more than two trains each way per day, the second party shall and will pay to the first party, in lawful money of the United States, as full compensation,

1169 or rental for the rights and privileges hereinbefore granted, the annual sum of Four Thousand Eight Hundred Dollars ($4,800.00), in equal monthly installments payable on the first day of each month, for the next preceding month; which compensation or rental shall be computed from the date when the second party shall run its first passenger train into said Union Passenger Station; and for each train additional to two trains each way per day, which the second party shall in any given month run to or from said Union Passenger Station, the second party shall and will also pay to the first party on the first day of the next succeeding month, such further sum as will constitute the same proportion of Two Hundred Dollars ($200.00) as the number of days which such additional train shall have run into or out of said Union Passenger Station during such given month shall bear to the number of days of the same month.

Article X.

All time cards, rules, regulations and orders for the movement and operation of trains, cars and engines and for the beneficial enjoyment of the property, the common use of which is granted by this agreement shall be from time to time made and promulgated by the first party; all movements of trains, cars and engines upon said property shall be under the immediate direction of the Superintendent or other proper officer or agent of the first party; but such time cards, rules, regulations and orders shall be reasonable, just and fair to all parties using said property, without preference or discrimination in favor of or against either, except that passenger trains of all kinds shall have the right of way and preference over
1170 all other trains and kinds of business upon said property. Changes in the rules or regulations shall not be made without reasonable notice to the second party. The first party shall have the general control, management and supervision of said passenger terminal facilities and the right to enforce proper discipline against such employes of the second party as may use tracks or property of the first party which any other railroad company or companies may now or hereafter have the right to use; and if the second party shall refuse or fail to enforce against any such of its employes any penalty prescribed by the first party, the first party shall have the absolute right to debar and exclude such employes from said terminal facilities.

All receipts of said passenger station for tickets sold for or on account of the second party, and all receipts for the carriage of excess baggage over any route owned or controlled by the second party shall be remitted to the second party at such times and in such manner as said second party may direct. The employes of the first party shall keep records and make such reports concerning the business of the second party, as may be by the second party reasonably required.

Article XI.

Any employe of the first party in or about said passenger terminal facilities, shall be removed for good cause shown by the second party in writing. The second party shall have the right to place in the ticket office of said Union Passenger Station at its own sole expense, for not more than thirty consecutive days at once, a suitable clerk empowered to observe and make note of the course of ticket sales and of the conduct of the ticket agents therein employed, in order to determine whether such ticket agents practice strict equality and impar-
1171 tiality in respect to the second party. If the second party shall in writing, stating the cause, request the

removal of a ticket agent and the first party shall fail or refuse to remove him, the sufficiency of the cause alleged shall be determined by the Board of Reference hereinafter provided for; and, in the event of such reference, if the first party shall fail to appoint a member of such Board for five days after notice thereto in writing from the second party, the first party shall then remove the ticket agent of whom complaint shall have been so made.

Article XII.

Section 1. The party of the second part hereby agrees to assume all risks of all loss, damage or injury which shall in any manner occur in or upon any track, building or premises, any use whereof is hereinbefore granted, whether to its property, or to property in its custody, or to its passengers, or to its employes, or which third persons or the property of third persons shall there suffer, by reason of the movement of any of its engines, cars or trains, as fully, in all respects, as if it had then been in the exclusive use and control of such track, building or premises; excepting only such loss, damage and injury as shall be caused by gross negligence of employes solely of the party of the first part and, except only as aforesaid, the party of the second part hereby agrees to save the party of the first part harmless from all such loss, damage and injury, from all liability and claim therefor and from all consequent cost and expenses; provided, however, and the parties hereto expressly covenant and agree that in case of a collision between their respective engines, cars or trains, while on any of the premises aforesaid, the party, whose employes shall have been alone in fault, shall be solely responsible for and settle
1172 and pay for the entire loss and damage caused thereby, and shall so save the other party harmless therefrom; and that if such collision shall be caused by the fault of employes of both parties or if the cause of the collision shall be so concealed that it can not be determined whose employe or employes were in fault, each party shall bear and pay all the loss and injury which its own property, or property in its custody, or its employes or passengers may have suffered in consequence thereof.

Sec. 2. The party of the second part shall and will at all times indemnify the party of the first part against all claims for loss or damage growing out of the acts or neglects of the ticket sellers and baggage handlers at the said Union Passenger Station, so far as such acts or neglects shall be connected with or concern the business of the party of the second part transacted thereat, and from all claims for loss of or damage to any baggage or express matter which the party of the second

part may bring to said station, or which may be delivered thereat for transportation by its trains, no matter how such loss or damage may occur.

Article XIII.

If either party shall fail to perform this agreement or any part thereof, the other party shall have the option to terminate the same, but before any such option shall become effective, the party desiring to terminate the agreement shall give notice in writing to the other party of its intention so to do, stating the reasons therefor. If within sixty (60) days thereafter the party in default shall have so complied with the provisions of this agreement as to be no longer in default, such option to terminate shall not become effective; otherwise the party who shall have given such notice may, after such sixty (60)
1173 days, terminate this agreement by a further written notice to the other party.

If by operation of law or because of any final judgment or decree, either party hereto or any Receiver or Trustee of its property shall at any time have a right or option to terminate this agreement before its expiration, the other party shall then have a like right and option.

Article XIV.

So long as this agreement shall continue in force, no difference which may arise as to the construction or performance of any terms, covenant or condition thereof, shall while it remains undetermined, affect the use or enjoyment of the said passenger terminal facilities or the rights or privileges herein conferred, or any obligation hereinbefore created, as the parties shall have previously enjoyed such use or discharged such obligations; but such use shall during the pendency of such difference, continue, and settlements and payments shall be made, in all respects as before the rise of such difference; but whenever any such difference shall be finally decided or arranged by reference or otherwise, such payments and settlements shall be made by the respective parties as may be required by the award of the said Board of Reference or be provided by the adjustment agreement, if any.

Article XV.

If any controversy shall arise as to the construction of this agreement, or as to any violation of its provisions, or in respect to the performance of any duty which it may be claimed to impose, or as to any amount claimed to be due under its
1174 provisions, such controversy shall be submitted to three disinterested persons experienced in railway operation as a Board of Reference; one member of such Board shall be

selected by each party, the two so chosen shall select a third, and the finding in writing of said Board, or a majority of them, shall be final and conclusive on the parties hereto.

Article XVI.

Unless sooner terminated as hereinbefore provided, this agreement shall remain in force until the 31st day of December, 1907, inclusive.

Article XVII.

The grants, covenants and agreements herein contained shall run to and be binding upon the parties hereto, their successors and legal representatives, and to and upon any other corporation which may hereafter own or operate the property of either party; but it is nevertheless explicitly agreed that without the written consent of the first party first had and obtained, the second party shall not and will not, in whole or in part, grant or sub-let to any other railroad company any right or privilege hereinbefore granted or conferred, or under guise of doing its own proper business, render or contract to render to any other railroad company any continuous or habitual service in hauling cars or trains of such other railroad company into or out of said passenger station.

Article XVIII.

If the first party shall deem it desirable to change any track which shall have been used by the second party, the first
1175 party shall have the right to change the same or to substitute another track therefor, provided that such changed or other track shall afford to the second party the same or equally good facilities in and for the transaction of its business aforesaid.

In Witness Whereof, each party hereto hath caused these presents in duplicate to be subscribed by its President, and its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

DES MOINES UNION RAILWAY COMPANY.
By H. D. Thompson, Vice-President.

Attest:
F. M. Hubbell, Secretary.

DES MOINES, IOWA FALLS & NORTHERN RAILWAY COMPANY.
By E. S. Ellsworth, President.

Attest:
J. H. Funk, Secretary.

1176 **Defendants' Exhibit 529.**

Contract and Lease.

Des Moines Union Railway Company,

Des Moines, Iowa,

To The

Des Moines and Fort Dodge Railroad

Company.

1177 Lease.

This Agreement, made this 1st day of December, 1904, by and between the Des Moines Union Railway Company, first party, and the Des Moines & Ft. Dodge Railroad Company, second party, each a corporation organized and existing under the laws of the state of Iowa, Witnesseth as follows:

The first party is the owner of a Union Passenger Station between West Fifth and West Seventh Streets, in the City of Des Moines, Iowa, and of certain railroad and side tracks in said city, which, with buildings, structures, fixtures, appliances and other things connected or used therewith or appertaining thereto, constitute a system which the first party uses and operates for the purpose of affording terminal facilities to railroads entering said city; and

That the second party as owning such a railroad, desires to participate in the common use of certain of the aforesaid terminal facilities for the purposes of its passenger business only, and in the manner hereinafter provided;

Now Therefore, In consideration of the premises and of their mutual and dependant covenants and agreements
1178 hereinafter contained, the said parties hereby agree as follows:

Article I.

The first party hereby grants to the second party the right to use and enjoy, solely for the purposes of the passenger business of the second party, and in common with the first party and other railroad companies now or hereafter admitted to such common use and enjoyment, the said Union Passenger Station and all the aforesaid terminal facilities of the first party designed or customarily used for passenger business and located upon the premises shown on the plat hereto attached and made part hereof (which plat also shows the connecting track,) together with all buildings, structures, fixtures, appliances and other things designed or customarily used for pas-

senger business, connected therewith or pertaining thereto, and all additions and improvements thereof; together with the services of all employes engaged in the care or operation thereof; all whereof are hereafter referred to and designated as "said Passenger Terminal Facilities." Such use and enjoyment shall be in the manner subject to the limitations and only for the purposes hereinafter set forth:

(a) For the passage and accommodation of all passenger engines, trains and traffic of the second party, express,
1179 mail and baggage cars in such trains included; any mixed train of the second party (carrying passengers and freight,) and the engine hauling the same shall be considered entitled to the rights and privileges hereinbefore provided for passenger engines and trains, if all freight cars shall be cut out of such mixed train before entering upon any track of the first party;

(b) For receiving and discharging passengers, baggage, mail and express matter to and from the passenger trains of the second party, for storing baggage, for use as a place for passengers to await the arrival or departure of such trains, for the sale of tickets, and for all such other and further uses and purposes as in the transaction of railway passenger business such premises and facilities are ordinarily used;

(c) For the right to run a telegraph wire or wires into said Union Passenger Station, and to use the same in dispatching passenger and mail trains and in handling passenger, baggage, mail and express business of the second party, at said city. The first party shall furnish an operator to operate such wire or wires, but the second party assumes and hereby agrees to save harmless the first party from all damages, claims and demands which shall arise out of any negligence of any such operator with respect to any order or message relating to the movement of any engine or any train upon any track of the second party.

1180 Article II.

The first party shall, at its sole cost and expense, furnish, supply and pay all ticket agents, baggage men and depot masters, and all other help needed to operate said passenger terminal facilities, or to properly serve and handle the passenger and baggage business of the second party at said Union Passenger Station; but the first party shall not, except as hereinafter expressly stipulated, be required to furnish any train or engine crew or any engine for handling or moving any passenger car, train or traffic of the second party. Except as hereinafter otherwise expressly provided, the second party

shall and will furnish all such engines and all such engine and train crews as shall be required to handle its cars and trains.

The first party shall, at its sole cost and expense, heat said Union Passenger Station, and keep the same and all walks, train sheds, platforms, and premises adjacent thereto, or used in connection therewith, in good repair, clean and free from unnecessary obstructions, and shall cause said Union Passenger Station, together with the ticket offices and baggage rooms therein contained, and the premises adjacent thereto, to be open and ready to serve the public, for such length of time before and after the arrival and departure of each passenger train of the second party as shall be by it reasonably required.

1181 Article III.

The first party shall, at its sole cost and expense, make improvements in and additions to said passenger terminal facilities whenever the same shall, by reason of increase in business or the admission of other railroad companies to the use and enjoyment thereof, become reasonably necessary for the convenient, economical, prompt and efficient handling of the passenger business or traffic of the second party, and shall, at its sole cost and expense, at all times maintain and keep said passenger terminal facilities and such improvements and additions thereto in good condition and repair.

Nothing herein shall require the first party to add to its present station and track facilities in East Des Moines.

Article IV.

The first party shall require its ticket and baggage agent at said Union Passenger Station to give reasonable bonds for the performance of their duties, which bonds shall contain suitable provisions to protect the second party; in case of a deficiency in the accounts of any such ticket or baggage agent, the first party shall apportion such deficiency on the basis of the cash receipts of all railroad companies using said station from the time when the accounts of such agent were
1182 last checked in their interest, and will, without delay, prosecute the bond by him given and pay over any sum or sums which may be recovered thereon, less the expenses of collecting the same, in accordance with the apportionment made as aforesaid.

Article V.

If express matter there handled by the second party shall be in carload lots, the loading or unloading of which would unreasonably obstruct the platforms at said Union Passenger

Station, the first party may, if it so elects, furnish at its own cost and expense, a convenient side track near said Union Passenger Station and easily accessible to teams, where it may require such loading or unloading to be done. The switching of such cars to and from such side tracks shall be promptly done by the first party at the rate of One Dollar and Fifty Cents ($1.50) for each loaded car, but without charge for empty cars; and for all such switching the second party will pay monthly, at such rate, upon presentation of a bill therefor.

Article VI.

If said passenger terminal facilities, or any part thereof, shall be destroyed or damaged, the first party shall, at its sole cost and expense, promptly rebuild or repair the same within nine months from the date of such destruction or damage, and shall also meanwhile furnish for the use of
1183 the second party, adequate temporary facilities in the place of those destroyed or damaged; which said temporary facilities shall, while the said premises are being rebuilt or repaired, be accepted by the second party as a full equivalent for the original terminal facilities so destroyed or damaged. If the first party shall neglect or fail promptly to commence and diligently to prosecute such repair or rebuilding, the second party may at its option, cancel and forever terminate this agreement.

Article VII.

So long as the first party shall maintain a passenger station east of the Des Moines River, in said city, the second party shall, without additional cost, have the right to use such station, in common with such other railroad companies as now have or may hereafter acquire the right to use the same, and there to receive such service as the party of the first part may at such station at the same time render to passenger trains generally.

Article VIII.

So long as the second party shall not run to or from said Union Passenger Station more than two trains each way per day, the second party shall and will pay to the first party, in lawful money of the United States, as full compensation, or rental for the rights and privileges hereinbefore granted,
1184 the annual sum of Four Thousand Eight Hundred Dollars ($4,800.00) in equal monthly installments payable on the first day of each month, for the next preceding month; which compensation or rental shall be computed from the date when the second party shall run its first passenger train into said Union Passenger Station; and for each train

additional to two trains each way per day, which the second party shall in any given month run to and from said Union Passenger Station, the second party shall and will also pay to the first party, on the first day of the next succeeding month, such further sum as will constitute the same proportion of Two Hundred Dollars ($200.00) as the number of days which such additional train shall have run into or out of said Union Passenger Station during such given month shall bear to the number of days of the same month.

Article IX.

All time cards, rules, regulations and orders for the movement and operation of trains, cars and engines, and for the beneficial enjoyment of the property, the common use of which is granted by this agreement, shall be from time to time made and promulgated by the first party; all movements of trains, cars and engines upon said property shall be under the immediate direction of the Superintendent or other proper officer or agent of the first party; but such time cards, rules,
1185 regulations and orders shall be reasonable, just and fair to all parties using said property, without preference or discrimination in favor of or against either, except that passenger trains of all kinds shall have the right of way and preference over all other trains and kinds of business upon said property. Changes in the rules or regulations shall not be made without reasonable notice to the second party. The first party shall have the general control, management, and supervision of said passenger terminal facilities and the right to enforce proper discipline against such employes of the second party as may use track or property of the first party which any other railroad company or companies may now or hereafter have the right to use; and if the second party shall refuse or fail to enforce against any such of its employes any penalty prescribed by the first party, the first party shall have the absolute right to debar and exclude such employes from said terminal facilities.

All receipts of said passenger station for tickets sold for or on account of the second party, and all receipts for the carriage of excess baggage over any route owned or controlled by the second party, shall be remitted to the second party at such times and in such manner as said second party may direct. The employes of the first party shall keep records and make such reports, concerning the business of the second party, as may be by the second party reasonably required.

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Article X.

Any employe of the first party in or about said passenger terminal facilities, shall be removed for good cause shown by the second party in writing. The second party shall have the right to place in the ticket office of said Union Passenger Station, at its sole expense, for not more than thirty consecutive days at once, a suitable clerk empowered to observe and make note of the course of ticket sales and of the conduct of the ticket agents therein employed, in order to determine whether such ticket agents practice strict equality and impartiality in respect to the second party. If the second party shall in writing, stating the cause, request the removal of a ticket agent and the first party shall fail or refuse to remove him, the sufficiency of the cause alleged shall be determined by the Board of Reference, hereinafter provided for; and, in the event of such reference, if the first party shall fail to appoint a member of such Board for five days after notice thereto in writing from the second party, the first party shall then remove the ticket agent of whom complaint shall have been so made.

Article XI.

Section 1. The party of the second part hereby, as between the parties hereto, agrees to assume all risks of all loss, damage, or injury which shall in any manner occur in or upon

any track, building, or premises, any use whereof is
1187 hereinbefore granted, whether to its property or to property in its custody, or to its passengers, or to its employes, or which third persons or the property of third persons shall there suffer, by reason of the movement of any of its engines, cars or trains, as full in all respects, as if it had then been in the exclusive use and control of such track, building or premises: excepting only such loss, damage and injury as shall be caused by gross negligence of employes solely of the party of the first part and, except only as aforesaid, the party of the second part hereby agrees to save the party of the first part harmless from all such loss, damage and injury, from all liability and claim therefor and from all consequent cost and expenses; provided, however, and the parties hereto expressly covenant and agree that in case of a collision between their respective engines, cars or trains, while on any of the premises aforesaid, the party, whose employes shall have been alone in fault, shall be solely responsible for and settle and pay for the entire loss and damage caused thereby, and shall so save the other party harmless therefrom; and that if such collision shall be caused by the fault of employes of both

parties, or if the cause of the collision shall be so concealed that it can not be determined whose employe or employes were in fault, each party shall bear and pay all the loss and injury which its own property, or property in its custody, or its employes or passengers may have suffered in consequence thereof.

1188 Section 2. The party of the second part shall and will at all times indemnify the party of the first part against all claims for loss or damage growing out of the acts or neglects of the ticket sellers and baggage handlers at the said Union Passenger Station, so far as such acts or neglects shall be connected with or concern the business of the party of the second part transacted thereat, and from all claims for loss of or damage to any baggage or express matter which the party of the second part may bring to said station, or which may be delivered thereat for transportation by its trains, no matter how such loss or damage may occur.

Article XII.

If either party shall fail to perform this agreement or any part thereof, the other party shall have the option to terminate the same, but before any such option shall become effective, the party desiring to terminate the agreement shall give notice in writing to the other party of its intention so to do, stating the reasons therefor. If within sixty (60) days thereafter the party in default shall have so complied with the provisions of this agreement as to be no longer in default, such option to terminate shall not become effective; otherwise the party who shall have given such notice may, after such sixty (60) days, terminate this agreement by a further written notice to the other party.

1189 If by operation of law or because of any final judgment or decree, either party hereto, or any Receiver or Trustee of its property, shall at any time have a right or option to terminate this agreement before its expiration, the other party shall then have a like right and option.

Article XIII.

So long as this agreement shall continue in force, no difference which may arise as to the construction or performance of any terms, covenants, or condition thereof, shall, while it remains undetermined, affect the use or enjoyment of the said passenger terminal facilities or the rights or privileges herein conferred, or any obligation hereinbefore created, as the parties shall have previously enjoyed such use or discharged such obligations; but such use shall, during the pendency of such difference, continue and settlements and payments shall be

made, in all respects as before the rise of such difference; but whenever any such difference shall be finally decided or arranged by reference or otherwise, such payments and settlements shall be made by the respective parties as may be required by the award of the said Board of Reference or be provided by the adjustment agreement, if any.

1190

Article XIV.

If any controversy shall arise as to the construction of this agreement, or as to any violation of its provisions, or in respect to the performance of any duty which it may be claimed to impose, or as to any amount claimed to be due under its provisions, such controversy shall be submitted to three disinterested persons, experienced in railway operation, as a Board of Reference; one member of such Board shall be selected by each party, the two so chosen shall elect a third, and the finding in writing of said Board, or a majority of them, shall be final and conclusive on the parties hereto.

Article XV.

This agreement shall become effective January 1st, 1905, and continue for five years and thereafter until one year's written notice of cancellation from either party to the other. It is provided, however, that the second party hereto may, at its option, terminate this agreement at any time after the date of its effectiveness by giving to the first party in writing one year's notice of its desire and purpose to do so.

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Article XVI.

The grants, covenants and agreements herein contained shall run to and be binding upon the parties hereto, their successors and legal representatives, and to and upon any other corporation which may hereinafter own or operate the property of either party, but it is nevertheless explicitly agreed that without the written consent of the first party had and obtained, the second party shall not and will not, in whole or in part, grant or sublet to any other railroad company any right or privilege hereinbefore granted or conferred, or under guise of doing its own proper business, render or contract to render to any other railroad company any continuous or habitual service in hauling cars or trains of such other railroad company into or out of said passenger station.

Article XVII.

If the first party shall deem it desirable to change any track which shall have been used by the second party, the first party shall have the right to change the same or substitute another track therefor, provided that such changed or other track shall

afford to the second party the same or equally good facilities in and for the transaction of its business aforesaid.

In Witness Whereof, each party hereunto hath caused these presents in duplicate to be subscribed by its President,
1192 and its corporate seal to be affixed, attested by its Secretary, the day and year first above written.

DES MOINES UNION RAILWAY COMPANY,
By F. C. Hubbell, President.

Attest:
F. M. Hubbell, Secretary.

DES MOINES AND FT. DODGE RAILROAD CO.,
By E. Hawley, President.

Attest:
W. S. Crandell, Secretary.

1193 **Defendants' Exhibit 530.**

The Wabash Railroad Company.

Des Moines Division

First Mortgage.

January 1, 1899.

1194 This Indenture, made this first day of January, in the year one thousand eight hundred and ninety-nine, between The Wabash Railroad Company, a consolidated railway corporation organized under the Laws of the States of Michigan, Ohio, Indiana, Illinois and Missouri, owning and operating continuous lines of railroad in all said States, and, also, lines of railroad extending into the State of Iowa, hereinafter called "the Company," party of the first part, and the Continental Trust Company of the City of New York, Trustee, hereinafter called "the Trustee," party of the second part, Witnesseth:

That whereas, the Company now owns and operates a line of railroad known as the Des Moines and St. Louis Railroad, extending from the City of Des Moines, in the State of Iowa, to Albia, in said State, a distance of about sixty-seven miles,and is engaged in the construction of a line of railroad extending from Albia to Moulton, a distance of about twenty-seven miles, all in the State of Iowa;

And whereas, the Company is now preparing for the construction or acquisition of a line of railroad extending from

East Hannibal to Quincy, in the State of Illinois, a distance of about seventeen miles;

And whereas, the Company owns the entire capital stock of the Des Moines and St. Louis Railroad Company, consisting of twenty thousand (20,000) shares of the par value of one hundred ($100) dollars each, and five hundred (500) shares of the capital stock of the Des Moines Union Railway Company, of the par value of one hundred ($100) dollars each, and, also, certain other shares of stock and leasehold interests hereinafter described and granted;

And whereas, the Company has, in pursuance of resolutions of its Board of Directors, and with the authority and approval of a majority in interest of all its stockholders, executed eighteen hundred (1,800) bonds, dated on the 1st day of January, 1899, for the sum of one thousand ($1,000) each, payable forty (40) years after date to bearer, in gold coin of
the United States, of the present standard of weight
1195 and fineness, with interest thereon, at the rate of four (4%) per cent. per annum, payable semi-annually on the first days of January and July of each year, and which bonds are numbered consecutively from No. one (1) to No. eighteen hundred (1800), both inclusive, and all of which are substantially in the form following, to-wit:

1196 * * * * * * * *

1197 Now, therefore, this indenture Witnesseth: That to equally secure, as herein provided, the payment of the principal of said eighteen hundred (1,800) bonds for the sum of one thousand ($1,000) dollars each, amounting in the aggregate to one million eight hundred thousand ($1,800,000) dollars, and no more; and to secure in like manner the interest on said bonds as the same, from time to time, falls due, and, also, to secure the performance of the several covenants herein expressed, and in consideration of the sum of one ($1) dollar to the Company paid by the Trustee, the receipt whereof is hereby acknowledged, the Company hath granted, bargained, sold, assigned and set over, and by these presents it does grant, bargain, sell, assign and set over unto the trustee and its successors in this trust forever, all the following described real and personal property, to-wit: All the railroad road-bed, tracks and right of way of the Company known as "The Des Moines and St. Louis Railroad," as the same now is, or may be hereafter constructed, or operated in the State of Iowa, commencing at a point in or near the City of Des Moines where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the Counties

of Polk, Marion and Monroe to the town or city of Albia, in said County of Monroe, a distance of about sixty-seven miles; also, all the railroad, road-bed, tracks and right of way of the Company in the State of Iowa known as the Moulton, Albia and Des Moines Railroad as the same now is or may be hereafter constructed, operated or acquired, commencing at a point in or near the town or city of Albia, in said County of Monroe, where the same connects with the tracks of the road known as "The Des Moines and St. Louis Railroad," and extending from thence in a southerly direction through the counties of Monroe and Appanoose, a distance of about twenty-seven miles, to a point in or near the town or city of Moulton, in said County of Appanoose, where the same connects with the main track or tracks of the Company now construct-
1198 ed and extending from St. Louis, in the State of Missouri, to Ottumwa, in the State of Iowa; also, all the railroad, road-bed, tracks and right of way of the Company in the State of Illinois known as the Hannibal and Quincy Railroad as the same now is, or may be hereafter constructed, acquired or operated, commencing at a point in or near East Hannibal, in the County of Pike, where the same connects with the present track or tracks of the Company and extending from thence through the Counties of Pike and Adams a distance of about seventeen miles to and into the City of Quincy in said State of Illinois, together with all the real estate and terminal properties of the Company in said City of Quincy, and, also, all the rights, privileges, franchises, appurtenances, embankments, bridges, turn-outs, switches, side-tracks, yards, structures, water tanks, shops, engine houses, depots, turntables, engines, cars and other rolling stock, machinery, tools, lots, lands, buildings, offices and all other things, real and personal, now owned or used, or that may be hereafter owned or used by the Company in connection with the lines of railroad herein and hereby granted to the Trustee in both said States of Iowa and Illinois; also twenty thousand (20,000) shares of the capital stock of the Des Moines and St. Louis Railroad Company, of the par value of one hundred ($100) dollars each; also five hundred (500) shares of the capital stock of the Des Moines Union Railway Company, of the par value of one hundred ($100) dollars each; also all the capital stock of the Hannibal and Quincy Railroad Company that may be subscribed for or issued; also all the capital stock of the Moulton, Albia and Des Moines Railroad Company that may be subscribed for or issued; and also all the leasehold rights and privileges of the Company to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in or near said City of Des Moines, including also the rights and interests of the Company in and to a certain terminal contract, dated the 31st day

of July, 1897, and made by and between the Des Moines Union Railway Company, the Company and the Des Moines
1199 Northern and Western Railroad Company, and in and to another contract, dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines and St. Louis Railway Company, the Des Moines and North Western Railway Company, and the St. Louis, Des Moines and Northern Railway Company.

To Have And To Hold all and singular the above granted and described property, together with all its appurtenances, and the revenues, rents, issues and profits thereof unto the Trustee, its successors and assigns forever. This conveyance is made in trust, however, and upon the following conditions, to-wit:

I.—The Company agrees at the time of the execution of these presents to deliver to and deposit with the Trustee the above mentioned terminal contract, dated the 31st day of July, 1897, between the Des Moines Union Railway Company, the Company, and the Des Moines Northern and Western Railroad Company, and also the other above mentioned contract, dated the 10th day of May, 1889, between the Des Moines Union Railway Company, the Des Moines and St. Louis Railway Company, the Des Moines and North Western Railway Company, and the St. Louis, Des Moines and Northern Railway Company, together with an assignment or assignments by the Company to the Trustee of all its rights and interest in and to said contracts, and the consents to such assignment or assignments of the remaining above mentioned parties to said contracts or of their successors or assigns.

In case of the loss or destruction of said two above mentioned contracts the Company may in lieu thereof deliver to and deposit with the Trustee certified copies of said contracts.

And the Company further agrees at the time of the execution of these presents to deliver to, and deposit with, or cause to be delivered to, and deposited with the Trustee, duly endorsed in blank, the above mentioned shares of stock of
1200 the Des Moines and St. Louis Railroad Company, and of the above mentioned Des Moines Union Railway Company, and of the above mentioned Hannibal and Quincy Railroad Company, and of the above mentioned Moulton, Albia and Des Moines Railroad Company; and also a consent to the assignment or mortgage by these presents to the Trustee of the above mentioned shares of stock of the Des Moines Union Railway Company, which consent is to be given by the above mentioned Des Moines Northern and Western Railroad Company,

party to the above mentioned terminal contract of the 31st day of July, 1897, or its successors or assigns.

Until default in the payment of the principal or interest of the bonds hereby secured, or in any other provision of this mortgage, the Trustee shall make, sign, execute, or procure and deliver, such proper proxies or powers of attorney to the Company, or its nominees, as shall enable it or them to vote upon the above mentioned shares of stock (or upon such of said shares as may not be necessarily used to qualify members of the Boards of Directors of the said Companies) at all general or special meetings of the stockholders of the said Companies, to the same extent and with the same effect as if these presents had not been executed; except that such voting power shall at no time be used or exercised so as to permit or authorize an increase in the capital stock of any of the said Companies, or so as to permit or authorize any lien, security or charge to be so created or imposed upon the property or franchises of any of said Companies, except for the acquisition of additional terminals in the City of Des Moines, by the Des Moines Union Railway Company; and every proxy or power of attorney given hereunder shall state therein that the same shall not authorize the holder thereof to, and that he shall not vote for, any increase in said stock, nor for the creation or imposition of any such lien, security or charge, except for the acquisition of additional terminals in the City of Des Moines by the Des Moines Union Railway Company, as aforesaid.

In the event, however, of such default, as above mentioned, and during the continuance thereof, the voting power
1201 upon said stock may be exercised by means of proper proxies which shall be given or procured by the Trustee and delivered to such person or persons as may be designated or appointed by a majority in interest of the holders of the bonds hereby secured, then outstanding, by an instrument in writing duly signed by such holders or their authorized agents, which instrument shall state the place of residence of each holder, and the serial numbers and amount of bonds held by such holder, accompanied by an affidavit of the holder or agent to the effect that he or she is the holder or the agent of the holder of the bonds for which he or she signs; provided, however, that until said majority of the bondholders shall make such designation or appointment, the Trustee may exercise the said voting power.

II.—If the Company, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the bonds hereby secured and each of them according to their tenor and

effect and all interest on them and each of them as the same, from time to time, falls due, and shall well and truly keep and perform the covenants and agreements, and each of them, herein expressed to be kept and performed by it, then all the estate, right, title, interest and demand of the Trustee, its successors and assigns in this trust, shall cease and determine; but otherwise, the same shall remain in full force and virtue for the equal benefit and security of the holders of said bonds and each of them to the full extent herein provided.

* * * * * * * *

1215 In Witness Whereof, the Company has caused these presents to be signed in its corporate name by its President and attested by its Secretary, and has caused the corporate seal of said Company to be hereunto affixed, and the Continental Trust Company of the City of New York, in token of its acceptance of the trust hereby created, has caused these presents to be signed in its corporate name by its Vice-President, and attested by its Secretary, and has caused the cor-

1216 porate seal of said Company to be hereunto affixed, as the day and year first above written, this instrument being executed in duplicate.

THE WABASH RAILROAD COMPANY,
By O. D. Ashley, President.

[Seal.]

Attest:
J. C. Otteson, Secretary.

CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK,
By Otto T. Bannard, President.

[Seal.]

Attest:
Willard V. King, Secretary.

$900
Revenue Stamps
Cancelled.

1219 **Defendants' Exhibit 531.**

Know All Men By These Presents:

That Frederick M. Hubbell of Polk County, and State of Iowa, in consideration of the sum of One Thousand Dollars in hand paid by The Des Moines Union Railway Company of

Polk County, and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit: Lot number four (4) in block number thirty-three (33) of Keene & Poindexters Addition to Fort Des Moines, now included in the corporate limits of the city of Des Moines, Iowa.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever, except taxes of 1887, and I covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever, except taxes of 1887. And Frances E. Hubbell wife of said F. M. Hubbell hereby relinquishes her right of dower in and to the above described premises.

Signed this 4th day of June, A. D. 1888.

FREDERICK M. HUBBELL.
FRANCES E. HUBBELL.

Duly acknowledged June 4th, 1888. Filed for record in the office of the Recorder of Polk County, Iowa, on the 6th day of June, 1888, and recorded in Book 209, Page 188 of the records in said office.

1220 **Defendants' Exhibit 532.**

Know All Men By These Presents, That Jefferson S. Polk, of Polk County, and State of Iowa, in consideration of the sum of One Thousand Dollars, in hand paid by the Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby sell and convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number three (3) in Block Number thirty-three (33) of Keene & Poindexters Addition to Fort Des Moines now included in the corporate limits of the city of Des Moines, Iowa.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever except taxes of 1887.

And I covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

And the Julia Polk, wife of Jefferson S. Polk hereby relinquishes her right in and to the above described premises.

Signed the 4th day of June, A. D. 1888.

JEFFERSON S. POLK,
JULIA POLK.

Duly acknowledged June 4th, 1888. Filed for record in the office of the Recorder of Polk County, Iowa, on the 6th day of June 1888, and recorded in Book 209, Page 189 of the records in said office.

1221 **Defendants' Exhibit 533.**

Know All Men By These Presents:

That Jefferson S. Polk & F. M. Hubbell of Polk County, State of Iowa, in consideration of the sum of Seventy Dollars, to us in hand paid by the Des Moines Union Railway Company of Polk County, State of Iowa the receipt whereof ..... do hereby acknowledge, have bargained, sold, and Quit-Claimed; and by these presents do bargain, sell and Quit-Claim unto the said Des Moines Union Railway Company, and to its heirs and assigns forever, all our right, title, interest, estate, claim and demand, both at law and in equity, and as well in possession as in expectancy, of, in and to the following described premises, to-wit:

Lot number two (2) of the Official Plat of Lot twenty seven (27) of Brooks & Co. Addition to the City of Des Moines now included in the corporate limits of the city of Des Moines,

And Julia Polk, wife of Jefferson S. Polk & Frances E. Hubbell wife of F. M. Hubbell hereby relinquish their right of dower in said premises. With all and singular the hereditaments and appurtenances thereto belonging.

Signed this second day of March A. D., 1889.

JEFFERSON S. POLK
JULIA H. POLK
F. M. HUBBELL
FRANCES E. HUBBELL.

1222 Duly acknowledged March 2, 1889. Filed for record in the office of the Recorder of Polk County, Iowa, on the 10th day of April, 1889, and recorded in Book 201, Page 605 of the records in said office.

1223 **Defendants' Exhibit 534.**

Know all men by these presents:

That Edwin Whitworth and E. T. Whitworth his wife, of the City of Liverpool England, for and in consideration of the sum of five hundred dollars ($500.00) the receipt whereof is hereby acknowledged, hereby sell and convey unto the Des Moines Union Railway Company, a corporation organized and existing under the laws of the state of Iowa, a right of way for Railway purposes described as follows, to-wit; A strip of land seven (7) feet in width off the west side of lot No. fifty-four (54) and seven (7) feet, in width off the east side of lot fifty-three (53) in Brook's and Co's addition to the City of Des Moines, in the county of Polk and State of Iowa, now included within and forming a part of the City of Des Moines.

And the said grantors in further consideration of the sum of one hundred dollars ($100.00) to be yearly paid on or before the First day of August in each year, hereby leases unto the said Des Moines Union Railway Company for the period of two years from and after the first day of June, 1889 a certain other right of way described as follows, to-wit: So much land in said lot fifty-four (54) as may be necessary to maintain and operate two certain switches both beginning in the track laid upon the right of way hereinbefore granted in the north half of said lot fifty-four (54), and one extending
1224 eastward to the International Distillery and known as the "International Distillery Switch", the other also extending eastward and connecting with the main line of the Chicago, Burlington & Quincy Railway Company near the center of said lot fifty-four (54).

And the said E. T. Whitworth, wife of said Edwin Whitworth, relinquishes her right of dower in and to the right of way herein first conveyed.

Witness our hands this Twenty-Ninth day of August 1889.

ELIZABETH TALKES WHITWORTH
EDWIN WHITWORTH.

Witness

..... Buchanan
5 Lin Thomas Bldg.
Liverpool

Wm. Pierce
U. S. Consulate
Liverpool.

Filed for record in the office of the Recorder of Polk County, Iowa, on the 19th day of December, 1889, and recorded in Book 226, Page 342 of the records in said office.

1225 **Defendants' Exhibit 535.**

Know All Men By These Presents, That I, F. M. Hubbell of the County of Polk and State of Iowa in consideration of the sum of One Dollar in hand paid by Des Moines Union Railway Company a corporation organized under the laws of Iowa of the County of Polk and State of Iowa do hereby convey and Quit Claim unto the said Des Moines Union Railway Company all my Right, Title and Interest in and to the following described premises, situated in Polk County, and State of Iowa, to-wit:

Lot number thirteen (13) in block twelve (12) in the town of Demoine, also the south one-third (1/3) of lot four (4) in block number thirty five (35) and lot number seven (7) in block number four (4) in the Original town of Fort Des Moines, now in the corporate limits of the city of Des Moines.

And Frances E. Hubbell wife of F. M. Hubbell hereby relinquishes her right in and to the above described premises.

Signed this first day of February, A. D. 1890.

F. M. HUBBELL
FRANCES E. HUBBELL.

Duly acknowledged February 1, 1890. Filed for record in the office of the Recorder of Polk County, Iowa, on the 27th day of September, 1906 and recorded in Book 515, Page 203 of the records in said office.

1226 **Defendants' Exhibit 536.**

Know All Men By These Presents, That the Chicago, Rock Island and Pacific Railway Company, in consideration of the sum of one dollar ($1.00) in hand paid by the Des Moines Union Railway Company, do hereby grant and convey unto the said Des Moines Union Railway Company, its successors and assigns, a right of way for railroad purposes over and upon the following described premises situated in the County of Polk and State of Iowa, to-wit:—

A strip of land fifty feet in width, being twenty-five feet on each side of the center line of the track of the said Des Moines Union Railway Company as now located upon and across lot four (4) block twenty-one (21) of H. M. Hoxie's Addition to

the City of Des Moines, now included within the corporate limits of the said City of Des Moines.

In Witness, the Chicago, Rock Island & Pacific Railway Company has caused these presents to be signed by its President and attested by its Secretary this 1st day of March, 1890.

(Seal) THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.
By R. R. Cable, President.

Attest:
W. G. Purdy, Secretary.

Duly acknowledged October 22, 1890. Filed for record in the office of the Recorder of Polk County, Iowa, on the
1227 6th day of November, 1890, and recorded in Book 247, Page 211, of the records in said office.

1228 **Defendants' Exhibit 537.**

Know All Men By These Presents, That the Des Moines & Ft. Dodge Railroad Company in consideration of the sum of Three Hundred Dollars in hand paid by the Des Moines Union Railway Company, do hereby grant and convey unto the said Des Moines Union Railway Company, its successors and assigns a right of way for railroad purposes, over and upon the following described premises situated in the County of Polk and State of Iowa to-wit:—A strip of land fifty feet in width, being twenty-five feet on each side of the center line of the track of the said Des Moines Union Railway Company as now located upon and across lot seven (7) block twenty-one (21) of H. M. Hoxie's Addition to the City of Des Moines, now included within the corporate limits of the said City of Des Moines.

In Witness Whereof, the Des Moines & Ft. Dodge Railroad Company has caused these presents to be signed by its President and attested by its Secretary, this 1st day of March, 1890.

(Seal) THE DES MOINES & FORT DODGE R. R. Co.,
By C. N. Gilmore, President.

Attest:
Geo. Given, Secretary.

Duly acknowledged November 5, 1890. Filed for record in the office of the Recorder of Polk County, Iowa, on the 6th

day of November, 1890, and recorded in Book 247, Page 212 of the records in said office.

1229 **Defendants' Exhibit 538.**

Know All Men By These Presents, That C. Huttenlocher, of the County of Polk and State of Iowa in consideration of the sum of Three Thousand Dollars, in hand paid by The Des Moines Union Railway Company of Polk County, State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number eleven (11) in Block thirty-three (33) of Keene & Poindexters Addition to Fort Des Moines now included in the corporate limits of the city of Des Moines, Iowa.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And Lydia Huttenlocher, wife of said C. Huttenlocher, hereby relinquishes her right of dower in and to the above described premises.

Signed this 14th day of June A. D. 1890.

C. HUTTENLOCHER.
LYDIA HUTTENLOCHER.

1230 Duly acknowledged June 14, 1890. Filed for record in the office of the Recorder of Polk County, Iowa, on the 10th day of October, 1890, and recorded in Book 253, Page 22 of the records in said office.

1231 **Defendants' Exhibit 539.**

Know All Men By These Presents: That Peter Bennett and Maria Bennett, husband and wife of the County of Polk and State of Iowa in consideration of the sum of Eight hundred Dollars, in hand paid by the Des Moines Union Railway Company of Polk County, State of Iowa do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Fractional Lots five (5) and six (6) in Block twenty one (21) Hoxie's Addition to the City of Des Moines and now included within the corporate limits of Des Moines, Iowa.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

And the said Maria Bennett hereby relinquishes her right of dower in and to the above described premises.

1232 Signed this 21st day of June A. D. 1890.

PETER BENNETT
MARIA BENNETT.

Duly acknowledged June 21, 1890. Filed for record in the office of the Recorder of Polk County, Iowa, on the 21st day of June 1890, and recorded in Book 248, Page 54 of the records in said office.

1233 **Defendants' Exhibit 540.**

Know All Men By These Presents: That Ursula Brotchi, widow of Philip Brotchi, deceased, of Polk County, and State of Iowa in consideration of the sum of Two Thousand Dollars, in hand paid by The Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit:

Lot number four (4) of Block thirty one (31) of Keene & Poindexters Addition to Fort Des Moines now included in the corporate limits of the city of Des Moines, Iowa.

Subject however to the railroad right of way of said Des Moines Union Railway Company.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that ... ha. good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

Signed the 25th day of August A. D. 1890.

her
URSULA x BROTH.
mark

Witness

Horace Keely
E. E. Beaton.

Duly acknowledged August 25, 1890. Filed for record in the office of the recorder of Polk County, Iowa, on August 26th and recorded in Book 248, Page 390 of the records in said office.

1234 **Defendants' Exhibit 541.**

Know All Men By These Presents:

That I, F. M. Hubbell of Polk County, State of Iowa, in consideration of the sum of Four Thousand Dollars, to me in hand paid by the Des Moines Union Railway Company, the receipt whereof I do hereby acknowledge, have bargained, sold and Quit-Claimed, and by these presents do bargain, sell and Quit-Claim unto the said Des Moines Union Railway Company, its successors and assigns forever, all my right, title, interest, estate and demand, both at law and in equity and as well in possession as in expectancy, of, in and to the following described premises, to-wit:

One hundred (100) feet in width off the west side of lot two (2) of the official plat of the south-west quarter (¼) and one hundred feet in width off the west side of lot eight (8) of the official plat of the north-west quarter (¼) all in section nine (9) township seventy-eight (78) north of range twenty-four (24) west 5th P. M. Subject, however to any rights which the Des Moines & Ft. Dodge Railway Company may have acquired and hereby reserving to myself, my heirs and assigns, the right to have Market Street extended across said land. The said Market Street to be sixty-six feet wide and wholly South of the right of way of the Des Moines & Ft. Dodge Railroad.

And Frances E. Hubbell, wife of F. M. Hubbell, hereby relinquishes her right of dower in and to the above de-
1235 scribed premises.

Signed this 1st day of Sept. A. D. 1890.

F. M. HUBBELL.
FRANCES E. HUBBELL.

Duly acknowledged September 1, 1890. Filed for record in the office of the Recorder of Polk County, Iowa, on the 2d day of September, 1890, and recorded in Book 247, Page 109 of the records in said office.

1236 **Defendants' Exhibit 542.**

Know All Men By These Presents, That I, Jefferson S. Polk of Polk County, and State of Iowa in consideration of the sum of Twelve thousand Dollars, in hand paid by The Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number Eight (8) in Block number four (4) of the Original Town of Fort Des Moines, Iowa, & now included within the corporate limits of the City of Des Moines Iowa.

This conveyance is subject to whatever rights if any the lessee may have under a certain lease made by Jefferson S Polk to Theo. C. Sherwood dated July 17th 1899 & which the lessor has heretofore declared forfeited.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same, that they are free and clear of all liens and incumbrances whatsoever, except said lease if the same be now in force.

And I covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever,
1237 except as against said Lessee.

And Julia H. Polk wife of said Grantor hereby relinquishes her right in and to the above described premises.

Signed the 4th day of September A. D. 1890.

JEFFERSON S. POLK
JULIA H. POLK.

Duly acknowledged September 4, 1890. Filed for record in the office of the Recorder of Polk County, Iowa, on the 3d day of September, A. D. 1896, and recorded in Book 352, Page 26 of the records in said office.

1238 **Defendants' Exhibit 543.**

Know All Men By These Presents: That F. C. Hubbell Trustee of Polk County, and State of Iowa in considera-

tion of the sum of Seven Hundred & fifty Dollars, in hand paid by The Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

All that part of lots numbered seven (7) and eight (8) in Block numbered forty-nine (49) Jonathan Lyons Addition to city of Des Moines now included in the corporate limits of city of Des Moines—which lies north of the certain strip of land twenty-eight (28) feet wide through said lots which I conveyed to the Des Moines & North Western Railway Company and the Des Moines & Northern Railway Company by deed dated February 11, 1891.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

Signed the 12th day of February A. D. 1891.

F. C. HUBBELL, Trustee

1239 State of Iowa,
Polk County—ss.

On the 12" day of February A. D. 1891, before me, C. Huttenlocher a Notary Public within and for said County, personally came F. C. Hubbell, Trustee personally to me known to be the identical person whose name is affixed to the above instrument as grantor and severally acknowledged the execution of the same to be his voluntary act and deed for the purposes therein expressed.

Witness my hand and official seal the day and year last above written.

(Seal)

C. HUTTENLOCHER,
Notary Public, Polk Co., Iowa.

1240 **Defendants' Exhibit 544.**

Des Moines, Iowa, August 10, 1891.

Recognizing the benefits and advantages which will acquire to us by having a single or double side track or switch laid on

the north side of Mulberry Street from Sixteenth Street to the east side of Fourteenth Street, in West Des Moines, We, the undersigned, who own all of the real estate upon the north side of said Mulberry Street between Fourteenth and Sixteenth Streets, do hereby consent that the Des Moines Union Railway Company shall build, maintain and operate a single or double side track or switch upon the north side of said Mulberry Street from Sixteenth Street to the east side of Fourteenth Street, and we hereby release all damages of whatever name and nature we may sustain by reason of the building, maintenance and operation of said tracks.

F. M. HUBBELL,
B. S. WALKER,
F. A. PERCIVAL,
J. KUHN.

Duly acknowledged August 11, 1891. Filed for record in the office of the Recorder of Polk County, Iowa, on the 31st day of August 1891, and recorded in Book 264, Page 111 of the records in said office.

1241 **Defendants' Exhibit 545.**

F. M. Hubbell, B. S. Walker
F. A. Percival &
Jacob Kuhn
to
Des Moines Union Ry Co.

Consent and
Release of damages.

Des Moines, Iowa, August 10th, 1891.

Recognizing the benefits and advantage which will acquire to us by having a single or double side track or switch laid on the north side of Mulberry Street, from Sixteenth Street to the east side of Fourteenth Street, in West Des Moines, We, the undersigned ,who own all of the real estate upon the north side of said Mulberry Street, between Fourteenth and Sixteenth Streets, do hereby consent that the Des Moines Union Railroad Company Shall build, maintain and operate a single or double side track or switch upon the north side of said Mulberry Street from Sixteenth Street, to the east side of Fourteenth Street, and we hereby release all damage of whatever name and nature, we may sustain by reason of the building, maintenance and operation of said tracks.

F. M. HUBBELL,
B. S. WALKER.

Duly acknowledged August 11th, 1891. Filed for record August 31, 1891 in the office of the Recorder of Polk County, Iowa, and recorded in Book 264, Page 111 of the records in said office.

1242 **Defendants' Exhibit 546.**

Know All Men By These Presents: That F. M. Hubbell of Polk County, and State of Iowa in consideration of the sum of Three Thousand Sixty-two & 42/100 Dollars, in hand paid by The Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

The South one half (1/2) of the North two thirds (2/3) of lot three (3) in Block thirty-five (35) in the Original town of Fort Des Moines now included in the corporate limits of the city of Des Moines, Iowa.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title, that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant And Defend The said premises against the lawful claims of all persons whomsoever.

And Frances E. Hubbell, wife of F. M. Hubbell, hereby relinquishes her right in and to the above described premises.

Signed the 21st day of August, A. D. 1891.

F. M. HUBBELL,
FRANCES E. HUBBELL,

Duly acknowledged August 27, 1891. Filed for record in the office of the Recorder of Polk County, Iowa, on the 27th day of August 1891, and recorded in Book 265, Page 437 of the records in said office.

1243 **Defendants' Exhibit 547.**

Know All Men By These Presents: That We, Luke Caffrey and wife, Bridget Caffrey, of the County of Marion and State of Iowa, in consideration of the sum of Thirty-three Hundred Dollars in hand paid by Des Moines Union Railway Company of Polk County and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Company

the following described premises, situated in the County of Polk, and State of Iowa, to-wit:

The north one-third (1/3) of Lot Three (3) in Block Thirty-five (35) Original Town of Fort Des Moines, and now included in the corporate limits of the City of Des Moines, Iowa.

And I hereby covenant with the said Des Moines Union Railway Company, that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same, that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And the said Bridget Caffrey, wife of Luke Caffrey, hereby relinquishes her right of dower in and to the above described premises.

Signed this 22d day of August, A. D. 1891.

LUKE CAFFREY
BRIDGET CAFFREY.

In the presence of
Thos. A. Cheshire.

Duly acknowledged August 22d, 1891. Filed for record in the office of the Recorder of Polk County, Iowa, August 24, 1891, and recorded in Book 265, Page 425 of the records in said office.

1244 **Defendants' Exhibit 548.**

Know All Men By These Presents:

That C. Huttenlocher of the County of Polk and State of Iowa in consideration of the sum of One Hundred twenty-nine Dollars, in hand paid by The Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell and Convey unto the said The Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit:

Lot number eighteen (18) of the Official Plat of lots numbered two (2) three (3) four (4) five (5) six (6) seven (7) and eight (8) in Block twenty one (21) of the town of Demoine now included in the corporate limits of the city of Des Moines.

And I do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under us.

And Lydia Huttenlocher wife of C. Huttenlocher hereby relinquishes her right in and to the above described premises.

Signed this 14th day of October A. D. 1891.

C. HUTTENLOCHER
LYDIA HUTTENLOCHER.

Duly acknowledged October 14th, 1891. Filed for record in the office of the Recorder of Polk County, Iowa, on the 16th day of October 1891, and recorded in Book 266, Page 124 of the records in said office.

1245 **Defendants' Exhibit 549.**

Know All Men By These Presents:

That F. C. Hubbell, of the County of Polk and State of Iowa in consideration of the sum of Fourteen Hundred Dollars in hand paid by The Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell and Convey unto the said The Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit:

That portion of Lot four (4) Official Plat of the South East quarter of Section Two (2) Township seventy-eight (78) Range twenty-four (24) lying south of the Des Moines Union Railway Company's right of way, being about three and one half acres.

And I do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under us.

And Mary W. Hubbell, wife of F. C. Hubbell, hereby relinquishes her right in and to the above described premises.

Signed this 23rd day of December A. D. 1892.

F. C. HUBBELL
MARY W. HUBBELL.

Duly acknowledged December 23rd, 1892. Filed for record in the office of the Recorder of Polk County, Iowa on the 23rd day of December 1892, and recorded in Book 297, Page 332 of the records in said office.

1246 **Defendants' Exhibit 550.**

An Ordinance.

Granting to the Des Moines Union Railway Company the right to lay, maintain and operate a single or double side

track on the north side of Mulberry Street from the west side of Sixteenth Street to the east side of Fourteenth Street.

Section 1.—Be it Ordained by the City Council of the City of Des Moines:—

That there is hereby granted to the Des Moines Union Railway Company the right to lay, maintain and operate a single or double side track on the north side of Mulberry Street from the west side of Sixteenth Street to the east side of Fourteenth Street.

Sec. 2. Be it further ordained that this grant shall not be effective unless the owners of the abutting property, abutting on said Mulberry Street in front of which property said side tracks or switch shall be laid, shall be compensated for or shall release all claims for damages of every kind or nature accruing or which may accrue to them, by reason of the laying, maintaining and operating of said switch or side tracks along said street.

Sec. 3. This ordinance shall be in force and of effect on and after its passage and publication as by law provided.

Passed January 18, 1892.

J. H. CAMPBELL,
Mayor.

Approved January 22, 1892.

Attest:
R. B. Dennis,
City Clerk.

1247 **Defendants' Exhibit 551.**

Know all Men by These Presents: That I, F. Cooper, (a single man) of the County of Polk and State of Iowa, in consideration of the sum of Four Hundred & fifty Dollars in hand paid by Des Moines Union Ry. Co. of Polk County, and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Ry. Co. the following described premises situated in the County of Polk and State of Iowa, to-wit:

Lots No. ten (10) and Eleven (11) in D. Rees's Sub Div of Lot No. thirty (30) Brooks & Companys Addition to the City of Des Moines, Polk County, Iowa.

And I do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under me.

Signed this 28th day of December, A. D. 1892.

F. COOPER.

Duly acknowledged December 28, 1892. Filed for record in the office of the Recorder of Polk County, Iowa, on the 4th day of March, 1893, and recorded in Book #301, Page #146 of the records in said office.

1248 **Defendants' Exhibit 552.**

Know all Men by These Presents:

That F. C. Hubbell of the County of Polk and State of Iowa in consideration of the sum of Thirteen Thousand Dollars in hand paid by The Des Moines Union Railway Co. of Polk County, and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Co. the following described premises situated in the County of Polk and State of Iowa, to-wit:

The North one third (1/3) of Lot number eight (8) and the South one third (1/3) of Lot number nine (9) all in Block number thirty (30) in the Original Town of Fort Des Moines now in the city of Des Moines, Iowa.

And I do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons, whomsoever claiming by, through or under us.

And Mary W. Hubbell, wife of F. C. Hubbell hereby relinquishes her right in and to the above described premises.

Signed this 13th day of April, A. D. 1893.

F. C. HUBBELL.
MARY W. HUBBELL.

Duly acknowledged April 14, 1893. Filed for record in the office of the Recorder of Polk County, Iowa, on the 21st day of April, 1893, and recorded in Book 301, Page 515 of the records in said office.

1249 **Defendants' Exhibit 553.**

Book 294
Page 326

James F. How, Trustee, :
:
to : Quit Claim Deed.
:
Des Moines Union Ry. Company :

This Indenture made on the 9th day of August, A. D. 1893, by and between James F. How, Trustee of the city of St. Louis, state of Missouri, party of the first part, and the Des Moines

Union Ry. Company of the state of Iowa, party of the second part, Witnesseth: That

The said party of the first part, in consideration of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents remise, release and forever quit-claim unto the said party of the second part the following described lots, tracts, or parcels of land lying, being, and situated in the county of Polk and state of Iowa, to-wit:

Strip of land fifty (50) feet in width on the north of and adjoining the right of way of the Chicago, Rock Island & Pacific Railroad Company in Lot number two (2) of the Official Plat of the N. W. ¼ of the N. E. ¼ of Section eight (8) in Township seventy-eight (78) north, range twenty-four (24) West of the 5th P. M. Iowa.

To have and to hold the same, with all rights, immunities privileges and appurtenances thereto belonging, unto the said party of the second part and its successors and assigns forever, so that neither the said party of the first part nor his heirs, nor any other person or persons for him or in
1250 his name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them, shall, by these presents be excluded and forever barred.

In Witness Whereof the said party of the first part has hereto set his hand and seal the day and year first above written.

JAMES F. HOW, Trustee.
(Seal)

Signed, sealed and delivered
in the presence of us.

(Acknowledgment)

1253

Defendants' Exhibit 554.

Deed.

Know All Men By These Presents:

That the City of Des Moines, by Isaac L. Hillis, Mayor and D. A. Kooker, City Clerk of the City of Des Moines, Polk County, Iowa, in consideration of the sum of One Dollar, in hand paid by the Des Moines Union Railway Company of Polk County and State of Iowa, does hereby Quit Claim unto the Des Moines Union Railway Company, all its right, title and interest in and to the following described real estate situated in Des Moines, Polk County, Iowa, to-wit:

All that part of West Thirteenth street in Keene & Poinderters Addition to the City of Des Moines, which lies South of the South line of Cherry street; also so much of Cherry street in said Keene & Poinderter's Addition, as lies west of the west line of said Thirteenth street in said City of Des Moines.

Provided, however, and this conveyance is made upon the express condition, that unless the said Des Moines Union Railway Company, itself or its assigns, shall actually use said grounds for shop purposes within two years, this ordinance shall become ineffective and inoperative.

This deed is made in pursuance of an ordinance passed by the City Council December 14, 1894.

(Seal) THE CITY OF DES MOINES, IOWA,
By Isaac L. Hillis, Mayor.

D. A. KOOKER,
City Clerk.

1254 Duly acknowledged December 26, 1894. Filed for record in the office of the Recorder of Polk County, Iowa, on the 28th day of December 1894, and recorded in Book 294, Page 524 of the records in said office.

1255 **Defendants' Exhibit 555.**

Know All Men By These Presents, That F. M. Hubbell and Frances E. Hubbell husband and wife of the County of Polk and State of Iowa in consideration of the sum of Two Hundred Dollars, in hand paid by The Des Moines Union Railway Company of the County of Polk and State of Iowa do hereby Quit Claim unto the said Des Moines Union Railway Company all our Right, Title and Interest in and to the following described premises, situated in Polk County, and State of Iowa, to-wit:

All that portion of lot one (1) of the Official Plat of the northeast quarter (¼) of section eleven (11) township seventy eight (78) range twenty four (24) west of the Fifth P. M., Iowa, which lies north and east of the right-of-way of the Chicago, Rock Island & Pacific R'y (Winterset Branch) including in this conveyance, all of the streets and alleys in that portion of Jacks' Plat which is laid out and platted on the above described land, except therefrom, however, the following lots in what is known as Jacks' Plat,
lots three (3) and four (4) in block eight (8), except the west fifty (50) feet thereof; lots five (5) six (6) seven (7) ten (10)

eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen
1256 (15) and sixteen (16) in block eight (8) except the west fifty (50) feet thereof; lots five (5) eight (8) and nine (9) in block six (6); lots seventeen (17) eighteen (18) and nineteen (19) in block eight (8); lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) in block seven (7), except the west fifty (50) feet thereof, and lots twenty one (21) twenty two (22) twenty three (23) twenty seven (27) thirty two (32) thirty three (33) and thirty four (34) in block seven (7) .....

And the said Frances E. Hubbell hereby relinquishes her right in and to the above described premises.

Signed this fifth day of February A. D. 1895.

F. M. HUBBELL.
FRANCES E. HUBBELL.

Duly acknowledged March 21, 1895. Filed for record in the office of the Recorder of Polk County, Iowa, on the 23d day of March, 1895, and recorded in Book 331, Page 2, of the records in said office.

1257 **Defendants' Exhibit 556.**

This Memorandum of Agreement made this 9th day of May, 1895, between the Des Moines Union Railway Company, the Des Moines Elevator Company, both corporations organized and existing under the laws of the State of Iowa, and L. Mott, Witnesseth: That

Whereas the Des Moines Elevator Company owns Lot three (3) in Block seven (7), Hoxie's Addition to the City of Des Moines, upon which it has constructed a grain elevator; and

Whereas L. Mott has made application to the City of Des Moines for a franchise to construct a railway track or tracks upon, over and along the alley running east and west through Block seven (7) of H. M. Hoxie's Addition to Des Moines, and also to the east side of Eighth Street at its intersection with the said alley, now included within the City of Des Moines; and

Whereas the track in question will pass the elevator of the said Des Moines Elevator Company, and will be of great value to the said Elevator Company in loading and unloading and switching cars to said Elevator

Now Therefore, in consideration of the premises, it is agreed as follows between all the parties:

1st. Said L. Mott agrees to assign to the Des Moines Union Railway Company all his rights, title and interest acquired by or granted to him by virtue of said proposed ordinance, or as amended, as soon as the same has become a law.

2nd. The Des Moines Elevator Company hereby grants to the said Des Moines Union Railway Company the right of way over and across that part of Lot three (3) in Block seven (7), H. M. Hoxie's Addition, where the said Des Moines
1258 Union Railway Company has constructed its tracks, so long as said lot is used for elevator purposes.

3rd. The said Des Moines Elevator Company also hereby releases all claims for abutting damages on account of the said track of the Des Moines Union Railway Company or L. Mott now or hereafter to be constructed through the east and west alley in Block seven (7), Hoxie's Addition to Des Moines.

4th. The said Des Moines Union Railway Company hereby agrees to connect the said tracks herein mentioned with its system of tracks in Des Moines as expeditiously as practicable, and maintain said connection so long as said lot shall be used for elevator purposes.

Signed in triplicate this 9th day of May, 1895.

DES MOINES UNION RAILWAY COMPANY,

(Seal) By F. C. Huidekl, President.

Attest:

F. M. Huidekl,
Secretary.

DES MOINES ELEVATOR COMPANY.

(Seal) By C. F. McCarty, President.

Attest:

B. A. Lockwood,
Secretary.

LAMOIN MOTT.

1259 **Defendants' Exhibit 557.**

An Ordinance granting to L. Mott and his assigns, the right to construct and operate a railway track, or tracks, upon the east and west alley through block 7 of H. M. Hoxie's Addition to Des Moines, and also to the east side of 8th Street at its intersection with said alley.

Be it Ordained by the City Council of the City of Des Moines:

Sec. 1. That there is hereby granted to L. Mott and his assigns the right to construct and operate a railway track, over and along the portion of the north part of the alley running east and west through block 7 of H. M. Hoxie's Addition to Des Moines, beginning at the west end of said alley at 9th Street; thence east to the west line of lot 3 in block 7 of H. M. Hoxie's Addition. Said track to be so laid as not to interfere with the present tracks of the Des Moines & Kansas City Railway Company, as now laid in said alley, for the use thereof.

Sec. 2. Before constructing said track or tracks, the said L. Mott or his assigns, shall either procure the consent of the property owners abutting upon the part of the alley so to be occupied, or shall assess and pay their damages as provided by law.

Sec. 3. This ordinance shall be in force and effect from
1260 and after its passage and publication, the publication to be without expense to the city.

Approved May 10th 1895.

1261 **Defendants' Exhibit 558.**

Know All Men By These Presents: That S. B. Tuttle & Almira K. Tuttle, husband & wife of Polk County, and State of Iowa, in consideration of the sum of Twelve Hundred Dollars, in hand paid by the Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

A strip of ground twelve (12) feet wide north of, parallel to and adjoining the right of way of the Des Moines & Kansas City Railway, said strip extending from the west side of west Ninth Street to the west line of Official Plat Lot number ten (10) in the North West quarter of Section nine (9) Township seventy eight (78) Range twenty four (24) Said strip of ground being 435 feet long, extending across lots one (1) & two (2) in block sixteen (16) of Hoxies Addition to the town of Fort Des Moines and across said Official Plat Lot ten (10) above referred to.

And we hereby covenant with the said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant and Defend The said premi-
1262 ises against the lawful claims of all persons whomsoever.

And the said Almira K. Tuttle hereby relinquishes her right in and to the above described premises.

Signed the 14th day of May A. D. 1895.

S. B. TUTTLE
ALMIRA K. TUTTLE.

Duly acknowledged May 14, 1895. Filed for record in the office of the Recorder of Polk County, Iowa, on the 15th day of May, 1895, and recorded in Book 329, Page 317 of the records in said office.

1283 **Defendants' Exhibit 559.**

Know All Men By These Presents: That Edwin Whitworth of Chester County, England in consideration of the sum of Five hundred Dollars in hand paid by the Des Moines Union Railway Company a corporation of the State of Iowa do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, being a part of Lot one (1) of the official plat of Lots fifty-two (52) fifty-three (53) and fifty-four (54) of Brooks and Co.'s Addition to the city of Des Moines, bounded and described as follows, to-wit: Commencing at the intersection of the north line of the right of way of the Chicago, Burlington & Quincy Railroad Company with the east line of said lot one (1) of the official plat of lots fifty-two (52) fifty-three (53) and fifty-four (54) of Brooks and Co.'s Addition to the City of Des Moines, said intersection being at the southeast corner of said lot one (1), thence north along the east line of said lot one (1) to the intersection of said east line of said lot one (1) with a line parallel with the north line of the said right of way of said C. R. & Q. R. R. Co. and fifty (50) feet therefrom, thence northwesterly parallel with said north line of said C. R. & Q. R. R. Co.'s right
1284 of way and fifty (50) feet therefrom to a point fifty (50) feet east of the east line of the fourteen feet right of way of the Des Moines Union Railway Company as now located between lots one (1) and two (2) in said official plat above named, thence north parallel with the east line of said right of way of said Des Moines Union Ry. Co. and fifty (50) feet therefrom to the north line of said lot one (1), being the south line of Scott Street, thence west along the north line of said lot one (1), fifty (50) feet to the east line of said right

of way of said Des Moines Union Ry. Co., thence south along the east line of said right of way of said Des Moines Union Ry. Co. to the north line of the right of way of said C. B. & Q. R. R. Co. above mentioned, thence southeasterly along said right of way of said C. B. & Q. R. R. Co. to the place of beginning.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

And Elizabeth Talkes Whitworth, wife of said Edwin
1265 Whitworth hereby relinquishes her right in and to the above described premises.

Signed the 14 day of August A. D., 1895.

EDWIN WHITWORTH
By Elizabeth Talkes Whitworth his Attorney in fact.

ELIZABETH TALKES WHITWORTH.

Witness.
Walter Cunliffe,
Solicitor Liverpool, England.

W. J. Sules,
U. S. Consulate,
Liverpool.

Duly acknowledged August 14th A. D., 1895. Filed for record in the office of the Recorder of Polk County, Iowa, on the 28th day of August 1895, and recorded in Book 337, Page 237 of the records in said office.

1266 **Defendants' Exhibit 560.**

For the consideration of Two Thousand Dollars ($2,000.00) the Chicago, Rock Island & Pacific Railway Company a corporation organized and existing under the laws of the States of Illinois and Iowa, hereby quit claims unto the Des Moines Union Railway Company, a corporation existing under the laws of the State of Iowa, all its right, title and interest in and to the following described tract of land, to-wit: A strip of land contained within the metes and bounds as follows: Beginning at a point on the West line of West Twelfth

Street, which is also the East line of Block number Thirty-one (31) in Keene and Poindexter's Addition to the City of Des Moines, which point is Thirty-two (32) feet northwardly from the center line of the main track of the railway of the said Chicago, Rock Island & Pacific Railway Company, formerly the main track of the Chicago, Rock Island & Pacific Railway Company, on a line drawn at right angles with a tangent to said center line as now located and constructed; thence in a westwardly direction on a line thirty-two (32) feet north of and parallel with said center line of said railway of said Chicago, Rock Island & Pacific Railway Company, following the alignment and curvature of said center line, five thousand and thirty (5030) feet to a point about thirty (30) feet west of the west boundary line of the east half (½) of the North West quarter (¼) of Section Eight (8), Township Seventy-eight (78) North, Range Twenty-four (24) West of the Fifth (5th) Principal Meridian; thence northwardly at right angles eighteen (18) feet to the north line of the right of way of the
1267 said Chicago, Rock Island & Pacific Railway Company; thence eastwardly with the said north line of said right of way to a point on the said West line of said West Twelfth Street eighteen (18) feet North of the place of beginning; thence eighteen (18) feet south to the place of beginning, containing two and nineteen one hundredths (2.19) acres, more or less.

The intention of these presents being to convey to said Des Moines Union Railway Company all right, title and interest in and to so much of the right of way of the Chicago, Rock Island & Pacific Railway Company lying within the east and west boundaries hereinbefore set forth as is situated more than thirty-two (32) feet northwardly from the present center line of the main track of the railway of the Chicago, Rock Island & Pacific Railway Company, measured at right angles with said center line.

In Testimony Whereof the said Chicago, Rock Island & Pacific Railway Company has caused this indenture to be signed by its Vice President and attested by its Assistant Secretary, with its corporate seal affixed, this 10th day of October A. D. 1895.

THE CHICAGO ROCK ISLAND & PACIFIC RAILWAY COMPANY,

(Seal) By W. G. Purdy, Vice President.

Attest:

J. F. Phillips,
Asst. Secretary.

State of Illinois,
County of Cook—ss.

Be it Remembered That on the 10th day of October A. D. 1895, the undersigned Wm. E. Bent, a Notary Public in and for said County, personally appeared W. G. Purdy and 1268 J. F. Phillips, to me personally known to be the identical persons whose names are signed to the foregoing instrument as Vice President and Asst. Secretary of the Chicago, Rock Island & Pacific Railway Company, the grantor therein named, and acknowledged the said instrument to be the voluntary act and deed of the said grantor, by them as its officers thereto duly authorized, voluntarily done and executed.

Witness my hand and Notarial seal this 10th day of October A. D. 1895.

(Seal)

WM. E. BENT,
Notary Public.

(Stamped on back of second page):

"Approved as to Form,

W. T. Rankin,
Ass't General Attorney."

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269 **Defendants' Exhibit 561.**

Know All Men By These Presents: That J. F. Vincent and Sallie M. Vincent, his wife, of ..... County, and State of Illinois in consideration of the sum of One dollar and other valuable consideration, in hand paid by the Des Moines Union Railway Company of Polk County and State of Iowa do hereby Sell and Convey unto the said Des Moines Union Railway Co. the following described premises, situated in the County of Polk, and State of Iowa, to-wit:

A strip of ground twenty six (26) feet wide off from the north side of Lots two (2) and four (4) of Official Plat of Lots fifteen (15) sixteen (16) seventeen (17) and eighteen (18) of Younts Addition of Out Lots in the City of Des Moines.

And we hereby covenant with the said Des Moines Union Railway Co. that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And the said Sallie M. Vincent hereby relinquishes her right in and to the above described premises.

Signed the 7th day of September A. D. 1895.

1270 J. F. VINCENT
SALLIE M. VINCENT.

Duly acknowledged December 14, 1895. Filed for record in the office of the Recorder of Polk County, Iowa, on the 17th day of December, 1895, and recorded in Book #340, Page 152 of the records in said office.

1271 **Defendants' Exhibit 562.**

Know All Men By These Presents: That I, F. M. Hubbell of the County of Polk and State of Iowa, in consideration of the sum of One Dollar in hand paid by the Des Moines Union Railway Company, a railway corporation organized and existing under the Laws of the State of Iowa, do hereby grant unto the said Des Moines Union Railway Company, subject to the conditions and limitations hereinafter set forth, the right-of-way over the following described premises situated in the County of Polk and State of Iowa, to-wit:

All that certain piece or parcel of land 13 feet in width the center line of which is described as follows;

Beginning at a point on the easterly line of a 100-ft. right-of-way belonging to the Des Moines Union Railway Company (being a 100-ft. strip off from the west side of lots two (2) and eight (8) of the Official Plat of the West half of Section 9, Township 78, Range 24) where the easterly line of same is intersected by the center line of the track leading to and across 9th Street. Said point is also about 1177.4 feet west of the westerly side line of said 9th Street and about 450.7 feet south of the southerly side line of Tuttle Street extended. From said point running along the center line of said track leading to and across South 9th Street, a distance of 1647.8 feet to the westerly side of a 13-ft. right-of-
1272 way belonging to said Des Moines Union Railway Company, the center line of which is 136½ feet easterly from and parallel with the easterly side line of said 9th Street. Excepting therefrom so much of the same as lies within the limits of the right-of-way of the Keokuk & Western Railroad Company, and within the limits of said 9th Street.

Said Hubbell reserves the right to open streets and alleys across the right-of-way herein granted, at such points as he shall desire.

The above granted right-of-way is granted only for the construction, maintenance, and operation of a side track and not for a main track. Said track is to be laid, maintained and operated upon said premises so that the Des Moines Union Railway Company can obtain access to manufactories, warehouses, and other industries located upon the land belonging to said Hubbell, in said Section 9, Township 78, Range 24, and it is not to be used for any other purpose than a side track, and it is not to be used as a side track for general railway purposes, save in such manner and at such times as will in no way interfere with its use as a side track for the accommodation of manufactories, ware houses, and other industries located upon the aforementioned land belonging to said Hubbell, and it is expressly understood and agreed that the right-of-way herein granted is limited to the pur-
1273 poses and for the objects hereinbefore set forth, and I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title, and that I have good right and lawful authority to grant the above mentioned right-of-way, and that the said premises are free and clear of all liens and incumbrances whatsoever, and I covenant to Warrant and Defend the right-of-way hereby granted against the lawful claims of all persons whomsoever.

And Frances E. Hubbell, wife of F. M. Hubbell, hereby relinquishes her right in and to the above described right-of-way.

Signed this 1st day of October 1895.

F. M. HUBBELL
FRANCES E. HUBBELL
By F. C. Hubbell her Atty-in-fact.

Duly acknowledged October 1, 1895. Filed for record in the office of the Recorder of Polk County, Iowa, on the 7th day of June, 1902, and recorded in Book 438, Page 559 of the records in said office.

1274 **Defendants' Exhibit 563.**

Know all Men by These Presents:

That We Harry West & Mary E. West his wife of Polk County and State of Iowa in consideration of the sum of Five Hundred (500) Dollars, in hand paid by The Des Moines Union Railway Company of Polk County and State of Iowa do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit:

A strip of ground 15 feet in width off the North side of Lot 3 of the Official Plat of lots 55 and 56 of Brooks & Co.'s Addition to the City of Des Moines, described as follws:—

Commence at the Northwest corner of Lot 3 of said Official Plat of Lots 55 and 56 of Brooks & Co's Addition to the City of Des Moines thence South along the West line of said Lot 3 to a point where a line drawn parallel with the North line of said Lot 3 and 15 feet therefrom would intersect said West line of Lot 3; thence Southeasterly parallel with said North line of said Lot 3 and 15 feet therefrom; to the South line of said Lot 3; thence East along the South line of said Lot 3 to a point in the Southeast corner of said Lot, 3, being the point of intersection of the South line of Lot 3 with the North line of said Lot 3, thence Northwesterly along the North line of Lot 3 to place of beginning.

1275 And hereby covenant with the said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And the said Mary E. West hereby relinquishes her right in and to the above described premises.

Signed the Twenty Ninth day of June, A. D. 1896.

HARRY WEST
MARY E. WEST.

Duly acknowledged June 29th, 1896. Filed for record in the office of the Recorder of Polk County, Iowa, on the 30th day of June, 1896, and recorded in Book 346, Page 399 of the records in said office.

1276 **Defendants' Exhibit 564.**

Know all Men by These Presents: That Matilda K. Sypher (a widow) of Dallas County, and State of Texas in consideration of the sum of Eleven Thousand Five Hundred Dollars, in hand paid by The Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number one (1) in block number four (4) in the Original Town of Fort Des Moines, now in the corporate limits of

the city of Des Moines, Iowa, subject to a mortgage made by me to the Equitable Life Insurance Company of Iowa dated January 16-1896 for Seven thousand five hundred dollars and recorded in book 321 on page 54, Polk County records.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever, except said mortgage.

And I covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever, except said mortgage.

1277 Signed the first day of September, A. D. 1896.

MATILDA K. SYPHER.

Duly acknowledged September 1, 1896. Filed for record in the office of the Recorder of Polk County, Iowa, on the 3d day of September, 1896, and recorded in Book 352, Page 25 of the records in said office.

1278 **Defendants' Exhibit 565.**

Know all Men by These Presents: That F. M. Hubbell & Frances E. Hubbell, his wife, of Polk County, and State of Iowa in consideration of the sum of Twelve Thousand Seven hundred & fifty Dollars, in hand paid by Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Co., the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number four (4) and the east half of lot number five (5) in block number nine (9) of Hoxies Addition to the town of Fort Des Moines now in the city of Des Moines.

This conveyance is made subject to a lease made to the Carbondale fuel company dated March 27-1896, for a portion of said ground and which lease expires May 1, 1906.

And we hereby covenant with the said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And the said Frances E. Hubbell, hereby relinquishes her right in and to the above described premises.

1279 Signed the 24th day of November A. D., 1896.

F. M. HUBBELL,
FRANCES E. HUBBELL.

Duly acknowledged November 24, 1896. Filed for record in the office of the Recorder of Polk County, Iowa, December 5, 1896, and recorded in Book 352, Page 389 of the records in said office.

1280 **Defendants' Exhibit 566.**

Know All Men By These Presents:

That Edwin Whitworth and Elizabeth Talkes Whitworth, husband and wife, of the County of Chester and State of England, in consideration of the sum of One Dollar, in hand paid by The Des Moines Union Railway Company, of the County of Polk and State of Iowa do hereby Quit Claim unto the said The Des Moines Union Railway Company, all our right, title and interest in and to the following described premises, situated in Polk County and State of Iowa, to-wit:

A strip of ground 15 feet in width off the north side of Lot three (3) of the Official Plat of Lots 55 and 56 of Brooks & Co.'s Addition to the city of Des Moines, described as follows: Commence at the Northwest corner of lot 3 of said Official Plat of lots 55 and 56 of Brooks & Co.'s Addition to the city of Des Moines, thence south along the west line of said lot three (3) to a point where a line drawn paraliel with the north line of said lot 3, and 15 feet therefrom would intersect said west line of lot 3, thence southeasterly parallel with said north line of said lot 3 and fifteen (15) feet therefrom to the south line of said lot 3, thence East along the south line of said lot 3 to a point in the southeast corner of said lot 3 being the point of intersection of the south line of Lot 3 with the north line of said lot 3, thence northwesterly along the north line of lot 3 to the place of beginning. We also hereby release the above property from a certain mortgage made by Jas. H. Windsor & wife to Edwin Whitworth dated September 12-1889 and recorded in book No. 233, page 54, Polk County records,
1281 and which mortgage is still owned by Edwin Whitworth.

And the said Elizabeth Talkes Whitworth hereby relinquishes her right in and to the above described premises.

Signed this 11th day of January, A. D. 1897. (L.E.T.)

EDWIN WHITWORTH,
By his Attorney Elizabeth Talkes Whitworth.

ELIZABETH TALKES WHITWORTH.

Duly acknowledged January 11th, 1897. Filed for record in the office of the Recorder of Polk County, Iowa, on the 27th day of January, A. D., 1897, and recorded in Book 331, Page 338 of the records of said office.

1282 **Defendants' Exhibit 567.**

Know All Men By These Presents:

That F. M. Hubbell and Frances E. Hubbell, husband and wife, of the County of Polk and State of Iowa, in consideration of the sum of One Dollar, in hand paid by Des Moines Union Railway Company of the County of Polk and State of Iowa do hereby Quit Claim unto the said Des Moines Union Railway Company all their right, title and interest in and to the following described premises, situated in Polk County and State of Iowa, to-wit:

Lot number Five (5) of the Official Plat of Keene and Poindexter's Addition to the city of Des Moines, Iowa, as platted April 9th, 1897.

And the said Frances E. Hubbell hereby relinquishes her right in and to the above described premises.

Signed this 22nd day of February, 1898.

F. M. HUBBELL.
FRANCES E. HUBBELL.

Duly acknowledged February 22, 1898. Filed for record in the office of the Recorder of Polk County, Iowa, March 17th, 1898, and recorded in Book 331, Page 545 of the records in said office.

1283 **Defendants' Exhibit 568.**

Know All Men By These Presents: That F. M. Hubbell, Trustee, of Polk County, and State of Iowa, in consideration of the sum of Twelve Thousand Five Hundred Dollars, in hand paid by Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit:

The north forty-four (44) feet of lot number six (6) in block number fifteen (15) of the Original town of Fort Des Moines now in the city of Des Moines.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

Signed the 2nd day of May A. D. 1898.

F. M. HUBBELL, Trustee.

Duly acknowledged May 2, 1898. Filed for record in the office of the Recorder of Polk County, Iowa, on the 29th day of December, 1898, and recorded in Book 370, Page 424 of the records in said office.

1284 **Defendants' Exhibit 569.**

Know All Men By These Presents: That F. M. Hubbell and Frances E. Hubbell his wife, of Polk County, and State of Iowa, in consideration of the sum of Twelve Thousand Five Hundred Dollars, in hand paid by Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell And Convey unto the said Des Moines Union Railway Co. the following described premises, situated in the County of Polk and State of Iowa, to-wit:

The north forty-four (44) feet of lot number three (3) in block Number fifteen (15) of the Original town of Fort Des Moines now in the city of Des Moines, Iowa.

And we hereby covenant with the said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And the said Frances E. Hubbell hereby relinquishes her right in and to the above described premises.

Signed the 2nd day of May, A. D. 1898.

1283 F. M. HUBBELL.
FRANCES E. HUBBELL.

Duly acknowledged May 2nd, 1898. Filed for record in the office of the Recorder of Polk County, Iowa, on the 28th day of December, 1898, and recorded in Book 370, Page 422 of the records in said office.

1286 **Defendants' Exhibit 570.**

#239. Resolved by the City Council of the City of Des Moines, that the Des Moines Union Railroad Company is authorized to remove the present curb on the south side of Cherry Street, from Fifth Street westward to the end of the structure now being erected for a Union Station, and to put in a line of curb 16 feet from, and parallel with the Lot line on the south side of Cherry Street, from the corner of Fifth Street to the west line of the structure now being erected for a Union Station, the said curb to be joined to the curbing on the west side of Fifth Street by a sweeping curve, with a radius of not less than ten feet; provided the same shall be done without expense to the City of Des Moines.

Be it Further Resolved, That the grade of the top of the curb on the west side of Fifth Street be established at 28 feet above the City datum at the center of Cherry Street; that the grade of said curb, at a point 110 feet south of the center of Cherry Street, be 27.5 feet above the City datum; that the grade of said curb 167 feet south of the center of Cherry Street be 26.9 ft. above the City datum, and that the grade of said curb at the center of Wagner Street be as heretofore established, to-wit: 25.22 feet above the City datum.

Adopted November 3, 1898.

1287 **Defendants' Exhibit 571.**

Know all Men by These Presents:

That I, F. M. Hubbell, of the County of Polk and State of Iowa, in consideration of the sum of Six Thousand Three Hundred Dollars ($6,300.00) in hand paid by the Des Moines Union Railway Company, a railway corporation organized and existing under the laws of the State of Iowa, do hereby grant unto the said Des Moines Union Railway Company, subject to the conditions and limitations hereinafter set forth, a right of way over the following described premises situated in the County of Polk and State of Iowa, to Iowa, to-wit:

A strip of ground fourteen (14) feet wide off the north side of Lots three (3) and six (6) in Block nine (9), and a strip of ground fourteen (14) feet wide off the north side of Lot six (6) in Block four (4), all in the Original Town of

Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa.

The above granted right of way is a right of way only for the construction, maintenance and operation of a side-track, and not for a main track. Said track is to be laid, maintained and operated upon said premises so that the Des Moines Union Railway Company can obtain access to manufactories, warehouses or other industries located upon said Lots three (3) and six (6) in Block nine (9), and upon said Lot six (6) in Block four (4), and it is not to be used for any other purpose than as a side-track, and is not to be used as a side-track for general railway purposes, save in such manner and at such times as will in no way interfere with its use as a side-
1288 track for the accommodation of manufactories, warehouses, or other industries located upon the afore-mentioned lots; and it is expressly agreed and understood that the right of way herein granted is limited to the purposes and for the objects above set forth.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title, and that I have good right and lawful authority to grant the above mentioned right of way, and that the said premises are free and clear of all liens and encumbrances whatsoever; and I covenant to Warrant and Defend the right of way hereby granted against the lawful claims of all persons whomsoever.

And Frances E. Hubbell, wife of said F. M. Hubbell, hereby relinquishes her right in and to the above described right of way.

Signed this 15th day of Feb'y, 1899.

F. M. HUBBELL.
FRANCES E. HUBBELL.

4 Revenue stamps.

Duly acknowledged Febry 15th, 1899. Filed for record in the office of the Recorder of Polk County, Iowa, on the 19th day of September, 1899, and recorded in Book 375, Page 581 of the records in said office.

1289 **Defendants' Exhibit 572.**

Know all Men by These Presents:

That I, F. M. Hubbell, of the County of Polk and State of Iowa, in consideration of the sum of Six Thousand Three Hundred Dollars ($6,300.00) in hand paid by the Des Moines Union Railway Company, a railway corporation organized

and existing under the laws of the State of Iowa, do hereby grant unto the said Des Moines Union Railway Company, subject to the conditions and limitations hereinafter set forth, a right of way over the following described premises situated in the County of Polk and State of Iowa, to-wit:

A strip of ground fourteen (14) feet wide off the north side of Lots three (3) and six (6) in Block nine (9), and a strip of ground fourteen (14) feet wide off the north side of Lot six (6) in Block four (4), all in the Original Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa.

The above granted right of way is a right of way only for the construction, maintenance and operation of a side-track, and not for a main track. Said track is to be laid, maintained and operated upon said premises so that the Des Moines Union Railway Company can obtain access to manufactories, warehouses or other industries located upon said Lots three
1290 (3) and six (6) in Block nine (9), and upon said Lot six (6) in Block four (4) and it is not to be used for any other purpose than as a side-track, and is not to be used as a side-track for general railway purposes, save in such manner and at such times as will in no way interefere with its use as a side-track for the accommodation of manufactories, warehouses or other industries located upon the above-mentioned lots; and it is expressly agreed and understood that the right of way herein granted is limited to the purposes and for the objects above set forth.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title, and that I have good right and lawful authority to grant the above mentioned right of way, and that the said premises are free and clear of all liens and encumbrances whatsoever; and I covenant to Warrant and Defend the right of way hereby granted against the lawful claims of all persons whomsoever.

And Frances E. Hubbell, wife of said F. M. Hubbell, hereby relinquishes her right in and to the above described right of way.

Signed this 15th day of Feb'y. 1899.

F. M. HUBBELL.
FRANCES E. HUBBELL.

1291 **Defendants' Exhibit 573.**

Know All Men By These Presents: That I, F. M. Hubbell of the County of Polk and State of Iowa, in consider-

tion of the sum of one dollar ($1) in hand paid by the Des Moines Union Railway Company a railway corporation organized and existing under the Laws of the State of Iowa, do hereby grant unto the said Des Moines Union Railway Company, subject to the conditions and limitations hereinafter set forth, a right-of-way over the following described premises situated in the County of Polk and State of Iowa, to-wit:

A strip of ground thirteen (13) feet wide lying east of and parallel with West Ninth Street, and distant therefrom one hundred and thirty (130) feet, the north end of said strip being the north line of lot fifty-seven (57) of the "Official Plat of the east three-quarters of Section nine (9) Township seventy-eight (78) Range twenty-four (24) West 5th P. M., north of the Raccoon River, and south of the south line of the Town of Fort Des Moines, and Hoxie's Addition, including lot four (4) block sixteen (16) Hoxie's Addition" and the south end is distant from the north end two thousand (2000) feet. There is excepted from this instrument two streets, each fifty (50) feet wide, known as Tuttle Street and Murphy Street, crossing this right-of-way.

Said Hubbell reserves the right to open other streets and alleys across the right-of-way herein granted at such
1292 points as he shall desire.

The above granted right-of-way is a right-of-way only for the construction, maintenance and operation of a side track, and not for a main track. Said track is to be laid, maintained and operated upon said premises so that the Des Moines Union Railway Company can obtain access to manufactories, ware houses, or other industries located upon said lots fifty-seven (57) fifty-eight (58) and fifty-nine (59) of said official Plat, and it is not to be used for any other purpose than as a side track, and it is not to be used as a side track for general railway purposes, save in such manner and at such times as will in no way interfere with its use as a side track for the accommodation of manufactories, ware houses or other industries located upon the aforementioned lots; and it is expressly agreed and understood that the right-of-way herein granted is limited to the purposes and for the objects above set forth.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title and that I have good right and lawful authority to grant the above mentioned right-of-way, and that the said premises are free and clear of all liens and incumbrances whatsoever; and I covenant to Warrant and Defend the right-

of-way hereby granted against the lawful claims of all persons whomsoever.

And Frances E. Hubbell, wife of F. M. Hubbell, here-
1293 by relinquishes her right in and to the above described right-of-way.

Signed this 1st day of April, 1899.

F. M. HUBBELL
FRANCES E. HUBBELL.

Duly acknowledged April 20th, 1899. Filed for record in the office of the Recorder of Polk County, Iowa, on the 20th day of April, 1899, and recorded in Book 375, Page 430 of the records in said office.

1294 **Defendants' Exhibit 574.**

Ordinance No. 981.

An Ordinance to vacate the east and west alley in Block Forty-nine (49) of J. Lyon's Addition and to grant the same to the Des Moines Union Railway Company.

Be it Ordained by the City Council of the City of Des Moines:

Section 1. That the east and west alley in Block Forty-nine (49) of J. Lyon's Addition to the City of Des Moines, be and the same is hereby vacated; provided, that a proper crossing shall be opened, graded and planked, over the right-of-way and tracks of the Des Moines Union Railway Company, and the Chicago, Rock Island and Pacific Railway where an extension of West Sixteenth Street running south from Walnut Street would cross said Railway tracks, the same to be done without expense to the City of Des Moines.

Section 2. That the said alley so above vacated be and the same is hereby granted to the Des Moines Union Railway Company for railway purposes.

Section 3. This ordinance shall take effect and be in force from and after its passage and publication as required by law.

Passed August 7, 1899.

Approved August 7, 1899.

I, E. R. Bennett, City Clerk of the City of Des Moines, here-
by certify that the above and foregoing is a true copy of
1295 Ordinance No. 981 passed by the City Council at a meeting held August 7, 1899, and that the same is as fully as of record in this office.

In witness whereof, I have hereunto set my hand and affixed my seal this 16th day of July, 1902.

E. R. BENNETT,
City Clerk.

1296 **Defendants' Exhibit 575.**

Be It Resolved By The City Council Of The City Of Des Moines:

That the City assents to a proposed crossing of a railway track of the Des Moines Union Railway Company over Cherry Street, the central line of which track is to leave Lot Five (5) of Block Nine (9), H. M. Hoxie's Addition to the City of Des Moines, about fifty-eight feet east of the east line of Ninth Street; and to enter Lot Eight (8), Block Ten (10) of said Hoxie's Addition to Des Moines, about eighty feet east of the said east line of Ninth Street.

Provided, however, that the top of the rails of the said track shall be at the present grade of the said street, and that the paving shall be replaced by the said Des Moines Union Railway Company in as good condition as it now is, the track to be laid, and the paving replaced under the supervision of the City Engineer.

Adopted March 31, 1900.

1297 **Defendants' Exhibit 576.**

Know All Men By These Presents: That I, F. C. Hubbell, of the County of Polk and State of Iowa, in consideration of the sum of one dollar ($1.00), in hand paid by the Des Moines Union Railway Company, a corporation organized and existing under the laws of the state of Iowa, do hereby grant unto the said Des Moines Union Railway Company, subject to the conditions and limitations hereinafter set forth, a right of way over the following described premises situated in the County of Polk, State of Iowa, to-wit:

The south fourteen (14) feet of lot three (3), block seven (7) in Hoxies Addition to the town of Fort Des Moines, now in the city of Des Moines, Iowa.

The above granted right of way is a right of way only for the construction, maintainence, and operation of a side track, and not for a main track. And it is not to be used for any other purpose than as a side track, and is not to be used as a side track for general purposes, save in such manner and at such times as it will in no way interfere with its use

as a side track for the accommodation of the owner or occupants of the north fifty-two (52) feet, of lot three (3) in said block (7) of Hoxies Addition to the town of Fort Des Moines.

And it is expressly agreed and understood that the right of way herein granted is lawful for the purposes and objects above set forth; and I hereby covenant with the said Des Moines Union Railway Company that I hold said prem-
1298 ises by a good and perfect title, and that I have good right and lawful authority to grant the above mentioned right of way, and that the said premises are free and clear of all liens and incumbrances whatsoever.

And I covenant to warrant and defend the right of way hereby granted against the lawful claims of all persons whomsoever. And Mary W. Hubbell, wife of said F. C. Hubbell, hereby relinquishes her right in and to the above described right of way.

Signed this 31st day of May, 1900.

F. C. HUBBELL.
MARY W. HUBBELL.

(Revenue stamp attached)

Duly acknowledged May 31, 1900. Filed for record in the office of the Recorder of Polk County, Iowa, on the 4th day of August, 1900, and recorded in Book 401, Page 277 of the records of said office.

1299 **Defendants' Exhibit 577.**

Know All Men By These Presents: That F. M. Hubbell of Polk County, and State of Iowa in consideration of the sum of Eight Hundred and four Dollars, in hand paid by the Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

The east twelve (12) feet of the West two-thirds of lots numbered seven (7) and eight (8) in block number ten (10) of Hoxies Addition to Fort Des Moines now included in and forming a part of the city of Des Moines.

And I hereby covenant with the Said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And Frances E. Hubbell wife of F. M. Hubbell hereby relinquishes her right in and to the above described premises.

Signed the 21st day of June, A. D. 1900.

F. M. HUBBELL.
FRANCES E. HUBBELL.

1300 Duly acknowledged June 22nd, 1900. Filed for record in the office of the Recorder of Polk County, Iowa, on the 25th day of June, 1900, and recorded in Book 406, Page 547 of the records in said office.

1301 **Defendants' Exhibit 578.**

Konw all Men by These Presents:

That Albert B. Cummins, Trustee, of the County of Polk and State of Iowa in consideration of the sum of One dollar & the performance of the Declaration of Trust hereinafter mentioned, in hand paid by Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit: Lots numbered four (4) and five (5) in block number twenty (20) Lot number ten (10) and the south one third of lot number three (3) in block number thirty-five (35) all in the original Town of Fort Des Moines.

Also lot number one (1) of Getchells Sub Division of lot eight (8) and the south one third of lot seven (7) of block eighteen (18) of Hoxies Addition to the town of Fort Des Moines now included in and forming a part of the city of Des Moines, Iowa.

And I do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under us, except a mortgage made by me as Trustee to the Equitable Life Insurance Co. of Iowa for $20,000.00 & recorded in book 231 on page 467 of Polk County Recorders office which the said grantee assumes and agrees to pay. This conveyance is also made in pursuance of a

declaration of a Trust made by me to said Des Moines
1302 Union Railway Company dated November 15th, 1890, and recorded in Book 264 page 353 of Polk County Recorders office.

Signed this 15th day of October A. D. 1901.

ALBERT B. CUMMINS,
Trustee.

Duly acknowledged October 21, 1901. Filed for record in the office of the Recorder of Polk County, Iowa, on the 21st day of October, 1901, and recorded in Book 430, Page 89 of the records in said office.

1303 **Defendants' Exhibit 579.**

#2081. Said resolution as amended was then presented as follows: Be it Resolved by the City Council of the City of Des Moines: That consent is hereby granted to the Des Moines Union Railway Co. to construct a railway track extending in a northeasterly direction from a point near the N. E. corner of Lot 5, Block 18, of H. M. Hoxie's Addition, across Cherry Street to a point near the southwest corner of Lot 1, Block 19, of H. M. Hoxie's Addition; said track crossing Cherry Street between 10th and 11th Streets. The privilege hereby granted is upon the condition that within one year from the passage of this resolution, there be constructed by or for the use of the Continental Biscuit Company for manufacturing purposes, a building upon said Lot 1, and also Lot 2, in Block 19, of H. M. Hoxie's Addition, and that if said building be not constructed as herein provided, then said track shall be removed by said railway company upon the request of the City Council and said street restored; and also upon the further condition, that the said railway company shall save the City harmless from all claims for damages by reason of the operation and maintenance of said track.

Adopted February 24, 1902.

1304 **Defendants' Exhibit 580.**

A resolution granting to the Des Moines Union Railway Company, the right to lay, maintain and operate a single track on the west side of West First Street, from the south side of the first alley north of Court Avenue to an intersection with the main line of the Des Moines Union Railway.

1. Be It Resolved By The City Council Of The City Of Des Moines, Iowa: That there is hereby granted to the Des Moines Union Railway Company the right to lay, maintain

and operate a single track railway on the west side of West First Street from the south side of the first alley north of Court Avenue to a convenient point of intersection with the main line of the Des Moines Union Railway. Said track shall be so laid that its center line shall so far as practicable be parallel with the east line of Lots 11 and 12 of Block 35 and of Lots 7 and 8 in Block 34, of the Original Town of Fort Des Moines, Iowa, and said track shall be immediately adjacent to the east line of said lots.

2. Be it Further Resolved: That this grant shall not be effective unless the owners of Lots 11 and 12 in Block 35 and Lots 7 and 8 in Block 34 of the Original Town of Fort Des Moines, in front of which said track shall be laid, shall be compensated for and shall release the City of Des Moines from all claims for damages of every kind and nature accruing or which may accrue to them by reason of the laying, maintaining and operating of said railway along said street. Said track shall be laid at the established grade of First Street, and the space between the lot line and the curbing shall be paved with brick. All switching on said track shall be done between the hours of seven P. M. and nine A. M. This
1305 grant to be in effect when erection of building is begun.

Adopted April 5, 1902.

1306 **[Defendants' Exhibit 581.**

#31. Be it Resolved by the City Council of the City of Des Moines: That permission is hereby granted to the Des Moines Union Railway Co. to lay down, maintain and operate a railroad track in East Third Street in the City of Des Moines from a point at or near the Northwest corner of Lot 4, Block 3, Demoine, thence northwesterly on a suitable curve to the northward to the northeast corner of Lot 10, Block 1 of Scott & Dean's Addition, with a suitable switch to serve the Dempster Manufacturing Company, provided that before said track is constructed the Des Moines Union Railway Company will settle and pay all abutting damages to property owners, and provided further that the said Des Moines Union Railway Company shall hold harmless the City of Des Moines from any damages by reason of the grant herein contained.

Adopted April 3, 1902.

1307 **Defendants' Exhibit 582.**

Know All Men By These Presents:

That F. C. Hubbell Trustee of the County of Polk and State of Iowa in consideration of the sum of One Dollar, in

hand paid by the Des Moines Union Railway Co. of Polk County, and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit:

Lots numbered one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) and ten (10) of Capital Addition in the city of Des Moines.

And I do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under us.

Signed this 7th day of May A. D. 1902.

F. C. HUBBELL Trustee
MARY W. HUBBELL.

Duly acknowledged May 7, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 17th day of May, 1902, and recorded in Book 443, Page 100, of the records in said office.

1308 **Defendants' Exhibit 583.**

Know All Men By These Presents:

That Charles H. Getchell and Rachel E. Getchell husband and wife, of Polk County, Iowa, in consideration of the sum of Twelve Thousand and no/100 Dollars, in hand paid by F. M. Hubbell of Polk County, Iowa, do hereby sell and convey unto the said F. M. Hubbell the following described premises situated in the County of Polk and State of Iowa, to-wit:

The North thirty-eight (38) feet of Lot Seven (7) in Block Nine (9), also the North thirty-eight (38) feet of Lot Two (2) in Block Fourteen (14), all in Hoxie's Addition, now in and forming a part of the City of Des Moines, Iowa, grantors reserving all improvements thereon.

This conveyance is made pursuant to contract entered into on June 17, 1902, by and between the Des Moines Union Railway Co., party of the first part, and Getchell & Martin Lumber & Manufacturing Co. and C. H. Getchell, parties of the second part; the said Des Moines Union Railway Co. having requested in writing that the deed to the said premises be executed to F. M. Hubbell, grantee herein. The said F. M. Hubbell accepts this deed subject to all of the conditions, obligations, burdens and requirements contained in said contract, and subject to the requirement that the said premises be used

for the purposes and in the manner in said contract provided.

1308 And we hereby covenant with the said F. M. Hubbell that we hold said premises by good and perfect title. That we have good right and lawful authority to sell and convey the same. That they are free and clear of all liens and encumbrances whatsoever. And we covenant to warrant and defend the same against the lawful claims of all persons whomsoever.

And the said Rachel E. Getchell hereby relinquishes her right in and to said premises.

Dated this 14 day of July, 1902.

CHARLES H. GETCHELL
RACHEL E. GETCHELL.

Duly acknowledged July 14, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 25th day of July, 1902, and recorded in Book 443, Page 536 of the records in said office.

1310 **Defendants' Exhibit 584.**

Know All Men By These Presents:

That Charles H. Getchell and Rachel E. Getchell husband and wife, of Polk County, Iowa, in consideration of the sum of Three Thousand and no 100 Dollars, in hand paid by F. M. Hubbell of Polk County, Iowa, do hereby sell and convey unto the said F. M. Hubbell the following described premises situated in the County of Polk and State of Iowa, to-wit:

The East Half (½) of Lots Seven (7) and Eight (8) in Block Fourteen (14) in Hoxie's Addition, now in and forming a part of the City of Des Moines, Iowa, grantors reserving all improvements thereon.

And we hereby covenant with the said F. M. Hubbell that we hold said premises by good and perfect title. That we have good right and lawful authority to sell and convey the same. That they are free and clear of all liens and encumbrances whatsoever. And we covenant to warrant and defend the same against the lawful claims of all persons whomsoever.

And the said Rachel E. Getchell hereby relinquishes her right in and to said premises.

Dated this 14 day of July, 1902.

CHARLES H. GETCHELL
RACHEL E. GETCHELL

Duly acknowledged July 14, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, July 25, 1902, and recorded in Book 443, Page 537 of the records in said office.

1311 **Defendants' Exhibit 585.**

Articles of Agreement, entered into this 17th day of June, 1902, by and between the Des Moines Union Railway Co., party of the first part, and Getchell & Martin Lumber & Manufacturing Co. and C. H. Getchell, parties of the second part, Witnesseth:

That Whereas, the Des Moines Union Railway Co. desires to acquire the right to occupy that portion of the alley running east and west between Vine and Cherry Streets in the city of Des Moines, Iowa, which lies between the alley running north and south between Seventh and Eighth Streets, and a point sixty-six (66) feet west of the alley running north and south between Ninth and Tenth Streets in said city, with railway tracks; and,

Whereas, the said Des Moines Union Railway Co. desires to acquire title to the East Half (½) of Lots Seven (7) and Eight (8), Block Fourteen (14) of Hoxie's Addition in the city of Des Moines, Iowa, also the north thirty-eight (38) feet of Lot Two (2) in said Block Fourteen (14) of Hoxie's Addition, also the north thirty-eight (38) feet of Lots Two (2) and Seven (7) in Block Nine (9) of Hoxie's Addition, all in and forming a part of the city of Des Moines, Iowa, and,

Whereas, a certain condemnation proceeding has been commenced to ascertain the damage to the property of sec-
1312 ond parties abutting on said alley caused by the locating and laying down of a railroad track thereon, in which the award of the sheriff's jury has been made, from which award said Des Moines Union Railway Co. has appealed to the District Court of Polk County, Iowa; and

Whereas, the Getchell & Martin Lumber & Manufacturing Co., has commenced a certain action for damages for the occupation of a portion of said alley in the past by the said Des Moines Union Railway Co.'s track, without first having the damage to abutting property assessed and compensated for; and,

Whereas, the said C. H. Getchell has commenced an action for damages and to have the damages caused by the laying down and operation of a railway track thereon, abutting on the portion of above property owned by him, ascertained and compensated for; and,

Whereas, the parties hereto desire to fully settle the said condemnation proceeding and the said actions for damages;

It Is Hereby Agreed As Follows:

1st. The Des Moines Union Railway Co., hereby agrees to purchase of second parties the East Half (½) of Lots Seven (7) and Eight (8) and the north thirty-eight (38) feet of Lot Two (2) in Block Fourteen (14), and the north thirty-eight (38) feet of Lots Two (2) and Seven (7) in Block Nine (9), all in
1313 Hoxie's Addition, now in and forming a part of the city of Des Moines, Iowa, subject to the conditions, reservations and stipulations hereinafter contained, and agrees to pay therefor, and as full settlement of the damages for the occupation of said alley with said tracks, the sum of Twenty-one Thousand Dollars ($21,000.00) on the delivery of proper deeds of conveyance, accompanied by abstracts showing good title. Said abstracts will show, however, a mortgage in favor of the Equitable Life Insurance Co., of Iowa, covering said property and other property, which mortgage shall be paid off out of said sum of Twenty-one Thousand Dollars ($21,000.00).

2nd. In consideration of the covenants of first party and of the matters and things herein contained, second parties agree to sell and convey to first party the premises last above described, and agree to relinquish all claim for damages against first party for and on account of the occupation of the said portion of said alley between Vine and Cherry Streets which abuts on Lot Three (3) in Block Four (4), Town of Fort Des Moines, and Lots Two (2) and Seven (7) in Block Nine (9), and Lot Two (2) and the East Half (½) of Lot Seven (7) in Block Fourteen (14) in Hoxie's Addition to the city of Des Moines, Iowa, with a railroad track, said relinquishment cover-
ing all damages past, present and future, caused by, or
1314 due thereto, and sign and acknowledge an instrument so relinquishing the same; first party to have the rights and be subject to the obligations in regard to the said alley that would exist if the right to occupy the said alley with its tracks had been obtained by condemnation proceedings pursuant to grant from City of Des Moines; subject, however, to the conditions hereinafter set forth.

3rd. First party shall use the north thirty-eight (38) feet of Lot Two (2) in Block Fourteen (14) and the north thirty-eight (38) feet of Lots Two (2) and Seven (7) in Block Nine (9) in Hoxie's Addition, for the location, laying down and operating of two (2) railroad tracks, one of which tracks shall be located as near as practicable to the north line of said thirty-eight (38) feet and the other as near as practicable to the

south line of said thirty-eight (38) feet, and shall improve the space between the said two (2) tracks for a driveway, and shall maintain the said driveway and the said south track in such condition until May 1st, 1918, with the right reserved by the said Getchell & Martin Lumber & Manufacturing Co., and C. H. Getchell, their heirs, administrators and assigns, and lessees of either, to use the said driveway between the said two (2) tracks during all of said time in common with the first party and its patrons, and with the right of the Getchell & Martin Lumber & Manufacturing Co., and C. H.
1315 Getchell, their heirs, administrators, assigns, and lessees of either, to use, in common with first party and its patrons, the south track to be located on said thirty-eight (38) feet of ground for sidetrack purposes for the benefit of the real estate abutting thereon from the south side thereof for loading and unloading and general sidetrack purposes, such rights to continue to May 1st, 1918.

4th. Said Des Moines Union Railway Co., shall use the said south track to be located on the said premises as a loading and unloading track, and shall use the same subject to the rights of the second parties, heirs, assigns, and lessees of the property abutting thereon to use the said south track for sidetrack, loading and unloading purposes, upon the conditions provided herein; and first party will, within a reasonable time after being requested so to do by said parties, or either of them, place on said sidetrack, in such place as may be requested, empty cars for loading, or loaded cars for unloading, at tariff rates charged others for like service, and will allow the same to stand on said sidetrack for such purpose for forty-eight (48) hours if desired, and will, within a reasonable time after being so requested, remove from said sidetrack any loaded cars that have been placed thereon for said parties or either of them.

1316 5th. In the event first party maintains the said driveway between said two (2) tracks hereinbefore described, and the south track hereinbefore mentioned, for loading and unloading purposes, after May 1st, 1918, the then owners or lessees of the south ninety-four (94) feet of Lots One (1) and Two (2), and Lots Seven (7) and Eight (8) of Block Nine (9), and south ninety-four (94) feet of Lots One (1) and Two (2) of Block Fourteen (14), all in Hoxie's Addition, during such time, shall have the same rights with regard to said driveway and with regard to said track and the placing on and removing of cars therefrom or loading and unloading of cars thereon or therefrom, as are given by this contract prior to May 1st, 1918, so long as the first party so maintains or uses said driveway or

the said track for the purposes above mentioned. Nothing herein contained shall prevent the first party from using said tracks and driveway for any purpose it may desire after May 1st, 1918.

6th. Second parties reserve all improvements on the said premises herein agreed to be conveyed to first party, and are given sixty (60) days, after the execution and delivery of deeds of conveyance, for the removal of the same.

7th. First party will dismiss the condemnation proceedings hereinbefore mentioned, and will pay all of the costs thereof, except attorneys' fees that might be taxed in favor of second parties in the condemnation proceedings hereinbefore referred to.

1317

8th. Getchell & Martin Lumber & Manufacturing Co. and C. H. Getchell will dismiss the two actions for damages hereinbefore mentioned, and will pay the costs thereof.

9th. This Contract shall be binding when approved by Mr. Earling of the Chicago, Milwaukee & St. Paul Railway Co., and by Mr. Ramsey of the Wabash Railway Co., provided such approval be entered hereon by the 1st day of July, 1902; and if not so approved by said parties, and notice thereof given second parties, by said time, this contract shall be null and void.

10th. First party agrees to pay to second parties the said sum of Twenty-one Thousand Dollars ($21,000.00) on the tendering of release of damages as provided herein, and of proper deeds of conveyance of said premises herein agreed to be conveyed, together with abstract of title as hereinbefore specified said deeds and abstract to be furnished on or before the 10th day of July, 1902.

11th. Unless the Equitable Life Insurance Co. of Iowa will accept the balance due on a mortgage held by it, which covers the property herein agreed to be conveyed, and will release the said mortgage at the time deeds are to be delivered and money paid over as herein provided, the said payment of said money and release of said mortgage to be concurrent in point of time,

second parties shall not be bound hereby and will be free from any obligation hereunder.

1318 In Witness Whereof, we have hereunto set our hands.

DES MOINES UNION RAILWAY COMPANY,

(Seal) By F. C. Hubbell, President.

GETCHELL & MARTIN L. M. CO.

(Seal) By C. H. Getchell, President.

C. H. GETCHELL.

We hereby approve of the foregoing contract.

A. J. EARLING,
J. RAMSEY, Jr.

Duly acknowledged June 18th, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 25th day of July, 1902, and recorded in Book 425, Page 324 of the records in said office.

1319 **Defendants' Exhibit 586.**

Know All Men By These Presents:

That Whereas, on the 17th day of June, 1902, the Des Moines Union Railway Co., party of the first part, and Getchell & Martin Lumber & Manufacturing Co. and C. H. Getchell, parties of the second part, entered into a certain written contract in which the parties of the second part agreed to convey to the party of the first part therein, the north thirty-eight (38) feet of Lots Two (2) and Seven (7) in Block Nine (9), and the north thirty-eight (38) feet of Lot Two (2) in Block Fourteen (14), and all of the East Half (½) of Lots Seven (7) and Eight (8) in Block Fourteen (14), all in Hoxie's Addition, now in and forming a part of the city of Des Moines, Iowa; and agreed to release and relinquish certain claims for damages for and on account of the occupation of a certain alley therein described by the Des Moines Union Railway Co. with railway tracks; and,

Whereas, the first party in said contract agreed to pay to the second parties therein, in consideration of the conveyance of said real estate and of the relinquishment of said claims for damages, the sum of Twenty-one Thousand Dollars ($21,000.00), and agreed to improve, maintain, occupy and use a portion of the premises above described for certain purposes in said contract specified; and

Whereas, the Des Moines Union Railway Co., has not
1328 the ready money out of which to pay said Twenty-one Thousand Dollars ($21,000.00); and,

Whereas, F. M. Hubbell proposes to accept a conveyance of the said real estate and borrow the said sum of Twenty-one Thousand Dollars ($21,000.00) thereon, and secure the payment thereof by executing his note therefor and giving a mortgage for said amount covering said real estate; and after mortgaging the same to secure said sum, convey all of said real estate above described except the south ninety-four (94) feet of the East Half (½) of Lots Seven (7) and Eight (8) in Block Fourteen (14), Hoxie's Addition, to the Des Moines Union Railway Co., the said Des Moines Union Railway Co. to accept such conveyance and assume the obligation of and pay off the said mortgage to be so placed on the said premises;

Now, Therefore, In Consideration of The Foregoing, and because of the matters and things hereinbefore set forth, the Des Moines Union Railway Co. hereby requests the Getchell & Martin Lumber & Manufacturing Co. and C. H. Getchell to execute deeds of conveyance for all of the real estate described in said contract above referred to, to F. M. Hubbell in lieu of conveying the said real state to the Des Moines Union Railway Co. as agreed to be done in said contract, such con-
1321 veyance to the said F. M. Hubbell, however, to be subject to the provisions and terms of the said contract. Such conveyance to the said F. M. Hubbell, however, shall not relieve the said real estate from the burdens imposed thereon by said contract, nor shall such conveyance relieve the Des Moines Union Railway Co. from complying with its agreements, duties and obligations imposed by the said contract; but notwithstanding such conveyance to the said F. M. Hubbell the said Des Moines Union Railway Co. shall improve, occupy and use the said premises for the purposes and during the time specified in said contract of June 17, 1902.

Dated this 18th day of July, 1902.

DES MOINES UNION RY. CO.,
(Seal) By H. D. Thompson, Vice Prest.

The Getchell & Martin Lumber & Manufacturing Co. and C. H. Getchell hereby consent to convey the property above described to F. M. Hubbell, without waiving, however, any of the rights stipulated for in the contract above referred to, and on the condition that the said F. M. Hubbell will, within ninety days from this date, convey all of said premises except

the south ninety-four (94) feet of the East Half (½)
1322 of Lots Seven (7) and Eight (8) in Block Fourteen (14) above described, to the Des Moines Union Railway Co. to be improved, used and occupied by the said Railway Company as in said contract agreed and provided.

Dated this 18 day of July, 1902.

G. H. GETCHELL
GETCHELL & MARTIN LUM. & MAN. CO.,

(Seal) By C. H. Getchell, President.

The undersigned, F. M. Hubbell, hereby consents to receive the conveyance of the above described real estate, subject to the burdens and conditions above specified and stipulated for in the contract above referred to, and agrees to convey all of the said real estate above described except the south Ninety-four (94) feet of the East Half of Lots Seven (7) and Eight (8) in Block Fourteen (14) Hoxie's Addition, to the Des Moines Union Railway Co. within ninety days from this date.

Dated this 18 day of July 1902.

F. M. HUBBELL.

Filed for record in the office of the Recorder of Polk County, Iowa on the 25th day of July, 1902, and recorded in Book 425, Page 529 of the records in said office.

1323 **Defendants' Exhibit 587.**

Know All Men By These Presents: That, Whereas, The Des Moines Union Railway Company, a corporation of the State of Iowa, has heretofore occupied, and is now occupying, that portion of the alley running east and west between Vine and Cherry Streets in the City of Des Moines, Iowa, which lies between the alley running north and south between Seventh and Eighth Streets, and a point sixty-six (66) feet west of the alley running north and south between Ninth and Tenth Streets in said City, with railway tracks, and

Whereas, the Getchell & Martin Lumber & Manufacturing Company, a corporation organized and existing under the laws of the State of Iowa, is the owner of Lots Three (3) and Four (4) in Block Four (4) Town of Fort Des Moines, and Lots One (1) and Two (2) in Block Nine (9) of Hoxie's Addition, all included in and forming a part of the City of Des Moines, Iowa, together with the certain mill property consisting of buildings and equipment, machinery and fixtures, and other improvements located thereon, and

Whereas, C. H. Getchell of Polk County, Iowa, is the owner of Lots Seven (7) and Eight (8) in Block Nine (9) and Lots One (1) and Two (2) and the East One-Half (½) of Lots Seven (7) and Eight (8) in Block Fourteen (14), all in Hoxie's Addition, included in and forming a part of the City
1324 of Des Moines, Iowa, and

Whereas, said property abuts upon, or lies in the near vicinity of that portion of the alley running east and west between Vine and Cherry Streets, above referred to, and

Whereas, the said Getchell & Martin Lumber & Manufacturing Company and said C. H. Getchell claim that they have sustained damages, and that their said properties hereinbefore described have been damaged, and that damages are now being sustained by them, and will hereafter continue to be sustained, and that their said properties have depreciated and will further depreciate in value, all by reason of the occupancy of said alley by the said Des Moines Union Railway Company with railway tracks, and the use of said alley for railway purposes, and

Whereas, a certain condemnation proceeding has been commenced to ascertain the damage to the property of said Getchell & Martin Lumber & Manufacturing Company abutting on said alley, caused by the location and laying down of a railway track thereon, in which the award of the sheriff's jury has been made, and from which award said Des Moines Union Railway Company has appealed to the District Court of Polk County, Iowa, and

Whereas, said Getchell & Martin Lumber & Manufacturing Company has commenced a certain action for damages
1325 for the occupation of a portion of said alley in the past by the said railway track of said Des Moines Union Railway Company, without first having the damage to abutting property assessed and compensated for, and

Whereas, the said C. H. Getchell has commenced an action for damages and to have the damages caused by the laying down and operation of a railway track on that part of said alley abutting upon the portion of the above described property owned by him, and asks that said damages be ascertained and compensated for,

Now, Therefore, as a part of the consideration for the payment by the said Des Moines Union Railway Company to the said Getchell & Martin Lumber & Manufacturing Company and C. H. Getchell of the sum of Twenty-one Thousand Dollars ($21,000.00) the receipt of which is hereby acknowledged, the said Getchell & Martin Lumber & Manufacturing Com-

pany and the said C. H. Getchell, and each of them, jointly and severally, hereby acknowledge full and complete satisfaction of any and all damages heretofore sustained or that may be hereafter sustained by them and each of them, their grantees, successors or assigns, and acknowledge full and complete payment and satisfaction of any and all damages to their said property hereinbefore described, or any part thereof, including said mill property and all other improve-
1326 ments thereon, and including all damages to said property heretofore sustained, or that may be hereafter sustained by reason of the laying down heretofore, or at any time hereafter of a railway track or railway tracks upon, and the occupation thereof with railway tracks, and the use thereof for railway purposes of, that portion of the alley running east and west between Vine and Cherry Streets in the City of Des Moines, Iowa, which lies between the alley running north and south between Seventh and Eighth Streets, and a point sixty-six (66) feet west of the alley running north and south between Ninth and Tenth Streets in the said city, the same including all that portion of said alley between Vine and Cherry Streets which abuts on Lot Three (3) in Block Four (4) Town of Fort Des Moines, and Lots Two (2) and Seven (7) in Block Nine (9), and Lot Two (2) and the East One Half ($\frac{1}{2}$) of Lot Seven (7) in Block Fourteen (14) all in Hoxie's Addition to the City of Des Moines, Iowa; and in consideration of such payment, the said Getchell & Martin Lumber & Manufacturing Company, and C. H. Getchell, and each of them, for themselves, their grantees, successors or assigns, hereby release, relinquish and discharge the said Des Moines Union Railway Company, its successors or assigns, and its officers, agents and representatives, of any and all damages or claims for damages, they, or either of them, now have
1327 or may hereafter have by reason of the laying down of such tracks upon such portion of said alley hereinbefore described and the occupation thereof with railway tracks, and the continued occupation and use thereof with railway tracks and for railway purposes; and this release and discharge shall, and does, include all damages claimed by said Getchell & Martin Lumber & Manufacturing Company and said C. H. Getchell in said suits hereinbefore referred to, which said suits are to be dismissed of record by the parties thereto.

By this release, the parties hereto intend to relinquish all claim for damages caused by, or claimed on account, of, the laying down, maintenance and operation of the said track or tracks in said alley in the past, and all damages that might, in any event, be assessed in favor of the said Getchell & Martin Lumber & Manufacturing Company and C. H. Getchell,

or either of them, or their grantees, successors or assigns, in condemnation proceedings to acquire the right to occupy said alley with railway tracks as hereinbefore provided and to give to the said Des Moines Union Railway Company, its successors or assigns, all the rights in said portion of said alley that it could acquire therein by condemnation proceedings, under the laws of the State of Iowa, it being conceded
1328 that the right to the use of said alley as hereinbefore provided could lawfully be acquired by such condemnation proceedings.

Witness our hands this 18th day of July, 1902.

C. H. GETCHELL,
(Seal) GETCHELL & MARTIN LUM. & MAN. CO.
By C. H. Getchell, President.

Duly acknowledged July 18, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 25th day of July 1902, and recorded in Book 425, Page 531 of the records in said office.

1329 **Defendants' Exhibit 588.**

Know All Men By These Presents:

That the Getchell & Martin Lumber & Manufacturing Co. of Polk County, Iowa, in consideration of the sum of Six Thousand and no/100 Dollars, in hand paid by F. M. Hubbell of Polk County, Iowa, does hereby sell and convey unto the said F. M. Hubbell the following described premises situated in the County of Polk, and State of Iowa, to-wit:

The North thirty-eight (38) feet of Lot Two (2) in Block Nine (9) of Hoxie's Addition, now in and forming a part of the City of Des Moines, Iowa. Grantor reserves all improvements thereon.

This conveyance is made pursuant to contract entered into on June 17, 1902, by and between the Des Moines Union Railway Co., party *of the* first part, and *Getchell* & Martin Lumber & Manufacturing Co. and C. H. Getchell, parties of the second part; the said Des Moines Union Railway Co., having requested in writing that the deed to the said premises be executed to F. M. Hubbell, grantee herein. The said F. M. Hubbell accepts this deed subject to all of the conditions, obligations, burdens and requirements contained in said contract, and subject to the requirement that the said premises be used for the purposes and in the manner in said contract provided.

And the said Getchell & Martin Lumber & Manufacturing Co. hereby covenants with the said F. M. Hubbell that
1330 it holds said premises by good and perfect title; that it has good right and lawful authority to sell and convey the same. That the said premises are free and clear of all liens and encumbrances whatsoever; and covenants to warrant and defend the same against the lawful claims of all persons whomsoever.

Dated at Des Moines, Iowa, this 18 day of July, 1902.

GETCHELL & MARTIN LUMBER & MANUFACTURING CO.,
(Seal) By C. H. Getchell, President.

Duly acknowledged July 18, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 25th day of July, 1902, and recorded in Book 365, Page 147 of the records in said office.

1331 **Defendants' Exhibit 589.**

In Consideration Of Three Thousand Dollars, F. M. Hubbell of Polk County, State of Iowa, hereby grants unto the Des Moines Union Railway Company of the County of Polk and State of Iowa subject to the conditions and limitations herein set forth the right of way over the following described premises situated in the County of Polk and State of Iowa to-wit: The north thirty-two (32) feet of lot number two (2) in block eighteen (18) of H. M. Hoxie's Addition to the town of Fort Des Moines now in the city of Des Moines, The grantee accepts this conveyance of right of way with the understanding and agreement that it will construct, maintain and operate a loading and unloading track for the use and benefit of the owners and lessees of the remaining portion of said lot number two (2). Said track to be located as near as practicable to the south line of said 32 foot strip. No track shall be located north of said unloading track whose center line shall be nearer than eighteen (18) feet to the center line of said unloading track at the west end, nor nearer than twenty (20) feet to said center line at the east end of said premises.

The space between said unloading track and the first
1332 track north thereof as above provided shall always be used as a drive way for teams as per plat opposite our signatures hereto, and subject to mortgage held by the Equitable Life Insurance Co. of Iowa.

And Frances E. Hubbell, wife of the said F. M. Hubbell for the foregoing consideration, do hereby relinquish all her right of dower and homestead in the above described premises.

Signed this 21st day of July, A. D. 1902.

F. M. HUBBELL,
FRANCES E. HUBBELL,

(Plat)

By F. C. Hubbell,
her Atty. in fact.

Duly acknowledged July 21st, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 25th day of July, A. D. 1902, and recorded in Book 438 Page 587 of the records in said office.

1333 **Defendants' Exhibit 590.**

Know All Men By These Presents:

That F. M. Hubbell and Frances E. Hubbell, husband and wife of the County of Polk and State of Iowa in consideration of the sum of Twenty thousand two hundred & Sixty four Dollars in hand paid by the Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit:

The north thirty eight (38) feet of the following described real estate to-wit: Lots numbered two (2) and seven (7) in block number nine (9) and lots numbered two (2) and seven (7) in block number fourteen (14) all being in Hoxies Addition to the town of Fort Des Moines now included in the corporate limits of the city of Des Moines.

This conveyance is made subject to a mortgage made by F. M. Hubbell dated July 18, 1902 in favor of the Equitable Life Insurance Co. of Iowa for $20264.00 maturing August 1, 1912, which the said Des Moines Union Railway Co., assumes and agrees to pay. The Des Moines Union Railway Company accepts this deed subject to a certain contract dated
1334 June 17th 1902 made between the Des Moines Union Railway Company and the Getchell & Martin Lumber & Manufacturing Company and C. H. Getchell which has been filed for record in the Recorder's Office of Polk County, and subject to a certain other agreement between said parties dated July 18th, 1902, which has also been recorded in the Recorder's

office of Polk County, and subject to all the conditions contained in the contracts above referred to.

And we do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under us, except as stated.

And the said Frances E. Hubbell hereby relinquishes her right in and to the above described premises.

Signed this 21st day of July, A. D. 1902.

F. M. HUBBELL,
FRANCES E. HUBBELL,
By F. C. Hubbell,
her Atty. in fact.

Duly acknowledged July 21st, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 25th day of July, 1902, and recorded in Book 443, Page 539 of the records in said office.

1335 **Defendants' Exhibit 591.**

Know All Men By These Presents:

That the Des Moines Water Works Company, a corporation with its principal place of business in the City of Des Moines, Iowa, in consideration of the sum of One Dollar to it in hand paid by the Des Moines Union Railway Company, a corporation with its principal place of business in the City of Des Moines, hereby quit claims unto the said Des Moines Union Railway Company a right of way for railway purposes over and across the following described strip of land in Polk County, Iowa, to-wit: a strip of ground about eleven (11) feet wide bounded by the lines in red ink running from the point indicated by the letter A on the plat hereto attached to the point indicated by the letter B on said plat, thence from the point indicated by said letter B to the point indicated by the letter C on said plat, thence from the point indicated by the said letter C to the point indicated by the letter D on said plat, thence from the point indicated by the said letter D to the place of beginning. Said plat is marked Exhibit "1" and is identified by the signature of the secretaries of each of the parties hereto, and is attached to this deed and made a part hereof. The right of way hereby conveyed is intended to be enclosed by the red line marked upon said plat, running from

1336 the point A to the point B and from the point B to the point C and from the point C to the point D and from the point D to the point A as above stated.

The property hereby granted is located in lots three (3) and four (4) in block 49 J. Lyon's Addition to the original town of Fort Des Moines, now included in the City of Des Moines, Iowa, and in what was formerly Iowa Street and the alley adjacent to said lots.

It is not the intention of the parties hereto to include in this grant *any* part of the said lots now occupied by the buildings of the grantor herein, it being the understanding of the parties that the boundary line B' comes up to the building of the grantor at one point, but does not include any portion of the said building.

This conveyance is upon the following express conditions:

First: The said property hereby granted shall be used for railroad purposes only, and if the grantee ceases to use the same or any part thereof for such purposes the real estate hereby granted or the part thereof not used for railroad purposes shall revert to the grantor and the interest of the grantee therein shall cease and determine.

Second: The Des Moines Union Railway Company shall promptly construct and shall maintain a coal track substantially as indicated by the track designated as "Proposed Coal Track" upon the plat Exhibit "1" hereto attached, from a connection with its railway to a point directly south of the east end of the coal house of the grantor herein, which track shall be used exclusively for the business of the grantor.
1337 The said coal track shall be located as shown by the said plat Exhibit "1". The top of the rails of said proposed coal track shall not at the point designated on said plat by the letter E, be more than eight inches higher than the level of the top of the door-sill of the east door of the grantor's boiler room.

In Witness Whereof, Said Des Moines Water Works Company has caused this instrument to be executed in its behalf by its president and attested by its secretary with its corporate seal, on this 21st day of July, A. D. 1902.

DES MOINES WATER WORKS COMPANY,

(Seal) By Charles H. Payson, President.

Attest:

Charles S. Denman,
Secretary.

Duly acknowledged July 21, 1902.

1338 **Defendants' Exhibit 592.**

September 12, 1902.

Received of the Des Moines Union Railway Company certain agreements wherein the Warfield, Pratt, Howell Co., Brown-Hurley Hardware Co. and Tone Bros. consent to the construction, operation and maintenance of a single track railway on the west side of West First Street opposite Lots Eleven (11) and Twelve (12) Block Thirty-five (35) and Lots Seven and Eight (8), Block Thirty-four (34) all in the original Town of Fort Des Moines; and release the City of Des Moines from any and all damages which may accrue to the said real estate by reason of the construction, maintenance and operation of said track in accordance with resolution adopted by the City Council August 23, 1902.

E. R. BENNETT,
City Clerk.

1339 **Defendants' Exhibit 593.**

A Resolution Granting to the Des Moines Union Railway Company the right to lay, maintain and operate a single track railway on the west side of West First Street from the south side of the first alley north of Court Avenue, southward, and on and across said West First Street to an intersection with the main line of the Des Moines Union Railway Company as the same is now located and constructed; and to rescind a resolution passed by the City Council of the City of Des Moines, Iowa, on the 21st day of April 1902, entitled "A resolution granting to the Des Moines Union Railway Company the right to lay, maintain and operate a single track railway on the west side of West First Street from the south side of the first alley north of Court Avenue to an intersection with the main line of the Des Moines Union Railway Company," and to rescind a resolution passed by the City Council of the City of Des Moines on the 23d day of June, 1902, reading as follows: "Be It Resolved by the City Council of the City of Des Moines: That the Des Moines Union Railway Company be instructed to lay its track seven (7) feet east of lot line instead of immediately adjacent to the east line of said lots as provided in Resolution R. C. No. 312, passed April 21, 1902."

First: Be it Resolved by the City Council of the City of Des Moines, Iowa: That there is hereby granted to the Des Moines Union Railway Company the right to lay, maintain and operate a single track railway on and along the west side of West First Street from the south side of the first alley

north of Court Avenue, southward, and on and across
1340 said West, First Street in a southeasterly direction, and upon a proper curve therefor, to a convenient point of intersection in order to connect with the main line of the Des Moines Union Railway Company as the same is now located and constructed across the Des Moines river, and from the Des Moines river westward. Said track shall be so laid that its center line shall, so far as practicable in order to make said connection and interest in a proper and convenient manner with said mine line, be a distance of twelve and one half (12½) feet from, and parallel with, the east line of Lots Eleven, (11) and Twelve (12) in Block Thirty-five (35) and Lots Seven (7) and Eight (8) in Block Thirty-four (34) all in the Original Town of Fort Des Moines, and included in and forming a part of the City of Des Moines, Polk County, Iowa.

Second: Be it Further Resolved: That this grant shall not be effective unless the owners of Lots Eleven (11) and Twelve (12) in Block Thirty-five (35) and Lots Seven (7) and Eight (8) in Block Thirty-four (34) of the Original Town of Fort Des Moines, in front of which said track shall be laid, be compensated for and shall release the City of Des Moines from all claims for damage of every kind and nature accruing or which may accrue to them by reason of the laying, maintaining and operating of said railway along said street, and said track shall be laid at the established grade of First Street. All switching on said track shall be done between the hours of seven o'clock P. M. and eight o'clock A. M.

Third: Be It Further Resolved: That the certain resolution passed by the City Council of the City of Des Moines, Iowa, on the 21st day of April, 1902, entitled "A reso-
1341 lution granting to the Des Moines Union Railway Company the right to lay, maintain and operate a single track railway on the west side of West First Street from the south side of the first alley north of Court Avenue to an intersection with the main line of the Des Moines Union Railway Company," also a certain other resolution passed by the City Council of the City of Des Moines on the 23d day of June, 1902, reading as follows: "Be it Resolved by the City Council of the City of Des Moines: That the Des Moines Union Railway Company be instructed to lay its track seven (7) feet east of lot line instead of immediately adjacent to the east line of said lots as provided in Resolution R. C. No. 312, passed April 21, 1902," be and they are and each of them is hereby rescinded.

Adopted August 23, 1902.

1342 **Defendants' Exhibit 594.**

Know All Men By These Presents, That I, C. C. Cole, Trustee, of Polk County, and State of Iowa, in consideration of the sum of One Hundred and fifty Dollars in hand paid by Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lots number Thirty-eight (38) and Number Thirty-nine (39) in Capitol Addition to the City of Des Moines, being now a part of the City of Des Moines, Polk County, Iowa.

And I do hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear from all liens and incumbrances whatsoever. .....

And I do covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

Signed the 8th day of October, A. D. 1902.

C. C. COLE, Trustee.

1343 Duly acknowledged October 8, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, October 16, 1902, and recorded in Book 445, Page 419 of the records in said office.

1344 **Defendants' Exhibit 595.**

In Consideration Of One Thousand Dollars, We, F. M. Hubbell and Frances E. Hubbell, husband and wife, of Polk County, State of Iowa, hereby Convey to the Des Moines Union Railway Company of the County of Polk and State of Iowa.

The right-of-way over and along the north twelve (12) feet of lots five (5) and six (6) in block forty-two (42) of T. Lyon's Addition to Fort Des Moines, for the purpose of building, maintaining and operating thereon a single track railway; and also the right-of-way over and along the following described premises, viz;

Beginning at the southwest corner of lot five (5) block forty-two (42) of T. Lyon's Addition to Fort Des Moines; thence north on the west line of said lot five (5) twenty-four (24) feet; thence southeasterly to a point on the south line of lot six (6) in said block forty-two (42) forty (40) feet east of the southwest corner of said lot; thence westerly along the

south line of said lots five (5) and six (6) to the place of beginning. For the purpose of building, maintaining and operating thereon a single or double track railway.

And I, Frances E. Hubbell, wife of the said F. M. Hubbell, for the foregoing consideration, do hereby relinquish all my right of dower and homestead in the above described premises.

1345 Signed this Eighth day of October A. D., 1902.

F. M. HUBBELL,
FRANCES E. HUBBELL,
By F. C. Hubbell, her Atty. in fact.

Duly acknowledged October 8th, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 15th day of October 1902, and recorded in Book 412, Page 406 of the records in said office.

1346 **Defendants' Exhibit 596.**

Know All Men By These Presents:

That C. Huttenlocher of the County of Polk and State of Iowa in consideration of the sum of Fifty Dollars in hand paid by the Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit: Lot number thirty-six (36) of Capital Addition now forming a part of the City of Des Moines.

And I do hereby covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under us.

And Lydia Huttenlocher, wife of C. Huttenlocher hereby relinquishes her right of dower in and to the above described premises.

Signed this 18th day of October A. D., 1902.

C. HUTTENLOCHER,
LYDIA HUTTENLOCHER,

Duly acknowledged October 18, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the 18th day of October, 1902, and recorded in Book 445, Page 429 of the records in said office.

1347 **Defendants' Exhibit 597.**

Know All Men By These Presents: That We, E. E. Cochran, widow of W. J. Cochran, and Josie M. Thorn and J. William Thorn, her husband, Mary E. Cochran, single, J. W. Cochran, single, D. A. Cochran, single, C. S. Cochran single, G. E. Cochran single and A. L. Cochran single, being all the children and all the heirs at law of W. J. Cochran, deceased, of Warren County, and State of Iowa, in consideration of the sum of Seventy-five Dollars, in hand paid by the Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell And Convey Unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number thirty-five (35) in Capital Addition now forming a part of the city of Des Moines.

And we hereby covenant with the said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

And the said William J. Thorn hereby relinquishes his right in and to the above described premises.

1348 Signed the 18th day of October A. D. 1902.

J. W. Cochran	E. E. Cochran
C. S. Cochran	D. A. Cochran
G. E. Cochran	Josie M. Thorn
A. L. Cochran	J. William Thorn
	Mary E. Cochran

Duly acknowledged October 21st, 1902. Filed for record in the office of the Recorder of Polk County Iowa, on the 23d day of October, 1902, and recorded in Book 445 Page 462 of the records in said office.

1349 **Defendants' Exhibit 598.**

Know All Men By These Presents: That We, B. Beanblossom and Rena Beanblossom, husband and wife of Polk County, and State of Iowa in consideration of the sum of One hundred Dollars in hand paid by the Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell and Convey unto the said Des Moines Union Railway Co.

the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot Number thirty-seven (37) of Capital Addition now forming a part of the city of Des Moines.

And we hereby covenant with the said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And the said Rena Beanblossom hereby relinquishes her right in and to the above described premises.

Signed the 20th day of October A. D. 1902.

B. BEANBLOSSOM,
RENA BEANBLOSSOM.

Duly acknowledged October 20th, 1902. Filed for record in the office of the Recorder of Polk County, Iowa, on the
1350 5th day of November, 1902, and recorded in Book 445, Page 328 of the records in said office.

1351 **Defendants' Exhibit 599.**

Know All Men By These Presents: That Bridget O'Conner a widow of Polk County, and State of Iowa in consideration of the sum of Thirty-five Dollars in hand paid by the Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell and Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number nine (9) of the Official Plat of lots numbered one (1) two (2) nine (9) and ten (10) of Block twenty (20) town of Demoine now forming a part of the city of Des Moines.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

Signed the 24th day of October A. D. 1902.

Witness:
Bloyle
Walter Mauthe.

BRIDGET O'CONNER her X mark

1352 Duly acknowledged October 24, 1902. Filed for record in the office of the Recorder of Polk County Iowa, on the 27th day of June, 1907, and recorded in Book 531 on Page 203 of the records in said office.

1353 **Defendants' Exhibit 600.**

Know All Men By these Presents: That the Des Moines Western Railway Company, a corporation organized and existing under the Laws of the State of Iowa, of the County of Polk and State of Iowa, in consideration of the conveyance to this Company by the Des Moines Union Railway Company, of certain real estate, in the city of Des Moines described in a certain deed dated March 16th 1903, and of the sum of One Dollar in hand paid by the said Des Moines Union Railway Company, does hereby sell and convey unto the said Des Moines Union Railway Company the following described premises situated in the County of Polk and State of Iowa, to-wit:

The south seventeen (17) feet of lots seven (7) and sixteen (16) in block fourteen, Town of Demoine; the following described portion of lot seven (7), block thirteen (13) Town of Demoine—beginning at a point on the west line of said lot seven (7) eleven and two-tenths (11.2) feet north of the southwest corner of said lot seven; thence south eleven and two-tenths (11.2) feet to the southwest corner of lot seven; thence east along south line of said lot ninety-eight and nine-tenths (98.9) feet; thence northwesterly on a 3° 10′ curve to the left to the point of beginning. The following described portion of lot fifteen (15) block twelve (12) Town of De-

1354 moine—beginning on the west line of said lot fifteen (15) thirty and eight-tenths (30.8) feet north of the southwest corner of lot fifteen (15); thence south thirty and eight-tenths (30.8) feet to the southwest corner of said lot; thence east along the south line of lot fifteen one hundred thirteen and six-tenths (113.6) feet; thence northwesterly on a 3° 10′ curve to the left, to the point of beginning. All of lot twelve (12) in block twelve (12) Town of Demoine; all of lot eleven (11) of the Official Plat of lots one, (1) two (2) nine (9) and ten (10) in block twenty (20) Town of Demoine,—all of the above being now included in the corporate limits of the City of Des Moines, Iowa.

And the said Des Moines Western Railway Company hereby covenants with the said Des Moines Union Railway Company that it holds said premises by good and perfect title, that it has good right and lawful authority to sell and convey the same, that they are free and clear of all liens and incumbrances whatsoever. And it covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever. This conveyance and exchange of property is made in pursuance of a resolution passed by the Board of Directors of the Des Moines Western Railway Company on March 16th 1903.

1355 In Witness Whereof the Des Moines Western Railway Co. has caused these presents to be signed by its President and Secretary, and attach- its seal hereto this 16th day of March 1903.

(Seal) DES MOINES WESTERN RAILWAY COMPANY,
By F. M. Hubbell, President.

Attest:

H. D. Thompson,
Secretary.

Duly acknowledged March 16th, 1903. Filed for record in the office of the Recorder of Polk County, Iowa, on the 26th day of March, 1903, and recorded in Book 455, Page 282 of the records in said office.

1356 **Defendants' Exhibit 601.**

Know All Men By These Presents:

That we, James Callahan and Catharine Callahan, husband and wife, of the County of Polk and State of Iowa, in consideration of the sum of Five Dollars in hand paid by the Des Moines Union Ry. Co. of the County of Polk and State of Iowa do hereby sell, convey and forever Quit Claim unto the said Des Moines Union Railway Co. all our right, title and interest in and to the following described premises situated in Polk County, and State of Iowa, to-wit: Lot number nine (9) of the Official Plat of Lots numbered one (1) two (2) nine (9) and ten (10) of Block twenty (20) in the town of Demoine now in the city of Des Moines, Iowa.

And the said Catharine Callahan hereby relinquishes her right in and to the above described premises.

Signed this 28th day of March 1903.

Witness
Thomas Lally
C. Huttenlocher.

JAMES his x mark CALLAHAN

CATHARINE her x mark CALLAHAN.

Duly acknowledged March 28, 1903. Filed for record in the office of the Recorder of Polk County, Iowa, on the 27th day of June 1907, and recorded in Book 515 Page 445 of the records in said office.

1357 **Defendants' Exhibit 602.**

Know All Men By These Presents: That we, James Watt and Mary C. Watt, husband and wife, of Polk County and State of Iowa, in consideration of the sum of One Dollar in hand paid by the Des Moines Union Railway Company of Polk County and State of Iowa, and the advantages to be derived as hereinafter stated, do hereby grant unto the Des Moines Union Railway Company the right-of-way over and across the following described premises situated in the County of Polk and State of Iowa, to-wit:

The north eleven (11) feet of the following described real estate—Lots five (5) six (6) seven (7) eight (8) and nine (9) in block thirty-four (34) of Keene & Poindexter's Addition to Fort Des Moines, and lot three (3) of Keene & Poindexter's official Plat all in the City of Des Moines.

Said Des Moines Union Railway Company shall use the said track to be located and constructed on said premises as a sidetrack and not for a main track, and shall use the same for the convenience of said James Watt, his grantees and assigns, and other parties doing business along said track, or any extension thereof easterly, hereafter made. The grantee hereof, will within a reasonable time, after being requested so to do by said grantor or his assigns, place cars on said side track in such places as may be requested,—empty cars for loading, or loaded cars for unloading, all proper charges having previously been paid, and will allow them to
1358 stand on said sidetrack for such purpose for a reasonable time, and will within a reasonable time after being so requested, remove from said sidetrack any loaded cars that have been placed thereon for said parties.

And we hereby covenant with the Said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

And the said Mary C. Watt hereby relinquishes her right in and to the above described premises.

Signed this first day of October, A. D. 1903.

JAMES WATT
MARY C. WATT.

Duly acknowledged October 1, 1903. Filed for record in the office of the Recorder of Polk County, Iowa, on the 27th day of November, 1903, and recorded in Book 473, Page 13 of the records in said office.

1359 **Defendants' Exhibit 603.**

Know All Men By These Presents: That we, Frederick M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell as Trustees of the Frederick M. Hubbell Estate of Polk County, and State of Iowa in consideration of the sum of Six Hundred Fifty Dollars, in hand paid by Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

The north eleven (11) feet of the following described real estate to-wit: Lots numbered seven (7) Eight (8) nine (9) and ten (10) in block thirty-nine (39) of Jonathan Lyon's Addition to Fort Des Moines, and of Lot four (4) of the Official Plat of Keene & Poindexter's Addition as filed for record April 9th, 1897, all being in the City of Des Moines. Said strip of ground is to be used for railroad purposes.

And we hereby covenant with the said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

1360 Signed the 12th day of November A. D. 1903.

TRUSTEES OF THE FREDERICK M. HUBBELL ESTATE.

By Frederick M. Hubbell,
Frederick C. Hubbell,
Grover C. Hubbell.

Duly acknowledged by Frederick M. Hubbell and Frederick C. Hubbell, Trustees, November 13, 1903, and by Grover C. Hubbell, Trustee, November 17, 1903. Filed for record in the office of the Recorder of Polk County, Iowa, on the 24th day of November, 1903 and recorded in Book 459, Page 5 of the records in said office.

1361 **Defendants' Exhibit 604.**

Know All Men By These Presents: That F. M. Hubbell and Frances E. Hubbell husband and wife of Polk County and State of Iowa in consideration of the sum of Three Hundred and fifty Dollars in hand paid by Des Moines Union Railway Company of Polk County, and State of Iowa, do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit: The north eleven (11) feet of lot number eleven (11) in block number thirty-nine (39) on Jonathan Lyon's Addition to Fort Des Moines now in the city of Des Moines, Iowa.

And we hereby covenant with the said Des Moines Union Railway Company that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

And the said Frances E. Hubbell hereby relinquishes her right in and to the above described premises.

Signed the 12" day of November A. D. 1903.

F. M. HUBBELL,
FRANCES E. HUBBELL,
By F. C. Hubbell, her Atty. in fact.

Duly acknowledged November 12, 1903. Filed for rec-
1362 ord in the office of the Recorder of Polk County, Iowa, on the 24th day of November, 1903, and recorded in Book 459, Page 4 of the records in said office.

1363 **Defendants' Exhibit 605.**

Know All Men By These Presents: That Annie S. Redhead a widow of Polk County, and State of Iowa in consideration of the sum of Five Hundred Dollars in hand paid by Des Moines Union Railway Company of Polk County, and State of Iowa do hereby Sell And Convey unto the said Des Moines Union Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number two (2) of the Official Plat of Lot number twenty (20) of Brooks & Company's Addition to the city of Des Moines being all of said lot twenty (20) of said Brooks & Company's Addition which lies south of the railroad right of way of the Des Moines Valley Railroad.

And I hereby covenant with the said Des Moines Union Railway Company that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And I covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

Signed the 24th day of November A. D. 1903.

ANNIE S. REDHEAD.

1364 Duly acknowledged November 24, 1903. Filed for record in the office of the Recorder of Polk County, Iowa, November 24, 1903, and recorded in Book 459, Page 15 of the records in said office.

1365 **Defendants' Exhibit 606.**

Know All Men By These Presents: That The Chicago, Rock Island & Pacific Railway Company, a corporation existing under the laws of the States of Illinois, and Iowa, in consideration of the sum of One Dollar ($1.00) to it paid by the Des Moines Union Railway Company, and other good and valuable considerations, the receipt whereof is hereby acknowledged, does hereby sell and convey unto the said Des Moines Union Railway Company, the following described property situated in the County of Polk, and State of Iowa, to-wit:

In block sixteen (16), Town of Demoine; the north twenty-five (25) feet of lots fourteen and nine (9).

In block fifteen (15), Town of Demoine; the north fourteen (14) feet of lots nine (9), ten (10), eleven (11), twelve (12), thirteen (13) and fourteen (14).

In block fourteen (14), Town of Demoine; commencing at the northwest corner of lot fourteen (14) of said block, thence easterly along the northerly line of said lot fourteen (14) to the northeast corner thereof; thence southerly along the easterly line of said lot fourteen (14) fifteen and eight-tenths (15.8) feet, thence westerly in a direct course to a point in the west line of said lot fourteen (14), 14 feet southerly from the place of commencement, thence northerly to the place of beginning.

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Also commencing at the north west corner of lot nine (9) of said block fourteen (14), thence easterly along the northerly line of said lot nine (9) to the northeast corner thereof; thence southerly along the easterly line of said lot nine (9), thirty-seven (37) feet; thence westerly in a direct course to a point in the west line of said lot nine (9), sixteen and five-tenths (16.5) feet southerly from the place of commencement; thence northerly to the place to commencement.

In block thirteen (13), Town of Demoine: Commencing at the north west corner of lot fourteen (14) of said block; thence easterly along the northerly line of said lot fourteen (14) to the north east corner thereof; thence southerly along the easterly line of lots fourteen (14) and thirteen (13) of said block, sixty-one (61) feet; thence westerly in a direct course to a point in the west line of said lot fourteen (14) forty-seven and nine-tenths (47.9) feet southerly from the place of commencement; thence northerly to the place of commencement.

1367

Also commencing at the north west corner of lot ten (10) of said block thirteen (13); thence easterly along the northerly line of said lot ten (10) to the north east corner thereof; thence southerly along the easterly line of said lot ten (10), twenty-five and nine-tenths (25.9) feet; thence westerly in a direct course to a point in the west line of said lot ten (10) six and three-tenths (6.3) feet southerly from the place of commencement; thence northerly to the place of commencement.

All of the above described real estate being now included in and forming a part of the City of Des Moines, Iowa.

To Have And To Hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining unto said Des Moines Union Railway Company, its successors and assigns, forever.

And the said The Chicago, Rock Island & Pacific Railway Company, for itself, and its successors and assigns, does hereby covenant and agree to and with said Des Moines Union Railway Company, its successors and assigns, that the said property above described, against all the claims of all persons, firms or corporations claiming, or to claim by, through or under it, only it will forever warrant and defend.

In Witness Whereof, said The Chicago, Rock Island &
1368 Pacific Railway Company has caused this indenture to be signed by its Vice-President, and its corporate seal to be hereunto affixed and the same to be attested by its Secretary this 25th day of February, A. D. 1908.

THE CHICAGO, ROCK ISLAND AND
(Seal) PACIFIC RAILWAY COMPANY,
By H. U. Mudge, Second Vice-President.

Attest:
....., Ass't. Secretary.

Duly acknowledged February 25th, 1908. Filed for record in the office of the Recorder of Polk County, Iowa, April 10, 1908, and recorded in Book 510, Page 418 of the records in said office.

1369 **Defendants' Exhibit 607.**

Know All Men By These Presents; That the City of Des Moines, a Municipal Corporation of the County of Polk and State of Iowa, for the consideration of One Dollar hereby quit claims to the Des Moines Union Railway Company of Des Moines, Polk County, Iowa, a corporation organized and existing under the laws of the State of Iowa, the following described real estate situated in the County of Polk and State of Iowa, to-wit:

All of Nineteenth Street and Vine Street, lying between lots nineteen, twenty, twenty-three, and twenty-four (19, 20, 23, 24) Brooks & Company's Addition, now included in and forming a part of the City of Des Moines, Iowa, which lies south and east of a line fifty (50) feet south of and extending parallel with the center line of the main track of the Keokuk & Des

Moines Division of the Chicago, Rock-Island & Pacific Railway, as now located and constructed over and across said streets and lots, Provided, however, that the City of Des Moines shall retain the right to lay, construct, maintain, and repair sewers, water pipe, and conduits and to authorize the same to be laid, constructed, maintained, and repaired, on, in and under all of the streets and parts of streets herein vacated. The intention of this dedication and grant being to convey to the Des Moines Union Railway Company herein mentioned, title to the several parts of streets vacated as provided
1370 in Ordinance #1256, and this deed is made under and by virtue of said Ordinance.

In Witness Whereof, the City of Des Moines Has caused these presents to be executed by its Mayor and City Clerk, and caused the Seal of said City to be hereto attached; this 10th day of March, 1906.

CITY OF DES MOINES, IOWA.
By G. W. Mattern, Mayor.
By N. R. Vertrees, City Clerk.

Duly acknowledged March 10, 1906. Filed for record in the office of the Recorder of Polk County, Iowa, on the 3d day of April, 1906, and recorded in Book 515, Page 67 of the records in said office.

1371 **Defendants' Exhibit 608.**

Know All Men By These Presents:

That Charles A. Rawson and Carrie Rawson, his wife; Hollis A. Rawson and Kate Rawson, his wife; Harry D. Rawson and Louise Rawson, his wife, and J. Scott Rawson and Grace Rawson, his wife, being the heirs and only heirs of A. Y. Rawson, deceased, late, of the County of Polk and State of Iowa, in consideration of One and no/100 dollars in hand paid by Des Moines Union Railway Company of the County of Polk and State of Iowa do hereby Remise, Release and Quit-claim unto the said Des Moines Union Railway Company all their right, title and interest in and to the following described premises, with all appurtenances thereunto belonging, situated in the County of Polk and State of Iowa to-wit: Lot One (1) in Block Twenty-one (21) in the Town of Demoine, now included in and forming a part of the city of Des Moines, Iowa.

And the said Carrie Rawson, Kate Rawson, Louise Rawson and Grace Rawson hereby relinquish their right of dower in and to the foregoing described premises.

Signed this 31st day of December A. D. 1907.

CARRIE RAWSON
C. A. RAWSON
B. H. BRADSHAW.

LOUISE RAWSON
KATE RAWSON
HOLLIS A. RAWSON
HARRY J. RAWSON
JOSEPH S. RAWSON
GRACE RAWSON.

Duly acknowledged by C. A. Rawson and Carrie Rawson, his wife, Hollis A. Rawson and Kate Rawson, his wife; Harry D. Rawson and Louise Rawson, his wife, January 17, 1908.

Duly acknowledged by J. Scott Rawson and Grace Rawson, his wife, January 6, 1908.

Filed for record in the office of the Recorder of Polk County, Iowa, January 18, 1908, and recorded in Book 515, Page 620 of the records of said office.

1372 **Defendants' Exhibit 609.**

J. S. Polk F. M. Hubbell.

Office of Polk & Hubbell.

Des Moines, Iowa, October 18th 1887.

A. A. Talmage, Esq., Executors,
St. Louis, Missouri.

Dear Sir:—At a meeting of the Des Moines Union Railway Co., recently held it was determined to call a meeting of the stockholders of that company, to be held November 1st, 1887, at the companys office in Des Moines, Iowa, for the purpose of amending the articles of incorporation.

It is absolutely necessary that the stock be represented at that time. If you cannot be present personally, I hope you will appoint some one as your proxy here.

I enclose a blank proxy which was prepared by Mr. Polk, who is now at Hot Springs, but he will be here on the day set for the meeting.

Yours truly,

F. M. HUBBELL.

1373 **Defendants' Exhibit 610.**

I, Mary R. Talmage, executrix of the last will and testament of Archibald A. Talmage, deceased, do hereby sell, assign transfer and set over unto James F. How the one share of the capital stock of the Des Moines Union Railway Company, standing in the name of my said decedent on the books of the said company.

Witness my hand and seal this 20th day of ..... 1887.

MARY R. TALMAGE. (Seal)

Signed, sealed
& Delivered in
presence of

Henry A. Lloyd.

1374 **Defendants' Exhibit 611.**

Know All Men By These Presents:

That I ..... a stockholder in the Des Moines Union Railway Company, and owning one share of the capital stock, of said company, do hereby constitute and appoint ..... of Des Moines, Iowa, my lawful agent, and attorney, for me, and in my name to appear at the meeting of the stockholders of said company, to be held at the office of the company in Des Moines, Iowa, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the 1st day of November 1887, for the purpose of amending Article 3 of the Articles of Incorporation of this company, so as to increase the Capital stock of the company to two million (2,000,000) dollars, and considering the question of issuing $1,000,000 of Bonds of the Company, secured by mortgage on its property to pay for constructing, and improving said railway, and property, and for the transaction of any other business coming before said meeting, or at any adjournment thereof, and then, and there for me, and in my name to cast the vote to which I am entitled as a stockholder, and which I might cast if present.

Witness my hand this 21 day of October, 1887.

A. L. HOPKINS.

Witness

J. C. Ottesen.

1375 **Defendants' Exhibit 612.**

Know All Men By These Presents:

That I ..... a stockholder in the Des Moines Union Railway Company, and owning one share of the capital stock, of said company, do hereby constitute and appoint ..... of Des Moines, Iowa, my lawful agent, and attorney, for me, and in my name to appear at the meeting of the stockholders of said company, to be held at the office of the company in Des Moines, Iowa, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the 1st day of November 1887, for the purpose of amending Article 3 of the Articles of Incorporation of this company, so as to increase the Capital stock of the company to two million (2,000,000) dollars, and considering the question of issuing $1,000,000 of Bonds of the Company, secured by mortgage on its property to pay for constructing, and improving said railway, and property, and for the transaction of any other business coming before such meeting, or at any adjournment thereof, and then, and there for me, and in my name to cast the vote to which I am entitled as a stockholder, and which I might cast if present.

Witness my hand this .... day of October, 1887.

G. M. DODGE.

Witness

.....

1376 **Defendants' Exhibit 613.**

Know All Men By These Presents:

That I ..... a stockholder in the Des Moines Union Railway Company, and owning two shares of the capital stock, of said company, do hereby constitute and appoint J. S. Polk, of Des Moines, Iowa, my lawful agent, and attorney, for me, and in my name to appear at the meeting of the stockholders of said company, to be held at the office of the company in Des Moines, Iowa, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the 1st day of November 1887, for the purpose of amending Article 3 of the Articles of Incorporation of this company, so as to increase the Capital stock of the company to two million (2,000,000) dollars, and considering the question of issuing $1,000,000 of Bonds of the Company, secured by mortgage on its property to pay for constructing, and improving said railway, and property, and for the transaction of any other business coming before said meeting, or at any adjournment thereof, and then, and there for me, and in my name to cast the vote to

which I am entitled as a stockholder, and which I might cast if present.

Witness my hand this 27' day of October 1887.

JAMES F. HOW.

Witness

Wm. R. Glading.

1377

Defendants' Exhibit 614.

Notice.

Notice is hereby given that the articles of incorporation of the Des Moines Union Railway Company, were on the 8th day of April, 1890 amended in the following particulars.

The authorized capital stock of the company is two million dollars ($2,000,000.00) divided into shares of one hundred dollars ($100.00).

Four thousand shares are issued as a part of the purchase price of the terminal property at Des Moines originally acquired by the company. The remaining shares are to be issued only by the authority of a resolution of the stockholders adopted by more than seven-eighths (7/8) of the stock, and to be paid for either in money or property at the time certificates therefor are issued.

The corporation is to be managed by a board of eight directors, to be elected on the first Thursday of January of each year, by the vote of more than seven-eighths of all the stock.

The board of directors are to elect the officers of the company, who are a president, vice-president secretary and treasurer, said officers to hold their offices for one year or until their successors are elected and qualified and they are to be elected annually on the first Thursday of January.

It is not necessary in order to entitle the company to carry on the business for which it was organized that all of its capital stock be subscribed or taken.

Witness my hand this 23rd day of April, 1890.

G. M. DODGE, President.

Attest:

F. M. Hubbell, Secretary.

1378 **Defendants' Exhibit 615.**

Affidavit of Publication.

State of Iowa, } ss.
Polk County }

I, B. L. Harding, being sworn say that I am Business Manager of The Des Moines Leader, a newspaper of general circulation, published regularly in Des Moines, Polk County, Iowa, and that the notice of which the annexed is a printed copy, was printed in said Des Moines Leader for 4 consecutive weeks the first publication being on the 24th day of April 1890 and the last on the 20th day of May 1890.

B. L. HARDING.

Subscribed and sworn to by the said B. L. Harding, before me and in my presence, this 21st day of May, 1890.

HENRY J. WILLIAMS,
Notary Public in and for Polk County, Iowa.

Publisher's Fees, $7.50.
Henry J. Williams
Iowa.
Notarial Seal. (**)

1379 **Defendants' Exhibit 616.**

Know All Men By These Presents, That We The Purchasing Committee of the Wab., St. Louis & Pacific Ry. & J. F. How do hereby constitute and appoint Charles M. Hays Attorney and Agent for me and in my name, place and stead, to vote as my proxy at the annual meeting of the Stockholders of the Des Moines Union Railway Co. to be held in Des Moines, Iowa, January 6, 1893 according to the number of votes we should be entitled to cast if then present.

In Witness Whereof, I have hereunto set my hand and seal this ..... day of ..... one thousand eight hundred and .....

THE PURCHASING COMMITTEE,
By O. D. Ashley, Secy. (Seal)
James F. How.

Sealed and delivered in the presence of
J. C. Otteson.

1380 **Defendants' Exhibit 617.**

Know All Men By These Presents, that { James F. Joy, T. H. Hubbard, Edgar T. Welles, O. D. Ashley, } Purchasing Committee Trustees,

Stockholders in the Des Moines Union Railway Co. owners of Four Hundred and ninety eight Shares, have made, constituted and appointed Charles M. Hays of St. Louis, Mo. lawful agent and attorney for us and in our name to appear at the annual meeting of the Stockholders of said Company, to be held in the City of Des Moines, Iowa, on the twenty-fifth day of January A. D. 1894 for the transaction of any business which may come before said meeting, or any adjournment thereof, and then and there for us and in our names to cast the vote to which we are entitled as Stockholders, and which we might cast if present.

Witness our hand and seal this 19th day of January A. D. 1894.

JAMES F. JOY,
T. H. HUBBARD,
EDGAR T. WELLES,
O. D. ASHLEY, } Purchasing Committee Trustees.

By O. D. Ashley, Secretary. (Seal)

Witness:
J. C. Otteson.

1381 **Defendants' Exhibit 618.**

Power of Attorney.

Know All Men By These Presents: That I, Chas M. Hays, a Director in the Des Moines Union Railway Company, do hereby constitute and appoint A. B. Cummins of Des Moines, Iowa, my lawful agent, and attorney, for me, and in my name, to appear at the meeting of the Board of Directors of said Company, to be held at the office of the Company in Des Moines, Iowa, on the 14″ day of November 1894, for the transaction of any business coming before such meeting or at any adjournment thereof, pertaining to the renewal at a lower rate of interest, of the floating debt of said Company, and then and there, for me, and in my name, to cast the vote to which I am entitled as a Director, and which I might cast if present.

Witness my hand this 12th day of November, 1894.

CHAS. M. HAYS.

Witness:
Henry Philips.

1382 **Defendants' Exhibit 619.**

Know All Men By These Presents: That we, James F. Joy, Thomas H. Hubbard, Ossian D. Ashley and Edgar T. Welles, Purchasing Committee, Trustees, do hereby constitute and appoint Chas. M. Hays Attorney or Agent for us and in our name to vote as our proxy at the Annual Meeting of the Stockholders of the Des Moines Union Railway Company, to be held at Des Moines, Iowa on Wednesday, January 30, 1895.

And we do hereby authorize the person above named to vote as our proxy at said meeting, or any adjournment thereof, according to the number of votes we should be entitled to vote if then personally present.

In Witness Whereof, we have hereunto set our hand and seal this 25th day of January, one thousand eight hundred and ninety-five.

JAMES F. JOY,
T. H. HUBBARD,
EDGAR T. WELLES,
O. D. ASHLEY,
} Purchasing Committee Trustees.

By O. D. Ashley, Secretary.

Sealed and Delivered
in the presence of:
J. C. Otteson.

1383 **Defendants' Exhibit 620.**

The Western Union Telegraph Company.

Received at 222-4th St. Des Moines.

96 CH DI RO 36 DH

St. Louis, Mo. Feb. 26-97.

A. B. Cummins, Atty. Des Moines, Ia.

In order to consider the changes suggested in contract with terminal company in connection with Amended articles of incorporation we would like to have the contract with changes suggested. Can you send it down by mail?

WELLS H. BLODGETT.
2:27 P. M.

1384 **Defendants' Exhibit 621.**

Know All Men By These Presents, That I, H. L. Magee, a Director in the Des Moines Union Railway Company, do hereby constitute and appoint A. B. Cummins of Des Moines, Iowa, my lawful agent and attorney for me and in my name to appear at the meeting of the Board of Directors of said Company, to be held at the office of the Company in Des Moines, Iowa, on the 20 day of September 1897, for the purpose of ratifying and approving a certain contract dated July 31st 1897, entered into by and between the Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company, and then and there for me and in my name, to cast the vote to which I am entitled as a Director, and which I might cast if present.

Witness my hand this 16 day of September, 1897.

HENRY L. MAGEE.

1385 **Defendants' Exhibit 622.**

Know All Men By These Presents, That I, J. Ramsey, Jr., a Director in the Des Moines Union Railway Company, do hereby constitute and appoint A. B. Cummins of Des Moines, Iowa, my lawful agent and attorney for me and in my name to appear at the meeting of the Board of Directors of said Company, to be held at the office of the Company in Des Moines, Iowa, on the 20 day of September 1897, for the purpose of ratifying and approving a certain contract dated July 31st 1897, entered into by and between the Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company, and then and there for me and in my name, to cast the vote to which I am entitled as a Director, and which I might cast if present.

Witness my hand this 16th day of September, 1897.

J. RAMSEY, JR.

1386 **Defendants' Exhibit 623.**

Minutes of the Adjourned Meeting of the Board of Directors of the Des Moines Union Railway Company, held at the office of the Secretary of the Company on Monday, September 20th, 1897.

F. C. Hubbell, President, presiding.

There were present in person, Directors F. C. Hubbell, F. M. Hubbell, A. N. Denman, A. B. Cummins, C. Huttenlocher

and H. D. Thompson, and Directors J. Ramsey, Jr. and H. L. Magee, by written proxies to A. B. Cummins, duly filed with the Secretary.

The contract entered into between the Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company, dated July 31st, 1897, was presented to the Board of Directors for approval, and thereupon A. B. Cummins offered the following resolution, viz:

Resolved, by the Board of Directors of the Des Moines Union Railway Company, that the contract bearing date July 31st 1897, entered into by and between the Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines Northern & Western Railroad Company, which contract has been signed by their respective Presidents and Secretaries, and which embraces 17 pages, be and the same is hereby ratified, approved, and in all respects confirmed on part of the Des Moines Union Railway Company, and the Secretary of this Company is hereby authorized to attach to said contract a certified copy of this resolution. Adopted unanimously.

There being no further business before the Board, the meeting adjourned, sine die.

F. M. HUBBELL,
Secretary.

1387 **Defendants' Exhibit 624.**

The Wabash Railroad Company.

Office
J. Ramsey Jr. Vice Pres't & Gen'l Manager.

St. Louis, Mo. Feb. 9th, 1898.

Mr. F. M. Hubbell,
Sec'y., Demoines Union Ry. Co.
Des Moines, Iowa.

Dear Sir:

I return herewith proxies signed by myself and Mr. Magee, as Directors, for the meeting to be convened at the office of the Secretary, for the purpose of electing officials and transacting such other business as may come before the meeting. We will accept our portion of the bonds at par.

Very truly yours,

J. RAMSEY, JR.,
Vice Prest. & Gen. Mgr.

1388 **Defendants' Exhibit 625.**

Know All Men By These Presents: That we, Jos. Ramsey, Jr. and H. L. Magee, Directors in the Des Moines Union Railway Company, do hereby constitute and appoint F. M. Hubbell of Des Moines, Iowa, our lawful agent and attorney, for us and in our names to appear at the meeting of the Directors of said Company to be held at the office of the Company in Des Moines, Iowa, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the 29th day of January, 1898, and at that time vote for the election of officers of said Company and to issue forty-seven (47) of the Company's bonds in payment of $47,000 of indebtedness, as set out in the copy of resolutions and minutes hereto attached, and then and there for us and in our names, to cast the vote to which we would be entitled as Directors, and which we might cast if present.

Witness our hands this 28th day of January 1898.

J. RAMSEY, JR.
HENRY L. MAGEE.

1389 **Defendants' Exhibit 626.**

(Proxy)

Know All Men By These Presents, That, O. D. Ashley, Edgar T. Welles & T. H. Hubbard, Purchasing Committee Trustees hereby constitute and appoint ..... our attorney to vote as our proxy, according to the number of votes we should be entitled to vote if personally present at the Annual Meeting of the Stockholders of the Des Moines Union Railway Company to be held at the office of said Company, in Des Moines, Ia, on the 6th day of January 1898 and at any adjournment or adjournments thereof, and we hereby empower and authorize our said attorney to vote for us and in our name, place and stead for Directors of said Company; and also to vote and act in any other business which may be brought before the said Annual Meeting, or any adjournment or adjournments thereof, and generally in our name and stead, to vote and act in the premises as completely and effectually as we could do if personally present, and to act by one or more substitutes or attorneys; thereby revoking any proxy heretofore given.

In Witness Whereof we have hereunto set our hands this 31st day of December, 1897.

In presence of
J. C. Otteson as to
O. D. Ashley,
Edgar T. Welles and
T. H. Hubbard.

O. D. ASHLEY
EDGAR T. WELLES
THOS. H. HUBBARD.

1390 **Defendants' Exhibit 627.**

(Proxy)

Know All Men By These Presents, That, O. D. Ashley, Edgar T. Welles & T. H. Hubbard, Purchasing Committee Trustees hereby constitute and appoint ..... our attorney to vote as our proxy, according to the number of votes we should be entitled to vote if personally present at the Annual Meeting of the Stockholders of the Des Moines Union Railway Company to be held at the office of said Company, in Des Moines, Ia, on the 6th day of January 1898 and at any adjournment or adjournments thereof, and we hereby empower and authorize our said attorney to vote for us and in our name, place and stead for Directors of said Company; and also to vote and act in any other business which may be brought before the said Annual Meeting, or any adjournment or adjournments thereof, and generally in our name and stead, to vote and act in the premises as completely and effectually as we could do if personally present, and to act by one or more substitutes or attorneys; hereby revoking any proxy heretofore given.

In Witness Whereof we have hereunto set our hands this 31st day of December, 1897.

In presence of
J. C. Otteson as to
O. D. Ashley,
Edgar T. Welles and
T. H. Hubbard.

O. D. ASHLEY
EDGAR T. WELLES
THOS. H. HUBBARD.

1391 **Defendants' Exhibit 628.**

Know All Men By These Presents: That we, Jos. Ramsey, Jr. and H. L. Magee, Directors of the Des Moines Union Railway Company, do hereby constitute and appoint F. M. Hubbell of Des Moines, Iowa, our lawful agent and attorney, for us and in our names to appear at the meeting of Directors of said Company to be held at the office of the Company in Des Moines, Iowa, between the hours of 10 o'clock A. M. and 4 o'clock P. M. of the 31st day of March, 1898, and at that time vote in favor of the Resolution authorizing the Des Moines Union Railway Company to purchase the north forty-four (44) feet of lot three (3) and the north forty-four (44) feet of lot six (6) in block fifteen (15) of the Original Town of Fort Des Moines, Iowa, for $25,000, said amount to be paid with twenty-five (25) of the First Mortgage Bonds of the Des Moines Union Railway Company, and then and there for us and in

our names, to cast the vote to which we would be entitled as Directors, and which we might cast if present.

Witness our hands this 29th day of March, 1898.

J. RAMSEY, JR.
H. L. MAGEE.

1392 **Defendants' Exhibit 629.**

Know All Men By These Presents, That I, Joseph Ramsey, Jr., do hereby constitute and appoint F. M. Hubbell attorney or agent for me and in my name to vote as my proxy at a special meeting of the Des Moines Union Railway Company, to be held at Des Moines, Iowa, on March 14, 1899, for the purpose of obtaining the consent of the Des Moines Union Railway Company to an assignment by the Wabash Railroad Company to the Continental Trust Company of the City of New York of the two contracts dated respectively on the 10th day of May, 1889, and July 31st, 1897, between the Des Moines Union Railway Company and the Des Moines and St. Louis Railroad Company, the Wabash Railroad Company and other companies, as provided for in a certain mortgage made by the Wabash Railroad Company to the Continental Trust Company of the City of New York, dated on or about the first day of January, 1899, and to the consent to the assignments or conveyances that have been made or that may be hereafter made by the Wabash Purchasing Committee to the Wabash Railroad Company, or that have been made or may be hereafter made by the Wabash Railroad Company to the Continental Trust Company of the City of New York of Five Hundred shares of the capital stock of the Des Moines Union Railway Company, in accordance with the terms of said mortgage, and in order to give effect to its provisions, and I do hereby authorize the said F. M. Hubbell to vote as my proxy at said meeting or any adjournment thereof according to the number of votes I should be entitled to vote if then personally present.

In Witness Whereof, I have hereunto set my hand and seal this 11th day of March, one thousand eight hundred and ninety-nine.

J. RAMSEY, JR.

Sealed and delivered in the presence of R. J. Woods.

1393 **Defendants' Exhibit 630.**

Know All Men By These Presents, That I, Henry L. Magee, do hereby constitute and appoint F. M. Hubbell attorney or agent for me and in my name to vote as my proxy

at a special meeting of the Des Moines Union Railway Company, to be held at Des Moines, Iowa, on March 14, 1899, for the purpose of obtaining the consent of the Des Moines Union Railway Company to an assignment by the Wabash Railroad Company to the Continental Trust Company of the City of New York of the two contracts dated respectively on the 10th day of May, 1889, and July 31st, 1897, between the Des Moines Union Railway Company and the Des Moines and St. Louis Railroad Company, the Wabash Railroad Company and other companies, as provided for in a certain mortgage made by the Wabash Railroad Company to the Continental Trust Company of the City of New York, dated on or about the first day of January, 1899, and to the consent to the assignments or conveyances that have been made or that may be hereafter made by the Wabash Purchasing Committee to the Wabash Railroad Company, or that have been made or may be hereafter made by the Wabash Railroad Company to the Continental Trust Company of the City of New York of Five Hundred shares of the capital stock of the Des Moines Union Railway Company, in accordance with the terms of said mortgage, and in order to give effect to its provisions, and I do hereby authorize the said F. M. Hubbell to vote as my proxy at said meeting or any adjournment thereof according to the number of votes I should be entitled to vote if then personally present.

In Witness Whereof, I have hereunto set my hand and seal this 11th day of March, one thousand eight hundred and ninety-nine.

H. L. MAGEE.

Sealed and delivered in presence of

Witness
S. E. Cotter.

1394 **Defendants' Exhibit 631.**

Know All Men By These Presents,

That we do hereby constitute and appoint Jos. Ramsey, Jr. attorney or agent for us, and our names to vote as our proxy at the meeting of the stockholders of the Des Moines Union Railway Company, to be held at Des Moines, Iowa, October 3, 1899.

And we do hereby authorize the person above named to vote as our proxy at said meeting, or any adjournment thereof, according to the number of votes we should be entitled to vote if then personally present.

In Witness Whereof, we have hereunto set our hand and seal this 27th day of September, one thousand eight hundred and ninety-nine.

(Seal) CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Trustee.
By Gordon McDonald, V. President.

Sealed and delivered
in presence of
Willard V. King, Secretary.

(5 cancelled two cent revenue stamps attached).

1395 **Defendants' Exhibit 632.**

Know All Men By These Presents: That the Chicago, Milwaukee & St. Paul Railway Company hereby constitutes and appoints C. A. Goodnow of Chicago, Illinois, its attorney to vote as its proxy, according to the number of votes it is entitled to cast, at the annual meeting of the stockholders of the Des Moines Union Railway Company, to be held in the City of Des Moines, Iowa on Thursday, the fourth day of January, 1900, and at any adjournment or adjournments thereof; and it hereby authorizes and empowers its said attorney to vote for it and in its name, place and stead, for Directors of said Company, and also to vote and act in any other business which may be brought before said annual meeting, or any adjournment or adjournments thereof, hereby ratifying and confirming all that its said attorney and proxy may lawfully do by virtue hereof.

In Witness Whereof, the said Chicago, Milwaukee & St. Paul Railway Company has caused these presents to be signed by its President, and its corporate seal to be hereunto affixed and duly attested, this thirtieth day of December, A. D. 1899.

(Seal) CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.
By A. J. Earling, President.

Attest:
E. W. Adams, Assistant Secretary.

(One ten cent revenue stamp affixed).

1296

Defendants' Exhibit 633.

The Wabash Railroad Company.

Office.

J. Ramsey, Jr., Vice Pres't. & Gen'l. Manager.

St. Louis, Mo. Jan. 2nd, 1900.

Mr. F. M. Hubbell,
President, The Des Moines Union Ry. Co.,
Des Moines, Iowa.

Dear Sir:—

As requested in yours of Dec. 27th, I hand you herewith proxy of the stock held by the Continental Trust Co. for use at the stockholders' annual meeting to be held on January 4th.

Please acknowledge.

Yours very truly,
J. RAMSEY, Jr.

1297

Defendants' Exhibit 634.

Know All Men By These Presents,

That the Continental Trust Company of the City of New York Trustee, do hereby constitute and appoint F. M. Hubbell Attorney or Agent for us and in our name to vote as our proxy at the Annual Meeting of the Stockholders of the Des Moines Union Railway Company to be held at Des Moines, Iowa, on Thursday, January 4, 1900.

And we do hereby authorize the persons above named, or either of them, to vote as our proxy at said meeting, or any adjournment thereof, according to the number of votes we should be entitled to vote if then personally present.

In Witness Whereof, we have hereunto set our hands and seal this 30th day of December, one thousand eight hundred and ninety-nine.

(Seal) CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, as Trustee.
By Gordon McDonald, V. President.

Sealed and delivered
in the presence of
Willard V. King, Secretary.

(Five cancelled two cent revenue stamps affixed.)

1398 **Defendants' Exhibit 635.**

Power of Attorney.

Know All Men By These Presents:

That The Chicago Milwaukee, & St. Paul Railway Company a Stockholder in the Des Moines Union Railway Company and owning 998 Shares of the Capital Stock of said Company, do hereby constitute, and appoint E. W. McKenna, & W. T. Underwood of Chicago my lawful agent, and attorney, for me, and in my name to appear at the meeting of the Stockholders of said Company, to be held at the office of the Company in Des Moines, Iowa, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the 4th day of January 1906, for the purpose of holding the Annual Meeting and any adjournment thereof and for the transaction of any other business coming before such meeting, or at any adjournment thereof, and then, and there for me, and in my name, to cast the vote to which I am entitled as a Stockholder and which I might cast if present.

Witness my hand this 4th day of January, 1906.

CHICAGO, MILWAUKEE & ST. PAUL RY. CO.
By E. W. McKenna, Second Vice Pres.

1399 **Defendants' Exhibit 636.**

Know All Men By These Presents, That The New York Trust Company, successor, to the Continental Trust Company of the City of New York, as Trustee under the Wabash Railroad Company, Des Moines Division, First Mortgage, dated January 1st, 1899, does hereby constitute and appoint E. R. Pryor Attorney and Agent for it and in its name, place and stead, to vote as its proxy at the regular annual meeting of the stockholders of the Des Moines Union Railway Company, to be held in Des Moines, Iowa, on January 4th, 1906 or any adjournment thereof, according to the number of votes that it should be entitled to vote if personally present; but this proxy shall not authorize the holder hereof to, and he shall not vote for, any increase of the stock of said Des Moines Union Railway Company, nor for the creation or imposition of any lien, security or charge on the property or franchise of said Des Moines Union Railway Company, except for the acquisition of additional terminals in the City of Des Moines by the Des Moines Union Railway Company.

In Witness Whereof, said the New York Trust Company has caused its seal to be affixed hereto, and this instrument to be signed by its President and Attested by its Sec-

retary this 8th day of Jany. one thousand nine hundred and six.

(Seal)

NEW YORK TRUST COMPANY,
Successor to Continental Trust Company of the City of New York, as Trustee under the Wabash R. R. Company, Des Moines Division, First Mortgage, dated January 1st, 1899,
By Otto T. Bannard, President.

Attest:
Henry E. Ahern,
Secretary.

1400 **Defendants' Exhibit 637.**

Des Moines, Ia. August 11th, 1899.

Mr. G. P. Ashley, Secretary,
195 Broadway, New York.

Dear Sir:

I enclose Stock Certificate No. 9 of the Des Moines Union Railway Company, for 998 shares of stock.

Will you please have the Purchasing Committee assign to me 498 shares of this stock and send the certificate back to me for re-issue? I will issue one half, being 498 shares, to the Purchasing Committee and send it to you together with stock certificate No. 6 for one share issued to James F. How, and certificate No. 7 issued to C. M. Hayes for one share. This will give to the Purchasing Committee 500 shares of stock.

The two shares which are necessary to complete the 500 due me, are certificates No. one to G. M. Dodge for one share; No. two to F. M. Hubbell for one share, both of which were issued to these parties by mistake, and have been assigned to me as a part of the 500 shares which I bought from you.

Hoping this will be satisfactory, I am,

Yours truly,

F. M. HUBBELL.

1401 **Defendants' Exhibit 638.**

Office of
The Wabash Railroad Company,
195 Broadway.

New York, Aug. 15, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I have yours of Aug. 11th, enclosing certificate for 998 shares of the Capital Stock of the Des Moines Union Ry Co., of

which stock you asked to assign 498 shares to you. This is all right if in the sale of the $135,000 of bonds which were divided into two lots of 67 and 68, the obligations for 1/8 of the stock to each were made to you. The transfer, which you now request, covers the two lots, and my impression is that one of the lots was to go to Gen'l Dodge. I have no doubt this is all right, but, of course, I shall want the two obligations for 1/8 each of the stock to be returned to me, understanding that I am now to make the transfer which fulfills those obligations. If this is all right, please let me know, and I will return the certificate properly assigned. I suppose my signature as Secretary will be all you want. If not, it will take some time to get the individual signatures of the Committee.

I note that the authorized Capital Stock is $2,000,000. Am I to understand that $200,000 is the whole amount of stock issued?

Yours respectfully,

O. D. ASHLEY,
President.

1402 **Defendants' Exhibit 639.**

Des Moines, August 19, 1890.

O. D. Ashley, Prest.
195 Broadway, New York.
Dear Sir:

I have yours of August 15th, and in reply have to say that the one quarter interest in the stock of the Des Moines Union, which was sold by the Purchasing Committee to F. M. Hubbell together with the 135,000 of terminal bonds, was settled and disposed of some time ago. That you may understand this matter fully I will give you a list of the stock which has been issued and to whom.

The authorized capital is $2,000,000 but the amount issued is $400,000 and a one eighth interest represents 500 shares.

Originally your Committee was entitled to one half of the stock, and when it came to be issued, the one quarter which was first sold to me was issued in two certificates; and deducted from your half of the stock, namely,

No. 12 to F. M. Hubbell, ... 500 shares
No. 14 to G. M. Dodge, ... 500 shares

The 400,000 of stock was issued on the 8th day of April 1890, as follows:

No. 1 to Dodge, ... 1 share
No. 2 to Hubbell, ... 1 share
No. 6 to James F. How, ... 1 share
No. 7 to C. M. Hayes, ... 1 share
No. 9 to Purchasing Committ e, ... 996 shares

Total, ...1000 shares.

This being one fourth of the entire stock and belongs to the Purchasing Committee, Certificates No. 1 and 2 have been issued erroneously, No. 1 having been assigned in blank by Dodge, No. 2 is assigned in blank by me.

No. 3 to F. C. Hubbell for ..... 1 share
No. 4 to H. D. Thompson for .... 1 share
No. 11 to D. M. & N. Railway Co... 998 shares

Total, ...1000 shares.

which is the one fourth interest belonging to the D. M. & N. W. Ry. Co.

No. 5 to L. M. Martin, ... 1 share
No. 8 to A. B. Cummins, ... 1 share
No. 10 to D. M. & Northern Ry. Co.. 998 shares

Total, ...1000 shares.

being the one fourth which is owned by the Des Moines & Northern Railway.

No. 12 to F. M. Hubbell, ... 500 shares
No. 14 to G. M. Dodge, ... 500 shares

1000 Shares,

This is the 1000 shares of stock sold by your Committee to F. M. Hubbell, with the 135000 of bonds.

Certificate No. 13 has never been issued, and is cancelled in the stock book, for the reason that a mistake was made in it and it was thought better to cancel it than to change the face of the Certificate. This makes 4,000 shares which is all of the capital stock of the company.

1403

I prefer to have all the members of the Purchasing Committee affix their signatures to the assignment of the 498 shares to me, being a part of Certificate No. 9.

Please let me hear from you now whether this is perfectly plain and satisfactory.

Yours truly,

F. M. HUBBELL.

1404 **Defendants' Exhibit 640.**

Office of
The Wabash Railroad Company,
195 Broadway.

New York August 22, 1890.
" 25, "

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir,

Your letter of the 19th received, and explanation is satisfactory,—I will forward the certificate to Mr. Joy for his signature, and request him to send it to you, and then the transfer will be complete. You will then as I understand it forward to me a certificate, in the name of the Purchasing Committee, for 498 shares, which, with the two shares issued to Messrs. How and Hays, will make up the 500 shares belonging to that committee.

What becomes of the obligations I gave to you for this stock? If they have been surrendered to the Depot Co., I wish you would send me a receipt for the certificates to show that the obligations have been fulfilled.

General Hubbard is absent in Europe and will not return before October, but he left a power of attorney with me and I have, accordingly, signed for him.

Yours truly,

O. D. ASHLEY,
President.

1405 **Defendants' Exhibit 641.**

Des Moines, August 28, 1890.

O. D. Ashley, Esq.,
195 Broadway, New York.

Dear Sir:

I now enclose Des Moines Union Railway Company Stock Certificate No. 15 for 498 shares issued to James F. Joy, T. H. Hubbard, Edgar T. Welles and O. D. Ashley, Purchasing Committee Trustees, being amount reserved by the Purchasing Committee out of Certificate No. 9 for 996 shares.

I will bring the contracts when I come to New York within 10 days.

Yours truly,
F. M. HUBBELL.

1406 **Defendants' Exhibit 642.**

Office of
The Wabash Railroad Company,
195 Broadway.

New York, Sept. 2, 1890.

F. M. Hubbell, Esq., Pres't.
Des Moines & Western,
Des Moines, Iowa.

Dear Sir:—
Yours enclosing certificate for 498 shares of Des Moines Union R'y. Co. Stock in the name of the Purchasing Committee duly received.

Yours truly,

O. D. ASHLEY, President.

1407 **Defendants' Exhibit 643.**

May 17, 1895.

Mr. A. D. Ashley,
195 Broadway, New York City.

Dear Sir:—
I have your dispatch of to-day and have answered it as follows, which I now confirm.

"We have only thirty-four terminal bonds. We will join you in selling these at ninety and accrued interest. I will send you printed copy of the lease, or terminal contract, and a map as soon as I can have it prepared. Have written."

We have made disposition of all of our bonds except 34, and would be glad to put these in with yours to make a large block, and have them sold at 90% and accrued interest.

I do not know how many bonds Genl. Dodge has, or at what price he would be willing to sell them. As he is in New York can't you see him in regard to his bonds.

The lease, or terminal contract, as we call it, was entered into originally between the Des Moines Union R'y. Company, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part. The St. Louis, Des Moines & N. R'y. was foreclosed and the Des Moines Northern R'y. Co. succeeded it in ownership. Then the Des Moines & Northern and the Des Moines & Northwestern Railways were con-

solidated in 1892, under the name of the Des Moines, Northern & Western R'y. Co. This latter Company was foreclosed and re-organized in 1895, under the name of the Des Moines Northern & Western Railroad Company. From this you will
1408 see that the present Company is not a party to the terminal contract only as it is entitled to all the benefits of the lessee, as successor of the other Companies.

If desirable, I have no doubt that a new terminal contract could be made so that the Des Moines Union Company would have the benefit of the written obligation of the Des Moines, Northern & Western Railroad Company.

There is an agreement between the Des Moines Union R'y. Company and the Chicago, St. Paul & Kansas City R'y. Co., dated January 1st, 1890 and afterward assumed by the Chicago Great Western R'y. Co. This contract terminated June 1st 1894 and was renewed by both parties, for 30 days and until canceled by notice from either party, so that the obligation of the Chicago Great Western R'y. Co. is liable to be canceled at its own option, at any time after thirty days' notice. Such a lease as that will be of no assistance in selling bonds so I do not think you need a copy of the C. G. W. R'y. contract with the Des Moines Union R'y.

Yours truly,

F. M. HUBBELL.

1409 **Defendants' Exhibit 644.**

Endorsements on the back of stock certificate number 9, issued by the Des Moines Union Railway Company.

For value received, we hereby sell, transfer and assign to F. M. Hubbell 498 shares and to James F. Joy, T. H. Hubbard, Edgar T. Welles and O. D. Ashley, Purchasing Committee, 498 shares of the stock within mentioned and authorize..... to secure the necessary transfer on the books of the company.

Witness our hands and seal this 22 day of August, 1890.

Witness,
J. C. Otteson,
Henry B. Joy.

O. D. ASHLEY,
THOMAS H. HUBBARD,
By O. D. Ashley, Attorney.

EDGAR T. WELLES,
JAMES F. JOY,

Purchasing Committee of the Wabash, St. Louis & Pacific R. Company.

1410 **Defendants' Exhibit 645.**

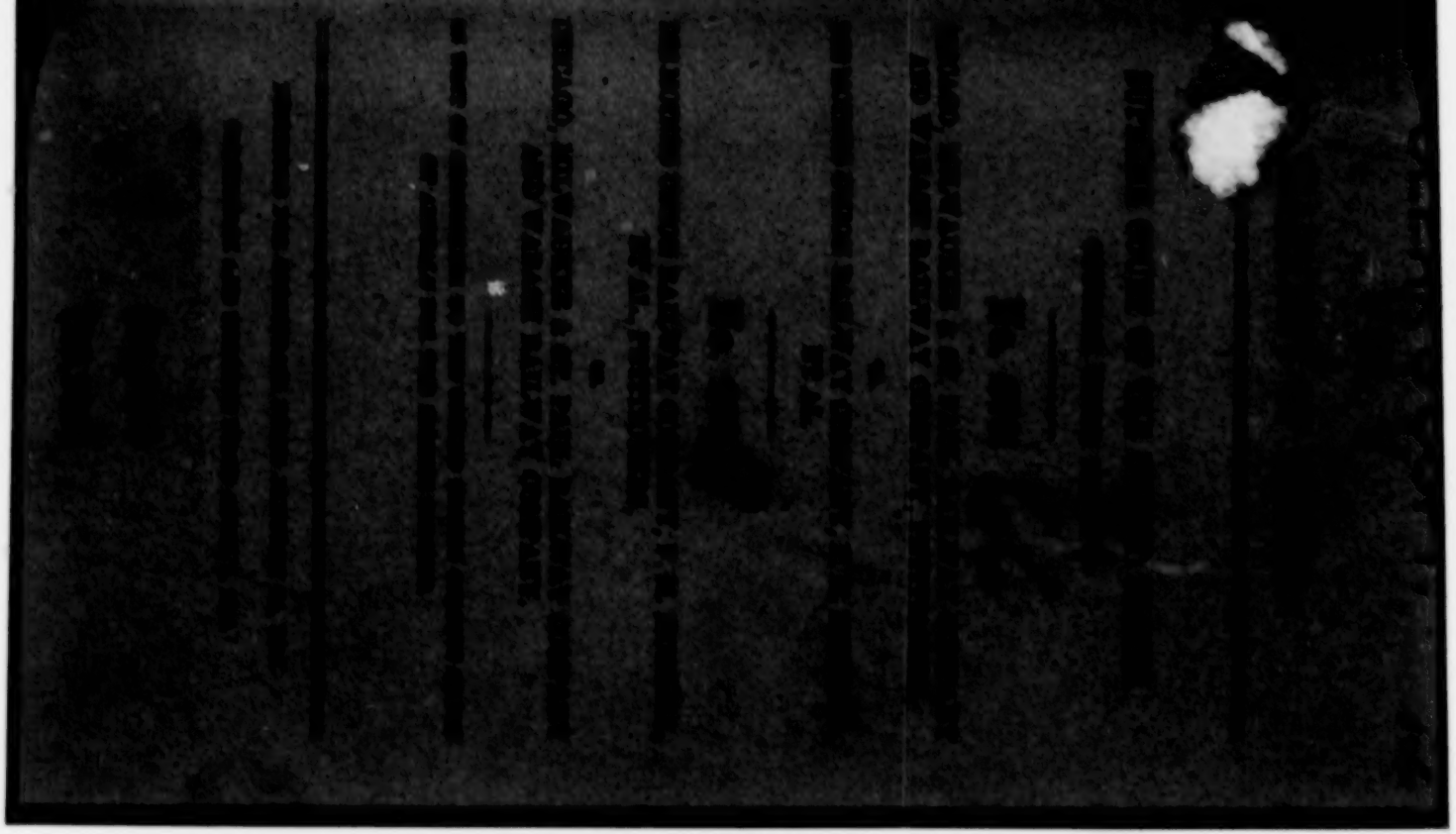
Endorsements appearing on the back of stock certificate number 15, issued by the Des Moines Union Railway Company.

For value received ..... hereby sell transfer and assign to the Continental Trust Company of the City of New York, as trustee, the shares of stock within mentioned and authorize ..... to secure the necessary transfer on the books of the company.

Witness our hands and seals this 21 day of March, 1899.

Witness,
J. C. Otteson.

THOMAS H. HUBBARD,
O. D. ASHLEY,
EDGAR T. WELLES,
Surviving members of Purchasing Committee, Trustee.



(26,905)

(26,906)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 278.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL.

No. 279.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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In the District Court of the United States, Southern District of Iowa, Central Division.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, and THE Wabash Railroad Company and The Wabash Railway Company, Complainants,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL, F. M. HUBBELL & SON, Defendants.

Stipulation.

The parties to this action, by their attorneys, acknowledge lodgement of the evidence in the clerk's office for inspection of the parties as required by law, and notice of time and place when the Court will be asked to approve the same, and, being unable to agree upon the condensation and stating of the evidence in narrative form, respectfully state to the Court that they desire and request that in making up the record of the testimony for the purpose of the appeal herein, it be reproduced in the exact words of the witness as given in the questions and answers upon the trial; and they further state that all the evidence was prepared and printed prior to the time that the present Federal equity rules went into effect, and with a view of using the evidence so printed in the Court of Appeals in the event that an appeal was taken by either party; that the documentary evidence herein constitutes a very large part of the entire testimony, there being more than 750 exhibits introduced and used upon the trial, all of which seem necessary on appeal, and that the oral testimony is practically all in explanation of the negotiations leading up to and culminating in the making of such documents and in the interpretation of the same, and it is necessary, in the opinion of the respective parties, to have such testimony reproduced in the exact language of the witness in order that the said exhibits may be fully understood; and they request that the evidence attached hereto, consisting of one volume designated as Testimony For Complainants, with index, and consisting of 617 pages in addition to the index, one volume designated as Defendants' Testimony, consisting of 360 pages with index, and one volume designated as Exhibits, and Defendants' Testimony consisting of 761 pages of defendants' exhibits and index, all attached hereto, be approved and certified by this Court.

and that the Clerk be directed to file the same in his office as a part of the record for the purposes of the appeal in this cause.

J. L. MINNIS AND
J. C. COOK,
J. N. HUGHES,
Attorneys for Complainants.

PARKER, PARRISH & MILLER,
F. W. LEHMAN,
Attorneys for Defendants.

Endorsed: Filed October 18, 1916. Wm. C. McArthur, Clerk.

In the District Court of the United States, Southern District of Iowa, Central Division.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, and The Wabash Railroad Company and The Wabash Railway Company, Complainants,

VS.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL, F. M. HUBBELL & SON, Defendants.

Certificate.

Now, to-wit, this 18th day of October, 1916, the undersigned Judge of the District Court of the United States for the Southern District of Iowa, having examined the evidence prepared by the parties as the evidence to be included in the record on the appeal of this cause, and the Stipulation of the parties with reference to notice and hearing, and also the request of the parties that certain parts of the testimony be reproduced in the exact words of the witnesses, and, it being the judgment of the Court that the evidence should be reproduced in the exact language of the witnesses, it is hereby ordered that the foregoing and attached evidence, consisting of one volume designated as Testimony for Complainants, with index, consisting of 617 pages, one volume designated as Defendants' Testimony, with index consisting of 366 pages, and one volume of exhibits designated as Defendants' Testimony, consisting of 761 pages, be and the same is hereby approved as the testimony in this cause to become a part of the record for the purposes of the appeal herein; and it is hereby directed and ordered that the same be filed in the clerk's office by the

clerk, and be made of record herein, and is hereby made a part of the record in this cause.

(Sgd.) MARTIN J. WADE,
Judge of the U. S. District Court
for the Southern District of Iowa.

Endorsed: Filed October 18, 1916. Wm. C. McArthur, Clerk.

* * * * * * *

(Here follow the Depositions of certain Witnesses which are omitted at this point to avoid duplication, the same appearing at marginal page 879, et seq.)

(*Record Entry of Hearing February* 11, 1913.)

Judge McPherson.

On this day this cause came on for submission to the Court on the evidence and arguments of counsel, the complainant Chicago, Milwaukee & St. Paul Railway Company, appearing by J. C. Cook, its solicitor, the complainant Wabash Railroad Company appearing by Wells H. Blodgett and J. L. Minnis, its solicitors and the Respondents, The Des Moines Union Railway Company, et al. appearing by N. T. Guernsey and J. L. Parrish their solicitors, and the matter not having been concluded when the hour for adjournment arrived, it is ordered that court do now adjourn until tomorrow morning at nine o'clock.

(*Record Entry of Hearing, February* 12, 1913.)

Before Judge McPherson.

Hon. Smith McPherson, Judge.

On this day this cause came on for further hearing, the parties appearing as heretofore and the matters in controversy not having been concluded when the hour for adjournment arrived, it is ordered that court do now adjourn until tomorrow morning at nine o'clock.

(*Record Entry of Hearing, February* 13, 1913.)

Before Judge McPherson.

On this day this cause came on for further hearing, the parties appearing as heretofore and the matters in controversy not having been concluded when the hour for adjournment arrived, it is ordered that court do now adjourn until tomorrow morning at nine o'clock.

(*Record Entry of Hearing, February* 14, 1913.)

Before Judge McPherson.

On this day this cause came on for further hearing, the parties appearing as heretofore and the matters in controversy not having been concluded when the hour for adjournment arrived it is ordered that court do now adjourn until tomorrow morning at nine o'clock.

(*Record Entry of Hearing and Order of Submission, February* 15, 1913.)

Before Judge McPherson.

This case has been duly and fully argued by counsel on the record, evidence, oral testimony and exhibits, having been argued on February 11, 12, 13, 14 and on this day the arguments were concluded. The case is now fully submitted and by the court taken under advisement.

Heretofore there was a case tried in the District Court of the State of Iowa in and for Polk County in which the Chicago, Milwaukee & St. Paul Railway Company was the plaintiff and the Des Moines Union Railway Company was the defendant, resulting in a decree for the defendant, dated March 29, 1910, in which the said plaintiff therein took an appeal to the Supreme Court of Iowa, and to which said Supreme Court of Iowa the case has been heretofore fully submitted, but not yet decided by said Supreme Court. After the said Supreme Court fully determines said case, the issues in this case are to then be completed, and the parties reserv*ing* the right to introduce testimony with reference to that issue of estoppel by judgment. Thereupon the case is to be regarded as finally submitted.

(*Memorandum Opinion of the District Court. Filed February* 24, 1916.)

By Judge Wade.

Any attempt to review the thousands of pages of evidence, briefs and arguments in this case, would be impossible. I can only say that I have not only read the evidence, briefs and arguments, but I have studied them with care and deliberation. I have given effect to every consideration which aids the human mind in searching for the truth. I have, in an effort to determine the intention of the parties in their words and acts, throughout more than thirty years of transactions before the court, considered the motives which ordinarily actuate men in dealing with property rights. Throughout this tangled web of inconsistent, and often incomprehensible conduct, relating to the

property and rights in issue, I have tried to trac*t* the purpose and the intent which men would naturally have in dealing with their fellows under such circumstances.

I have considered the relation of these men, one to another, I have asked myself, what were the probabilities as to *c*ntent and purpose, I have tried through the fog, to discern here and there a meaning of the minds of the men dealing with these important property rights. I have borne in mind, that agreements may be discovered, not alon*g* in words used, but in acts and *dundu* conduct. I have tried to apply the well recognized principle, that contracts may often be best construed, by considering the construction which has been placed upon them by the parties themselves, as manifest in their acts and conduct.

I have given recognition to the force of acquiescence in conduct, to delay in assertion of rights—to failure to protect—to apparently silent recognition of asserted privileges. Of course it is impossible to reconcile all that has been done, it would be utterly impossible to understand why many things were done, except that i*s* is manifest, (1), that during a large period of time involved, men representing conflicting interests, were personal friends, exhibiting great confidence in those with whom they were dealing; (2), The men whose acts are under consideration, were men of great responsibility to other varied interest, and (3) *muh* Much of what appears now to be valuable interest, during a large portion of the time involved, were considered of slight pecuniary value, and treated accordingly.

It is apparent, of course, that if at the time of the transactions during the first ten years, all the parties realized that the Terminal Company would eventually attain a value which it now possesses, the transactions between the parties would have been more definite and certain.

Things were permitted to "Drift" largely because it was not felt that beyond immediate benefits which the different parties were receiving, there appeared to be anything of sufficient value to justify positive assertion of rights between the parties.

But in considering all of the foregoing, I have recognized the well settle- principles that,

(*a*) Men must be bound by their contracts even though subsequent events proved that they were inadvisable, or absurd;

(*b*) That rights and titles evidenced by written contracts, records, or deeds, cannot be set aside or affected by parole evidence tending to change the terms and effect of such contracts, records or deeds.

(*c*) That men are presumed to intend the natural consequence of their acts.

From the record in this case, in view of the foregoing considerations, certain conclusions have been forced upon me, I will not undertake to recit- in detail, the evidence forming the basis or these conclusions; I will only indicate something of the processes leading to these conclusions.

In what follows, I will refer to the defendants as "The Terminal Company", and to the plaintiffs and their predecessors as "The Railway Companies".

The facts seem to group themselves, at least for convenient purpose, with reference to periods of time, 1880 to 1885 inclusive. During this period we find the relations of the parties established by the contract of December 8, 1880, by which Polk, Clarkson, Hubbell and Rummells, and the Wabash Railway became associated in a plan to construct certain railways from Des Moines to Albia, and Des Moines to the Northwest in connection with other already constructed lines.

Pursuant to this contract we find the organization of the necessary companies to carry out the plans of the original contract. These lines converging in Des Moines, and Des Moines being a center of population and business, the parties naturally proceeded to acquire terminal facilities in that city, purchasing property—much of it in the names of James F. Howe and G. M. Dodge, who held it as trustees; the money paid therefor, being expended by the Wabash.

On January 2nd, 1882, was executed the contract which is and has been, the bone of contention" in this whole matter; at least all inquiries in regard to rights and titles, logically go back to this contract. While uncertain and indefinite in some degree, and tentative only in many respects, did have the effect of determining as between the parties, definitely and conclusively certain rights. All of the property purchased up to that time by this contract, became by reason of the terms thereof, dedicated to the future use and enjoyment of the three companies named therein. It was as comprehensive as the con-

ditions would at that time warrant. It clearly indicates the relative interests of the different parties—not any definite interests in any particular piece of property but an apparent definite purpose that each company should have such interest in the total property, as would serve its uses for terminal purposes, and this was the only interest any of said companies naturally desired in the properties.

For such purposes, each company was the owner of the entire property, subject only to the rights of the other companies for similar purposes. It apparently was not intended to reserve to any of the companies, a specific interest in the entire property, but considered more the rights of use which the respective parties would have in the property; but there can be no question but that the entire property was dedicated to the joint use of all. The conditions of such joint use also were specified in fixing the proportion of expenses to be borne by each of the companies. The contract specifically provided that the title to the property "should be and remain in a Trustee". It also provided "That a Depot Company may be organized, and may take permanent charge of the property upon the terms herein set forth" and it provided that bonds might be issued covering the "respective portions of the costs of said properties and improvements."

The provision that the property "shall be and remain in a Trustee", was apparently intended to be read with the provision "that a Depot Company may be organized, and may take permanent charge of the property upon the terms herein set forth, and "that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the costs". It was hardly intended that in case a depot company should be organized, that the title was to remain in a separate trustee and the management in the depot company, because it expressly provides, that the depot company should issue "its mortgage bonds", which could not well be done without holding the title; so that it may be fairly inferred that it was intended that in case a depot company would be organized, that it would take the title. In any event, the subsequent conduct of the parties construing this provision, conclusively established that the depot company was to be to all intents and purposes the "Trustee" referred to in the contract. No one can successfully contend, that when this contract was made, the details had been worked out, or that there was a meeting of the minds of the parties upon such details. Much was left to mutual cooperation in the accomplishment of the general purpose, and recognizing that

there might be disagreement, provision was made in the contract for arbitration.

If the transactions stopped with the execution of this contract, there could be no question between the parties to the contract as to their rights in the property. It was property held for their joint use for terminal purposes. It is idle to talk of consideration, or lack of consideration, in this transaction. The consideration was satisfactory to the parties at that time. The mutual obligations which then existed, and the mutual advantages in anticipation, cannot of course now be fully disclosed; but a consideration which is valuable and satisfactory to the parties, cannot, as between the parties, be inquired into by the Court.

From the execution of this contract until December 9, 1884, nothing of interest in this case occurred—the parties apparently dealing in harmony under the provisions of their contract. On this date, however, it was decided to form a corporation—the purpose being expressed in the language, "Whereas it is desirable that a corporation be organized *by* the purpose *of* taking and holding such property" The words "such property" referring specifically to the property covered by the contract in 1882.

On December 10, 1884, the corporation was organized. Articles of Incorporation were adopted, which went far beyond the usual forms, in an effort to specifically describe the purpose of the corporation as being "for carrying out the objects and purposes of the agreement heretofore, to-wit, on the second day of January, 1882, made and entered into." The contract is set out in full in the Articles of Incorporation, and a construction is placed upon the contract in the following language:

"Whereas, it was provided in the contract aforesaid, that a Depot Company might be organized to take permanent charge of the property, and it was the understanding of the parties that such company might acquire, operate, and maintain said property in such manner as best to serve the interests of the parties hereto."

The nature of the business was described as "the construction, ownership, and operation of a railway in, around and about the city of Des Moines, Iowa," including the construction ownership and use of depots, freight-houses, railway shops, repair shops, stock yards, and whatever else may be useful and convenient for the operation of railways at the terminal points of Des Moines, Iowa, etc."

It will be observed that the company was not organized merely to hold the property then owned jointly by the parties under the contract in 1882, but it contemplated the purchase of new property, the construction of improvements thereon, the extension of facilities for terminal uses. In other words, it is apparent that in the organization of this corporation, the parties had a vision of a large, comprehensive Terminal Station, equipped with the necessary tracks, not only to accommodate the business of the three Companies, but looking forward to the extension of privileges to other Companies, it was to be a close corporation which carefully guarded the rights of the three Railway Companies, and gave them absolute control.

The capital stock was designated as One Million Dollars, and authority was given for the issue of such capital stock for the "property and franchises in the city of Des Moines" held by the Railway Companies.

The formation of this corporation and its plan of ownership and operation, was satisfied by Resolutions adopted January 1, 1885 by the different railway companies interested, which expressed the purpose of conveying to the corporation, the property held in behalf of the three companies under the contract of 1882, whether held by the railway, of the Trustees, Howe and Dodge. Much consideration has been given to the wording of these Resolutions, but two purposes are clearly expressed, (1) a recognition of the organization of the corporation as being the "Depot Company" which the contract of 1882 provided might be organized, and (2), that all property in which the Companies had a joint interest under the contract of 1882, whether held by the Companies or others, should be transferred to the corporation.

On January 1st, 1885, the Terminal Company also by resolution, "accepted the transfer and management and operation of said property", and expressed a purpose to assume control thereof from that date "so far as practical". The Resolution of the Terminal Company specifically refers to the contract of 1882, and gives recognition to the fact that the corporation was organized in pursuance of said contract, and specifically recognizes the desire of the Companies, "to transfer said property to this Company in accordance with the terms of said contract."

It was further provided for a committee to confer with the parties "upon the terms and prices at which they will respectively assign, transfer and convey said railroad property and franchises to this

Company, and procure from them and each of them such conveyance and transfer as may be necessary To Fully Invest This Company with the Title, Control and Management of said Properties Provided for in said Contract of January 2nd, 1882."

Up to this time, the management of the property under the contract of 1882, had been in the Des Moines & St. St. Louis Railroad Company, that this management in fact continued until 1888, notwithstanding the organization of the corporation and resolutions aforesaid. In fact everything seemed to remain in statu quo from January, 1885 until 1887.

In November, 1887, appropriate resolutions were adopted by the Railway Companies, directing Howe and Dodge to transfer the property held by them as Trustee-, to the Terminal Company. These resolutions clearly gave recognition to the contract of 1882, and to the conveyance directed as being pursuant to said contract. The Resolutions provided for certain issues of stock, which were not made in accordance therewith; the issuance of stock having been deferred apparently by mutual acquiescence until 1890.

In 1887, appropriate conveyance- were made by Howe and Dodge; the deeds from Howe reciting that the title was held under the contract of 1882, and the deed from Dodge being a simple quit claim.

November 7, 1887, the St. Louis, Des Moines & Northern, executed a quit claim deed to the Terminal Company. November 8, 1887, the Des Moines & St. Louis Company adopted a Resolution directing its proper officers to convey to the Terminal Company "for the purpose of carrying out the contract of date January 2nd 1882" and on February 21, 1888, said Company complied with said Resolution by the execution of a warranty deed.

Thus by February 21, 1888, the Terminal Company had become invested with the title to all the property covered by the contract of 1882, whether held by Howe, Dodge, or the Railway Companies. Much significence is attached to the expressions in these deeds, which conveyed upon their fact, an absolute title. These deeds must be con-trued with the Resolutions, authorizing their execution, even so construed, there is no question in my mind but what the Terminal Company acquired absolute title to these properties.

I have given to the claims of the plaintiff most earnest consideration, but I cannot agree that the Terminal Company acquired any

of this property as "Trustee" in the ordinary sense of that term. The title of the Terminal Company was, and is, an absolute title. the rights, if any, of the plaintiffs, must be looked for, not in a reservation of any title in the property, but whatever they are, they consist of rights or equities in the corporation itself. I cannot believe that it was contemplated by any one, that the title to be acquired by the Terminal Company, was less than an absolute title.

But we must not overlook the purpose for which the corporation was created, and the use to which its property was to be put. There is nothing to indicate that this corporation was intended in any sense as a temporary agency; it has all the marks of permanency. It was not contemplated that any of the parties should ever against acquire right of title in the properties conveyed, nor was there any reservation in the conveyance. They were absolute, and their effect cannot be varied by parole evidence of a reserved intent or purpose.

So that the rights of the plaintiff must be looked for, not in a reservation of title to the property conveyed, but in they right which these parties would have in the use of the franchises of the corporation itself.

Looking at the transactions to this date, I cannot believe that it was the purpose of these railway- to grant unto the Terminal Company, the absolute interest which they had in these franchises which were necessary to the business of the Companies without reserving any right whatsoever (except at the will of the Terminal Company) to the use of its facilities. I do not believe that it was in contemplation of the parties, that the Terminal Company might, the day after these conveyances were completed, by Resolution, terminate the use of the Terminal Railways by these companies.

Much has been said about the plan for the issuance of stock as being payment in full consideration for all interest. It is apparent that at this time, and for several years afterward, the matter of the issuance of stock was regarded as of small import. No stock was issued until April 28, 1890—more than two years after the completed conveyances to the Terminal Company. During these two years, what were the rights of the Railway Companies? They continued to use the Terminals. No contract was made, were they trespassers, technically speaking. The rights of the parties during this period, as subsequently, must be ascertained in part by the test of reason and probabilities, and we must in this connection, also bear in mind the rule contended for by the plaintiffs, they except under rare con-

ditions, can a Railway Company divest itself absolutely of a portion of its railway necessary to its successful operation.

What were the rights of these railway companies reserved out of these transactions? March 31, 1888, we find a Resolution by the Terminal Company fixing the manner in which the expenses should be paid, which was substantially the same as the plan followed when the Des Moines & St. Louis Company was handling the Terminals. Interest on bonds was provided for substantially in the same ratio as other expenses, and it was expressly resolved "that a supplemental agreement be made."

fixing the terms and conditions on which the several lines Now Interested, or which may hereafter become interested, shall enjoy the use of these terminals. "Supplemental" to what? The only thing that such an agreement could be supplemental to, would be the contract of 1882, as incorporated in the Articles of Incorporation.

In construing the effect of the contract executed under this Resolution, which defendants contend is a lease, it is important to bear in mind that transaction between the parties in this case, have now reached a point where they not only were dealing between themselves in a friendly way, but *were* they had to deal with the public in reference to the bonds which were issued to pay for investment. The time has come when, mutual confidence, which perhaps accounts for the uncertainty of much that was done before, will no longer serve. Forms must now be observed. Now and hereafter, proceedings must be expressed in such a way as to show that things are upon a "business basis." These consideration- may account for terms of "grant" in the contract finally executed May 10, 1889. This contract, regardless of specific terms employed, was clearly intended to merely fix the relations of the parties with reference to the enjoyment of the property during the period of the contract, and the period of the contract was clearly fixed with reference to the maturity of the bonds.

I find nothing in the acts or conduct of the parties at this time or prior thereto, which indicates upon the one hand, an intention to waive any right to the use of the property conveyed to the Terminal Company; or upon the other, an assertion by the Terminal Company, of any right to a denial of such use. Being satisfied that it was not intended to be a "grant" for the periode of thirty years, it cannot be construed as a perpetual grant. I can only construe it as a defi-

nite determination of the obligations of the Terminal Company and the Railway Companies for a fixed period of time.

This contract of 1889 being the last important fact in the transactions preceding the amendment to the Articles of Incorporation in 1890, it is well to determine the relative rights of the parties at any — prior to the date when said Articles were amended.

When I go back to the beginning of the relations of the parties originally interested in the property, I find that the dominant a*le*ment manifest is the joint use of the property. Profits were no considered, except as they might be incidental. The contract of 1882 was really a contract of joint use of certain properties. We must always bear in mind the situation of the three companies, each of which absolutely required the use of the properties for the proper performance of their corporate duties. This right to use, not only valuable, but essential, must have been in the mind of all parties at the time of organization of the Terminal Company, and after its organization, I cannot believe that these Companies had deprived themselves of the right to this use. This right is in no manner a limitation upon the ownership of the property it is merely an equity which the Companies reserved in the corporation itself—an obligation which the corporation assumed by virtue of its positive recognition of the contract of 1882, and by virtue of the numerous expressions in Resolutions and conveyances by which it acquired title to the property.

This right—this equity, was of cour*t* subject to terms and conditions which might change with the years.

Under the contract of 1882, it was contemplated that each Company should bear a fair share of the expenses, but what would be a fair share, might change with changing conditions. The right or equity which was reserved to these Companies upon the formation of the Terminal Company, was subject to the same conditions and obligations, and the contract of 1889, recognizing these mutual obligations, was merely a determination for the period there expressed (the limit being fixed by the maturing bonds), of the amounts which the Companies should pay for enjoying the equity, which I hold they had in the use of Terminal properties. I do not believe, that if a disagreement had arisen at the time of the execution of the contract of 1889, and if the Terminal Company had denied the Companies the use of the property, that any court would have sustained the right asserted by the Terminal Company. I do not believe that any court

would have given recognition to a condition where three lines of railway, exercising franchises granted by the State, would terminate at the entrance to the city of Des Moines. I believe that an assertion of this kind by the Terminal Company, would have been held not only contrary to equity and good conscience, under all the circumstances, but that it would have been held contrary to public policy to permit the Terminal Company to thus "chop off" three important lines of railway so as to render them practically useless.

This conclusion has support in the reports, 1891, 1892, 1893, made by the Terminal Company to the Executive Counsel of the State, in which under oath, it was represented, that "the Des Moines Union Railway Company is simply a representative Company, acting as an agent at Des Moines for the Wabash Railway Company and the Des Moines & Northwestern Railway Company and the Des Moines and Northern Railway Company, performing all necessary work for them, and charging each at actual cost its due proportion for the expense thereby incurred."

Thus for four years after the contract of 1889, it appears that the general view of the Terminal Company, was at least consistent with the continuing rights of the Railway Companies.

Counsel for plaintiffs give too much significance to the term "agency" used in these reports, as indicating a mere agent or employe. I do not so construe the term. I think the word is used as meaning the "medium" through which these Companies exercised the right of use, which always up to this time was their dominant interest in the property.

Counsel for defendants have laid great stress upon the use of the term "tenants" in contracts and resolutions, and correspondence, descriptive of the Railway Companies. Equity does not consider forms or terms; it tries to look behind the words used, and to shape decrees based upon truth and justice, as the same may be manifest, not in single terms but in all the words used, and all the acts done expressive of purpose and intent; And I might as well say at this point, that the right or equity of the Railway Companies to the use of the Terminal porperties, in my judgment, is perpetual during the existence of the corporation. I find nothing in the proceedings subsequent to the contract of 1889, to signify a purpose or intent to release such equity or right, and find nothing which justifies the Terminal Company in assuming that such equity or right was forfeited or waived.

But What Of The Amendment To The Article Of Incorporation in 1890? Technically, the amendment was not valid, because at that time no stock of the corporation had been issued, and of course a valid amendment could only be adopted by the stockholders. Counsel for plaintiff insist that unless actually valid at the time the amendment was voted upon, that the amendment never could become affective by any process of ratification, estoppel, waiver, or acquiescence. I can agree with this proposition in so far as the rights of the public might be affected by such amendment, but in so far as property rights and relations are concerned as between individuals, I cannot agree that by subsequent conduct, the things attempted to be done could not become binding upon them. In so far as the right or equity of the Companies which I have found existed at that time, is concerned, I do not believe that it was in any manner affected by the amendment. It does not appear that it was intended to affect any right then existing, and even if such intention existed on the part of any one, it was not manifest, and I find nothing which would give it effect.

But this amendment to the Articles did fix the capital stock, and did provide for the issuance of "four thousand sharez" "as part of the purchase price of the terminal property" and these shares were actually issued, and are still outstanding. A large number of these shares have been sold—not to innocent purchasers without knowledge of the proceedings, but sold for a consideration. Some are still held by the Companies receiving the original issue, or their successors. For more than twenty-five years now all parties have treated with each other with full recognition of the issuance of this stock authorized by the amendment to the Articles of Incorporation, and certainly it is too late now to question the proceedings under which said stock was issued.

The only other contract between the parties is what is termed the Ratification Contract of 1897 which was adopted after a fruitless effort to agree upon terms which would modify the conditions of the contract of 1889 as to the amount which the Companies should pay.

Here again we find that the necessity for a new contract was based upon the claim that "without it we could not well dispose of our bonds," and the correspondence relating to this attempt to procure a new contract with new terms, and the final adoption of the ratification contract, must all be construed with this point in view; so construed, many of the expression there, which counsel would argue for or against, right or title, become ineffectual for such purpose.

"The Surplus Earnings."

And this brings us to the question of "surplus earnings" which consisted of charges for switching and handling cars and traffic for other Companies than the Railway Companies, and building rentals and privileges.

To whom does this accumulated "surplus" belong? Here again we are required to view things from the beginning, and to deal with conditions which at the beginning, no one anticipated. It is often true, in dealing with human affairs, that courts are compelled, so to speak, to make contracts between parties in reference, to certain property rights which would accrue to them out of conditions not contemplated by either party at the time of original transactions.

In the original transactions between all these parties, there were two things in which the Companies could possibly be interested; (a) the use of the Terminal properties, and (b), the profits which might be produced by the use of the Terminal properties by other persons. It is apparent that no one anticipated profits as a matter of any great consequence at that time. It is evident that the contract of 1882, contemplated the application of any possible profits to the reduction of the expense account, to the advantage of the Companies. When it came to executing the contract of 1889, in fixing the amounts to be paid by the Railway Companies, specific language was used which required only a deduction from the total expenses "the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month."

At that time the depot facilities did not exist. It is not apparent that switching charges were by virtue of contracts for the use of said property. In other words, technically speaking, the contract limits the application of receipts to the amounts received from other Companies using the terminal properties under contracts or leases. For the first year, the Terminal Company seemed to construe the contract as requiring the application of rents collected for the use of real estate and for switching charges, and this was ordered by Resolution of February 11, 1891.

January 7, 1892, a Resolution was adopted, reciting the need of cash capital, and ordering that the rent of real estate and switching charges, "shall not be credited upon the accounts of the tenant companies," "until the further action of the board." This led to an inquiry, and on March 2nd, 1892, the Superintendent of the Term-

inal Company, wrote the Auditor of the Wabash, that the allowance for switching charges, rentals, etc. would not be distributed until the Company could accumulate a small sum for working capital, and while there was correspondence and some controversy, thereafter, this "surplus fund" has never since been credited upon the bills of the Railway Companies.

Did this point rest upon the contract alone [ther] would be force in the claim that it was the intention that all income from every source should be deducted from the expenses to be paid by the Railway Companies. Here we come to deal with conditions that no one anticipated. The business of the Company which at that time made the surplus fund very small, increased under careful management, until it has assumed very large proportions.

And here another factor must be considered. When the Terminal Company was organized, it provided for the issuance of shares of stock. Under the amendment to the Articles, the amount of shares actually issued, was four hundred thousand dollars. These shares nominally, were issued in part payment for the properties. They in fact, represented little, if anything in value, because bonds were issued nominally in an amount sufficient to pay for all money invested; but in [an] much as these bonds, at the time of issuance, probably could not be said to be worth par, the stock may have been considered as making up the difference between actual value and selling value at that time. In any event, the stock was issued. It will not do to say that it meant nothing. It will not do to say that it never was intended that they should have any dividends. Shares of stock are written contracts. They do not express all of the rights and obligations of the parties, but the law attaches to them specific rights, and to the corporation, specific obligations, and the legal effect of these shares of stock, cannot be changed by parole evidence.

A court is not justified in believing—certainly not in the absence of specific record evidence, that it was the intention these shares of stock should be issued and held without hope or expectation of a dividend thereon; but there was no source of dividend for the stock, if, as contended by plaintiffs, all of the rentals and switching charges were to be credited to the Railway Companies.

I feel that the only construction which the court is justified in placing upon the entire transaction is, that it was contemplated that there would be some profits, and that the profits should go to the Railway Companies in the proportion indicated by the division of the stock. In other words, if the Companies receiving the stock, had held the stock until the present time, there need be no dispute over switching charges, or rentals, or other surplus, because it would all go to these Companies as dividends upon their stock. It isn't clear that this was the actual present intent, but it is the only intent which a court can give to the acts and conduct of the parties in view of the issuance and division of the stock.

If it were possible that the Terminal Company would have an income aside from rentals, switching charges, etc., which might form the basis of a fund for paying dividents, there would be more reason for urging that the contract of 1889, should be construed as contemplating the application of this "surplus fund" to their account; but at least from everything in view at the time of these transactions, such a construction of the contract of 1889, would leave the Company without any fund whatsoever, and the stock representing nothing except the power to vote.

There is nothing in the facts which would enable a court of equity to enter a decree providing for an application of a portion of this "surplus fund" to the Railway Companies, and a portion to the stock. Either the stock must fail to receive any dividend, or the Companies must be deprived of the application of any part of the "surplus fund". The court cannot shut its eyes to the fact apparent in the record, that those who purchased the stock, and who have had the management of the Company, are, to a large extent, responsible for its wonderful development, and while it might be possible to pay for the service they have rendered, yet upon the whole record, I do not feel that the court is justified in now entering a decree which proclaims the stock from the beginning, as signifying nothing of value; such a decree would only be justifiable where the evidence was clear, convincing and satisfactory.

I will not review the criticism of the respective parties, nor the charges of bad faith. It is apparent of course, that Hubbell early anticipated the possibilities of the development of this Terminal Company, and that with greater foresight than the other interested persons, he purchased the stock for small consideration; but certainly so far as the present Companies are concerned, the stock was purchased openly—part of it, directly from the Wabash, or the purchasing committee, and part of it from the predecessor of the Milwaukee Road, and the rights of the Milwaukee Road were ac-

quired with full knowledge of the ownership of the stock. These Companies still hold part of the stock, and under my construction, they will receive their proportionate share of the accumulated profits of the Terminal Company. While the amount paid for the stock by the present holders, was small, the railway companies should not be allowed to say that the sale by their predecessors of this stock, was a sale of something which had absolutely no value, and that never could have any value. Somewhere, and somehow, it is my judgment, that all parties believed that this stock should earn some dividend provided the Company succeeded, but there is no such possibility upon the construction now contended for by plaintiffs herein.

The contract of 1889 will terminate in 1918. Under my holding the plaintiffs are entitled to a continued use of the Terminal properties. What shall be the terms or condition of such use, cannot now be determined. There being no contract governing the amount to be paid, if the parties cannot agree, a court of equity will have to determine the matter for the parties. The contract of 1889 may be a guide, or it may not be a guide; it will depend altogether upon what the court may feel, in view of all the facts, is equitable and just.

In the foregoing I have not quoted authorities. The principles applied are fundamental and well recognized. It has been merely a process of interpretation, not alone of one contract, but different contracts and numerous acts and transactions.

In the recent case of Rushing vs. Manhattan Life Insurance Co. — Fed. Rep. — Sanborn, Judge, well says,—

"The sole purpose of the interpretation of a contract is to ascertain the intention of the parties when they made it. If possible every part of a contract must be so construed as to be consistent with every other part and to have effect. It is only when the parts of a contract are so radically repugnant that there is no rational construction that will render them effective and accordant that any part must perish. And the intention of the parties must be deducted, not from specific provisions or fragmentary parts of the agreement, but from the entire contract, because the intent is not evidenced by any part or stipulation of it, nor by the contract without any part or provision, but by every part and term so construed, if possible, as to be consistent with every other party and with the entire agreement. American Bonding

Co. vs. Pueblo Inv. Co., 150 Fed. 17, 27, 80 C. C. A. 97, 107; Jacobs vs. Spalding, 71 Wis. 177. 188, 36 N. W. 608; Boardman vs. Reed, 6 Pet. 328 Canal Co. vs. Hill, 15 Wall, 94; O'Brien vs. Miller, 168 U. S. 287; Pressed Steel Car Co. vs. Eastern Ry. Co. 57 C. C. A. 635, 637, 121 Fed. 609, 611; Uinta Tunnel, etc. Co. vs. Ajax Gold Min. Co. 141 Fed. 563, 73 C. C. A. 35; U. S. Fidelity & G. Co. vs. Board of Com'rs, 145 Fed. 144, 148, 76 C. C. A. 114, 118."

Not only is the foregoing true as to the interpretation of a contract, but it is true as to the interpretation of a series of acts and contracts.

I cannot forbear expressing my appreciation to counsel for their earnest and laborious efforts in presenting this case. In the application of the legal principles involved, I have been greatly aided by the numerous authorities cited and discussed, and by the able and eloquent arguments presented in open court.

Counsel for plaintiffs will prepare a decree consistent with this Opinion reserving proper exceptions and submit the same to counsel for defendants, who will have twenty days in which to file objections to the form thereof, and it can then be submitted for determination.

(Sgd.) MARTIN J. WADE,
Judge.

Endorsed: Filed February 24, 1916. Wm. C. McArthur, Clerk.

Petition of Wabash Railway Company for Leave to File Original Bill of Complaint in the Nature of a Supplemental Bill.

Comes now the Wabash Railway Company, a railroad corporation created by and under the laws of the State of Indiana, and a citizen of said State, having its principal offices in the City of St. Louis, State of Missouri, and respectfully shows unto the Court that since the filing of the Amended Bill of Complaint in this cause, the complainant Wabash Railroad Company has transferred and conveyed to your petitioner, all of its railroads and properties, including all of the right, title and interest held and owned by said Railroad Company in and to the terminal properties, contracts, leases, easements, actions and causes of action described in the said Amended Bill of Complaint, by reason whereof the petitioner now owns and holds in its own right, all of the right, title, and interest formerly held

and owned by said Railroad Company in and to said terminal properties, contracts, leases, easements, actions and causes of action.

Wherefore your petitioner is advised that it is necessary for it to file in this cause its original Bill of Complaint in the nature of a Supplemental Bill, and your petitioner prays that leave be granted to file herein an original Bill of Complaint in the nature of a Supplemental Bill.

JAMES L. MINNIS,
H. S. BROWN,
Solicitors for Petitioner.

Endorsed: Filed May 31, 1916. Wm. C. McArthur, Clerk.

Order Granting Leave to Wabash Railway Company to File its Original Bill of Complaint in the Nature of a Supplemental Bill.

This cause coming on to be heard on the petition of the Wabash Railway Company for leave to file herein its original Bill of Complaint in the nature of a Supplemental Bill, and the Court having considered the said petition, and in view of the consent of all of the parties entered herein, and being fully advised in the premises, doth Order and Decree:

That leave be granted to petitioner Wabash Railway Company to file in this cause its original Bill of Complaint in the nature of a Supplemental Bill.

MARTIN J. WADE,
Judge.

Endorsed: Filed July 1st, 1916. Wm. C. McArthur, Clerk.

(Order Substituting Wabash Railway Co. for Wabash Railroad Co. as Party Complainant, etc.)

This cause coming on to be heard on this first day of July, 1916, on the bill of complaint in the nature of a supplemental bill filed herein by Wabash Railway Company, and the answers of the Chicago, Milwaukee and St. Paul Railway Company, The Wabash Railroad Company, and the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell and Son, and each of the parties to this cause being represented by their respective Solicitors; and the Court being fully advised in the premises, doth Order, Adjudge and Decree:

(1) That the bill of complaint filed herein by the Wabash Railway Company be in all things taken and considered as supplemental to the amended bill of complaint heretofore filed in this cause.

(2) That said Wabash Railway Company be substituted for and stand in the place of The Wabash Railroad Company as a party complainant in the said amended bill of complaint.

(3) That said Wabash Railway Company be, and is hereby granted the benefit of all the proceedings had in this cause in all respects as though the said amended bill of complaint had been filed by said Wabash Railway Company.

MARTIN J. WADE,
Judge.

Endorsed: Filed July 1st, 1916. Wm. C. McArthur, Clerk.

Bill of Complaint in the Nature of a Supplemental Bill of Wabash Railway Company.

The Wabash Railway Company, a railroad corporation created by and under the laws of the State of Indiana, a citizen of said State, having its principal offices in the City of St. Louis, State of Missouri, brings this its original bill of complaint in the nature of a supplemental bill against the Des Moines Union Railway Company, a corporation created by and under the laws of the State of Iowa, having its principal office in the City of Des Moines, in said last named State, and a citizen of the State of Iowa; Frederick M. Hubbell, a citizen of the State of Iowa, and a resident of the City of Des Moines, in Polk County in said District and Division, and Frederick C. Hubbell, also a citizen of the State of Iowa and a resident of said City of Des Moines, in Polk County, Iowa, which is in said District and Division, and the firm of F. M. Hubbell and Son, which is composed of said Frederick M. Hubbell and Frederick C. Hubbell, Defendants.

And thereupon your Orator complains and says:

I.

That on the — day of ——, the Chicago, Milwaukee and St. Paul Railway Company, a corporation, and The Wabash Railroad

Company, a corporation, as Complainants, exhibited their original bill of complaint in this Honorable Court, against the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell and Son, as Defendants, being Number 2449, in Equity. And thereafter by order of this Honorable Court the said Complainants filed in said cause their amended bill of complaint therein, praying as follows:

1. That it be declared that, on the terms stated in said contract of January 2nd, 1882, the complainants, their successors and assigns, are entitled, for railroad purposes, to the joint and exclusive use, in common and in perpetuity, of all the pieces and parcels of real estate, together with all buildings, tracks and improvements thereon, or appurtenant thereto, in said City of Des Moines, heretofore conveyed to the Des Moines Union Railway Company by James F. Rex, James F. How, Trustee, Grenville M. Dodge, the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Frederick M. Hubbell and J. S. Polk, and each of them, and all additions thereunto made by exchange or by purchase for extensions of tracks or building grounds, where such purchases were made either by rents of the original property or by the proceeds of mortgage bonds issued as aforesaid; and that the said Frederick M. Hubbell and Frederick C. Hubbell, and each of them, their counsel, solicitors, officers, agents and attorneys be perpetually restrained by the order and injunction of this Honorable Court, from in any wise interfering with, or obstructing your orators, their officers, agents or servants, in the aforesaid use of said properties and appurtenances.

2. That said Des Moines Union Railway (The Terminal) Company, its officers and agents, be required to render unto your orators a full and true account of all moneys heretofore received by it or them, on account of the switching or handling of cars, or traffic, on or over said terminal properties or any part thereof, for all persons or corporations whomsoever, other than complainants; of all sums of money received from or on account of rentals of real estate, buildings and improvements, as well as the income derived from all other sources connected with the use or operation of said terminal properties, giving the dates and sources from which the same were derived; the amounts expended and the purposes and dates of all expenditures; the balance now on hand, and a full and true statement and description of all properties acquired and improvements made and paid for with or from moneys received by it or them, on account of the aforesaid operation and use of said real estate, buildings, tracks and terminals.

3. That it be declared that complainants, their successors and assigns, are entitled to have and enjoy the exclusive use, in common and in perpetuity, of all the real estate, tracks, buildings, improvements and terminal facilities in said City of Des Moines, that have been, or may be hereafter acquired, erected or made, either in the name of the Terminal Company, or in the name of any other corporation or person, with the income or earnings derived from the rental, operation or use of said terminal properties, or any part thereof, or from sale of mortgage bonds heretofore issued or hereafter issued in the name of said Terminal Company.

4. That the Terminal Company be required to pay over to complainants all sums of money now in its possession or under its control (in excess of the sum of $25,000.00, to be retained as a working fund), received by it on account of the switching or hauling of cars or traffic, on or over said terminal properties, or any part thereof, for all persons or corporations, other than complainants; and all sums of money received from, or on account of rentals of real estate or buildings, as well as income derived from all other sources connected with the use or operation of said terminal properties, or any part thereof, in the proportion that the wheelage of each complainant has borne to the total wheelage over said terminals during the months such moneys were earned or accrued.

5. That it be adjudged and decreed that the Articles of Incorporation of said Terminal Company, as the same were adopted, signed and filed on or about the 10th day of December, 1884, are now in full force and effect; that the same have never been amended, and that all alleged and pretended amendments thereof are void and of no effect.

6. That all extensions of tracks that have been constructed by said Frederick M. Hubbell or Frederick C. Hubbell, or by any person or persons for them, or by any corporation organized and controlled by them, or either of them, partly on said terminal properties and partly on real estate or right of way acquired by them, or either of them, be decreed to be a part and parcel of said terminal properties, and that complainants be permitted to have the use thereof, in common and in perpetuity on such terms and under such regulations as to the Court shall seem equitable.

7. That said defendants, Frederick M. Hubbell and Frederick C. Hubbell, and each of them, be, by the order and decree of the Court, enjoined and prohibited from hereafter asserting, claiming or publishing that said Terminal Company, is the owner in fee simple of all or any of said terminal properties, or that the only rights complainants now have therein were acquired under the said contract dated May 1st, 1889, or that after the expiration of said contracts, to-wit, after the 1st day of May, 1918, complainants will have no right to further use said terminals, excepting on such terms and for such compensation as may be agreed upon between them and said Terminal Company.

8. That the Terminal Company be required to appoint from time to time, an Executive Committee, who shall be the nominees and representatives respectfully of your Orators, their successors and assigns, which Committee shall have power to appoint a Superintendent who shall have charge of the operation, repair and management of said depot grounds and terminal facilities, including station buildings, tracks, round houses and shops, and that in default of such appointment by the Board of Directors of the Terminal Company, such Committee be, from time to time appointed by the Court.

9. That said Frederick M. Hubbell and Frederick C. Hubbell and said firm of F. M. Hubbell & Son be perpetually restrained by the order and injunction of this Court from selling, pledging or otherwise disposing of the shares of the nominal Capital Stock of said Terminal Company that have been issued in their names, and that as holders of said stock certificates they be restrained by the order and injunction of this Court from exercising any control or management of said terminals and terminal properties excepting such as shall be in accordance with the terms and spirit of the aforesaid contract dated January 2nd, 1882, and herein referred to as Exhibit "A."

10. That defendant, Frederick M. Hubbell and Frederick C. Hubbell, and said Terminal Company, and each of them, be perpetually restrained by the order and injunction of this Court, from executing any lease, or entering into any contract for the use of said terminal properties by any person or corporation, after the expiration of said contract of May 10, 1889 (herein referred to as Exhibit "P,") that will in any manner interfere with or impair the rights of your orators to use said terminals in common and in perpetuity as provided in said contract of January 2nd, 1882, herein referred to as Exhibit "A."

11. That it be adjudged and decreed that the Des Moines Union Railway Company took and now holds the title to all the real estate that has been heretofore, or may be hereafter acquired by or conveyed to it, for terminal purposes in the City of Des Moines, together with all the buildings, tracks and other improvements thereon, as trustee, for the Des Moines & St. Louis Railway Company, the Des Moines Northern Railway Company, the St. Louis, Des Moines & Northern Railway Company, and the complainants herein, as their successors and assigns, now are and shall be hereafter entitled to the permanent use of the same as and for terminals for said railroads in the City of Des Moines, on the terms and conditions stated in said contract of January 2nd, 1882, to-wit: On condition that they pay the cost of supervising, maintaining and operating said terminals and the cost of all insurance, taxes and assessments thereon according to their proportionate use thereof, as evidenced by their wheelage upon and over said terminals.

12. And that your orators may have such other and further relief in the premises as the nature of the cause shall require and as to the Court shall seem meet.

And your orator further shows that the said defendants appeared and put their answer to said amended bill. That said amended bill and answer now remain as of record in this Honorable Court, and Complainant takes leave to make reference thereto.

II.

Your Orator further represents and shows to the Court that since the filing of the said amended bill of complaint the Equitable Trust Company of New York, as Trustee, filed its bill of complaint in the District Court of the United States, for the Eastern Division of the Eastern Judicial District of the State of Missouri, against The Wabash Railroad Company and James B. Forgan, praying therein the foreclosure of a certain mortgage theretofore executed and delivered by The Wabash Railroad Company to secure the payment of certain bonds of said Railroad Company, as described in said bill of complaint; that said mortgage conveyed to the said Equitable Trust Company, and said James B. Forgan, as Trustees, all of the Railroads and properties of The Wabash Railroad Company, including all of the right, title and intrest of the Wabash Railroad Company in and to the terminal properties, contracts, leases, easements, actions and causes of action, described and referred to in the said

amended bill of complaint heretofore filed in this Honorable Court by the said Chicago, Milwaukee and St. Paul Railway Company and The Wabash Railroad Company, against the Des Moines Union Railway Company and others, as stated in Paragraph I, hereof.

That on or about the second day of February, 1912, the said Equitable Trust Company of New York, as Trustee, filed in this Honorable Court its ancillary bill of complaint against The Wabash Railroad Company and James B. Forgan, praying the foreclosure of *said* mortgage of the Wabash Railroad Company. That thereafter, such proceedings were had in said foreclosure suits that a decree of foreclosure of said mortgage (to which reference is hereby made) was entered therein in the District Court of the United States, for the Eastern Division of the Eastern Judicial District of the State of Missouri, and in this Honorable Court, and all of the railroads and properties of The Wabash Railroad Company were directed to be sold to satisfy and pay the bonds of the Wabash Railroad Company secured by said mortgage. That pursuant to the terms of said decree, all of the railroads and properties of The Wabash Railroad Company were thereafter sold to, and purchased by, your Orator, including all of the right, title and interest held and owned by The Wabash Railroad Company in and to the terminal properties, contracts, leases, easements, actions and causes of action, described in the said amended bill of complaint, described in Paragraph I, hereof.

III.

Your Orator further represents and shows unto the Court that, by a certain Indenture made the 22nd day of October, 1915, between Chester H. Krum, as Special Master, party of the first part; said The Wabash Railroad Company, party of the second part; Edward B. Pryor and Edward F. Kearney as Receivers of The Wabash Railroad Company, parties of the third part; the said Equitable Trust Company of New York as Trustee, under the aforesaid mortgage of The Wabash Railroad Company, party of the fourth part; James B. Forgan, as one of the Trustees under the aforesaid mortgage, party of the fifth part; Henry Rogers Winthrop and Robert Goelet as a Purchasing Committee, parties of the sixth part, and your Orator, Wabash Railway Company, as party of the seventh part, the said parties of the first, second, third, fourth, fifth and sixth parts to said indenture, did thereby and for the considerations in said Indenture mentioned, grant, bargain, sell, alien, remise, release, convey, confirm assign transfer and set over unto your Orator, and to its successors and assigns, in fee simple and absolute, all and singular the rail-

roads, property, rights, franchises, privileges, immunities and appurtenances to the same belonging; rolling stock, bonds, stocks or interests in stocks, debentures, contracts, choses in action, property, premises and rights of every kind and description covered by and embraced in the aforesaid mortgage of The Wabash Railroad Company as adjudged in the said decrees of foreclosure; also all terminals, terminal property and interest in terminals, union depots or stations of said The Wabash Railroad Company wheresoever situate, and all other property of every kind and description owned by said Railroad Company at the time of the execution and delivery of its said mortgage, and appurtenant to or used in connection with its lines of railroad, as well as any other property appurtenant to the lines of railroad; also any and all corporate and other rights, powers, privileges and franchises, easements, tenements, hereditaments and appurtenances, reversions and remainders, which the said Railroad Company had at the time of the execution and delivery of its said mortgage, or which it subsequently acquired for or appurtenant to the construction, maintenance, use or operation of the lines of railroad, extensions and branches, or any part thereof, covered by the said mortgage, and any and all rents, issues, profits, tolls, and other income of said lines of railroad, extensions and branches or any part thereof, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the said Railroad Company, of in and to the said lines of railroad, terminals and other property, and any and every part thereof, with all the appurtenances; also all the right, title, interest, rents, issues, profits, tolls, revenues and other income of the said Railroad Company, under any and all leases, leaseholds, rights under leases or contracts, traffic agreements, trackage agreements and operating agreements for the use, or joint use with other companies, of the railroads, terminals, union stations, bridges and other property wheresoever situated, belonging to any other company or companies, or by reason of which the said Railroad Company is entitled to handle or to have its business and traffic handled by or over such lines of railroad, terminals, union stations or bridges; also five hundred shares of the par value of One Hundred Dollars each of the capital stock of the Des Moines Union Railway Company; also, generally, all property of every kind and description and of whatever nature and wheresoever located, interests, rights, claims, demands, judgments, choses in action, rights of action and causes of action adjudged by said foreclosure decrees to be covered by or included in the said mortgage, whether originally or as after acquired property thereunder.

That by the terms of the Indenture aforesaid, The Wabash Railroad Company parted with all of its rights, title, interest, claims, estate and easements, in and to the terminal properties, contracts, leases, actions, and causes of action described in the amended bill of complaint filed in this Court by the Chicago, Milwaukee and St. Paul Railway Company, and The Wabash Railroad Company against the Des Moines Union Railway Company, and others, as described in Paragraph I, hereof; and your Orator has thereby acquired and now owns and holds in its own right, all of the right, title, interest, estate, easements, claims, demands, actions and causes of action, the right and claim to which was alleged to be in The Wabash Railroad Company by the aforesaid amended bill of Complaint.

A copy of said Indenture is hereto attached marked Exhibit "A" and made a part hereof.

IV.

Your Orator hereby adopts all and singular the averments contained in the amended bill of complaint heretofore filed in this Honorable Court by the Chicago, Milwaukee and St. Paul Railway Company and The Wabash Railroad Company against the Des Moines Union Railway Company and others, as described in Paragraph I, hereof, and avers the same to be true.

V.

In consideration whereof, and forasmuch as your Orator is without remedy in the premises, under the strict rules of the common law, and cannot have any relief except in a Court of Equity, where matters of this sort are properly cognizable and relievable; to the end, therefore, that the said Des Moines Union Railway Company and said Frederick M. Hubbell and Frederick C. Hubbell and F. M. Hubbell and Son, the Chicago, Milwaukee and St. Paul Railway Company and The Wabash Railroad Company, may be required to make answer according to the best of their knowledge, information and belief, to all and singular the matters hereinabove stated, as charged, as fully and completely as if the same were repeated, and they were thereunto particularly interrogated (but not under oath, answers under oath being hereby expressly waived) your Orator prays:

1. That this bill be taken and considered as supplemental to the said amended bill of complaint heretofore exhibited in this Honorable Court by the Chicago, Milwaukee and St. Paul Railway Company, and The Wabash Railroad Company, as complainants against the Des Moines Union Railway Company, and others, as defendants, being Number 2449 in Equity.

2. That an order be entered herein directing that your Orator, Wabash Railway Company be substituted for and stand in the place of The Wabash Railroad Company, as a complainant in the said amended bill of complaint.

3. That your Orator may be granted the benefit of all of the proceedings had in the said suit.

4. That your Orator be granted the full relief prayed for in said amended bill of complaint in all respects as though the said amended bill of complaint had been brought by your Orator.

5. That your Orator may be granted such other and further relief in the premises, as the nature of the case shall require, and as to the Court shall seem meet.

May it please the Court to grant unto your Orator, writs of subpoena, to be directed to the said defendants, the Des Moines Union Railway Company, Frederick M. Hubbell and Frederick C. Hubbell, and F. M. Hubbell and Son, commanding them and each of them at a certain time, and under a certain penalty therein to be named, to appear before your Honor in this Honorable Court, and then and there severally to answer all and singular the matters aforesaid (but not under oath), and to stand to, abide, and perform such other and further orders and decrees herein as to your Honor shall seem meet.

JAMES L. MINNIS,
N. S. BROWN,
Solicitors for Complainant.

STATE OF MISSOURI,
City of St. Louis, ss:

On this 29th day of May, 1916, came James L. Minnis, who made oath that he is Vice President of Wabash Railway Company; that he has read the foregoing bill of complaint and knows the contents thereof, and the same are true.

JAMES L. MINNIS.

Subscribed and sworn to before me this 29th day of May, A. D. 1916.

[SEAL.] JOSEPH H. MILLER,
Notary Public.

My Commission expires Nov. 9, 1919.

Endorsed: Filed July 1st, 1916. Wm. C. McArthur, Clerk.

(Answer of Chicago, Milwaukee & St. Paul Ry. Co. et al. to Bill of Complaint in Nature of Supersedeas Bill filed by Wabash Railway Co.)

Come now the Chicago, Milwaukee and St. Paul Railway Company and The Wabash Railroad Company, and for their answer to the bill of complaint in the nature of a supplemental bill filed herein by Wabash Railway Company, admit the averments of said bill.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
By J. C. COOK,
Its Solicitor.
THE WABASH RAILROAD COMPANY,
By JAMES L. MINNIS,
N. S. BROWN,
Its Solicitors.

Endorsed: Filed July 1st, 1916. Wm. C. McArthur, Clerk.

(Answer of Des Moines Union Ry. Co. et al. to Bill of Complaint in Nature of Supplemental Bill of Complaint Filed by Wabash Ry. Co.

Come now the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell and Son, and for their answer to the bill of complaint in the nature of a supplemental bill, filed herein by Wabash Railway Company, admit the averments of paragraphs I, II and III, of said bill of complaint; but deny that either Wabash Railway Company or The Wabash Railroad Company is entitled, in Equity, to any relief as prayed for in the amended bill of complaint heretofore filed herein, for the reasons alleged in the answer of these defendants to said amended bill of complaint, and heretofore filed in this cause, to which reference is hereby made.

THE DES MOINES UNION RAILWAY COMPANY,
FREDERICK M. HUBBELL,
FREDERICK C. HUBBELL AND
F. M. HUBBELL AND SON,
By F. W. LEHMAN,
PARKER, PARISH & MILLER,
Their Solicitors.

Endorsed: Filed July 1st, 1916. Wm. C. McArthur, Clerk.

(*Record Entry of Hearing for Purpose of Settling Decree, May* 15, 1916.

Before Judge Wade.

On this day this cause came on for hearing for the purpose of settling a Decree in this cause. The Chicago, Milwaukee & St. Paul Railway Company appearing by J. C. Cook, its attorney, the Wabash Railroad Company appearing by J. L. Minnis, its attorney, and the defendants appearing by J. L. Parrish and F. W. Lehmann, their attorneys and the matter having been fully submitted to the court is by the court taken under advisement.

(*Memorandum of District Court upon Entry of Decree.*)

I am entering decree in which I have tried to describe briefly the rights, duties, and obligations which I find exist between the parties. I found it impossible to make any specific finding of fact, because any finding of fact would be inadequate unless so complete as to be impractical in a decree. I have not found it possible to include in the decree, as asked by complainants, a copy of the contract of 1882 because if it should be now adjudged that the rights of the parties were such as provided for in the contract of 1882, it would then leave for the future the question as to the meaning of the contract of 1882—one of the very questions involved in this case. In truth this decree grants complainants every right it had under contract of 1882 except with relation to the management and control, and profits of the property.

So far as the right to the use of the properties is concerned; for every purpose of the complainants as public service corporations, this decree recognizes the same and protects the complainants in such rights. I feel that this disposes of the point urged by counsel that these corporations could not dispose of any of their properties so as to deprive themselves of the power or capacity to serve the public in accordance with their franchises. If complainants have made a transaction in such form that so far as their public service is concerned they have not impaired their power or capacity, this is as far as the public is interested so far as the question of retaining franchise is concerned.

As to the management, control and profits, I feel that the parties have disposed of the same in the organization of the corporation, the transfer of the properties, and the subsequent transactions in relation thereto.

As I indicated in original opinion, some of these rights have been affected more by estoppel and asequiescence, than by definite intelligible contract or agreement.

I have tried to make clear and definite in this decree, the rights and duties of the parties, so that upon review by the Court of Appeals, there can be no question as to the points determined by the court, and so that in any future controversy, if any, between the parties, certain rights will be definitely and finally fixed either by this decree, or by such decree as the Court of Appeals may order entered herein.

I have felt that the full meaning of this decree could not be expressed without adjudicating the rights of the parties in the property—in the corporation, and in the surplus earnings; and I have tried to leave it in shape so that the questions presented by counsel can be intelligently reviewed.

As to costs, I feel that under the peculiar circumstances of this case, and the purpose and effect of this [litigations], and the results, that each party should pay half the costs.

MARTIN J. WADE,
Judge.

Endorsed: Filed August 29, 1916. Wm. C. McArthur, Clerk.

(Decree of District Court, August 29, 1916.)

Decree.

And now to-wit, on this 29th day of August, 1916, this cause having been heretofore fully submitted, and the Wabash Railway Company having, under authority of the Court, joined as party complainant herein, and the court being now fully advised—It Is Ordered, Adjudged and Decreed—

First: That the defendant, The Des Moines Union Railway Company, is a corporation organized under the laws of the State of Iowa, with the power to own, maintain and operate a terminal railway within, and in the vicinity of the city of Des Moines, Polk County, Iowa; and that it is the owner of all the real estate, railway tracks, depot buildings, bridges, and other improvements constituting the terminal property and known as the terminal of the Des Moines Union Railway Company in the city of Des Moines, Iowa, and including all the property transferred to it by or in behalf of the complainant's predecessors, the Des Moines & St. Louis Railroad Company, The St. Louis, Des Moines & Northern Railway Company, and the Des Moines Northwestern Railway Company, and by James F. How and Grenville M. Dodge, Trustees, on or about the year 1887, and

all the real estate and other property since acquired by the said Des Moines Union Railway Company, including the franchise to own, operate and maintain a terminal railway in and about and in the vicinity of the city of Des Moines, Iowa, and that the ownership of such property is absolute and unqualified, and that the complainants have no right, title, easement, or interest therein.

Second. It is further Ordered, Adjudged and Decreed, that one of the corporate obligations assumed by the defendant, the Des Moines Union Railway Company, at the time of its organization, and at the time of acquiring the terminal property hereinbefore referred to, was to use said terminal property in perpetuity for the purpose of furnishing terminal service to the complainant's predecessors so long as they might be equitable, and that such corporate obligation now exists in favor of the complainants herein, and their successors or assigns. This corporate obligation is absolute, and is paramount to any other obligation of said corporation, and the use of its property and franchises for other purposes, or by other companies, shall be without prejudice to the use by these complainants, their successors and assigns, of such property and franchises in such reasonable manner as will enable them to perform their full duty to the public; but said use by the complainants shall be subject to all reasonable regulations of the defendant corporation, and shall not interfere with the use of such property and franchises by other railway companies, or persons, except in so far as may be reasonably necesary.

Third. The court finds that under date of May 10, 1889, and under date of July 31, 1897, certain contracts were made between the Des Moines Union Railway Company and the predecessors of the complainants herein, by the terms of which contracts, the conditions under which the Des Moines Union Railway Company should perform its corporate obligation to the complainants and their predecessors, and the amounts to be paid, were fixed and determined during the existence of said contracts, which expire on May 1st, 1918.

And It Is Now Ordered, Adjudged and Decreed, that the continued use of said property and franchises after May 1, 1918, shall be upon terms reasonable under all the facts and circumstances, including the past transactions between the complainants and the Des Moines Union Railway Company and its predecessors in so far as the same may aid in determining what may be reasonable. And if the parties cannot agree upon such terms, then the same shall be

fixed by a court upon aplication by any or all of the parties to this action, and any of the parties may make application to re-open this case for such purpose, or may avail themselves of any legal remedy which they may have.

Fourth. It Is Further Ordered, Adjudged and Decreed, that under the articles of incorporation and the amendments thereto, the Des Moines Union Railway Company is a legally organized corporation, and that the management and control thereof, and of its property and franchises, is in such corporation through its officers elected, or to be elected by its stockholders or directors as they may appear from the records of said corporation, and as provided in the articles of incorporation and amendments thereto; and that the complainants have no control over the management of said corporation, or interest in said corporation, except such rights as they may have as stockholders in said corporation.

Fifth. It is Further Ordered, Adjudged and Decreed, That The Des Moines Union Railway Company is the absolute owner of the "surplus earnings" held by such corporation, consisting of monies collected for rentals and privileges, and charges for switching and handling cars and traffic for companies other than the complainants and their predecessors, and that complainants have no interest therein except such as accrue- to them as stockholders of the Des Moines Union Railway Company.

Sixth. It Is Further Ordered and Adjudged, that complainants pay one half of the costs of this suit, to be taxed by the Clerk, and that the defendant—the Des Moines Union Railway Company, pay one half of the costs of this action, to be taxed by the Clerk, and that judgment is hereby rendered against said parties therefor.

To this Decree, complainants except, and the defendant, the Des Moines Union Railway Company, excepts to so much of said decree as adjudges that it is under obligation to use, or permit the use of said railway property for the purpose of furnishing to the complainants, terminal service in the city of Des Moines, Iowa.

To the failure of the court to enter decree in form presented by the different parties, they respectively except.

To the judgment against them for costs, complainants, and the Des Moines Union Railway Company, except.

Witness my hand.

MARTIN J. WADE,
Judge.

Endorsed: Filed: August 29th, 1916. Wm. C. McArthur, Clerk.

(*Petition for Appeal by Complainants and Order Allowing Same, etc.*)

To the Hon. Martin J. Wade, Judge of the United States District Court:

The above named Complainants, feeling themselves aggrieved by decree made and entered in this cause on the 29th day of August, A. D. 1916, do hereby appeal from said Decree to the Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith; and they pray that their appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said Decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis in the State of Missouri; and, desiring to supersede the execution of the Decree, your petitioners here tender bond in such amount as the Court may require for such purpose, and pray that with the allowance of the appeal a supersedeas be issued, and that the proper order touching the security to be required of them to protect and appeal, be made.

J. C. COOK AND JOHN N. HUGHES, &
C. R. SUTHERLAND,
Solicitors and Attorneys for Complainants Chicago, Milwaukee & St. Paul Railway Company.

JAMES L. MINNIS,
Solicitor, Attorney for Complainants, Wabash R. R. Co. & Wabash Ry. Co.

The above Petition is granted, and the appeal is allowed and shall operate as a supersedeas upon the petitioners filing bond, in the sum of Five Thousand ($5,000.00) Dollars with sufficient sureties as required by law.

MARTIN J. WADE.
Judge of the District Court for the Southern District of Iowa.

Endorsed: Filed October 18, 1916. Wm. C. McArthur, Clerk.

(Assignment of Errors on Appeal by Complainants.)

The complainants above named respectfully complain and state that the Decree entered in this cause is erroneous for the following reasons:

First. The Court erred in adjudging and decreeing that the Des Moines Union Railway Company is the absolute and unqualified owner of all the properties, railways and franchises conveyed to it by the predecessors of complainants, or acquired by it since such conveyance, the same constituting its railway terminals in Des Moines, and that the Complainants have no right, title, easement or interest therein.

Second. The court erred in adjudging and decreeing that the Des Moines Union Railway Company had right and authority to impose terms, conditions, rentals, charges and regulations upon the complainants or either of them for the use of the terminal properties in the City of Des Moines after the first day of May, 1918, and right and authority to permit other railway companies or corporations to occupy and use said depot and terminal properties after that date.

Third. The Court erred in adjudging and decreeing that the use by complainants of the railway terminal properties and franchises at Des Moines, Iowa, after May 1, 1918, shall be upon terms imposed by the Des Moines Union Railway Company, or by agreement of the parties to this action, and that if the parties cannot agree upon such terms, then the same shall be fixed by a court upon application by any or all of the parties to this action, and in adjudging and decreeing that this cause may be re-opened for such purpose.

Fourth. The Court erred in adjudging and decreeing that the amendments to the articles of incorporation of the Des Moines

Union Railway Company are legal and valid, and that said corporation was legally organized under such amendments, and that the management and control of said Des Moines Union Railway Company and of the properties and franchises and railway now held in its name are now, and after May 1, 1918, will continue to be, in said corporation through its officers elected or to be elected by the stockholders as they may appear from the records of said corporation and as provided in the articles of incorporation and amendments; and that the complainants have no control over the management of said corporation, or interest in the property now held in its name, except such rights as they may have as stockholders therein.

Fifth. The Court erred in adjudging and decreeing that the Des Moines Union Railway Company is the absolute owner of the surplus earnings held by such corporation, consisting of moneys collected for rentals and privileges, charges for switching and handling cars and traffic for other companies; and that complainants' interest therein was only that of stockholders of the Des Moines Union Railway Company.

Sixth. The Court erred in failing and refusing to decree that on the terms stated in the contract of January 2, 1882, the Complainants, their successors and assigns, are entitled, for railroad purposes, to the joint and exclusive use in common and in perpetuity of all the pieces and parcels of real estate, together with all buildings, tracks, and improvements thereon, or appurtenances thereto, in the City of Des Moines, heretofore conveyed to the Des Moines Union Railway Company by James F. How, James F. How, Trustee, Grenville M. Dodge, the Des Moines & St. Louis Railroad Company, the Des Moines, Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Frederick M. Hubbell, and J. S. Polk, and each of them, and all other persons and all additions thereunto made by exchange or by purchase for extensions of tracks or building grounds, where such purchases were made either from rents of the original property, or from the proceeds of mortgage bonds.

Seventh. The Court erred in failing and refusing to adjudge and decree that complainants, their successors and assigns, are entitled to have and enjoy the exclusive use in common and in perpetuity, of all the real estate, tracks, buildings, improvements and terminal facilities in said City of Des Moines that have been, or may be hereafter acquired, erected or made, either in the name of the Terminal Company, or in the name of any other corporation or person, with

the income or earnings derived from the rental, operation or use of said terminal properties, or any part thereof, or from sale of mortgage bonds heretofore issued or hereafter issued in the name of said Terminal Company.

Eighth. The Court erred in failing and refusing to adjudge and decree that the Terminal Company be required to account for and pay over to complainants all sums of money now in its possession or under its control (in excess of the sum of $25,000.00 to be retained as a working fund), received by it on account of the switching or handling of cars, or traffic, on or over said terminal properties, or any part thereof, for all persons or corporations other than complainants; and all sums of money received from, or on account of rentals of real estate, or buildings, as well as income derived from all other sources connected with the use or operation of said terminal properties, or any part thereof, in the proportion that the wheelage of each complainant has borne to the total wheelage over said terminals during the months such money were earned or accrued.

Ninth. The Court erred in failing and refusing to adjudge and decree that the articles of incorporation of said Terminal Company, as the same were adopted, signed and filed, on or about the 10th day of December, 1884, are now in full force and effect; that the same have never been amended, and that all alleged and pretended amendments thereof are void and of no effect.

Tenth. The Court erred in failing and refusing to adjudge and decree that all extensions of tracks that have been constructed by said Frederick M. Hubbell or Frederick C. Hubbell, or by any person or persons for them, or by any corporation organized and controlled by them, or either of them, partly on said terminal properties and partly on real estate or right of way acquired by them, or either of them, be decreed to be part and parcel of said terminal properties, and that complainants be permitted to have the use thereof, in common and in perpetuity on such terms and under such regulations as to the Court shall seem equitable.

Eleventh. The Court erred in failing and refusing to adjudge and decree that the Des Moines Union Railway Company took and now holds the title to all the real estate that has been heretofore, or may be hereafter, acquired by or conveyed to it, for terminal purposes in the City of Des Moines, together with all the buildings, tracks and other improvements thereon, as Trustee, for the Des Moines &

St. Louis Ry. Co., the Des Moines Northern Ry. Co., the St. Louis, Des Moines & Northern Ry. Co., and the complainants herein, as their successors and assigns, and that the complainants herein, and their assigns, now are and shall be hereafter entitled to the permanent use of the same as and for terminals for their said railroads in the City of Des Moines, on the terms and conditions stated in said contract of January 2, 1882.

Twelfth. The Court erred in failing and refusing to adjudge and decree that the Des Moines Union Railway Company took and now holds the title to all the real estate that has been heretofore or may be hereafter acquired or conveyed to it for terminal purposes in the City of Des Moines, together with all the buildings, tracks, facilities and other improvements thereon, subject to the joint and common use of the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, and the complainants herein, and their successors and assigns, and that the complainants herein and their assigns now are and shall be hereafter entitled to the permanent and exclusive use and enjoyment of the same as and for terminals for their said railroads in the City of Des Moines, on the terms and conditions stated in said contract of January 2, 1882.

Thirteenth. The Court erred in failing to adjudge and decree that the defendants be enjoined from asserting any claim to the property inconsistent with the said right of the complainants, their successors and assigns, to the joint use and occupation of said property and all parts thereof.

Fourteenth. The Court erred in failing by its judgment and decree to require the Des Moines Union Railway Company to appoint an Executive Committee, the members of which to be nominated by the complainants and their assigns, and adjudging and decreeing that such committee should appoint a superintendent to operate, maintain and repair the said property and facilities; and that on default of such appointment, the court would from time to time appoint such committee.

Fifteenth. The Court erred in failing and refusing to enjoin and restrain the defendants, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell and Son from selling, pledging or otherwise disposing of their shares of the capital stock of the Des Moines Union Railway Company, and from exercising, by virtue of said shares, any control or management of said properties and facilities except in accordance with the terms and spirit of the said contract entered into

on January 2, 1882, being "Exhibit A," attached to the Bill of Complaint.

Sixteenth. The Court erred in failing and refusing by its decree to restrain defendants from executing any leases or entering into any contracts for the use of said properties and facilities which may interfere with, or impair, the rights of complainants, their successors and assigns, to the use and enjoyment of said property and facilities in accordance with said contract of January 2, 1882.

Seventeenth. The Court erred in failing and refusing to adjudge and decree the relief prayed for in the Amended Bill of Complaint as Amended.

Eighteenth. The Court erred in adjudging and decreeing that the complainants shall pay one-half of the costs of this action, or any part thereof.

Nineteenth. The Court erred in adjudging and decreeing that the Des Moines Union Railway Company held the railway terminal properties in controversy in this suit, in any other capacity than as trustee for the complainants.

Twentieth. The Court erred in failing and refusing to decree a right in the complainants to own, use, possess and occupy the terminal properties, franchises and railways in the City of Des Moines, Iowa, in perpetuity on the terms [States] in the contract of January 2, 1882.

Twenty-first. The Decree is contrary to equity.

Twenty-second. The Decree is contrary to law.

Twenty-third. The Court erred in adjudging and decreeing any rights to the properties in controversy in the defendants or either of them.

Twenty-fourth. The Court erred in not holding, adjudging and decreeing that after May 1, A. D. 1918, the contract of January 2nd, A. D. 1882, being Exhibit "A" to the Bill of Complaint as amended, will govern the parties in the use, maintenance and operation of the terminal property and that the Des Moines Union Railway Company is under obligation to hold, maintain and devote the same to the use by complainants and their successors in title or interest perpetually, under and according to the terms and intent of said contract of January 2, 1882.

Twenty-fifth. The Court erred in not holding and decreeing that after May 1, 1918, the only compensation required of complainants, their successors or assigns, shall be the performance of the requirements imposed by the contract of January 2, 1882, being Exhibit "A" to the Bill of Complaint or petition of plaintiff herein.

Twenty-sixth. The Court erred in not holding and decreeing that the contract of January 2, 1882, being Exhibit "A" to the Bill of Complaint, fixes the terms and conditions under which the complainants or plaintiffs and their successors may occupy and use the terminal property held by the Des Moines Union Railway Company after May 1, A. D. 1918.

Wherefore, the complainants pray that the said Decree be reversed, and that the District Court be instructed to enter such decree as is prayed for by the said Bill of Complaint.

J. C. COOK AND
JOHN N. HUGHES &
C. R. SUTHERLAND,
Attorneys for Complainant C. M. & St. P. Ry. Co.

JAMES L. MINNIS,
Solicitor, Attorney for Complainant Wabash R. R. Co. and Wabash Ry. Co.

Endorsed: Filed: Oct. 18,1916. Wm. C. McArthur, Clerk.

(Joint Præcipe for Transcript on Complainant's Appeal.)

The parties to the above entitled action hereby make and file this, their joint præcipe, and indicate the parts of the record to be incorporated by the Clerk in the transcript on the appeal of this cause as follows:

First. Include the Summons and original Bill of Complaint.

Second. Include the Answer to the original Bill.

Third. Include the Amended Bill of Complaint as Amended.

Fourth. Include the Answer to the Amended Bill of Complaint as Amended and all amendments to such Answer, except amendment to answer filed Dec. 2, 1912.

Fifth. Include the evidence as approved and certified by the Judge of this court and made of record herein, including deposition of Mark L. Mitchell, et al. filed January 6th, 1913.

Sixth. Include the Petition of the Wabash Railway Company filed on or about the 1st day of July, 1916, requesting to be made a party in this suit, and the Answers to that pleading.

Seventh. Include the Opinion of the Court, filed on or about the 24th day of Feb. 1916.

Eighth. Include the Supplemental Opinion and the Decree of the Court filed on or about the 29th day of August, 1916.

Ninth. Include all record entries made during the pendency of this cause.

Tenth. Include the Petition for Appeal, Assignment of Errors, and Order allowing the appeal.

Eleventh. Include Bond on Appeal and all endorsements thereon.

Twelfth. Include the Citation with endorsements of service.

J. C. COOK,
J. L. MINNIS AND
JOHN N. HUGHES,
Attorneys for Appellant.

F. W. LEHMAN,
PARKER PARRISH & MILLER,
Attorneys for Appellee.

Endorsed: Filed October 27th, 1916. Wm. C. McArthur, Clerk.

(Complainant's Supersedeas Bond on Appeal.)

Know All Men By These Presents, That we, the Chicago, Milwaukee & St. Paul Railway Company, The Wabash Railroad Company, and The Wabash Railway Company, as principals, and the London & Lancashire Indemnity Company of America, as surety, acknowledge ourselves to be jointly indebted to the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, appellees in the above cause, in the sum of Five Thousand ($5,000.00) Dollars, conditioned that,

Whereas, on the 29th day of August, A. D. 1916, in the District Court of the United States for the Southern District of Iowa, in a suit depending in that court, wherein the Chicago, Milwaukee & St. Paul Railway Company, The Wabash Railroad Company, and the Wabash Railway Company were complainants, and the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son were defendants, a decree was rendered against the said Chicago, Milwaukee & St. Paul Railway Company, Wabash Railroad Company and the Wabash Railway Company, having obtained an appeal to the Circuit Court of Appeals for the Eighth Circuit and filed a copy thereof in the office of the clerk of the court, to reverse the said decree, and a citation directed to the said Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Eighth Circuit to be holden in the City of St. Louis in the State of Missouri on the first Monday of May 1917.

Now, if the said Chicago, Milwaukee & St. Paul Railway Company, The Wabash Railway Company, the Wabash Railroad Company shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and effect.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.,
By J. C. COOK AND JOHN N. HUGHES & C. R. SUTHERLAND.
WABASH RAILROAD COMPANY,
By JAMES L. MINNIS,
General Solicitor.
WABASH RAILWAY COMPANY.
By JAMES L. MINNIS,
Vice President, Principal.
LONDON, LANCASHIRE INDEMNITY CO. OF AMERICA,
By JOHN E. RHODES, JR.,
Attorney in Fact, Surety.

[Seal of Surety Co.]

Bond approved this 18th day of October, 1916.
MARTIN J. WADE,
Judge.

Endorsed: Filed October 18th, 1916. Wm. C. McArthur, Clerk.

Clerk's Certificate.

STATE OF IOWA,
Polk County, ss:

I, A. E. Mahan, Clerk of the District Court in and for said County and State, hereby certify that the sureties on the attached Bond are amply sufficient for the penalty of the same, and that if said Bond were presented to me for approval I would approve it.

Witness my hand and the seal of said Court affixed at Des Moines, Iowa, this 10th day of Nov. A. D. 1916.

A. E. MAHAN,
Clerk of District Court.
A. E. CULLY,
Deputy.

Endorsed: Filed November 14th, 1916. Wm. C. McArthur, Clerk. By Louis J. Adelman, Deputy.

(Petition for Appeal by Defendants and Order Allowing Same.)

To the Honorable M. J. Wade, District Judge:

The above named defendants, the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 26th day of August, 1916, do hereby appeal from the said decree to the circuit court of appeals for the eighth circuit, for the reasons set forth in the assignments of error filed herewith, and they pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and document upon which said decree was based, duly authenticated, be sent to the United States circuit court of appeals for the eighth circuit, under the rules of such court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required of them be made.

DES MOINES UNION RAILWAY COMPANY,
FREDERICK M. HUBBELL,
FREDERICK C. HUBBELL,
F. M. HUBBELL & SON,
By F. W. LEHMANN,
PARKER, PARRISH & MILLER,
Their Attorneys.

Appeal allowed upon giving bond, as required by law, in the sum of Five Thousand dollars ($5000.00).

Dated this 13th day of November, A. D. 1916.

MARTIN J. WADE,
Judge.

Endorsed: Filed November 14 1916. Wm. C. McArthur, Clerk. By Louis J. Adelman, Deputy.

(*Assignment of Errors by Defendants.*)

Filed Nov. 14, 1916.

Come now the defendants in the above entitled cause and file the following assignment of errors upon which they will rely upon their prosecution of their appeal in the above entitled cause from the decree made by this Honorable Court on the 26th day of August, 1916:

I.

The United States district court for the southern district of Iowa erred in holding, adjudging and decreeing that the defendant, the Des Moines Union Railway Company, owed to the complainants a corporate obligation to use the terminal property in perpetuity for the purpose of furnishing terminal services to complainants.

II.

The United States district court for the southern district of Iowa erred in holding, adjudging and decreeing that said corporate obligation is absolute and paramount to any other obligation of the defendant, Des Moines Union Railway Company, and that the use of the terminal property and franchises of the defendant corporation for other purposes or by other companies should be without prejudice to the use by these complainants, their successors and assigns of such [propefty] and franchises.

Wherefore, the defendants pray that said decree be reversed as to the matters above referred to, and that said district court for the southern district of Iowa be ordered to enter a decree reversing the decision of the lower court in said cause in respect to the matters complained of.

F. W. LEHMANN,
PARKER, PARRISH & MILLER,
Attorneys for Defendants.

(Defendants' Supersedeas Bond on Appeal.)

Know All Men By These Presents:

That we, Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, as principals, and H. D. Thompson and Oliver P. Thompson as sureties, of the county of Polk and state of Iowa, are hereby held and firmly bound unto the Chicago, Milwaukee & St. Paul Railway Company, The Wabash Railroad Company and Wabash Railway Company in the sum of Five Thousand dollars ($5000.00) lawful money of the United States, to be paid to them and their respective executors, administrators and successors, for which payment well and truly to be made [*be*] bind ourselves and each of us, jointly and severally, and each of our heirs, executors, administrators and successors by these presents.

Sealed with our seals and dated this 10th day of November 1916.

Whereas, the above named Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son have prosecuted an appeal to the United States circuit court of appeals for the eighth circuit, to reverse the judgment and decree of the district court, for the southern district of Iowa, in the above entitled cause;

Now Therefore, the condition of this obligation is such that if the above named Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son shall prosecute their said appeal to effect and pay all costs if they fail to make good their plea, then this obligation to be void; otherwise to remain in full force and effect.

DES MOINES UNION RAILWAY COMPANY,
By F. M. HUBBELL,
Secretary.
F. M. HUBBELL & SON,
FREDERICK M. HUBBELL,
FREDERICK C. HUBBELL,
Principals.
H. D. THOMPSON,
OLIVER P. THOMPSON,
Sureties.

Endorsed: Filed November 14, 1916. Wm. C. McArthur, Clerk.

(Joint Præcipe for Transcript on Defendants' Appeal.)

The parties hereto having heretofore filed a joint præcipe [indication] the parts of the record to be incorporated in the complainants' appeal, hereby join and indicate that in addition thereto there shall be incorporated by the clerk in the transcript on the appeal of this cause the following:

1. Include the defendants' petition for appeal, defendants' assignment of errors, and the order allowing defendants' appeal.

2. Include the bond given by defendants on appeal, and all endorsements thereon.

3. Include citation on defendants' appeal, with endorsements of service thereon.

J. C. COOK,
JOHN N. HUGHES AND
J. L. MINNIS,
Attorneys for Complainants.
F. W. LEHMAN,
PARKER, PARRISH & MILLER,
Attorneys for Defendants.

Endorsed: Filed November 21 1916. Wm. C. McArthur, Clerk.

(Clerk's Certificate to Transcript.)

UNITED STATES OF AMERICA,
Southern District of Iowa, ss:

I, Wm. C. McArthur, Clerk of the District Court of the United States for the Southern District of Iowa hereby certify the above and foregoing to be a full, true and complete transcript of the record in the cause numbered 4001-Eq. Chicago, Milwaukee & St. Paul Railway Company and Wabash Railroad Company, Complainants vs. Des Moines Union Railway Company, et al., defendants, said transcript embracing 149 numbered pages; Page 5, being a printed bill of complaint of 42 pages; Page 28, being a printed copy of the amended bill of complaint, as amended, cont-ining 115 pages; Page 32, being the answer to the amended bill of complaint, containing 54 pages; Page 39, consisting of the printed volume of 665

pages preceeded by 10 pages of printed index, entitled, "Testimony for complainants with an index"; Page 40, being the printed volume of 366 pages and 1 page of index, entitled, "Defendants' Testimony" and Page 41, being the printed volume of 761 pages marked "Exhibits Defendants' Testimony," being all the matters called for in the præcipes for a transcript filed herein, as full, true and complete as the originals thereof remain on file and of record in office in the City of Des Moines in said District Court. I further certify that I transmit herewith as part of said transcript the original Citation issued on behalf of Complainants October 18th 1916 and the original Citation issued on behalf of Defendants December 20th 1916.

In Witness Whereof I hereunto set my hand and affix the seal of said Court at office in the City of Des Moines in said District this 19th day of January A. D. 1917.

[Seal U. S. Dist. Court, Southern Dist. of Iowa.]

WM. McARTHUR,
Clerk U. S. District Court Southern District of Iowa.

Nos. 4885 and 4886, Filed Feb. 3 1917 John D. Jordan Clerk.

And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Mr. J. C. Cook and Mr. John N. Hughes as Counsel for the Appellant, Chicago, Milwaukee & St. Paul Railway Company, in Cause No. 4885.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, THE WABASH RAILROAD COMPANY and WABASH RAILWAY COMPANY, Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL, and F. M. HUBBELL & SON.

The Clerk of said Court will please enter our appearance for the appellant, the Chicago, Milwaukee & St. Paul Railway Company, in the above entitled cause.

J. C. COOK,
JOHN N. HUGHES,
Attorneys for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 5, 1917.

(*Appearance of Mr. James L. Minnis and Mr. N. S. Brown as Counsel for the Appellants, Wabash Railroad Co., et al., in Cause No.* 4885.)

The Clerk will enter *my* appearance as Counsel for the Appellants The Wabash Railroad Company and Wabash Railway Company.

JAMES L. MINNIS,
N. S. BROWN,
1419 *Railway Exchange Building, Saint Louis, Missouri.*

(Endorsed): Filed in U. S. Circuit Court of Appeals, Mar. 6, 1917.

(*Appearance of Mr. F. W. Lehmann, Mr. J. L. Parrish, and Mr. W. E. Miller, as Counsel for Appellees in Case No.* 4885.)

The Clerk will enter *my* appearance as Counsel for the Appellees.

F. W. LEHMANN,
St. Louis, Missouri.

J. L. PARRISH,
Des Moines, Iowa.

W. E. MILLER,
Des Moines, Iowa.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 24, 1917.

(*Appearance of Mr. Frederick W. Lehmann as Counsel for Appellees in Cause No.* 4885.)

The Clerk will enter my appearance as Counsel for Appellees.

FREDERICK W. LEHMANN.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 30, 1917.

(*Appearance of Mr. Burton Hanson as Counsel for Appellants in Cause No.* 4885.)

The Clerk will enter my appearance as Counsel for the Appellants.

BURTON HANSON.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 21, 1917.

(Appearance of Mr. F. W. Lehmann, Mr. J. L. Parrish and Mr. W. E. Miller as Counsel for Appellants in Cause No. 4886.)

No. 4886.

THE DES MOINES UNION RAILWAY COMPANY et al., Appellants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO. et al.

The Clerk will enter *my* appearance as Counsel for the Appellants.

F. W. LEHMANN,
St. Louis, Mo.
J. L. PARRISH,
Des Moines, Ia.
W. E. MILLER,
Des Moines, Ia.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 6, 1917.

(Appearance of James L. Minnis and Mr. N. S. Brown as Counsel for the Appellees, Wabash Railroad Co. et al., in Cause No. 4886.)

The Clerk will enter *my* appearance as Counsel for the Appellees, The Wabash Railroad Company and Wabash Railway Company.

JAMES L. MINNIS,
N. S. BROWN,
1419 *Railway Exchange Building, Saint Louis, Missouri.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Mar. 6, 1917.

(Appearance of Mr. J. C. Cook and Mr. Burton Hanson as Counsel for Appellees in Cause No. 4886.)

The Clerk will enter *my* appearance as Counsel for the Appellees.

J. C. COOK.
BURTON HANSON.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 24, 1917.

(*Order of Argument in Both Causes.*)

May Term, 1917, Thursday, May 24, 1917.

No. 4885.

CHICAGO, MILWAUKEE and ST. PAUL RY. Co. et al., Appellants,

vs.

DES MOINES UNION RAILWAY Co. et al.

Appeal from the District Court of the United States for the Southern District of Iowa.

and

4886.

DES MOINES UNION RAILWAY Co. et al., Appellants,

vs.

CHICAGO, MILWAUKEE AND ST. PAUL RY. Co. et al.

Appeal from the District Court of the United States for the Southern District of Iowa.

The above cases, Nos. 4885 and 4886, being an appeal and cross-appeal, are argued as one case under the rule, the plaintiff below having the opening and closing of the oral argument, and on application of counsel the time of argument is enlarged to two and one-half hours to each side, whereupon argument was commenced by Mr. Burton Hanson in behalf of the Chicago, Milwaukee and St. Paul Railway Company, et al., continued by Mr. J. L. Parrish and Mr. F. W. Lehmann in behalf of the Des Moines Union Railway Company, et al., and the hour of adjournment having arrived the further argument is postponed until tomorrow.

(*Order for Submission in Both Causes.*)

May Term, 1917, Friday, May 25, 1917.

These causes having been called for further hearing, argument was resumed by Mr. F. W. Lehmann in behalf of the Des Moines

Union Railway Company, et al., and concluded by Mr. J. L. Minnis in behalf of the Chicago, Milwaukee and St. Paul Railway Company, et al.

Thereupon, these causes were submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

(Opinion in Both Causes.)

United States Circuit Court of Appeals, Eight Circuit, May Term, A. D. 1918.

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Iowa, May Term, A. D. 1918.

No. 4886.

DES MOINES UNION RAILWAY COMPANY et al., Appellants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Iowa.

Mr. Burton Hanson (Mr. J. C. Cook was with him on the brief), for Chicago, Milwaukee & St. Paul Railway Company, and

Mr. J. L. Minnis for Wabash Railroad Company, Appellants in Nr. 4885 and appellees in No. 4886.

Mr. J. L. Parrish and Mr. F. W. Lehmann (Mr. W. E. Miller was with them on the brief), for Appellees in No. 4885 and Appellants in No. 4886.

Before Hook, Smith and Stone, Circuit Judges.

STONE, *Circuit Judge*, delivered the opinion of the Court:

This is a bill by the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company against the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son. The complainants are railways passing through the city of Des Moines, requiring the use of terminal and depot facilities. Defendants are a terminal company at Des Moines and the individual owners of five-eighths of its outstanding capital stock. Complainants, except for eight qualifying shares, own the other three-eighths of such stock, the Wabash one-eighth, and the Milwaukee two-eighths. Complainants are now using the facilities of the terminal company under a thirty year contract, dated May 10, 1889, but related back to May 1, 1888, and expiring May 1, 1918. As holders of the stock control in the terminal company, the Hubbells have declared that if complainants desire to use the terminals after the above date they can do so only under such contract as may be maed therefor. Believing that they have (aside from stock holidngs) controlling interests and rights in the terminal property, complainants have brought their bill. The main object of the suit is to have determined the rights of the three companies in respect to the terminal property and operation. A subsidiary but not unimportant controversy is present regarding the right to several hundred thousand dollars accumulated from rentals, privileges and switching service by the terminal company, not arising from the use by or service to the complainants.

The complainants allege that they are the real owners of the terminal property and that defendant company simply holds the title in trust for them; or that the terminal ownership is subject to an easement in their favor which gives them the right to use the property in perpetuity for terminal purposes, upon payment of the actual cost of operation, maintenance and taxes.

The claim of the defendants is that the defendant company is the sole owner of the entire title to the terminal property, and also that complainants are estopped from questioning such title.

The decree of the court below adjudged that the defendant company had complete title to the terminal property, and that complainants had no interest therein except as stockholders of the defendant company. But the court held that, growing out of provisions in that company's articles of incorporation, it owed to complainants

and their successors a corporate obligation to furnish them terminal service upon equitable terms, and that such obligation was paramount to any obligation to serve other roads. From this latter provision in the decree defendants have prosecuted a cross appeal. As to the accumulated earnings, the court below held that this fund belonged to the defendant company, and that the complainants had no interest therein, other than as shareholders in the defendant company. Complainants have appealed from the entire decree.

The determinination of the main controversy is the definition of the legal effect of certain instruments and acts of the parties or their predecessors in interest. The determination of the right to the accumualted earnings depends upon the construction of the contract (dated May 10, 1889) under which the parties are now operating.

The Main Controversy.

A brief history is essential to any proper understanding and determination of the case. As to that part of their respective railways entering Des Moines, the Milwaukee is the remote successor of the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, while the Wabash is the remote successor of the Des Moines & St. Louis Railway Company. Prior to 1881 the Wabash, St. Louis & Pacific Railway Company was the owner of a railway line extending from St. Louis northwesterly to Albia, Iowa, about sixty-eight miles southeasterly from Des Moines. J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells were at the same time interested in a short narrow gauge line, the Des Moines Northwestern Railway Company, extending northwesterly from Waukee, a town about fifteen miles westerly from Des Moines. Desiring to connect these lines at Des Moines, the Wabash and the above individuals entered into a contract December 8, 1880, providing for the organization by these individuals of a new company, the Des Moines & St. Louis Railway Company, and the building by it of a standard gauge line from Albia to Des Moines, with funds furnished by the Wabash Company. On the same day the Wabash Company entered into contract with the Des Moines Northwestern Railway, with the expressed object of increasing and securing the "through" traffic of that line.

This it sought to do by agreeing to furnish funds for the extension of that line northward and westward, and by agreeing to provide a connection from Waukee with the contemplated Des Moines & St. Louis Railway tracks to be laid in Des Moines. In April, 1881, yet another company, the St. Louis, Des Moines & Northern Railway Company, was organized by the above individuals, and soon began constructing a narrow gauge line from the northwest to Des Moines. A part of this line formed a link between Waukee and Des Moines, over which the Northwestern shortly thereafter secured running rights.

During the year 1881 and thereafter, the acquirement of right of way in Des Moines and the construction work there proceeded, the land being taken in the name of James F. How; James F. How, Trustee; G. M. Dodge; St. Louis, Des Moines & Northern Railway Company; or the Des Moines & St. Louis Railway Company. That taken by How, or How, Trustee, being paid for by the Wabash.

With the three lines entering or about to enter Des Moines and the land being acquired for terminals, the time and necessity for some terminal arrangement had arrived. The contract of January 2, 1882, was executed by the three railways and by the individuals (Dodge and How) in whose names part of the land had been taken. This contract is the basis of complainants' claims upon the main issue in the case. They contend that titles and rights defined therein remain unchanged in essentials. Defendants claims later departures radically affected such titles and rights as are to be found in the contract.

This contract, omitting signatures, was as follows:

"This Agreement made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the several individual signers hereto, Witnesseth:

"First. The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

"Second. In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually, James F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

"Third. It is mutually agreed by the parties above named, that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

"Fourth. The title to said property shall be and remain in a trustee to be named by agreement by said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

"Fifth. The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustees upon demand and reimbursement.

"Sixth. The Des Moines and St. Louis Company, shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two companies, and the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

"Seventh. The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

"Eighth. It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories and other sources of trade in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge trucks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefor shall be determined by arbitration.

"Ninth. Taxes and assessments levied upon said property shall be charged to maintenance account.

"Tenth. In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies parties hereto.

"Eleventh. All differences arising under this agreement shall be referred to arbitration; one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company, and the third by the two thus selected.

The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis, and the Des Moines Northwestern, then the second arbitrator

shall be chosen by the Des Moines Northwestern, and not by the St. Louis, Des Moines & Northern.

"Twelfth. It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement."

An analysis of this contract shows a statement of the occasion and object of the contract; provisions for the title, the use and occupation; the maintenance and the improvement of the property; and for arbitration.

The occasion and object of the contract is stated to be to provide for the common holding and use by the three companies of the property and improvements then or thereafter acquired or constructed for terminal facilities.

As to title, the property was "to be held in common" (Par. Twelfth) through the medium of a trustee to be selected by the companies, in whom the title should "be and remain * * * subject to the joint use and occupation of all of said Railway Companies upon the terms herein described" (Par. Fourth). If outside railways effected arrangements to enter Des Moines over any of the three lines they should, beside a portion of the maintenance cost, pay a fair rental "to enure to the Companies hereto in the same proportion as the original outlay" (Par. Tenth). The individual "signers hereto" declared the property acquired in their names to have been "upon the trusts above referred to', and agreed "to quit claim and convey the same to said trustee upon demand and reimbursement" (Par. Fifth). Payment for the property was to be borne by the three companies in proportions of one-half by the Des Moines & St. Louis and one-fourth by each of the other companies, with a provision that if a depot company should be organized and should take permanent charge of the property, that "said company may issue and deliver to the companies, parties hereto, its mortgage bonds to the amount of their respective portions" of expenditures for the property. (Par. Third.)

The use and occupation of the property was to be "joint" (Par. Fourth) under the "police control" and "supervision" of Des Moines

& St. Louis (Par. Sixth). Industrial spur tracks which might be built should be adapted to both standard and narrow gauge (Par. Eighth). There was provision for the use of these terminal facilities by outside companies. If such company did not extend to Des Moines, but should effect an entrance by a running arrangement over any of these three lines, such company should be entitled to the use of all the terminal facilities upon payment of a fair rental and its proportion of the maintenance account. Other railways might "be admitted to the use of said facilities by agreement of all the parties hereto" (Par. Tenth).

The maintenance of the property, including taxes and assessments (Par. Ninth), was to be in charge of the Des Moines & St. Louis, the expense to be divided on a wheelage basis and paid monthly to said company on rendition of accounts therefor (Par Sixth). Any other company entitled to use the terminals under Paragraph Tenth to bear its wheelage proportion (Par. Tenth).

Regarding future improvements, the contract provided they must, in character and extent, be such as agreed upon by the three companies, or if a disagreement, such as determined by arbitration (Par. Seventh and Eighth). The cost of such to be paid one-half by the Des Moines and St. Louis and one-fourth by each of the other companies (Par. Third), except that arbitration might settle which of the companies should pay for the industrial spur tracks, the construction of which had been opposed by one of the companies as not advantageous to its business (Par. Eighth).

Obviously the only purpose of including the individuals, Dodge and How, in the contract was to control the title taken in their names. They figure in the future of the plan, as outlined by the contract, only for the purpose of conveying their title "to said trustee upon demand."

Also there is mention of a "Depot Company." Under the influence of a knowledge of what was afterwards done, there is danger of exaggerating this reference. Clearly it was rather incidental. Its physical location in the contract is significant of the place it occupied in the minds of the parties at the time in connection with the contract. The contract is carefully drawn by skilled draftsmen, who set off in brief, clean-cut, numbered paragraphs the different subjects of the contract. If the "Depot Company" had bulked large in their contemplation at that time, or if it was to form any essential part of their then plan, it is strange it did not receive some separate and distinct consideration. In fact, it occurs in the paragraph which sets forth the proportions in which the companies are to bear the expense of acquiring and improving the terminal property. Its obvious connection with that idea is that it contains the only suggestion of any method of reimbursement for such outlay. In our judgment, that was the only reason for mentioning, in the contract, the matter of such a company. Even as expressed, while it shows that the subject of such a company had been considered, it also reveals that either the project had not reached the stage of completion and concurrence, or that everything regarding it was purposely left in complete abeyance, in so far as this contract is concerned. The expres-

sion is that such a company "may be organized" * * * may take permanent charge of the property * * * may issue and deliver to the companies * * * its mortgage bonds * * *."

As to the companies, the contract not only declared some existing property rights, but attempted to define for the future the rights of title and usage of the terminal property. The title contemplated was a trust. The legal title to be "in a trustee to be named by agreement of said companies." The beneficial estate to be in the three companies in proportion to the parts each contributed to the payment therefor. While this proportional interest is not set forth in so many words, it is necessarily inferred from the combined circumstances that the companies were to pay therefor and for improvements thereto in proportion of one-half, one-fourth and one-fourth (Par. Third), and that the only possible source of profit then contemplated or provided for (rental from any tenant company) was to enure to the three companies in the same proportion (Par. Tenth). But there was to be no proportional limitation of usage. There was to be a "joint use and occupation of all of said Railway companies" (Par. Fourth). Nothing in the entire contract hampers the complete independent individual occupation and use of all the terminal facilities at all times by each of the companies except the two provisions that the occupation and use shall be "joint" (Par. Fourth), and that the Des Moines & St. Louis shall be charged with the "police control and supervision" thereof (Par. Sixth). It was apparently intended that each company should do its own terminal work with its own men and equipment. The only other precedence given either of the companies was the necessary one of "maintenance", with which the Des Moines & St. Louis was also charged (Par. Fourth). In short, the three companies gave up independence of title and of action in the occupation and use of the property only in so far as was absolutely necessary to what they then considered a safe joint occupation and use.

But whatever may have been the importance of a depot company in the minds of the contracting companies at the time the contract was executed, such (defendant herein) was incorporated under the Iowa statutes on December 10, 1884. However, conveyance to this new company, and acceptance by it, affecting the existing terminal property, although first authorized by resolutions of the four companies January 1, 1885, did not begin until November 7, 1887, nor end until April 28, 1888. The actual management of the property by the terminal company did not commence until May 1, 1888, up to which time the companies occupied and used it in common under the 1882 contract.

What the effect upon the title, control, use and occupation of this terminal property had the formation of this terminal company and these conveyances of the property formerly owned, occupied and used by the railway companies under the 1882 contract? This involves consideration (in the light of attendant acts and circumstances) of the Articles of Incorporation of the terminal company, the resolutions of the four companies in reference to the conveyances, the conveyances themselves, and an attempted amendment of the articles of incorporation.

The only official action taken by any of the railway companies concerning and prior to the incorporation of the terminal company was a resolution of the Board of Directors of the Des Moines Northwestern Railway Company on December 9, 1884, (the day preceding the incorporation). This resolution declared "it is desirable that a corporation be organized for the purpose of taking and holding" the property covered by the 1882 contract. It then chose its representatives "to act for this company in the organization of such corporation, and they are selected to act as two of the directors of said proposed corporation so to be organized for the purpose of carrying out the objects of said contract of January 2nd, 1882." December 10, 1884, all of the parties to the 1882 contract met for the purpose of incorporating the defendant company, General G. M. Dodge appearing both for himself and for the St. Louis, Des Moines & Northern, two individuals representing the Northwestern and two the Des Moines & St. Louis. The sole business of the meeting was the passage of resolutions referring to the articles of incorporation. The resolution of adoption declared "that for the purpose of carrying out the objects and purposes of the agreement heretofore, to-wit, on the 2nd day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company and others (which is set out in full in the following Articles of Incorporation)", that the articles be adopted as follows:

"Articles of Incorporation of the Des Moines Union Railway Company.

"Whereas, The Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Iowa, and have secured certain franchises, purchased certain realty and made certain improvements thereon—which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions, at their joint expense—in accordance with a contract made and entered into by and between said companies and Grenville M. Dodge, and James F. How, Trustee, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to-wit:

[Here the contract was set forth.]

"Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said Companies, and

"Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was the understanding of the parties that such Company might acquire, operate and maintain said property in such manner as best to serve the interests of the parties hereto.

"Now, Therefore, for the purposes aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following:

"Articles of Incorporation.

Article 1.

"The name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be Des Moines, Iowa.

Article 2.

"The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight-houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars from the line or depot of one railawy to another, or from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter I, of Title IX. of the Code and the amendments thereto. All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, The St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, Trustee, and Grenville M. Dodge. The said company shall have the right to lease or otherwise dispose of the use of any part of its franchise to any other Railway Company—provided that the assent in writing of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and The St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

Article 3.

"The capital stock of this corporation shall be One Million ($1,000,000.00) Dollars, which shall be divided into shares of one hundred ($100.00) Dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwest-

ern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge.

Article 4.

"The affairs of the Company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of each year. The provisional Board of Directors, who shall hold office until the first Thursday in January, A. D. 1886, shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

"Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St, Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.

"The fact that a candidate has been duly nominated shall be certified to the Stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive.

"The provisions herein with respect to nomination for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and The St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the Stockholders as hereinbefore provided.

"The Directors shall elect, from their number, a President, Vice President, Secretary and Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

Article 5.

"The President, Vice President, Secretary and Treasurer, shall possess the powers and discharge the duties of like officers of similar corporations, subject to the limitations imposed by these Articles. The officers, hereby constituted, who shall hold their places until the first Thursday in January, 1886, or until their successors are duly chosen, shall be as follows:

President .....G. M. Dodge.
Vice-President .....Jas. F. How.
Secretary & Treasurer....F. M. Hubbell.

Article 6.

"The private property of Stockholders shall be exempt from liability for corporate debts and undertakings.

Article 7.

"The highest amount of indebtedness to which the corporation may at any time subject itself shall be the amount authorized by law.

Article 8.

"Meetings of the Board of Directors may be called by the President, or, in case of his absence or disability, by the Vice President, and shall be called upon request preferred in writing by two members of the Board.

Article 9.

"These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of the stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation—published in the City of Des Moines, Iowa.

Article 10.

"This corporation shall commence on the Fifth day of December, A. D. 1884, and continue fifty years, with the right of renewal."

That the creation and entrance of the terminal company into the arrangements of the parties had a marked influence is certain. Here was a creature of the companies, brought into being for the cardinal purpose of taking, by some sort of title, this terminal property, improving, maintaining and operating it. No title was conveyed in the articles of incorporation. Had nothing further been done the title, control and operation of the terminal property would have been unaffected. But these articles are valuable as throwing light upon the intention of the parties as to the place that company was to have in their terminal plans. These articles contain provisions in addition to such as would have been necessary in the mere

creation of a terminal company—to such as would have been employed by outsiders whose only purpose was to engage in a terminal business. It is in these exceptional provisions that the particular intention of these parties is to be found. The articles include what may be called a "preamble", which, after reciting the occasion of the 1882 contract, the contract in extenso, and the expenditure of money in pursuance thereof, makes its sole reference to the terminal company as follows:

"Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was the understanding of the parties that such Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto;"

declares that "for the purposes aforesaid, as well as for those hereinafter expressed, they associate themselves in a body corporate, and adopt the following:

Articles of Incorporation."

The clear statement in this preamble reference is that the parties intend the terminal company "to take permanent charge of the property" and "to acquire, operate and maintain said property" in such manner as best to serve their interests.

In what we may call the articles proper we find certain provisions which reveal the intention of the railway companies, not only to keep the stock ownership (seemingly contemplated in the authority given the Board of Directors "to receive in payment therefor the property and franchises in Des Moines, now held" by the railways and individuals, parties to the 1882 contract), but to exercise a control over the property and over the actions of the terminal company beyond such as would spring from stock ownership alone. Our immediate inquiry has no concern with the legality of these exceptional limitations if attacked in a proper way, but, taking them as they are, what light do they throw upon the intention of the parties?

Such control may be roughly classified into three kinds: (*a*) the requirement that the board of directors should be nominated by the three companies (treating the Wabash as identical in interest with the Des Moines & St. Louis) (A-4); (*b*) requirements relating to the disposition of the use of any part of its franchises to any other railway company (A-2), to the creation of any limitation upon such franchises (A-4), to the creation of any permanent charge upon the property (A-4); and (*c*) a broad requirement that all of the powers of the corporation shall be exercised "in accordance with the terms and spirit" of the 1882 contract (A-2).

The first of these three classes (*a*) shows the method of controlling the board of directors. Aside from any previous contract, the railways might want a provision perpetuating in them the choice of directors, and the only connection in thought with the 1882 contract

suggested by this requirement is in the circumstance that each railway company was to choose directors in proportion to their interest in the property under that contract. If the selection of directors were to depend entirely upon the vote of the stock, there was no assurance that two of the railways might not combine their votes and exclude the third from any voice in the active management. Therefore, they sought to assure not only complete control of the board, but the same representation upon the board as each of them was to have in the property under the existing contract. The idea also doubtless being in their minds that the stock which paid for that property would be similarly divided.

The second requirement (*b*) shows the method intended to preserve the control of the railway companies over the property and franchises acquired by the terminal company. Without the previous approval of the three railway companies no disposition of the use of any part of its franchises could be made to any other railway company, nor could any permanent charge be placed upon its property.

Passing from these specific provisions, looking toward the control by the railway companies of the management, franchises and property of the terminal company, we approach the general requirement (*c*) that "all the powers" of the terminal company shall be exercised "in accordance with the terms and spirit" of the 1882 contract. What does this mean? Evidently a limitation upon the exercise of the corporate powers. Subject to the limitations above discussed, those powers were such as ordinarily belonged to a corporation organized under the Iowa Code for pecuniary profit to construct, own and operate a terminal railway, with all of its attendant depots, warehouses, shops, etc. What, then, were the further limitations carried by this reference? How was the free exercise of these powers of the terminal company in constructing, owning and operating a terminal, to be limited by the terms or spirit of the contract? The terms and intent of the contract as to construction were that there should be only such improvements and extensions as were agreed upon by all the three railways, or settled by arbitration, and to be paid for (except as to certain industrial spurs) by the three on the basis of their contemplated interests in the property of one-half, one-quarter and one-quarter. The contract terms and intent as to ownership were a trust. The contract terms and intent as to operation were that each company should do its own terminal work under the police control and supervision of the Des Moines & St. Louis. Under the contract the cost of maintenance (including taxes and assessments) was on a wheelage basis. Under the contract the use of the facilities by other roads was to require agreement of all three roads, except that any other road entering Des Moines over the tracks of any of the three railways might use them on payment of rental to the roads and a wheelage part of the maintenance.

It is clear that all of these terms and intentions neither were intended to nor could survive the introduction of the terminal company. It is also clear that some of them were to remain active. It is impossible from the two instruments alone (contract of 1882 and

articles of incorporation), read in the light of their history, to draw a line in this particular which is at all points clear and definite. Some things, however, seem distinct. Touching operation, it is conceded by all parties to this suit that the plan of the contract that each of the railways should do its own terminal work over tracks in joint use was dangerous and unworkable. Doubtless this was one of the main underlying necessities for a terminal company which could, with its own engines and men, do all of this terminal work. Each of the companies was to have terminal facilities, but in a different method from that covered by the contract. The idea of a joint usage in the sense of a right in each of the three railways to make an individual usage of the same property during the same period had been found unsatisfactory and abandoned for the better plan. The contract plan of operation was to be replaced in its entirety.

As to ownership, no title or interest in the property owned or held by all or any of the parties to the contract passed or was affected by the articles of incorporation. It is quite clear, however, in the articles that the parties intended in the future to turn over that property to the terminal company. What was to be the character of the title or interest they intended to convey? There is no dispute in this case that as much as the bare legal title was to go. Was the full beneficial interest also to pass? When the parties made the 1882 contract, which provided for a trust, they also revealed therein that a terminal company had been under discussion. In an almost incidental way that matter was mentioned in connection with payment for the property covered by the contract. This mention was that such a company "may issue and deliver to the companies parties hereto its mortgage bonds, to the amount of their respective portions of the costs of said purchases and improvements." Why issue and deliver the bonds unless they carried value? Why issue and deliver them, except for some value in return? In short, the idea in the contract was compensation or reimbursement. The compensation or reimbursement was to be for money paid out for the legal title and the beneficial interest in the property. The only thing which the parties then had in view to give value to a mortgage and its bonds was this same property. Clearly the parties had considered before and at the time of the contract that the plan first to be tried might give way to that of a terminal company, and that such company might acquire the entire title to the property. Coming to the articles, we find no change in this conception. The preamble recited that "it was the understanding of the parties that such company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto." Nothing is said regarding the use of mortgage bonds, but Article 3, dealing with capital stock, authorized the directorate of the new company "to receive in payment therefor the property and franchises in the City of Des Moines now held by" the parties to the contract. What other than the beneficial interest in this property could have constituted in any real sense "payment" for the stock? Article 4 required the consent of all three companies before any "permanent

charge" could be placed by the terminal company upon the property. Thus the plan, so far as revealed by the articles, seemed to remain as suggested in the contract, with the additional idea of a payment in stock. In short, the complete title to go to the company, with the terms of payment not definitely settled, but suggestions of the value in bonds up to the outlay (in the contract) and of the capital stock of the company (in the articles).

As to maintenance: There is but one direct statement, and that is the one from the preamble quoted above. As to where the funds are to be secured therefor, there is no suggestion, unless we can infer that the plan of the contract is to prevail, or that indebtedness may be incurred therefor.

As to the use by other railways: There is the provision that the company shall have no right, without the prior written consent of the three railways, "to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company."

Summarizing, the intention of the parties as revealed by the articles of incorporation shows a development of the terminal plan, changing, but not entirely abandoning, that of the 1882 contract. The continuing influence of that contract is evident, though the limits of that influence are not in all respects clearly defined. As to operation, it is evident that the general agency thereof was to be entirely different from that contemplated by the contract, but there is lack of certainty as to the influence of the contract over the action of this new agency. As to title the intention is clear. As to improvement and maintenance there is indistinctness.

The conduct and acts of the parties during the next few following years gradually clarified, crystallized and consummated the entire plan. The intention that the entire title to the property should pass to the terminal company had been suggested in the 1882 contract and adhered to in the articles of incorporation of that company. It was to be further emphasized in resolutions of the four companies relating to the transfers of the title. It was to be consummated in those conveyances. The plan as to improvements, maintenance and operation of the property in the hands of the terminal company, which had been so dimly outlined in the charter requirement that the powers of the terminal company should be exercised "in accordance with the terms and spirit" of the contract, obviously needed further and clearer definition. The 1882 contract was most general in its provisions and it applied to a situation in which a terminal company had no place. No one could determine what the "terms and spirit" of the 1882 contract meant as applied to the management of the terminal company. Very soon after the terminal company took control of the property the parties dispelled this uncertainty by a supplemental contract explaining clearly what they meant in that regard by the "terms and spirit" of the 1882 contract. This was the contract of May 10, 1889, related back to the date the terminal company took control (May 1, 1888), and covering a term of thirty years. It completed in a workable manner the terminal plan. While all important in the other branch of this case, this last contract is no more than a side light upon the main controversy which

pivots upon the character of title in the property conveyed to the terminal company.

The first step toward a transfer of title was the action by stockholders' meetings of the four companies, all held January 1, 1885. At these meetings the railway companies (each reciting that the terminal company had been "organized as contemplated and provided in the aforesaid contract, to acquire, hold, use and enjoy the real estate, property rights and franchises in the City of Des Moines * * * of the aforesaid railway companies and signatories of said contract acquired and held thereunder, and to carry out the purposes of the said contract") ratified and accepted the articles; undertook "to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of" the terminal company and authorized its proper officers

"upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign and transfer to said company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines East of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract."

Upon the same day the terminal company, at the first meeting of its Board of Directors, appointed a committee

"to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said properties as provided for in said contract of January 2nd, 1882."

It also directed the issue of not to exceed all of its fully paid capital stock and not to exceed 500 bonds of $1000.00 each, secured by mortgage on "all of said property so to be conveyed to this Company or thereafter to be acquired." This stock and these bonds were "to enable this Company to pay for the property and to maintain, operate and improve the same, and purchase other property necessary to carry out its objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same." With the provision that when the above committee "shall have agreed with the said several parties to said contract as to the amount of bonds and stocks of this Company necessary to be delivered to them and each of them, in payment for said railroad property and franchises," and shall have delivered the same "on receipt of the conveyances and assignments of said property so to be made to this Company," the remainder of the bonds and stock shall be issued from

time to time as needed only for the above purposes. Deeds in compliance with these resolutions were not made until beginning with November 7, 1887, and ending April 28, 1888. Nor did the terminal company take possession and operate that property until May 1, 1888, after the last of these deeds, although two of the three railway companies had at these same January 1, 1885, meetings, voted to at once "transfer the management and operation of its property in Des Moines" to the terminal company, expressly leaving the settlement as contemplated by the other resolution to be arranged later, and although the terminal company at its meeting that day assumed to take immediate charge. It is not shown in the record why there was this delay in executing the deeds, although counsel suggest it lay in the confusion attending the passage through financial difficulties of the Wabash & Pacific, the largest single force in the terminal arrangement.

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November 1, 1887, the terminal company, at a stockholders' meeting called "for the purpose of considering the question of amending the Articles of Incorporation of this Company, and issuing bonds of the Company for the purpose of raising money to purchase, construct and improve its railway and property", increased its capital stock to $2,000,000.00, (without changing the authorization to receive therefor the properties in payment) and authorized the issue of not over $800,000.00 bonds, "secured by mortgage or deed of trust on the property of this Company, and the same or the proceeds thereof to be used in purchasing and paying for its property and improving the same, and building its railways, depots, round-houses and shops, and making other improvements."

Within a week later the directorates of the four companies passed practically identical resolutions in reference to the transfer of the property taken in the names of Dodge and of How. The substance of these resolutions was a request to How and to Dodge "to transfer to" the terminal company the property so held upon receipt of stipulations to deliver to each of them as soon as practicable "first mortgage bonds of that company to the amount of the money advanced for the payment of said property and improvements with interest on same and taxes paid thereon", and the capital stock of the company. The stock to go one-fourth to Dodge and three-fourths to How, the latter to transfer the stock and bonds coming to him to the purchasing committee of the Wabash "in lieu for the money advanced by said Company to make the purchase of above property and improvements, and the payment of taxes for this company."

In addition the Des Moines & St. Louis authorized its officers to execute a deed to the terminal company "conveying to it all its real estate rights of way, franchise, road-bed and other property of said company lying and being in the City of Des Moines, east of Farnham street", no matter how acquired. This being done "for the purpose of carrying out the contract of date January second, 1882."

On the same day, upon receipt of formal notices of the above resolutions passed by the railway companies, the terminal company, at a directors' meeting, accepted the above action of the railway com-

panies, authorized the delivery of the stock and bond warrants, the execution of the mortgage and issue of bonds.

All of the above resolutions were passed at stock or directorate meetings of the companies. The entire membership of the terminal company was selected by the railway companies and undoubtedly simply registered their will. The resolutions emphasize and confirm the statements made above as to the intention of the railways (revealed in the contract and the articles) that the entire title should pass to the terminal company and be paid for by stock and bonds of that company.

In pursuance of the resolutions, How and Dodge delivered deeds. There were three from How covering different pieces of property. The first two were identical in form. Omitting legal description of the property they were as follows:

"James F. How, Trustee,

to

Des Moines Union Ry. Co.

Deed.

"Whereas, The property herein described was from time to time purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company a corporation; and Whereas for its convenience the legal title to said property was conveyed to me in trust; and Whereas said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company; G. M. Dodge, James F. How and James F. How, Trustee; and which contract was consented to by said Wabash, St. Louis and Pacific Railway Company; and Whereas I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas the Board of Directors of said Des Moines & St. Louis Railway Company and the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"'Whereas, James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement with this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F.

How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to.'

"Now, therefore, know all men by these presents:

"That I, James F. How, Trustee, as aforesaid, of the City of St. Louis, State of Missouri, in consideration of the premises, and of the sum of One Dollar, to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, the several lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows:

* * * * * * *

"To have and to hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me."

The third deed substantially differed only in that the conveyance recited it to be by How "as Trustee aforesaid." The deed from Dodge was an ordinary quit claim. A few lots which had been taken in the name of the Northern were quit-claimed by a deed which conveyed the described lots,

"Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises together with the appurtenances, unto the said parties of the second part and assigns forever."

Other property which stood in the name of the Des Moines & St. Louis was conveyed by general warranty deed. All of these deeds were recorded, so far as this record shows, on April 26, April 27, or May 1, 1888.

The mortgage authorized was dated November 1, 1887, acknowledged February 13 and 28, 1888, and recorded May 21, 1888 (three weeks after record of the last of the above deeds on May 1). There was never any deed from the Northwestern, which had no property standing in its name.

It is unprofitable to trace the different later steps connected with and leading up finally to the payment for the property by bonds covering the actual expenditures and stock totaling 4000 shares ($400,000.00).

With the passage of these deeds and consideration ends the history of the title. All of these transactions result as follows: An intention on the part of all parties that the entire title shall go to the terminal company; payment by that company of the full consideration therefor ultimately agreed upon; deeds designed to convey that full title.

But it is said that if the railways did so convey all interest in those necessary parts of their roads, such action would be void. The rule invoked is that public carriers will not be permitted to contract away their public usefulness by vitally maiming their lines. Rules of law extend no further than the basic reasons upon which they rest. The usefulness, if not the necessity, of terminal companies is established. That they must, as a general proposition, own their properties in order to raise funds to improve, maintain and operate them efficiently, is certain. The more efficiently and economically a railway can procure terminal facilities, the better and cheaper its services to the public should be. The conditions and compensation for use of such terminals by the railways is subject to public control, so that the railways cannot be denied or unreasonably restricted in such usage. The public service is protected. It should be bettered by such a terminal arrangement. Therefore, the rule invoked by plaintiffs has no application to disposition of terminal portions of a railway to a terminal company.

It is urged that the terminal company has, by its own statements, declared that it had no beneficial interest in the property. The statements intended are contained in reports made by that company to the Executive Council of Iowa for the years 1888, 1889, 1890, 1892 and 1893. In these reports the company stated that it was "simply a representative company, acting as an agency" for the railway companies, "performing all necessary work for them, and charging each at actual cost, its due proportion thereof incurred." These reports were made for purposes of taxation. During all of those years except 1892 and 1893 the entire income was applied in reduction of the bills of the railway companies, and for those two years it should have been so applied under the terms of the thirty-year contract, dated May 10, 1889. So that, in fact, it had no income which properly remained as its own. Again, if the use of the term "representative" is to be emphasized, it would be met by the terms "tenant" and "lessee," applied to the railway companies, in a contract dated July 31, 1897. This latter contract was between the terminal company and the complainants, or their predecessors. It applied to and affected the contract of 1889, under which the companies are and have been operating since very shortly after the terminal company began to control the property.

It is contended that complainants retained through the articles of the terminal company an interest in and control over the property.

As we have endeavored to show above, no interest was retained in the property through these articles of incorporation. The title was undisturbed and unaffected until the deeds transferred it. However vocal the articles of incorporation and the resolutions of the different companies may have been of the intention of the parties, these expressions passed into effective action only in the deeds. But the articles did provide for a direct control over the property by the railway companies. This was through the requirement that the prior consent of the railways was necessary before leasing or disposing of the use of any part of its franchises, or before placing any permanent charge upon the property, and the requirement that the railways, not the stock, should name the entire directorate. This control was purely contractual in its nature and neither sprang from nor gave rise to any legal estate or interest in the property itself affecting the full and complete title of the terminal company. When the deeds passed, the terminal company held the complete legal and equitable title to the property, though it had by contract restricted its freedom to lease, dispose of or incumber it.

The above control was later relinquished. April 8, 1889, there was an attempt to amend the articles. The result of the proposed amendments would have been to take from the railways, as such, all of the control given by the original articles; to substitute therefor a character of veto control by one-eighth of the stock; and to provide that, not all, as formerly, but 4000 shares of the capital stock should be paid the railway companies in addition to the bonds then already issued as the full purchase price of the property deeded by the railways. The railways contend that they were invalid because not properly adopted; and that, even if valid, they could not alter the relations between the railways and the terminal company, because such were based upon contractual rights which had become vested, and which the railways had not by formal corporate action consented to be altered.

The claim that the amendments were never properly adopted is well taken, but not open to complainants. The exact rights of anyone to any of the capital stock were not determined definitely until the contract of May 10, 1889, and no stock had been issued at all up to the date of the attempted amendments. However, the company had maintained an organization from its incorporation, December 10, 1884. This was not difficult, as the articles themselves provided for the nomination of the entire board by the railway companies; no other party had any interest in this terminal company or property; and it was not active in the control and operation of the property until May 1, 1888. But when the corporation undertook to amend its fundamental law, that could be legally done only by the stockholders. There was no stock issued; there was only a right to stock through the contract of 1889. This contract provided (Sec. 26) for the issuance of the entire authorized capital of $2,000,000.00 (20,000 shares), 10,000 shares to the St. Louis Company and 5000 shares to each of the other two companies. It appears from the same section of the contract that each company was to

stock qualify its own terminal company directors. With the three companies entitled to all the stock, and with none of it issued, the eight men (in person or by proxy), who had been selected by these companies as their choice for directors, met in a stockholders' meeting, claiming to represent one share of stock each. There is a statement in the minutes of that meeting that the railway companies "were also present" in the person of three of these men, who were respectively president or vice-president of each of the railways. It is not stated or claimed that such alleged representatives were there holding the proxies of the stock to which their respective companies were entitled, or that as such representatives they participated in any way in the meeting. *Nor is* it claimed that any of them had any authorization from his company (unless such adhered to his official position) to so be present or to represent it. At such a meeting the amendments were duly passed. Formal requisites of the Iowa law as to publication, etc., of corporate amendments were met.

Articles of incorporation have a dual character; they are at once a grant of authority and a contract. The matter of authority is between the state and the incorporators alone. The matter of contract, while always and primarily between the state and the incorporators, may include third parties, either actual or in prospect. Hawthorne v. Calef, 2 Wall. 10; Curran v. Arkansas, 15 How. 304; Woodruff v. Trapnall, 10 How. 190. The relation between such third parties and the incorporators or their combined entity, the corporation, is purely contractual. It possesses no different or higher attributes because its terms find expression in an instrument to which the state is also a party. Such contracts are subject to the ordinary rules of law governing contracts. It is, of course, evident that such third parties and the corporation could not alter such contract in any manner that would affect the rights of the other party, the state. Although there are additional reasons why this should be so where the state is a party to this character of contract, yet neither can two or three parties to any contract so alter their contractual relations as to affect the third without its consent. No reason appears why in this, as any kind of tri-party contract, two of the parties may not at will alter or annul any of such contract rights, if such action affects them alone. With such power to change their rights, the question becomes whether or not the terminal and railway companies have altered or annulled the rights arising from the contract contained in the articles of incorporation. They took no formal corporate action accepting or ratifying these attempted changes in their contractual relations with the terminal company. But all of the individuals who acted at this purported meeting of stockholders of the terminal company were chosen by the three railway companies and certainly were merely their instruments. There can be no question that the controlling, executive officers of the railway companies were fully aware of and approved the action of the meeting; that Hubbell was encouraged to purchase the bonds and stock; that the value of the stock was solely prospective during the existent

operating contract and that this value has largely increased as the worth of the terminals grew and the contract term diminished. Although the 1889 contract had provided for distribution between them of the entire capital stock of 20,000 shares they accepted, after the amendments, distribution of 4,000 shares provided therein. Before the amendments there had been no stock issued, but the corporate organization had been maintained by eight directors chosen by the three railways in accordance with and in the proportions prescribed in the original articles. After the amendments the directors were elected by the outstanding stock, and, in fact, they were not all representative of the railways; no attempt was made by the railways, as such, to exercise the very valuable right of naming, in certain proportions, the directors. The amendments provided that no stock beyond the 4,000 shares should be issued except by consent of more than seven-eighths of the stock. This provision has been observed. This was a very vital provision, bearing upon the value of the issued stock. It cannot be disputed that the virtual veto of further issue was for the benefit of Hubbell, who then owned one-eighth of the stock (bought less than two months before), and to whom the Wabash purchasing committee at that very time was endeavoring to sell another eighth (later consummated). At that time the terminal company was under contract with the railway companies to apply all of its surplus earning to a reduction of their service bills thus, during the life of that contract, depriving the stock of all chance of dividends. That contract had then twenty-eight years to run. Yet three days before this purported meeting of the terminal stockholders the Wabash purchasing committee offered Hubbell $100,000 of terminal bonds and one-eighth of the stock for $115,000.00 and accrued bond interest. This sale was consummated after the amendments had been adopted. The truth seems to be that the purchasing committee of the Wabash was desirous of realizing upon these bonds and stock by sale to Hubbell, who was the dominating influence in the other two railways; that Hubbell was willing to purchase if the control of the railways, as such, given in the articles was removed; the articles were amended, removing Hubbell's objection; the purchase was made. For seventeen years thereafter the railways acted in perfect harmony with the articles as amended. During all of that time there was no questioning of their validity. Not until this suit was filed in 1907 was there any such attack. The doctrine of laches comprehends and controls the situation. Neither as shareholders nor as parties contracting with the terminal company can the railway companies thus sleep upon their rights and then in a court of equity enforce such against others who have, to their knowledge, acted upon the belief that such rights did not exist and have acquired and hold property which has enormously increased in value in the interval. These amendments took away all control by the railway companies, as such, over the action of the terminal company. This would include the rights of approval by them of usage, transfer or permanent incumbrance of the property, nomination of directors and all influence of the 1882 contract as embodied in the articles of incorporation. All of these

provisions in the articles were for the exclusive benefit of the railways, and they could and did part with them.

Finally, it is urged that it cannot be supposed that these railway companies would bring into being a creature, put into its hands such ownership and control over their property and endow it with such powers that it and not they could command the situation. Such a supposition is improbable and here unnecessary. There is nowhere any indication that the railways intended any such result, and yet such, in our judgment, is the result. This unexpected outcome was the product of several circumstances. A very short trial convinced the railways that the 1882 contract plan was not safe nor practical in the use of the terminals. Under that plan as much control as they deemed proper had been vested in that one of them (Des Moines & St. Louis Railway Company) which was most largely interested in the property. The necessity of some neutral outside agency was evident. A close corporation in which stock and representation on the directorate was assured in proportion to their ownership of the property naturally suggested itself. The opportunity for reimbursing themselves for outlay in connection with the property was attractive. This could be done through bonds of a terminal company and yet leave the free use and entire control of the terminals. Such bonds must have value behind them, and there was no other value possible except the property. Also, they must acquire the stock of such company and must make payment therefor in value. So they created this agency; they circumscribed its powers with restrictions which made their control of it as complete as legally possible; they contracted among themselves, limiting the transfer of stock by any of them. They thus took every precaution consistent with the objects they had in mind which prudent men could devise to make their control over their creature complete and permanent. They then transferred to it their property and felt secure. For years so complete was this mastery that no stock of the terminal company was issued, although it had acquired the property, issued its bonds thereon, and had sole control over the operation of the terminals. But financial difficulties enmeshed the Wabash, the then holder of the largest interest (one-half) in the stock and bonds. One avenue of relief was through disposition of a considerable portion of such stock and bonds to an individual (Hubbell), who was then influential in the two other railways. Such a sale would seem in effect a mere rearrangement of the interests of the three companies in the terminal company. But it was a vital condition of that purchase, required by the purchaser, that the complete control of the railways over the terminal company should be lessened so that the purchaser might protect his interests. This was done. It was the severance of those bonds in which lay the control of the railways, as such, over the terminal company. Thereafter, through successive acts, natural enough and, at the time, apparently harmless, this removal of control was more completely confirmed. The ultimate result being the entire emancipation of the terminal company from outside government. In course of time a majority of the outstanding stock had passed legitimately

and for value to the Hubbells. Also, they had disposed of their interests in the railways (Northern and Northwestern) to the Milwaukee, retaining for themselves the terminal company holdings. These last two concurring factors inserted into the situation for the first time an unforeseen diversity of interests between the railways and the terminal company. Thus the railways themselves had, through a series of acts and circumstances extending over many years, gradually let slip from them the exclusive ownership and control which they had at the beginning so much valued and so carefully guarded. The proprietorship and mastery of the entire terminal property, rights and franchises are represented by the outstanding stock and bonds of the terminal company. All of such stock and bonds are now held by the complainants or passed through their ownership or that of their predecessors and were parted with for value. They have not lost their property. They have the stock and bonds or the value they received for them. They have parted with all control not given by the stock or bonds.

Our determination upon the main contention in this case is that complainants, except as bond and stockholders, have no interest in the property of the terminal company and no voice in the control and management of that company.

Surplus Earnings.

In connection with the management and operation of the terminal properties, sources of income arose aside from the contributions made by the three railways. These sources were switching charges and rental of parts of its property or of privileges in connection therewith. Accumulations of this character now total several hundred thousand dollars. Complainants base claim therefor upon the contract entered into between the terminal company and the railway companies, dated May 10, 1889. The terminal company replies that the contract does not include such monies. The determination turns, therefore, upon the meaning of that contract. A subsequent contract of July 31, 1897, does not affect this controversy.

Those portions of the 1889 contract pertinent to this point are as follows:

"Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay to said party of the first part a sum of money to be asecrtained as follows, to-wit:

"1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

"2nd. At the expiration of each month or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round-houses, engine houses, etc., during the preceding month. And in like manner

there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round-houses, transfer and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

"Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid to the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month; and it is expressly understood and agreed that in computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard gauge cars; and that the term 'wheelage' as used in this contract means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

"Section Five. If the amount, or any part of the amount, due from any other railroad company or companies for the use of said property or any part thereof, shall not be paid when due, then the sum so due and unpaid shall also, on demand of said first party, be paid to it by said second parties on a wheelage basis as hereinbefore defined."

Section Nine, referred to in the above quotation, relates to a different basis of dividing round-house expenses and does not alter the meaning of the quotation.

The plaintiffs contend that these "Surplus Earnings" are made up of items which under the above provisions should have been credited upon their monthly bills. Defendants claim that the only character of credit items intended by these provisions were such as were paid by some other railway by virtue of a contract for the use of the property, and that these items fall without that definition. This latter contention is a strict construction of the exact wording of the contract. It is not in our judgment a fair construction of the spirit of the agreement. This conclusion is based both upon the history of the transaction and upon the meaning to be given this precise language when read in connection with the entire contract.

After the railways had, in April, 1888, transferred the property to the terminal company it was in a position to proceed to carry out its purposes. All of the parties (this for practical purposes

at that time meant the three railway companies) evidently realized that something more was needed to definitely define and control the relations of the four companies toward each other. One witness testifies that the moving considerations which led to this agreement were that the 1882 contract had made no provision defining how the interest upon the bonds should be paid, and that the railways thought that round-house services should not be paid for on a wheelage basis. Doubtless these two items were in the minds of the parties, but it is quite evident that there was something of greater importance. The very general statement in the articles of incorporation that the terminal company was to exercise all of its powers "in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882", was too vague to serve as a practical definition of the rights of the parties or as a guide to the terminal company in the conduct of the business of the railway companies. Besides it was vitally necessary to settle the terminal stock rights of the railways. Therefore the parties wisely determined, as set out in the preamble of the 1889 contract, that

"for the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined."

The contract of 1882 had provided a plan for financing the terminal project. This plan contemplated that the railway companies would provide the terminal properties; that the expenses of control, supervision, maintenance (including taxes) and (generally speaking) improvements should be met by them on a wheelage basis. They expected at that time to procure the service at cost and divide that cost in accordance with actual usage. This idea that the terminal service for which they were taking all these steps would be furnished them at cost passed into the 1889 contract. For several years after that contract became effective the monthly bills rendered by the terminal company and paid by the railway companies set forth specifically these items of rentals and switching charges from outside sources of credits upon the expenses, of which the balance was divided between the three railways on a wheeling basis. February 11, 1891, a director's meeting of the terminal company ordered

"that the rents collected for the use of the Company's real estate, and the switching charges paid in, be credited on the bills of the different tenant companies occupying this Company's terminals, giving to each Company its share ascertained by wheelage."

About a year later, January 7, 1892, the same body ordered a discontinuance of this practice. By its terms this discontinuance was intended to be temporary and was for the purpose of providing a fund "with which to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies." When the auditor of the Wabash noticed the absence of such credits from the bill for the month preceding the above last

order he inquired of the terminal company superintendent, who wrote as follows:

"Replying to yours of the 1st inst., in regard to the allowance for switching, rentals, etc., that should be made on our bills for the months of December and January, I have to say, that at a meeting of the Executive Committee, held January 7, 1892, it was decided not to distribute these collections for a period of time, until the Des Moines Union Railway Company could accumulate a small fund for working capital. I presume this will continue in effect until January, 1893. You will be furnished each month a statement showing the amount of this rental, *and your proportion of the same* (italics ours) os you can make a charge against the D. M. U. Railway and carry it on your books, as you see fit for future adjustment."

Also, in the annual report made by the terminal company to the Executive Council of the state of Iowa for taxation purposes for the years 1888, 1889, 1890, 1892 and 1893, was the statement that the terminal company was "simply a representative company, acting as an agency for" the railway companies, "performing all necessary work for them, and charging each at actual cost its due proportion thereof incurred." The report for 1894 differs in some other, but not in this respect, except that it includes another railway, and says that it "performs certain services for these companies and collects from them as rental and for such services, the aggregate amount of its expenses, which expenses are paid by the several railway companies in proportion to the use of the property and services rendered, as provided by contracts existing between this company," and the other companies. Thus the history of this provision of the contract, and of the view taken of it by the parties themselves before any antagonistic motives or interests had intervened, shows that all revenue of the terminal company was to be credited on the bills of the railway companies. A careful consideration of the entire contract itself leads to the same conclusion.

Therefore, the surplus earnings should be returned to the railway companies. For that purpose an accounting should be taken to determine what sum should go to each, calculated upon monthly wheelage basis.

Usage After May 1, 1918.

When the present operating contract is ended the rights of the parties respecting the use of the terminals by the railways are those which spring from their nature as carriers and their physical and business relation to each other as carriers in and entering a large terminal. These are that the terminal company must furnish its full terminal facilities in so far as reasonably necessary and required by the railways, and they will pay therefor such reasonable sum as may be agreed upon between the terminal company and each of the railways, or, in default of such agreement, as may be fixed by the proper public tribunal.

Conclusion.

The decree should be modified. It should state the complete title to this property in the terminal company, and that the only interest of the railways in the property or the management of the corporation is such as flows from stock ownership. That the surplus earnings belong to the railways, and a master should be appointed under instructions to ascertain the part due each upon a wheelage basis.

It is so ordered.

Filed May 23, 1918.

HOOK, *Circuit Judge*, dissenting in part:

I concur in the award to plaintiffs of what is called the surplus earnings of the terminal company, not only for the particular reason given but also for a broader one arising from the other branch of the case.

I am unable to agree to the foregoing opinion upon the main controversy and will state my reasons in a general way. The railroad companies organized the terminal company and invested it with the legal title to their property, including integral parts of railroad lines and appurtenant franchises, solely for the more convenient and better performance of their public duties. It is open to question whether the most important of the conveyances could lawfully have been made except for that specific purpose. That purpose was fundamental, not temporary or casual, and it determined the character of the terminal organization. The terminal company was not incorporated by individuals as an independent enterprise for personal profit and its stock was not put upon the market as that of a financial venture. The contract of 1882 between the railroad companies foreshadowed the terminal company in express words and when that company was chartered it took the place of the individual trustee provided for by the contract. That fact is too plain for discussion. The change to a corporate trustee was solely for reasons of convenience. It was one of method or form but not of underlying, essential substance.

As regards the legal title to the property, the terminal company became the trustee of the railroad companies that organized it and of such others as might thereafter be admitted to joint beneficial ownership. The beneficiaries present and future were what are commonly called proprietary or constituent companies. Each of them owed a duty to the others that it would not at any time so deal for itself or with its own proprietary interest as to impair or destroy the joint relation among them or the character of their common organization. Not only did the terminal company hold the legal title as trustee, but in the operation and maintenance of the property it was an agency of the proprietary companies for the performance of their railroad functions. This was accurately

expressed in a sworn declaration by one of the individual defendants in 1892 when president of the terminal company. He averred that it was "simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company and the Des Moines, Northern and Western Railway Company, performing all necessary work for them, and charging each at actual cost, its due proportion for the expense thereby incurred." The Des Moines, Northern and Western was the successor of two of the original proprietary companies.

In both aspects of its position towards the proprietary companies the terminal company was in a high sense their trustee; and according to salutary principles it was bound to maintain the integrity of that relation. Being itself a corporation, its fiduciary obligations and disabilities rested equally upon its officers through whom alone it could act. The limitations upon the right of a person in such a capacity to act for his personal benefit with respect to the subject of the trust are familiar. Never are they less than that the dealing must be open, avowedly at arm's length, and without contrivance or concealment. The individual defendants, one or the other or both, were, at all the times material in this case, officers and directors of the terminal company. The conclusion of my brothers, briefly stated, is that by a series of transactions occurring in a long course of years the original character of the terminal company was gradually changed into that of an independent corporation, and that the control of it was lost by the railroad companies and was acquired by the individual defendants who were its officers. But they say: "There is nowhere any indication that the railways intended any such result, and yet such, in our judgment, is the result. This unexpected outcome was the product of several circumstances." In other words, the proprietary companies were not cognizant of the trend of the circumstances, and the result held to follow, though unexpected and not intended by them, is enforced because of a legal presumption of intention of natural consequences of acts, regardless of intention in fact. The circumstances relied on do not appear to me to have the significance attributed to them, but were it otherwise the presumption should not be so broadly applied to the case of a trust the destruction of which is claimed by those subject to the disabilities of trustees dealing for themselves. The excerpt quoted above touches the quick of this controversy. In my opinion the various transactions thought to produce a result so unexpected and unforeseen should be severally examined in the light of the surroundings at the time they occurred. If in one aspect they were then consistent, or not apparently inconsistent, with the frequent and studied declarations of the object of the terminal organization, and that view was then reasonably entertained by the railroad companies, that view should prevail in a court of equity rather than a shrewder one tending to a conclusion in favor of participants who were bound in good conscience to the contrary.

An argument is made upon the issue by the terminal company of bonds on the property and the necessity that it should have had the title to enable it to make the mortgage. Of course it had to have

title as complete as the giving of the mortgage required, but there is nothing in that inconsistent in any degree with the existence of a trust relation between it and the proprietary companies. The mortgage is still afoot, and in this case no rights are asserted under it. Its effect upon the question before us is not different from that of a joint mortgage by the proprietary companies upon properties severally owned by them but committed to a comomn use, or that of an authorized mortgage by an individual trustee named under the contract of 1882. The proprietary companies were fully justified in believing that the changes and amendments in the charter etc. of the terminal company now relied on as making for its complete independence, were for the sole purpose of giving it the conventional dress of a corporation that has put forth an issue of bonds. That was why suggestions originating within the terminal company were so readily agreed to by them, and that is why the result so contrary to their vital interests, now held to follow, was unforeseen. I question whether property and rights of great value are lost in that way except in circumstances concededly not present here. The very suggestion that a great railroad system, like the Wabash for example, had unintentionally and unexpectedly lost its proprietary interest and right to use extensive terminals in a large city, to the establishment and upbuilding of which it was a party and to which it had contributed property acquired for railroad purposes by eminent domain and public grant, is so unusual as to impose upon those who make it a heavy burden of law and fact. Questions like these naturally suggest themselves: Who got the property of the railroad company and deprived it of its right of entrance into the city? How did they do it? What were their relations to the railroad company? Who represented the railroad company in such an important matter and what authority did they have?

After the conclusion is reached that the terminal company had by gradual action thrown off its trust character and had become independent, attention is directed to the transactions in its stock. The power asserted by the individual defendants to control the terminal company and thereby to exclude the plaintiffs from the use of the terminals rests upon their possession of five-eighths of the issued capital stock. There is, however, abundant proof that the stock of that company was intended only to represent the interests of railroad companies actually using the terminal facilities and as a method of apportionment among them. The stock was not intended as a source of personal or individual profit apart from railroad use. Stock ownership and terminal use were inseparable. I know of no public policy or rule of law against such a status of corporate stock or its enforcement as between the parties who established it. If it were formally expressed in the corporate charter the world would have to take notice. But as between the parties themselves, those participating and having actual knowledge, internal evidence may disclose it. It should always be in mind that in this case there are no innocent purchasers relying upon public records. The contract of 1882 specified the proportional interests of the three original railroad companies and foreshadowed the organization of the terminal com-

pany to take the place of an individual trustee. In 1884 the terminal company was organized for the expressed purpose of carrying out the contract. My brothers see in the articles of incorporation some evidence of a departure from the trust and the beneficial relations, but it seems to me that the intention to maintain them was asserted and reasserted as definitely and positively as words would permit. While, as customary, the charter made provision for a capital stock, the connection between the distribution and future ownership of such thereof as might be issued and the railroad use of the property was manifested not only in that instrument but afterwards in many ways by both the railroad companies and the terminal company. The limitations of an opinion will not admit of a recital of this evidence in detail. It is in the record and there is much of it. In 1887, three years after the terminal company was incorporated, when the parties began to convey to it the legal title, the directors of the predecessor of the Wabash Company adopted a resolution directing its president and secretary to execute a deed conveying "all its real estate rights of way, franchise, roadbed and other property of said company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from the City of Des Moines, or by purchase or condemnation", and, it was added, "this resolution being offered for the purpose of carrying out the contract of date January second 1882" etc. One of the individual defendants, as secretary of the directors' meeting, recorded the adoption of the resolution. The Wabash Company was then the real party in interest. The conveyance executed by the officers so authorized, the individual defendant being one of them, was in form a warranty deed, but certainly the resolution of authority fixed the effect of the conveyance for the parties and those who afterwards dealt with knowledge of the facts. Mere executive officials of a railroad company cannot, upon their own initiative, convey away parts of its road and franchises. And, were it necessary to be determined here, it would be an interesting question how far its representatives in a terminal company organized and holding title like the one here, could do so by consenting to a vital change of its character, or even by a disposal of its stock, without express authority of their principal manifested in the usual corporate way. The thirty year contract of May 10, 1889, between the terminal company and the proprietary companies was authorized as supplemental to the contract of 1882, and in a preamble it was recited that in pursuance of its charter it acquired and owned a railway. The charter was that of 1884 into which the contract of 1882 was written. One other matter bearing on this phase of the case may be mentioned. The effort to purchase stock began in 1888. The property of the Wabash Company, including a half interest in the terminal stock not yet issued, was then in a transitional state in a foreclosure proceeding, being held by a purchasing committee. One of the defendants wrote Mr. Ashley, the president of the Wabash Company and also a member and the secretary of the purchasing committee, saying he had been asked whether half of that stock interest, one fourth of the whole, could be bought. Mr. Ashley replied favorably, adding:

"but I have always supposed that it would be necessary to confine the sale to such railway companies as would be interested in the station." Also: "Was there not an understanding or agreement as to the sale of the stock when the Terminal Company was formed and would it not be prejudicial to the interest of the whole to part with the stock to outsiders?" The defendant replied, agreeing with him and mentioning some railroads in whose interest inquiries had been made. The purchase was made in 1890. It was in 1892 that the other individual defendant made the sworn statement that the terminal company was "simply a representative company acting as an agency" for the railroad companies. About two months after the first sale the purchasing committee sold an additional eighth of the stock to the defendant. In a letter during the negotiations Mr. Ashley wrote him: "It must be understood of course, that a one eighth interest in the capital stock shall be sufficient to represent a proprietorship in the company according to the understanding we had when you were here." The phrase "proprietorship in the company" is not commonly used to describe the stock of an ordinary corporation. Moreover the defendants being substantially interested in the proprietary companies, other than the Wabash, had been endeavoring to induce other railroads to come into the terminal company. They were, one or both, also officers of the terminal company. It would naturally be assumed that in dealing with them they were acting in the railroad and terminal interest as distinguished from that in which they now assert control. The record shows that it was common practice in correspondence to address them personally on subjects of corporate concern. In fact the three-eighths of the stock bought from the Wabash purchasing committee was transferred to and became the property of the Des Moines Northern & Western Railway Company into which the two other companies were merged. That was in 1892. The Des Moines Northern & Western then owned seven-eights of the terminal stock and the Wabash one-eighth. As has already been observed, the terminal company was declared in that year to have been simply a representative agency. Early in 1893 a similar declaration was made on behalf of that company. The Des Moines Northern & Western was financially dominated and officially controlled by the individual defendants. In the fall of 1893 their company pledged five eighths of the terminal stock to them as collateral to some indebtedness. In January, 1894, the pledged stock was by agreement applied as part payment to a small amount, and they have since held it. The next annual sworn statement on behalf of the terminal company to the Executive Council of the State of Iowa illustrates the transforming effect upon the character of the corporation which a mere transfer of its stock is supposed to have. In February, 1894, it was declared that the terminal company was the owner of the property; that it leased it to the railroad companies, performed services for them and collected a rental. My brothers adopting that theory say that the ultimate result was the entire emancipation of the terminal company from "outside government." According to the decision, the proprietary companies became outsiders without right, after the expi-

tion of the operating contract of 1889, to use the terminals, contrary to the will of the holders of five-eighths of the stock, except upon the order of some public administrative board in Iowa, if there be one with jurisdiction. I do not think the stock in the hands of the defendants should be destroyed or its true value in the scheme or plan of the terminal organization impaired, but that it should be actively operative and profitable only when transferred to and held by railroad companies which use the terminals and contribute in that way to the object of their creation. There are four or five other important railroad systems entering Des Moines besides those of the plaintiffs.

There is little conflict in the evidence. The difference between my brothers and myself is not so much about the facts as their significance. They put emphasis upon the corporate cover of the terminal company and perceive a drift to complete self-sufficiency and independency from the very moment of incorporation. But the doctrine of a corporate entity separate and apart from the persons composing the corporation is after all a mere legal fiction established for convenience and to serve the ends of justice. It does not go beyond that. In equity the shell artificially assumed is not impermeable. The court will look through it and regard the kernel, and whenever justice requires will hold the stockholders as the corporation. That is being constantly done in equity in determining public rights as affected by the corporate association of particular individuals and the rights of the individuals among themselves and with respect to their organization.

But however the above may be, it seems to me that the less measure of relief granted by the trial court cannot be denied the plaintiffs. It is that they were entitled to a continued use of the terminal properties and that the court would determine the terms and conditions if the parties were unable to agree. That is the matter of defendants' appeal. Whenever a definite right claimed by a railroad company to use specific property of another is of contractual origin, as where it is a condition of the franchise of the owner or is founded upon conventional agreement, the question of the existence, of the right and its extent and limitations is a justiciable one; and the claimant may invoke the aid of a court of equity for its establishment and enforcement. Similarly, when the right is upon reasonable terms and conditions the court may determine them if the parties do not agree. Both phases of this subject have been so decided in the cases, familiar in this circuit, of the Union Pacific Bridge at Omaha, and the Wabash right of way and tracks at St. Louis. If the right of use exists, reasonable terms and conditions are implied in the absence of recital or stipulation about them. In view of the admitted history of the terminal company the plaintiffs, merely as minority stockholders, have a right to the use of the terminals and upon reasonable terms. The right is not of that general nature which requires an appeal to some administrative board for the enforcement of the public policy of the State applicable to all railroad companies, but is essentially contractual. It could not reasonably be said that, had the contract of 1889 not been made, two of

the original companies holding a majority of the stock might have excluded the third from the use of the terminals and defeated its appeal to the courts. The individual defendants have no greater right or power.

Filed May 23, 1918.

(*Decree in Both Causes.*)

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1918, Thursday, May 23, 1918.

No. 4885.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, THE WABASH RAILROAD COMPANY, and The Wabash Railway Company, Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL, and F. M. HUBBELL AND SON,

and

No. 4886.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL and F. M. HUBBELL AND SON, Appellants,

vs.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, THE WABASH RAILROAD COMPANY, and WABASH RAILWAY COMPANY.

Appeals from the District Court of the United States for the Southern District of Iowa.

These causes came on to be heard on the transcripts of the record from the District Court of the United States for the Southern District of Iowa, and were argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in these causes, be, and the same is hereby, modified, and the causes are hereby remanded to the said District Court with directions to modify its decree so as to state the complete title to the property in controversy in the terminal company, and that the only interest of the railways in the property or the management of the corporation is such as flows from stock ownership; that the surplus earnings belong to the railways, and to appoint a master under instructions to ascertain the part due each upon a wheelage basis.

It is further ordered that the costs in this Court be divided equally,

the Chicago, Milwaukee and St. Paul Railway Company et al., appellants in case No. 4885 and appellees in case No. 4886, to pay one-half thereof, and the Des Moines Union Railway Company et al., appellees in case No. 4885 and appellants in case No. 4886, to pay one-half thereof.

May 23, 1918.

United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1918.

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Iowa.

No. 4886.

May Term, A. D. 1918.

DES MOINES UNION RAILWAY COMPANY et al., Appellants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Iowa.

Petition for Rehearing.

Come now the Wabash Railway Company, The Wabash Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company, and petition the Court for a rehearing in the above-entitled cause, in order that the main controversy therein, viz., whether
2137 the railway companies or the terminal company owns the terminal property in controversy, may be reconsidered; and as grounds therefor state as follows:

I.

The opinion of the majority of the judges, and the decision, is in conflict with the case of the Chicago, Milwaukee & St. Paul Railway Company, St. Paul, Minneapolis & Omaha Railway Company and Minneapolis Eastern Railway Company v. Minneapolis Civic and

Commerce Association (decided June 10, 1918), in the following particulars:

(*a*) In this case the Supreme Court held, on facts not substantially different from the facts in the case at bar, that the terminal tracks in controversy belonged to the using railway companies.

The only features which distinguish the two cases are, in the former the railway companies owned all the stock of the subsidiary company, whereas in the instant case some of the stock of the terminal company was owned by an outsider; but in the instant case the terminal tracks and facilities were constructed as a part of the railways of the using railway companies in obedience to their charter obligations to the state, whereas in the other case the company which constructed and owned the terminal tracks was organized by local citizens with charter obligations to build an independent railroad, and its stock was afterwards purchased by the using companies.

The circumstance that some of the stock of the terminal company in the case at bar is owned by an outsider ought not be influential, because it must be conceded the using railway companies
2138 owned all the stock and dominated the action of the terminal company when the tracks and terminal facilities were constructed as a part and in completion of their railways, and for a long time thereafter, and that under the rule announced in the above decision they at that time owned such rails and terminal facilities.

To hold that the using railway companies, by disposing of some of the shares of the terminal company, "chopped off" their railroads at the city limits of Des Moines, and thereby conveyed the terminal tracks and facilities to the terminal company, would be contrary to common sense.

Surely no court would hold that the ownership of an important part of a line of railway, placed for convenience in the name of a terminal company, at all times depends on whether the railway company owns all the stock of the terminal company, and that if at any time it sells one or more shares of such stock it thereby dismembers its railway, *i. e.*, today the railway owns all of the stock of the terminal company and, consequently, all the tracks in its name; tomorrow the railway sells or gives away some of the shares, and then it does not own the rails in the name of the terminal company; and the next day it acquires the shares so sold or given away, and again it owns the tracks of the terminal railway; and so on. Such flexibility pertains to legerdemain, and not to the title to property.

The circumstance that the terminals in controversy in the case at bar were constructed as a part and in completion of the railways, pursuant to the obligation of the railway companies to the state, renders the applicability of the principle applied in the above decision even more obvious than the facts in that case.

(*b*) The Supreme Court in the above decision held that in dealing with a corporation existing under circumstances not dissimilar in essential respects from those surrounding the terminal company in the case at bar the courts will desregard the corporate agency and

give effect to the substance of the transactions involved. The Court said:

"In such a case the courts will not permit themselves to be blinded or deceived by mere forms of law, but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist, and as the justice of the case may require."

In the case at bar it is conceded the railway companies were under the necessity of using the terminals in controversy, and prompted by that necessity acquired the ground and entered into a contract for the purpose of securing, and, in fact, secured the needed terminals, but the majority of the judges hold that the railway companies unwittingly and unintentionally permitted the needed terminals to slip from them. The majority opinion says:

"Finally, it is urged that it can not be supposed that these railway companies would bring into being a creature, put into its hands such ownership and control over their property and endow it with such powers that it and not they could command the situation. Such a supposition is improbable and here unnecessary. There is nowhere any indication that the railways intended any such result, and yet such, in our judgment, is the result. This unexpected outcome was the product of several circumstances."

Thus it is held not only that the evidence did not indicate "that the railways intended any such result", but that such result was to them an "unexpected outcome". Again, the majority opinion says:

"Thus the railways themselves had, through a series of acts and circumstances extending over many years, gradually let slip from them that exclusive ownership and control which they had at the beginning so much valued and so carefully guarded."

The majority opinion in effect holds that during the course of events the railway companies had no thought of parting with their terminals, but that the Hubbells designed to acquire an interest in them. To say the least, then, the minds of the parties did not meet and were not in accord with the forms which brought about the "unexpected outcome", and whereby the railway companies 'gradually let slip from them that exclusive ownership and control which they had at the beginning so much valued and so carefully guarded."

The majority opinion on its face deals only with the forms of the transactions:

In addition, it is obvious, from the conclusion that the railway companies unwittingly and unintentionally dispossessed themselves of facilities they were bound to use, that the majority opinion rests on the forms and not on the real transactions—the intentions of the parties—in contravention of the above decision of the Supreme Court.

The dissenting opinion takes direct issue with the majority opinion on this point. In the dissenting opinion it is said:

"The difference between my brothers and myself is not so much about the facts as their significance. They put emphasis upon the corporate cover of the terminal company and perceive a drift to complete self-sufficiency and independency from the very moment of incorporation. But the doctrine of a corporate entity separate and apart from the persons composing the corporation is after all, a mere legal fiction established for convenience and to serve the ends of justice. It does not go beyond that. In equity the shell artificially assumed is not impermeable. The Court will look though it and regard the kernel, and whenever justice requires will hold the stockholders as the corporation. That is being constantly done in equity in determining public rights as affected by the corporate association of particular individuals and the rights of the individuals among themselves and with respect to their organization."

The Court properly assumed the conceded facts that the rights of innocent purchasers are not involved, and that the Hubbells initiated or co-operated in the performance of every act, on which the majority base the conclusion that the railway companies unintentionally permitted the terminal property to slip from them. As said in the minority opinion:

"It should always be in mind that in this case there are no innocent purchasers relying upon public records * * * Moreover, the defendants being substantially interested in the proprietary companies, other than the Wabash, had been endeavoring to induce other railroads to come into the terminal company. They were, one or both, also officers of the terminal company. It would naturally be assumed that in dealing with them they were acting in the railroad and terminal interest as distinguished from that in which they now assert control."

No reason, therefore, exists why the Court may not deal with the real transactions, and give effect to the intentions of the parties.

II.

The opinion of the majority and the decision are in conflict with the decision of the Supreme Court in the case of United States v. Terminal Railroad Association of St. Louis (224 U. S. 383).

In that case the terminal property was conveyed to the terminal company, which contemporaneously "granted" a joint easement to the railway companies, whereas in the case at bar the joint easement was "reserved" by the railway companies.

The two cases are not otherwise distinguishable. The Supreme Court in the last-mentioned case held the railway companies were entitled to the joint use of the terminal property and that the rails of the terminal company were the rails of the proprietary companies, whereas in the case at bar the majority opinion entirely overlooked the clause of the contract of 1882 by which the railway companies

created and reserved the joint easement. The majority opinion says of that contract:

"The contract is carefully drawn by skilled draftsmen who set off in brief, clean-cut, numbered paragraphs the different subjects of the contract." Is it not obvious that such draftsmen intended by that contract to create and reserve a joint easement in the railway companies on the terminal property when they wrote into that contract that the title to the terminal property should be held 'subject to the joint use and occupation of all said railway companies'?"

Is it possible skilled draftsmen wrote into the contract that the title to the terminal property should be held, "but subject to the joint use and occupation of all said railway companies" without intending to express any significance whatever?

Was not the only object and purpose of the contract to secure the joint use and occupation of terminals, and were not the quoted words appropriate to accomplish that object and purpose? The railway companies owned the land, which was already held in trust. Did they not agree that the land and terminals should be held "subject to the joint use and occupation of all said railway companies"?

Do not those words bear a definite meaning to the bench and bar? "Subject to" is an accustomed form of creating a reservation. Would a careful draftsman have intended nothing by the words "use and occupation of all said railway companies", which manifestly he borrowed from a decision of the Supreme Court of Iowa?

Without the quoted words is not the entire contract unintelligible and without meaning? Does not each and every one of "the clean-cut, numbered paragraphs" refer to and rest on the words "subject to the joint use and occupation of all said railway companies"?

May not the owners of land separate the use and occupation from the land itself—create an easement?

If two farmers are obliged to acquire a joint way, of necessity, and they enter into a contract covering the purchase of 40 acres of land, and agree by the contract that the 40 acres shall be held by a trustee, "but subject to a highway 40 feet wide on the south side thereof", would the quoted words have no significance? Would the trustee take the legal title to the roadway?

And in such case if the trustee afterward pays for the property held in trust would he not take the 40 acres burdened by the joint way of necessity? Would the fact that the trustee paid for what he held in trust indicate a change in the plan of the farmers, and denote an intent to part with the way of necessity—a way of necessity is, of course, what the words indicate, a way which the parties are obliged to use.

The majority opinion does not refer to, or discuss, the problems involved in these questions, or given any significance to the words in the contract, "but subject to the joint use and occupation of all said railway companies". It treats the contract of 1882 precisely as if those words have no meaning. The omission to give them the only significance they bear is the basic error on which that opinion rests.

The majority opinion is based on the reasoning that the terminal company paid for that which it took in trust, and therefore rests on

the erroneous assumption that the terminal company took as trustee the title to the joint easement reserved by the railway companies.

III.

The opinion of the majority and the decision are in conflict with the decision of the Supreme Court in the case of Joy et al. v. St. Louis (138 U. S. 1), wherein it was held that a covenant in a contract that all railway companies should have the right to use certain railway facilities and deeds and other instruments which were absolute on their face, and in form a contradiction of such covenant, should all be read together "as a single transaction relating to the same subject matter, and should be construed together in such a way as to carry into effect the intention of the parties in view of their situation at the time and of the subject matter of the instruments", and when so read involved a grant of an easement to all such companies.

The majority opinion fails to consider the covenant in the contract of 1882 which created and reserved the joint easement, and instead of treating that contract, the articles, the deeds and the contract of 1889 as successive steps in "a single transaction relating to the same subject matter", and instead of construing them "together in such a way as to carry into effect the intention of the parties", treated them as unrelated transactions, and so construed them as to produce an outcome "unexpected" and a result not intended by the interested parties.

Obviously the only purpose and object of the contract of 1882 was to secure to the railway companies the joint easement or joint terminals. This object and purpose must control in reading all subsequent documents relating to the same subject matter. It was essential that all subsequent steps should be clothed in forms and the forms apparently isolated the related transactions which according to the majority opinion unmistakably disclose the intention of the parties.

IV.

The opinion of the majority and the decision are in conflict with the following covenants of the articles of incorporation, which were entirely overlooked:

Article II provides, among other things, that the terminal company "shall not lease or otherwise dispose of the use of any part of its franchises to any other railway company * * * without the assent in writing" of the railway companies.

Article IV provides, among other things, "that no contract, lease or other agreement amounting to a permanent charge upon the property of the corporation shall be entered into by the board unless the same shall have been first approved by" the railway companies.

Manifestly these covenants were designed to prevent the terminal company from in any wise interfering with the full joint use and occupation of the terminal property by the railway companies.

The articles provide that no one shall be eligible to the office

of director except a nominee of the railway companies. The "board" was necessarily composed of representatives of the railway companies.

Why, then, were the above covenants made unless to limit the authority of the representatives of the railway companies who might represent them on the board of the terminal company?

The importance of those covenants is illustrated by the evidence, which shows that Mr. Hubbell sometimes dealt with the local representatives of the railway companies and sometimes with the New York officers. The local representatives did not know about his transactions with the New York officers, and the New York officers did not know about his transactions with the local representatives.

The "approval of the railway companies" and the "assent in writing of the railway companies" could lawfully proceed only from the board of directors of the railway companies as a result of formal corporate action.

It is said in the majority opinion:

"No reason appears why in this, as any kind of tri-party contract, two of the parties may not at will alter or annul any of such contract rights, if such action affects them alone. With such power to change their rights, the question becomes whether or not the terminal and railway companies have altered or annulled the rights arising from the contract contained in the articles of incorporation. They took no formal action accepting or ratifying these attempted changes in their contractual relations with the terminal company. But all of the individuals who acted at this purported meeting of stockholders of the terminal company were chosen by the three railway companies and certainly were merely their instruments."

It is undoubtedly true that parties to a contract may ordinarily annul the contract, but in the present instance the parties agreed specifically that the contract should not be annulled so as to dispose of "any part of the use of the terminals", or so as to make a "permanent charge upon them", except in a specified manner, viz., with the assent in writing or approval of the railway companies.

These provisions were entirely overlooked by the majority opinion, which finds in expressed terms that the railway companies "took no formal corporate action accepting or ratifying", etc., but holds that the terminal company deprived the railway companies of all without their written consent or approval, but by the acts of negligence of the local representatives of the railway companies, who were expressly denied any authority in the premises.

Covenants in contracts prescribing the manner of altering contracts and denying authority to the agents of the parties have uniformly been given effect.

In the case of Assurance Company v. Building Association (183 U. S. 308, l. c. 361) it was held

"that provisions contained in fire insurance policies, that such a policy shall be void and of no effect if other insurance is placed on the property in other companies, without the knowledge and consent

of the company, are usual and reasonable; that it is reasonable and competent for the parties to agree that such knowledge and consent shall be manifested in writing, either by endorsement upon the policy or by other writing; that it is competent and reasonable for insurance companies to make it matter of condition in their policies that their agents shall not be deemed to have authority to alter or contradict the express terms of the policies as executed and delivered."

Mr. Hubbell understood these covenants and gave them a practical construction when he demanded and received from Mr. Ashley, at the time he purchased the stock an agreement "that said purchasing committee will consent to such change in said articles of incorporation as will permit one director of said company to be nominated by any person or corporation holding one-eighth of the stock of the said Union Railway Company" (1601, 1602).

This is the only consent or approval given by the railway companies.

From the instrument last mentioned it is obvious the majority of the Judges labored under a misapprehension when they said that "Hubbell was willing to purchase if the control of the railways as suggested and as given in the articles was removed. The articles were amended removing Hubbell's objection. The purchase was made."

The only evidence of a desire of Mr. Hubbell to amend the articles is the above contract consenting to an amendment so as to permit the holder of one-eighth of the stock to elect a director.

Mr. Hubbell testified:

"Q. Did Mr. Cummins explain to you that his purpose in amending the articles of incorporation of the Terminal Company was to straighten out the title to the terminal property?

A. I understand that his reason for claiming that an amendment of the articles was necessary, was that the Des Moines Union Railway Company was not carrying on business in accordance with the contract of January 2nd, 1882, and never had done so, and that it was necessary for the Des Moines Union to amend its articles so that they would conform to the methods and manner in which the Des Moines Union Company was operating and transacting the business" (175).

Mr. Cummins testified:

"These amendments were not suggested by Mr. Hubbell. They were entirely my own suggestions and came about in a way that I have already related. With regard to Mr. Hubbell's position, my recollection is that Mr. Hubbell—conservative then as now, never disposed to move very rapidly into the future—was opposed to my proposition, as I thought, without any good reason."

V.

The majority opinion and the decision are based on the erroneous assumption that "for seventeen years" after the adoption of the alleged amended articles "the railway companies acted in perfect harmony with the articles as amended. During all of that time there was no question of their validity, not until this suit was filed in 1907 was there any such attack. The doctrine of laches comprehends and controls the situation."

This ruling overlooks the conceded fact that during those seventeen years the rights of the party were defined by the contract of 1889 and actions of the parties governed accordingly.

It would be unsound to hold that the acts of parties in one relationship under one contract, covering a considerable period, constitute an acquiescence in another arrangement and relationship which in the nature of things could not have in a practical sense influenced their action during such period.

It is conceded that during the "seventeen years" the parties did not act under the amended articles but acted under the contract of 1889, and that as soon as Mr. Hubbell indicated that he claimed the terminal company owned the terminals the dispute arose and complainants filed this suit (328 and 329).

VI.

The ruling in the majority opinion that the railway companies are estopped from claiming the joint easement is without any support in the evidence. The majority opinion says:

"Neither as shareholders nor as parties contracting with the terminal company can the railway companies thus sleep upon their rights and then in a court of equity enforce such against those who have, to their knowledge, acted upon the belief that such rights did not exist and have acquired and hold property which has enormously increased in value in the interval."

Mr. Hubbell testified:

"I don't remember of the purchasing committee making any representations as to the title which the Des Moines Union Railway Company has to the Terminal property in the City of Des Moines. * * * I don't remember that the subject was discussed or talked about at all by any member of the purchasing committee. They simply sold the bonds and the stock by a written contract and I paid the price agreed upon."

Mr. Hubbell said in his letter to Mr. Ashley of June 18th, 1888:

"I agree with you that the sale of a quarter interest in the stock of the terminal company should be made only to a railway company, who will join with the Wabash in making a contract with the Des Moines Union, guaranteeing the interest upon the bonds and operat-

ing expenses. I think it would be prejudicial to sell any of this stock to outsiders."

And Mr. Ashley said in his letter of April 5th, 1890, to Mr. Hubbell, in connection with the sale of the stock:

"It must be understood, of course, that a one-eighth interest in the capital stock shall be sufficient to represent proprietorship in the company, according to the understanding we had when you were here."

The understanding referred to by Mr. Ashley shows that Mr. Hubbell was aware of the claim of the railway companies to the joint easement. His statement that it would be prejudicial for the stock to be purchased by an outsider shows that he affirmatively represented to Mr. Ashley that he was not acquiring the stock for speculation nor to make money out of the terminal company.

We respectfully urge that not a scintilla of evidence can be found in the record tending to show that the railway companies had any knowledge or information that Mr. Hubbell understood or claimed that the terminal company owned absolutely all interest in the terminal property prior to the dispute which led to this suit, and we respectfully ask the Court to re-examine the evidence on that point.

VII.

The City of Des Moines has a population of more than 125,000 and is by far the most important commercial city and railroad center of Iowa. Under the majority opinion, the complainants are now practically excluded therefrom, the Wabash being held at the east city limits about two miles from the passenger and freight depot, and the St. Paul Company at the west part of the city, about one mile from the passenger and freight depot; and yet these three miles of railroad and these terminals were all constructed by their predecessors under franchises from the State of Iowa and as part and parcel of their roads. The majority opinion overrides the rule universally enforced by the United States Supreme Court, which forbids the alienating of this property or segregating it from the franchises under which it was constructed, or, as Judge Wade said, "chopping it off" from the lines of railway of which it was originally a part, on the ground that some public authority may compel the Des Moines Union Railway Company to permit complainants to use the property as a part of their respective lines of railway on equitable terms.

The following excerpt from the majority opinion shows that, in reaching this conclusion, which is clearly erroneous, the Des Moines Union Railway Company was treated as a terminal company, and therefore not subject to the general statutes, State and Federal, respecting railway companies:

"But it is said that if the railways did so convey all interest in these necessary parts of their roads, such action would be void. The rule invoked is that public carriers will not be permitted to contract away

their public usefulness by vitally maiming their lines. Rules of law extend no further than the basic reasons upon which they rest. The usefulness, if not the necessity, of terminal companies is established. That they must, as a general proposition, own their properties in order to raise funds to improve, maintain and operate them efficiently, is certain. The more efficiently and economically a railway can procure terminal facilities, the better and cheaper its services to the public should be. The conditions and compensation for use of such terminals by the railways is subject to public control, so that the railways can not be denied or unreasonably restricted in such usage. The public service is protected. It should be bettered by such a terminal arrangement. Therefore, the rule invoked by plaintiffs has no application to disposition of terminal portions of a railway to a terminal company." (Majority Opinion, foot page 26; top page 27.)

This is a serious and fundamental error. The Des Moines Union Railway Company is a railway company organized under the general railway statutes of Iowa, and is subject to and governed by the general railroad laws of that State, and the provisions of the Interstate Commerce Act. The statutes of Iowa nowhere provide for or recognize a terminal railway company; they do provide for the organization of union railway depots (Sections 2099-2102, Code of Iowa, 1897). The powers of such depot companies are limited to acquiring, establishing, constructing and maintaining union station houses or depots with railroad tracks and other appurtenances. Such companies have no power to operate engines or cars, or to engage in the business of transportation. The Supreme Court of Iowa, in Morgan v. Des Moines Union Railway Company, 113 Iowa 561, 85 Northwestern Reporter 903, decided that this defendant corporation was not organized as a union railway depot, but was organized under and governed by the general laws of the State appertaining to the organization and operation of railroads. It was expressly held in this case that the statutes applying to union railway depots were not applicable to the Des Moines Union Railway Company. Section 2116 of the Code of Iowa, which requires railway companies upon reasonable notice to furnish suitable cars, and to provide suitable facilities for receiving and handling freight at any depot, and to receive and transport the empty or loaded cars furnished by any connecting road, to be delivered at any station, and to return them to such connecting road, does not meet the situation outlined in the majority opinion that:

"The conditions and compensation for use of such terminals by the railways is subject to public control, so that the railways cannot be denied or unreasonably restricted in such usage. The public service is protected. It should be bettered by such a terminal arrangement. Therefore, the rule invoked by plaintiffs has no application to disposition of terminal portions of a railway to a terminal company." (Majority opinion, 26, 27.)

It is apparent that section 2116 does not require one railway to haul the passenger trains or coaches of another railway company to its depots, and to furnish station facilities; nor does it require one company to break and reform the trains of another company; nor does it compel one company to give the use of its team tracks or freight houses, or furnish terminal facilities to another—the very things complainants must have, and which they cannot legally demand, if the decree herein ordered is permitted to stand.

The federal statutes—section 3 of the Interstate Commerce Act—in terms provide that any carrier subject to that act shall not be required to give the use of its tracks or terminal facilities to another carrier. The Des Moines Company is engaged in interstate commerce and is subject to that act.

That there is no federal law or rule which would compel one railway company, or even a terminal company, to thus accommodate another company, is made clear by the decision of the United States Supreme Court in the St. Louis Terminal case. Had there been such a rule the Court would have said in that case that under this rule the St. Louis Terminal Company could be forced to admit a new or outside railway company to cross either of its bridges and to use its terminals, but because of the absence of such a rule the Court entered the decree which it did, virtually dissolving the consolidated corporations.

We believe that we are so familiar with the decisions, state and federal, as to warrant us in saying that no decision can be found that would afford any relief to complainants, if this majority opinion is to stand.

Two points in the opinion stand out clear, and, in themselves, demonstrate that the final result is wrong:

First: The admission that the record shows that the railway corporations did not intend to cut themselves off from the use of the terminal property, or to change the defendant company from a mere holding company or agency to an independent owner;

Second: That under the arrangement between all parties, as shown by the contract of May 10th, 1889, the Des Moines Union was to maintain the property and do all the work of the railway companies at cost and without any profit or income to the Des Moines Union or its stockholders.

Courts of equity do not deprive parties of their property rights when they have done nothing that shows an intention to do so. It is obvious that a corporation which by its own charter undertakes to "acquire, operate and maintain certain property in such manner as to best serve the interests of" another party, and assumes to and does hold and maintain the property, and devotes it to the use and benefit of such other party, without profit to itself, is a mere holding corporation—a mere agency for such other party.

This view is strengthened by the fact that the Des Moines Union Railway Company was created by the railway companies under the apparent necessity of consolidating titles to the right-of-way held

in the names of different parties, and giving the property singleness of management to the end that it would best serve the interests of the public and the railway companies, parties to the contract of January 2, 1882.

The fact that subsequent experience proved that it was impracticable for each railway company to do its own switching was a good reason for creating an agency which would do this for them, but was no reason for selling the property to such agency and surrendering all right to have beneficial use of the same, and depriving themselves of the facilities that were absolutely essential to an entrance into this large city.

VIII.

The opinion (page 17) holds that the words in the articles of association, "all the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract," amounts to a mere limitation upon the powers of the corporation.

This is another serious and fundamental error.

When the state clothed Hubbell and his associates with corporate existence, accompanied with a railroad franchise to be exercised for the public good, they and their successors, by accepting the charter, assumed the duty to exercise all the powers conferred upon the corporation; and this provision in the charter was a part of the law of its existence. Instead of being a mere limitation upon its powers, it declared the purpose of the state in creating and endorsing the corporation, and fixed the object which the corporation was to have in view, and prescribed what it must do affirmatively. In this clause of the charter the state did not say what the corporation should not do; nor did it even say what the Des Moines Union as a creature of the state might do; but the state said plainly what the corporation should do—viz: that "all its powers shall be exercised according to the terms and spirit of that contract which the state had placed in its charter to emphasize its command. We repeat, the charter did not say, "You shall not do so and so"—but said: "You shall exercise all your powers to carry out the contract of 1882 according to its letter and spirit." The Des Moines Union did exercise its corporate powers in the way of acquiring and taking over this property, and therefore, whether we regard this provision in its articles as a command from the state, or as a mere limitation upon its powers the controlling effect is the same.

The provision in the contract that the Depot Company might issue mortgage bonds was carried out. The provision implied that the title to the property would be placed in the Depot Company. Obviously the purpose was to enhance the security, and not to defeat the declared purposes of the contract; for how could the Depot Company execute mortgage bonds that would be of value to the parties who were to receive them, unless it held the legal title? It is plain that these two provisions must be construed together and that organizing a corporation to act both as trustee and as a Depot Company were not at all out of harmony with the 1882 contract. Moreover, even if we concede that the contract contemplated a trustee

separate from a Depot Company, still, if the parties afterwards concluded to combine them in one entity, this could not be regarded as an abandonment of the declared purpose of the contract.

But it seems a work of supererogation to argue this; for if they intended to abandon the 1882 contract, then why was it ever referred to in the articles of association; and why was it set out in extenso in the articles; and why was it explicit-y stated that the purpose of organizing the corporation was to carry out that contract; and why declare that the powers of the corporation should be exercised not only in harmony with its terms, but with its spirit?

So far we have reviewed the opinion merely on the facts which it recites; but when we go to facts which the opinion does not recite or even refer to, the error is still more apparent.

Defendants in their answer say that the 1882 contract "was tentative only", and that " it was not the purpose or the effect of said contract to evidence any such definite or completed plan" and the majority seem to have adopted this view to the extent of holding that in organizing the Des Moines Union Railway Company, and in turning the property over to its management, the three railway companies abandoned the contract of 1882, and that each abandoned or lost its rights acquired or held under the contract.

Neither of the respondents were parties to this contract, and their understanding of it and its effect, as well as their intent, can not be inquired into; and as to each of the three railway companies, the facts are that from the day of its execution, all three acted under it, and the property was maintained and used by them in full and strict accord with its terms for seven years and four months, and up to the making of the contract of May 10, 1889, which latter contract merely supplemented that of 1882, and was for a definite period only. Moreover, this supplemental contract as construed by the parties and by this Court, is in full harmony with the general plan and purpose of that of 1882.

As the 1882 contract provided for placing the title in a trustee for perpetual holding, and Howe and Dodge agreed to convey to such trustee all parcels of real estate to which they held title on reimbursement of their outlay upon the property, and as the trustee who was to hold the title was to be thereafter named, might not the railway companies create a corporation and have the property conveyed to it to hold as trustee? A corporation would live forever, but a natural person would die; and as the title was to be held in perpetuity, a corporation was necessary. A corporation could be controlled through its stock; but a natural person would be governed by law, and might become troublesome. The railway companies therefore had the strongest reason for creating a corporation and using it as trustee, without thereby abandoning the original contract.

The contract also provided that the railway companies might create a depot company to take permanent charge of the property "upon the terms herein set forth"; and such corporation might issue its mortgage bonds to reimburse the parties to the contract in the amount of their respective portions of the cost of the said purchase and improvements.

How could this "depot company" issue its mortgage bonds with-

at being invested with the apparent title to the property which it ca to mortgage? Here, then, was the strongest reason for the railway companies, agreeing on the depot company as the trustee. Surely this was not an abandonment of the 1882 contract, for that contract explicitly provided for a future agreement in respect of a election of a trustee. And well they might agree to make the "depot company" such trustee. But aside from all this, surely it s not meant to hold that when A and B make a written contract, a ubsequent agreement modifying it abrogates the original contract, specially when the parties refer to it in the next contract or arrangement without showing a plain intent to rescind the former contract.

Moreover, the 1882 contract as to who should be trustee to hold the title, and as to a depot company, was general, and contemplated that details should and would be settled and arranged by the parties thereafter. The creating of the Des Moines Union Railway Company and conveying the titles to it and putting it in charge of the property were all in line with the general purpose and terms of the 1882 contract.

IX.

There is another serious and fundamental error in the majority opinion, in holding that the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, or their successors in title and interest, parted with, or conveyed to, the Des Moines Union Railway Company the rights acquired and held by them under the contract of January 2, 1882.

While the St. Paul Company and the Wabash Company were properly joined in the suit because seeking the same equitable relief, yet, as to the first or main branch of the case they do not derive title, or acquire their rights, from the same source, nor through the same channel. The St. Paul Company is the successor in title and interest of the Des Moines Northwestern Company and the St. Louis, Des Moines & Northern Company; and the St. Paul Company can not be affected or prejudiced in its rights by anything done by the Des Moines & St. Louis Company subsequent to the January 2, 1882, contract. By that contract, any and all rights or interest of either of the three railway companies were merged in one common interest, and the three companies became tenants in common of the property, subject only to the following conditions: (*a*) The parties who had advanced money were to be reimbursed, and such reimbursement might be made in bonds secured by mortgage on the property; (*b*) the title was to go to and be held by a trustee, who was to be agreed upon by all three; (*c*) each corporation was to contribute to the future cost of maintenance, taxes, and betterments in proportion to wheelage use by each. Subject to these conditions definitely fixed and determined, the Des Moines Northwestern Railway Company by that contract became a full and equal co-tenant of the property and any additions, and could not be affected or prejudiced by any act of either or both of its co-tenants thereafter. By that contract, each corporation granted to each of the other two a full use in common

with itself of all that it owned or had a right to. It is a universal rule of law that a grant of the fullest use that property is capable of, is the equal of a grant of the property itself; and the grant to the Des Moines Northwestern Railway Company of the full right in perpetuity to use in common with the other two, was in fact a grant of a one-third interest in the property. Being thus invested with a one-third interest, what did the Des Moines Northwestern Railway Company subsequently do to divest itself of that interest, and transfer it to the Des Moines Union Railway Company? The opinion fails to point to any act or any combination of acts showing such transfer, or a grant to the defendant company. This is because no such act or acts can be found in the evidence, or anywhere in the entire record. All of its acts and those of its successors in title, on this point, are the following:

The Des Moines Northwestern Railway Company went into possession and, together with the St. Louis, Des Moines & Northern Railway Company from the execution of the contract, used the road from Fourth street west, and as soon as the road was also completed to Fourth street from the east in the fall of 1882 it used the entire property to the east city limits and performed its part of the contract. After using it thus for three years, its directors adopted a resolution which recited the making of the 1882 contract and declared a desire to have a corporation organized "for the purpose of taking and holding the property," and appointed defendant Hubbell and another to act for it in organizing "such corporation * * * so to be organized for the purpose of carrying out the objects of said contract of January 2, 1882" (see plaintiff's evidence, original paging 187). Was there in this anything indicating an intent to abandon the contract, or to part with its rights thereunder? On the contrary, it was to carry out that contract.

The articles of association were filed for record December 10, 1884; and on January 1, 1885, the Des Moines Northwestern Railway Company stockholders, at their regular annual meeting, on motion of F. M. Hubbell, adopted a resolution which recited the contract of 1882, and that

"on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided for in the aforesaid contract * * * and to carry out the purposes of said contract of January 2nd, 1882 * * * Now, therefore, Resolved, that this company accepts and ratifies so far as its interests are affected thereby the articles of incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company."

By way of resume, we insist in behalf of the Chicago, Milwaukee & St. Paul Railway Company that in so far as the rights originally held by the Des Moines Northwestern Railway Company are now

involved, this complainant can not be prejudiced by any conveyance made by any of the other railway companies to the Des Moines Union Company further than were authorized by the contract of 1882.

Looking into the record for the acts of the other remote grantor of the St. Paul Company, we find that it built and was the owner of the road from Fourth street westward; but a portion of the right-of-way had been acquired in the name of G. M. Dodge, who financed the corporation in the building of its entire railway in and outside of Des Moines; and the remainder of the right-of-way from Fourth street westward to Farnham street stood in the name of the corporation. A compliance with the 1882 contract therefore required a conveyance to the trustee of the parcels so held east of Farnham street. By the 1882 contract the St. Louis, Des Moines & Northern Railway Company agreed that this right of way should be conveyed to the trustee, and by its subsequent acts it agreed that the Des Moines Union Railway Company was to be such trustee, for in a resolution of its board of directors it requested Howe and Dodge to transfer to the Des Moines Union Railway Company the property which stood in their names. Now, it must be noted that nothing stood in the name of Howe or Dodge but certain lots of land used for right-of-way. Neither Dodge nor Howe had little to or ownership in the railroad, or in the franchises; so that Howe and Dodge could not transfer or convey any part of or interest in these. True it is, the St. Louis, Des Moines & Northern Railway Company made a quitclaim deed to certain lots; but this did not serve to convey the railroad, nor any franchise; nor did it convey the right to use the railroad under the contract of January 2, 1882. A conveyance of ground used for railroad right-of-way does not carry the railroad nor the right to operate and use the road (see printed argument of J. C. Cook for the C., M. & St. P. Ry. Co., beginning at foot of page 44).

Here was an explicit declaration of its understanding that the Des Moines Union was to act in accordance with the terms of, and was to carry out, that contract; and it is also a declaration of the understanding that was to accompany its future acts or dealings with this new corporation.

But this is not all; for, by a resolution of the Des Moines Union board of directors, that corporation declared its readiness and purpose to act under and according to the terms of the 1882 contract. Moreover, by this resolution, knowledge and notice of this corporate action of the Des Moines & Northwestern was acknowledged by the Des Moines Union Railway Company, and its aforesaid resolution was a reply to it, and this constituted an agreement in writing to act under and according to the 1882 contract.

The records of the Des Moines Northwestern Railway Company and those of its successors in interest show no further corporate action. Neither it nor any of its successors in title or in interest ever made any conveyance of anything real or personal; nor did it or any of them ever relinquish or convey to the Des Moines Union the rights acquired by it, or held under the 1882 contract. This remarkable

and controlling fact is entirely overlooked by this Court, although distinctly urged in brief and printed argument of Mr. Cook. (See argument of J. C. Cook for Chicago, Milwaukee & St. Paul Railway Company, beginning at foot of page 44), and was also urged by Mr. Hanson in his oral argument.

Although all conveyances by others to the Des Moines Union were made before May 1, 1888, yet the Des Moines Northwestern Railway Company continued to use the property according to the terms of the 1882 contract, and precisely as it had done before, until the operating contract of May 10, 1889. There was no change except that under that contract the Des Moines Union did the work for all the roads at cost, and acted for the Des Moines & St. Louis Company in maintaining the property at cost, the Des Moines & Northwestern or its successors contributing to such operating and maintenance just as was required by the 1882 contract. It is a travesty upon law and justice to say that the Des Moines Northwestern and its successors in title and interest in some manner and at some time lost all rights under the 1882 contract, except as for a time they were modified by the contract of May 10, 1889; and this Court unanimously and, we think, correctly holds that during that time the Des Moines Union merely acted as an agency for the three railway companies to serve their interests at cost and without profit to itself.

By the 1882 contract the Des Moines Northwestern Railway Company acquired a substantial right and interest in perpetuity, and surely it required affirmative corporate action by it or a successor to divest itself of that right and interest, and a Court should not declare such a divestment unless it can point to the very act which shows an intent to alienate.

It must be remembered always that we have here no intervening rights; no innocent third party misled by ignorance of the true facts. Mr. Hubbell testified that he had not changed his position or been induced to purchase stock by anything that occurred after May, 1888, and it goes without saying that as he was an active participator in every act of each of the corporations, he had full knowledge of the true facts

X.

In conclusion we desire to again bring to the attention of this Court the important circumstance that this terminal property was created for the the express purpose of securing to the three companies and their successors the right to use the same in perpetuity without cost to them other than interest upon the actual cost thereof plus the cost of maintenance and operation. The mortgage bonds issued for the acquisition of this property still remain unpaid, and so far these three companies and their successors have had the use of this terminal property without profit to the terminal company. If, now, there is to be a revaluation of this entire property, and the complainants, by grace of the Hubbells, who own five-eighths of its capital stock, are permitted to use it on such terms as they may exact, it is quite apparent that one of their exactions will be the payment of a full rate

of interest on such revaluation. This will not only operate injuriously to complainants, but will impose a substantial additional charge upon the public and result in an immense annual income to the Hubbells on a comparatively small investment. In fact, the record warrants the inference that the stock which they now hold was acquired by the manipulation of records and accounts of the Des Moines Northern & Western Railway Company and without the expenditure of a single dollar, and with the admission by Hubbell that "It would be prejudicial to sell any of this stock to outsiders," which was an assurance that he did not purchase the stock as an investment or speculation. The situation which will be brought about if this opinion is to stand will be exceptional in respect of the relation which will exist between this terminal property and complainants' railway systems, for it is a matter of common knowledge that practically all terminals are owned by and operated in the interest of the railway companies using them and that no additional charge is made to the public on account of the use of terminal facilities.

We submit that in view of the public interests involved in this case, the large and cumbersome record, and the many points relied upon and involved in the dispute, and the division of opinion among the Judges, for the reasons heretofore indicated, a reargument and a reconsideration of the main point of the case would be in the interest of justice.

Respectfully submitted,

J. C. COOK,
BURTON HANSON,
JAMES L. MINNIS,
Solicitors for Appellants.

We, the undersigned, counsel for petitioners, hereby certify that we have read the foregoing petition for rehearing, that the same is not made for the purpose of vexation or delay and in our opinion is well founded in law.

J. C. COOK,
BURTON HANSON,
JAMES L. MINNIS,
Counsel.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jul- 22, 1918.

(*Order Denying Petition of Chicago, Milwaukee & St. Paul Railway Co. et al. for a Rehearing.*)

September Term, 1918, Monday, October 28, 1918.

These causes came on this day to be heard upon the petition for a rehearing, filed by Counsel for the Chicago, Milwaukee and St. Paul Railway Company, et als., appellants in No. 4885 and appellees in No. 4886.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of these causes, be, and the same is hereby, denied.

October 28, 1918.

United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1918.

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Iowa.

May Term, A. D. 1918.

No. 4886.

DES MOINES UNION RAILWAY COMPANY et al., Appellees,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Iowa.

Petition for Rehearing by Appellees in No. 4885 and Appellants in No. 4886.

Come now the Des Moines Union Railway Company, F. M. Hubbell and Son, F. M. Hubbell and F. C. Hubbell and petition the Court for a rehearing of this cause so far as relates to the "surplus earnings" in controversy between the parties hereto and in support of such petition submit:

I.

The Court erred in holding that the Des Moines Union Railway Company was not entitled to the "surplus earnings" in controversy between the parties, when the contract in relation thereto was clear and unambiguous as to such "surplus earnings" and the contract therefore was not subject to variation from its terms by any conduct of the parties thereunder.

II.

The Court erred in holding that although the "surplus earnings" were not credit items in favor of the Railroad Companies within "a strict construction of the exact wording of the contract" of May 10th, 1889, that none the less they should be allowed as such in view of the history of the transaction and upon the meaning to be given to the contract in its entirety.

The construction given to the contract by the parties from January 1892 until just before this suit was brought was in entire accord with the exact wording of the contract and the paragraph of the contract relative to the credit items to be allowed the railroad companies was not qualified in any way by any other provision of the contract.

III.

The Court erred in holding that the "subsequent contract of July 31st, 1897, does not affect this controversy."

When the contract of July 31st, 1897, was entered into by the parties, they had, pursuant to the express terms of the contract of May 10th, 1889, for more than five years continuously and consecutively withheld such "surplus earnings" from the credits to which the railroad companies were entitled in determining the payments to be made by them for the services rendered to them by the Des Moines Union Railway Company and the contract of July 31st, 1897, was designed to and did affirm the express terms of the contract of May 10th, 1889, as stating the true intent and meaning of the parties thereto.

IV.

The statement in the annual reports of the Des Moines Union Railway Company from 1888 to 1894, that it was simply a representative company acting as an agency for the railway companies, performing all necessary work for them, and charging each at actual cost its due proportion thereof incurred, is not repugnant to the said contract of May 10th, 1889, nor to the construction of the same by the conduct of the parties under it subsequent to January 1892.

V.

The contract of May 10th, 1889, was not and could not be changed by anything contained in said annual statements.

VI.

It was competent for the parties to the contract of May 10th, 1889, to determine how the costs and expenses of the services rendered by the Des Moines Union Railway Company to the railroad companies

should be ascertained and what credit items should be allowed therein, and this was done in express terms by paragraphs one to five, both inclusive of section three of said contract and paragraph four of section three provided as to credit items to be deducted from the ascertained costs and expenses of rendering the services only that "there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part (the railroad companies) on a wheelage basis, and from January 1892 until a short time before this suit was brought settlements between the parties were made monthly on this basis. And on this basis settlements had been made for more than five years when the contract of July 31st, 1897, was made by which the contract of May 10th, 1889, was affirmed in its very terms, a copy being attached for complete identification.

VII.

The Court erred in finding that the contract of May 10, 1889 was not affected by the contract of July 31st, 1897, with respect to the disposition of said surplus earnings, for the reason that the issue with respect to the disposition of said surplus earnings was, as shown by the evidence, a subject of negotiation between the parties to said contract and as a result of said negotiations the contract of July 31st, 1897, was executed, and by its terms the parties agreed that the subject matter of said surplus earnings should be disposed of as provided by the terms of the written contract of May 10th, 1889.

Respectfully Submitted,

J. L. PARRISH,
F. W. LEHMANN,
For the Petitioners.

The undersigned of counsel for the above named petitioners do hereby certify that the foregoing petition for rehearing is filed in good faith and not for any purpose of delay and is believed by them to be well grounded in law.

St. Louis, Missouri, July 22nd, 1918.

J. L. PARRISH,
F. W. LEHMANN.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jul. 22, 1918.

(Order Denying Petition of Des Moines Union Railway Company et al. for a Rehearing.)

September Term, 1918, Monday, October 28, 1918.

These causes came on this day to be heard upon the petition for a rehearing, filed by counsel for the Des Moines Union Railway Company, et al., appellees in No. 4885 and appellants in No. 4886.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of these causes, be, and the same is hereby, denied.

October 28, 1918.

United States Circuit Court of Appeals, Eighth Circuit,
May Term, A. D. 1918.

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.,
Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Iowa.

May Term, A. D. 1918.

No. 4886.

DES MOINES UNION RAILWAY COMPANY et al., Appellants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.,
Appellees.

Appeal from the District Court of the United States for the Southern District of Iowa.

Motion by Appellees in No. 4885 and Appellants in 4886 to Modify Decree.

Come now the Des Moines Union Railway Company, F. M. Hubbell and Son, F. M. Hubbell and F. C. Hubbell and subject to their petition for rehearing herein, move the Court to modify the decree entered herein so as to provide that an accounting be had as to the amount of the surplus earnings which complainants shall be entitled to receive and in support thereof show the Court:

That the opinion and the decree herein provide that this case shall be remanded with directions, among other things, to appoint a master to ascertain the part of the surplus earnings due each of the complainants upon a wheelage basis.

That the contract of May 10, 1889, in Section 3 thereof (Vol 2, p. 481) provides the basis for ascertaining the amounts which shall be paid by complainants for terminal facilities and services rendered by the Des Moines Union Railway Company. By Section 4 of said

contract (p. 481) it is provided that the earnings of the Des Moines Union Railway Company to which the complainants shall be entitled to credit shall be deducted from the indebtedness due from the complainants ascertained as provided for in Section three. The bill in this case, after making appropriate allegations with respect to said surplus: (Vol. 1, p. 33)

"First: That said defendant, the Des Moines Union Railway Company be required to render to your orators a full and true account of all moneys earned and received by it for switching services, real estate rentals, and from other sources hereinabove mentioned, giving the dates, sources from which derived, amounts, portions of said receipts expended, the purposes and dates of such expenditures, and the balance now on hand, together with a full and true statement and description of all properties acquired, and improvements made and paid for from such earnings.

Second: That all the said earnings or receipts in the hands of said defendant be paid over to your orators on the basis of their respective wheelage, or credited on said basis upon the monthly bills of said defendant against your orators, for the maintenance, repair and operation and other charges pertaining to the maintenance and operation of said properties."

The petitioner further shows the Court that in the trial of this case in the Court below, no accounting was had and no testimony was introduced upon the issue as to the amount or extent of said surplus earnings or as to whether or not there was indebtedness due from the complainants accruing under Section 3 of the contract of May 10th, 1889, upon which said surplus earnings or a portion thereof, should be credited.

That to carry out and comply with the decree of this Court and to comply with the contract of May 10, 1889, as construed by this Court, it is necessary to include in the accounting, the issue as to the extent and amount of said surplus earnings as to whether or not there is indebtedness due your Petitioner under Section 3 of the contract, upon which said surplus earnings should be credited.

Your petitioner further shows the Court that at the time of the trial of this case in the Court below, it was impossible to have a full and complete accounting either as to the amount of said surplus earnings or as to any indebtedness due Petitioner under Section 3 of said contract upon which said surplus earnings should be credited for the reason that the said contract then had several years to run; said contract expiring by limitation upon the first day of May, 1918.

That in fact the claims of Petitioner against complainants for terminal facilities and services rendered to them under the terms of said contract, and for which it is entitled to compensation ascertained in the manner provided for in Section 3 thereof, amounts to many thousands of dollars; some of which claims are disputed by complainants.

It seems to us unnecessary to say much in the way of arguing the

merits of this motion. Clearly the contract of May 10th, 1889, does not primarily require the terminal company to pay to complainants these surplus earnings. The theory of the contract is that the complainants shall pay to the terminal company an amount to be ascertained as provided in Section 3. Under the provisions of Section 4 as construed by the Court, the surplus earnings are to be credited upon the amounts ascertained to be due the terminal company under Section 3, so that complainants are not entitled to these surplus earnings so long as there is anything due under the terms of Section 3. In other words, the primary obligation contained in Section 4 is to credit and not to pay.

In construing Section 3 it is conceivable that a controversy might arise between the parties and indeed such a controversy has arisen. It necessarily follows that preliminary to a determination as to how the surplus earnings shall be divided between complainants and the formulation of a decree requiring said distribution, the amount of these surplus earnings must be ascertained and this involves the question of what is due the terminal company under the provisions of Section 3.

Of course, it may be that our rights with respect to this controversy are preserved by the decree in its present form, because it may be said that the earnings in question cannot be properly described as surplus earnings except to the extent to which they exceed the amounts which should be credited upon the indebtedness due the terminal company, ascertained in the manner provided for in Section 3, although the term "surplus earnings" has so far been used in this litigation to mean earnings of the terminal company other than those "which other railroad companies may be under obligation to pay by virtue of contracts for the use of said property."

However this may be, it seems to us for the purpose of avoiding any controversy over this subject in the future process of this litigation, the decree ought to be amended so as to make it clear that the terminal company should not be required to pay complainants any sums which may properly be used in satisfaction of any claims arising under Section 3 of the contract.

Respectfully Submitted by

J. L. PARRISH AND
F. W. LEHMANN, FOR
Des Moines Union Railway Company, F. M. Hubbell and Son, F. M. Hubbell and F. C. Hubbell.

The undersigned counsel for the above named moving parties certify that the foregoing motion is made in good faith and not for delay and is believed by them to be well grounded in law.

J. L. PARRISH AND
F. W. LEHMANN.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jul. 22, 1918.

(Order Denying Motion of Des Moines Union Railway Company et al. to Modify Decree.)

September Term, 1918, Monday, October 28, 1918.

These causes came on this day to be heard upon the motion to modify the decree, filed by counsel for the Des Moines Union Railway Company, et al., appellees in No. 4885 and appellants in No. 4886.

On consideration whereof, it is now here ordered by this Court, that said motion to modify the decree in these causes, be, and the same is hereby, denied.

October 28, 1918.

(Motion for Stay of Mandate in Cause No. 4885.)

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY et al., Appellees.

Come now the appellants in the above entitled cause, and show unto the Court as follows: That on October 28th, 1918, an order of this Court was entered in this cause denying appellants' petition for a rehearing.

That it is the purpose of appellants to make timely petition to the Supreme Court of the United States for a writ of certiorari to be directed to this Court to the end that the decision and decree of this Court in this cause may be reviewed by the Supreme Court of the United States.

Wherefore, appellants move the Court to enter an order herein directing the clerk to withhold the mandate of this Court in this cause for a period of three months from October 28th, 1918; and if within said three months these appellants shall have filed in the Supreme Court of the United States their petition for a writ of certiorari directed to this Court in this cause, and the same be not acted upon before the expiration of said three months' period, then that said mandate be further withheld until the said Supreme Court of the United States shall have passed upon the said petition of these appellants.

J. C. COOK,
BURTON HANSON,
N. S. BROWN, AND
JAMES L. MINNIS,
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 31, 1918.

(Motion for Stay of Mandate in Cause No. 4886.)

No. 4886.

DES MOINES UNION RAILWAY COMPANY et al., Appellants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellees.

Come now the appellants in the above entitled cause, and show unto the Court as follows: That on October 28th, 1918, an order of this Court was entered in this cause denying appellants' petition for a rehearing.

That it is the purpose of appellants to make timely petition to the Supreme Court of the United States for a writ of certiorari to be directed to this Court to the end that the decision and decree of this Court in this cause may be reviewed by the Supreme Court of the United States.

Wherefore, appellants move the Court to enter an order herein directing the clerk to withhold the mandate of this Court in this cause for a period of three months from October 28th, 1918; and if within said three months these appellants shall have filed in the Supreme Court of the United States their petition for a writ of certiorari directed to this court in this cause, and the same be not acted upon before the expiration of said three months' period, then that said mandate be further withheld until the said Supreme Court of the United States shall have passed upon the said petition of these appellants.

J. L. PARRISH,
F. W. LEHMANN,
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 4, 1918.

(Order Staying Mandate in Both Causes.)

September Term, 1918, Monday, November 18, 1918.

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY et al.

and

No. 4886.

DES MOINES UNION RAILWAY COMPANY et al., Appellants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.

Appeals from the District Court of the United States for the Southern District of Iowa.

Upon consideration of the motions filed by counsel for appellants in each of these causes, for a stay of the mandate of this Court for a period of three months from October 28, 1918, pending the petitions of said appellants to the Supreme Court of the United States for a writ of certiorari and for such further time until said petitions shall have been passed on, if not passed on before the expiration of said three months' period.

It is now here ordered that the mandate of this Court in these causes, be, and the same is hereby, stayed for a period of three months from and after October 28, 1918, pending the petitions of appellants to the Supreme Court of the United States for a writ of certiorari and until such petitions for writ of certiorari shall have been passed on by said Supreme Court.

November 18, 1918.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing transcript composed of five volumes, Volume I consisting of pages 1 to 216, inclusive; Volume II consisting of pages 217 to 895, inclusive; Volume III consisting of pages 897 to 1266, inclusive; Volume IV consisting of pages 1267 to 2033, inclusive, and Volume V consisting of pages 2035 to 2185, inclusive, contains the transcript of

the record from the District Court of the United States for the Southern District of Iowa, as prepared and printed, under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in certain causes in said Circuit Court of Appeals wherein the Chicago, Milwaukee & St. Paul Railway Company, et al., were Appellants, and the Des Moines Union Railway Company, et al., were Appellees, No. 4885, and wherein the Des Moines Union Railway Company, et al., were Appellants, and the Chicago, Milwaukee & St. Paul Railway Company, et al., were Appellees, No. 4886, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-eighth day of December, A. D. 1918.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

File No. 26,905.

Supreme Court of the United States, October Term, 1918.

No. 819.

(No. 4885 in the United States Circuit Court of Appeals.)

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY et al., Respondents.

Stipulation as to Return to Writ of Certiorari.

It is hereby stipulated and agreed by and between the parties hereto that the certified copy of the transcript of record herein, now on file in the office of the Clerk of the Supreme Court of the United

States be taken as the return to the writ of certiorari issued in this cause under date of March 22nd, 1919.

JOHN C. COOK,
BURTON HANSON AND
JAMES L. MINNIS,
Attorneys for Petitioner.
J. L. PARRISH &
F. W. LEHMANN,
Attorneys for Respondents.

(Endorsed:) No. 4885. File No. 26,905 Supreme Court of the United States, No. 819, October Term, 1918. Chicago, Milwaukee & St. Paul Railway Company et al., Petitioners, vs. Des Moines Union Railway Company et al., Respondents. Stipulation as to return to writ of certiorari. Filed Apr. 1, 1919, E. E. Koch, Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Chicago, Milwaukee & St. Paul Railway Company et al. are appellants, and Des Moines Union Railway Company et al. are appellees, No. 4885, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of Iowa, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-second day of March, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

(Endorsed:) File No. 26,905. Supreme Court of the United States, No. 819, October Term, 1918. Chicago, Milwaukee & St. Paul Railway Company et al. vs. Des Moines Union Railway Company et al. Writ of certiorari. Filed Apr. 1, 1919, E. E. Koch, Clerk.

Return to Writ.

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of the Chicago, Milwaukee and St. Paul Railway Company et al., Appellants, vs. Des Moines Union Railway Company, et al., No. 4885, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this second day of April, A. D. 1919.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] File No. 26,905. Supreme Court U. S. October Term, 1918. Term No. 819. Chicago, Milwaukee & St. Paul Ry. Co. et al., Petitioners, vs. Des Moines Union Ry. Co. et al. Writ of certiorari and return. Filed April 4, 1919.

Supreme Court of the United States, October Term, 1918.

No. 820.

(No. 4886 in the United States Circuit Court of Appeals.)

DES MOINES UNION RAILWAY COMPANY et al., Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Respondents.

Stipulation as to Return to Writ of Certiorari.

It is hereby stipulated and agreed by and between the parties hereto that the certified copy of the transcript of record herein, now on file in the office of the Clerk of the Supreme Court of the United

States be taken as the return to the writ of certiorari issued in this cause under date of March 22nd, 1919.

J. L. PARRISH AND
F. W. LEHMANN,
Attorneys for Petitioners.
JOHN C. COOK,
BURTON HANSON AND
JAMES L. MINNIS,
Attorneys for Respondent.

(Endorsed:) No. 4886. Supreme Court of the United States. No. 820. October Term, 1918. Des Moines Union Railway Company et al., Petitioners, vs. Chicago, Milwaukee & St. Paul Railway Company et al., Respondents. Stipulation as to return to Writ of certiorari. Filed Apr. 1, 1919, E. E. Koch, Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Des Moines Union Railway Company et al. are appellants, and Chicago, Milwaukee & St. Paul Railway Company et al. are appellees, No. 4886, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal — the District Court of the United States for the Southern District of Iowa, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-second day of March, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 26,906. Supreme Court of the United States, No. 820, October Term, 1918. Des Moines Union Railway Company et al., vs. Chicago, Milwaukee & St. Paul Railway Company et al. Writ of certiorari. Filed Apr. 1, 1919, E. E. Koch, Clerk.

Return to Writ.

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of the Des Moines Union Railway Company et al., Appellants, vs. The Chicago, Milwaukee and St. Paul Railway Company et al., No. 4886, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this second day of April, A. D. 1919.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] File No. 26,906. Supreme Court U. S. October Term, 1918. Term No. 820. Des Moines Union Ry. Co. et al., Petitioners, vs. Chicago, Milwaukee & St. Paul Ry. Co. et al. Writ of certiorari and return. Filed April 4, 1919.

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JAMES D. MAHER, Cl. of

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1918.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON,
Respondents.

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PETITION FOR WRIT OF CERTIORARI.

JOHN C. COOK,
BURTON HANSON,
Railway Exchange Bldg., Chicago, Ill.
JAMES L. MINNIS,
Railway Exchange Bldg., St. Louis, Mo.
Counsel for Petitioners, Chicago, Milwaukee & St. Paul Railway Company and Wabash Railway Company.

ST. LOUIS LAW PRINTING CO., Ninth and Walnut Sts. Bell, Main 1819.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1918.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON,
Respondents.

PETITION FOR WRIT OF CERTIORARI.

Now come the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the "St. Paul Company", and the Wabash Railway Company, hereinafter called the "Wabash Company", and respectfully petition this Court to grant a writ of *certiorari* under Section 240 of the Judicial Code to the Circuit Court of Appeals for the Eighth Judicial Circuit, to remove therefrom, for review here, the record in the cause therein pending numbered 4885 in equity, wherein your petitioners are appellants, and the Des Moines Union Railway Company, F. M. Hubbell, F. C. Hubbell and F. M. Hubbell & Son are appellees,

also the record in the cause therein pending numbered 4886, wherein your petitioners are appellees, and said Des Moines Union Railway Company (hereafter called the Des Moines Company), F. M. Hubbell, F. C. Hubbell and F. M. Hubbell & Son are appellants (a copy of the records being presented herewith), and state:

This is a bill in equity filed in the District Court for the Southern District of Iowa to enjoin the respondents, F. M. Hubbell and F. C. Hubbell, from causing the Des Moines Company (which they dominate), to exclude petitioners from the use and occupation of the parts of their railroads and all their terminal facilities located in Des Moines, Iowa, which petitioners and their predecessors acquired and developed and have operated in the name and under the management of that company as their agent, and to recover income derived from the use thereof now in its treasury (55; 119).*

The railroads and terminal facilities in controversy include a double track railroad extending from a connection with the railroad of the Wabash Company at its terminus at the east limits of the City of Des Moines through the business center of Des Moines over a bridge across the Des Moines River to a connection with the tracks of the railroad of the St. Paul Company at its terminus at Sixteenth street near the western limits of Des Moines, a distance of about three miles; passenger depot, freight

*Note: Figures in parenthesis throughout this petition refer to pages of the record and where double pages appear they refer to the pages stamped by the clerk in heavy black figures above the pages originally printed.

depot, sidetracks, switches, roundhouses, turntables and industrial tracks connecting with all industries of importance in Des Moines, together with switch engines and other incidental facilities (1047) (183) (402). The original outlay for the ground and right-of-way was $461,257.00 (478-479) and F. M. Hubbell estimated the value of the property at $2,000,000 (1054).

All of the judges of the Court of Appeals were of opinion that petitioners are entitled to the income in the treasury of the Des Moines Company and that they and their predecessors acquired and owned the joint railroad and terminal facilities, but two of the judges were of opinion (2086-2119) that the petitioners and their predecessors had "gradually **let slip** from them" the joint railroads and terminal facilities (2115) notwithstanding "there is nowhere any indication that the railways **intended** any such result and yet such, in our judgment, is the result. This **unexpected outcome** was the product of several circumstances". The other Judge was of a contrary opinion (2120-2126), but the Court ordered and adjudged that petitioners are entitled to recover the income, and that the Des Moines Company is the owner absolutely of the joint railroads and terminal facilities and that petitioners are not entitled to use and occupy them (2126).

The bill is **based on:**

(1) A contract dated January 2, 1882, between the Des Moines & St. Louis Railroad Company, predecessor in title of the Wabash Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, predecessors in title of the St. Paul Company, and How and

Dodge, their trustees, which stated that said predecessor companies (hereinafter sometimes called the railway companies) "are engaged in the construction of railways converging at the City of Des Moines", and had agreed to extend their railroads into and through Des Moines by constructing joint railroads, and to develop joint terminal facilities therein on ground they had purchased for that purpose and that such joint railroads and terminal facilities should be held in perpetuity **"subject to the joint use and occupation of all said railway companies"** at actual cost to be shared in accordance with use (120-122).

(2) Articles of incorporation of the Des Moines Company made by F. M. Hubbell and other authorized representatives of the railway companies, on December 10, 1884, which after setting out the above contract *verbatim* provided among other things (Art. II) that, **"all the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, 1882"** (123-129).

(3) Resolutions of the railway companies directing that their joint railroads and terminal facilities be conveyed to the Des Moines Company **"to carry out the purposes of said contract of January 2nd, 1882"** (Ex. D, 131-132; Ex. F., 134-135; Ex. G., 135, 136, 137), and the resolution of the Des Moines Company "**that this Company accepts the transfer and management and operation of said property and assumes control thereof from this date * * * and that it hereby instructs its president to make such order as may be necessary to render such control and management effective as provided in said contract**" (Ex. C, 130-131).

(4) A supplemental agreement dated May 10, 1889, between the railway companies and the Des Moines Company, which covered in detail the operation of the joint railroads and terminal facilities until May 1, 1918 (150-159).

Deeds were made to the Des Moines Company (143-150, 455-459), which made its mortgage (459-472) and issued its bonds to reimburse the railway companies and their trustees for the outlays as provided in the contract of January 2nd, 1882 (478-479). F. M. Hubbell, the attorney and agent of the railway companies, at the inception of the terminal enterprise (396-400), purchased the joint right-of-way and terminal ground (1045-1046), became interested in and dominated the companies, predecessors of the St. Paul Company (1096-1097, 1100-1101); was at all times a director and secretary of the Des Moines Company (998) and an officer and director of each of the railway companies (1041, 1042, 1043, 1044). The officers and agents of the company predecessor of the Wabash relied on F. M. Hubbell to promote its interests as well as the interests of the companies he dominated (234, 361-365), but instead he acted adversely and in his individual interest by acquiring alleged assignments of the alleged rights of the company predecessor of the Wabash to three-eighths of the unissued stock of the Des Moines Company under an agreement that it would be sold "only to a railway company who will join with the Wabash in making a contract with the Des Moines Union guaranteeing interest on the bonds, operating expenses, etc." (1059-1060, 1061-1063, 1070, 1602-1603), and that the articles would not be amended otherwise than to permit the holder of one-eighth of stock to elect a director (1601-1602),

which stock was finally transferred to the company he dominated (1064-1065, 1069-1070, 1089). He caused the records of the Des Moines Company, without knowledge or consent of the railway companies (231-235, 364-365, 1090-1094, 1601-1602) to purport to show that at a meeting of its stockholders, when in fact no stock had been issued (1068, 1087) or subscribed (1065, 1087, 1090) its articles of incorporation had been amended so as to eliminate all the rights and interests of the railway companies in their joint railroads and terminal facilities and create a colorable claim that the Des Moines Company had acquired them (488, 494), and caused 4,000 shares of its stock to be issued under article III of the alleged amended articles (1068-1069), which falsely stated the stock would be issued in payment for the property, bonds having been previously issued for that purpose (478-479); the stock was therefore issued without consideration (348-349); by mesne assignments F. M. Hubbell and his son, F. C. Hubbell, acquired individually five-eighths thereof or 2,500 shares from the company they dominated in a trade at the alleged price of ten cents on the dollar (1016, 1042, 1064, 1065, 1482, 1483, 1484, 1096, 1097, 1150, 1151) in violation of the agreement that the stock would be sold "only to a railroad company who would join with the Wabash in making a contract with the Des Moines Company, guaranteeing interest upon the bonds, operating expenses, etc." (1059, 1060, 1061, 1070), and by means of said stock they controlled the majority of the directors (themselves and their dummies) of the Des Moines Company (190), and caused it to set up said claim adverse to petitioners.

One-fourth, or 1,000 shares, of the stock is now held

by the St. Paul Company, five-eighths, or 2,500 shares, by F. M. Hubbell and son (190), and one-eighth, or 500 shares, by the Wabash Company (169).

Before the Hubbells acquired five-eighths of the stock affidavits were made by Howe in 1889 (501); by Seely, general superintendent in 1890 (502); by Cummins, vice-president, in 1891 (503); by respondent F. C. Hubbell, president, in 1892 (504), and by Cummins (attorney for the Des Moines Company and the railway companies and the personal attorney of F. M. Hubbell) (1059), as vice-president of the Des Moines Company, February 28th, 1893, to the Council of the State of Iowa (505), that the Des Moines Company "is simply a representative company acting as an agency at Des Moines for the" railway companies, "performing all the necessary work for them and charging each road its due proportion of the expense thereby incurred, etc., at actual cost".

The Hubbells acquired five-eighths of the stock of the Des Moines Company January 29th, 1894 (1482-1483-1484) and on February 16th, 1894, Cummins, as vice-president of the Des Moines Company, made affidavit to the Council of State of Iowa that "the Des Moines Company is the owner of the property hereinbefore described, etc." (506). The first knowledge either of the railway companies or their successors had of the claim of respondents Hubbell that the Des Moines Company had acquired the joint railroads and terminal facilities was in October, 1905, when they threatened to cause the Des Moines Company to exclude petitioners from the use and occupation thereof at the expiration of the supplemental or operating agreement, to wit, on May 1, 1918, and to

withhold such income (328-329), whereupon in due time petitioners brought this suit (3).

As above stated the Judges of the Court of Appeals concurred in holding (see majority opinion 2086-2119, and dissenting opinion 2120-2126) that the petitioners are entitled to the income in the treasury of the Des Moines Company and that the predecessors of the petitioners acquired and owned the joint railroads and terminal facilities.

But Judge Stone (Judge Smith concurring, and Judge Hook dissenting), held:

First. That the deeds to the Des Moines Company vested in it the absolute title to all interest in the joint railroads and terminal facilities (2094-2110), contrary to *(a)* the contract of 1882 that they should be held subject "to the joint use and occupation of all said railway companies" (120); *(b)* the articles of incorporation that "all the powers exercised by this company shall be in accordance with the terms of the aforesaid contract" (127); *(c)* the resolutions of the railway companies that their joint railroads and terminal facilities should be conveyed to the Des Moines Company "to carry out the purposes of the said contract" (131-139); *(d)* the resolutions of the Des Moines Company "that this company accepts the transfer and management and operation of said property * * * and assumes control thereof * * * and it hereby instructs its president to make such order as may be necessary to render such control and management effective as provided in said contract" (130-131); *(e)* the understanding of the persons who actively participated in the transactions as shown by the affidavits made to the Council of State (501-505); *(f)* the decision of this court in Joy *et al* v. St. Louis (138 U. S.

l. c. 38). *(g)* public policy as announced in Central Transportation Company v. Pullman Company (139 U. S. 28-49) and confirmed by all subsequent cases, that a railway corporation can not alienate or convey its right to use its railway in whole or in part without the express consent of the state under whose franchise it was created and acquired and the laws of Iowa do not permit by sale, lease or otherwise, the dismemberment of a railroad or a separation of a railroad or any part from the franchise under which it was created or acquired (Section 2066 of the Iowa Code, 1897—same as Section 1300 of the Code of 1873; O'Connor v. Tennessee Central Railway, 109 Fed. Rep. 935); *(h)* the contract with the state of Iowa which arose from public taxes voted to the companies' predecessors to the St. Paul Company "for the purpose of aiding" them in constructing a railroad "to a connection with the line owned or operated by the Wabash, St. Louis & Pacific Railway Company (788-827); *(i)* and the condition on which they were accepted in writing (796-799) pursuant to which the railroad was constructed to Fourth street to a connection with the Wabash road (823), whereby the predecessors of the St. Paul Company and their successors became obligated to the state to perpetually maintain and continuously operate the same (State against Central Iowa Railway Company, 71 Iowa 410); and *(j)* contrary to the public policy of the State of Iowa announced in said section 2066, which reads as follows:

> "**Sale or Lease of Railroad Property—Joint Arrangement.** Any railroad corporation may sell or lease its property and franchises to, or make

joint running arrangements not in conflict with law, with any corporation owning or operating any connecting railway, and any corporation operating the railway of another shall be liable in the same manner and extent as though such railway belonged to it."

This statute prohibits by implication the dismemberment or breaking up of a railroad or the franchises under which it was constructed and permits a railroad and franchises to be disposed of only as a unit or entirety.

Second. That the articles of incorporation of the Des Moines Company made it a mere agency for the railway companies and gave them complete control and domination over its affairs, which enabled them to enjoy the use and occupation of the joint railroads and terminal facilities at cost, in accordance with their respective use (2110); but that this control and all the rights growing out of it were "later relinquished" to the Des Moines Company (2110) by the alleged amendments to the articles which "took away all control by the railway companies as such over the action of the terminal company * * * and all influence of the 1882 contract as embodied in the articles of incorporation" (2113), and that while "the amendments were never properly adopted" that question was "not open to complainants" (2110) because they were guilty of laches (2113-2114-2115) on the grounds:

(1) That "Hubbell was willing to purchase" the stock of the Des Moines Company "if the control of the railways as such given in the articles was removed; the articles were amended, removing Hubbell's objection; the purchase was made" (2113);

contrary to *(a)* the 16th paragraph of the answer wherein "these respondents aver that said stock was acquired long after the amendments to the articles of incorporation of the Des Moines Union Railway Company referred to in the amended bill had been adopted and that the two transactions were wholly and entirely independent of each other" (185); *(b)* to the testimony of F. M. Hubbell who made no "objection" to the articles and did not suggest the alleged amendments or rely on them (1075; 1098-1099-1100). "I do not think I attached any particular importance to those amendments as having any effect at all upon the value of the stock or upon the title held by the terminal company in the terminal property" (1081). "The purchasing committee made no representations to me concerning the title to the property. I never heard the title of the Des Moines Union Railway Company to the terminal property questioned until this suit was brought and I was made one of the defendants" (1078); *(c)* to the testimony of Cummins that he initiated the amendments (1206, 1210-1211) and his letter of January 27th, 1890, to Dodge that "while Mr. Hubbell was at first disposed to oppose the amendments which I had prepared after full explanation with him I believe that he will support them" and that "they are directed to two purposes, first, to clear up the ambiguity and uncertainty with respect to the amount of stock to be issued on account of the original purchase of the property, and, second, to enable the Des Moines Union Railway Company to act in all matters without the previous authority of three corporations" (1211-1212); *(d)* the implied agreement between Hubbell and the Wabash purchasing

committee arising from the contract between them that the committee "will consent to such change in said articles of incorporation as will permit one director of said company to be nominated by any person or corporation holding one-eighth of the stock of the said Union Railway Company" (1601-1602). This instrument was obtained by Hubbell in connection with the purchase of stock, and amounts to an agreement between the parties that the articles would not be otherwise amended; *(c)* the undisputed documentary evidence that Hubbell acquired the stock of the Wabash purchasing committee with the express understanding that the sale of the stock "should be made only to a railway company who will join with the Wabash in making a contract with the Des Moines Union guaranteeing interest upon the bonds, operating expenses, etc.," and "that it would be prejudicial to sell any of this stock to outsiders (see Hubbell's letter of June 18, 1888, to Ashley [1060] and Ashley's letter of June 16, 1888 [1059]), and that the "one-eighth interest in the capital stock" retained by the Wabash purchasing committee "shall be sufficient to represent a proprietorship in the company, according to the understanding we had when you were here" (see Ashley's letter of April 5, 1890, in reply to Hubbell's letter of April 1st, 1890 [1061]).

(2) That "for seventeen years thereafter (adoption of the alleged amendments) the railways acted in perfect harmony with the articles as amended. During that time there was no question of their validity and not until this suit was filed in 1907 was there any such attack. The doctrine of laches comprehends and controls the situation," contrary to the conceded fact that the railway companies during the seventeen years op-

erated their joint railroads and terminal facilities under and pursuant to and in compliance with the supplemental or operating agreement (150-159). Hubbell testified "the contract of May 10, 1889," had been executed before he "ever heard of any suggestion from any one respecting the amendment of the articles"; that the method of doing business "was not changed after the amendments"; that "the business was transacted and has been transacted ever since * * * under the contract of 1889" (1099). Hubbell did not claim the alleged amendments would affect in any way the railway companies or the operations of the joint railroads and terminal facilities until after the expiration of the supplemental operating agreement (see paragraph 25, Respondent's answer) (191), and the first time he advised any officer or agent of the petitioners or their predecessors that he claimed adversely to them was in 1905, and this suit was brought shortly thereafter (328-329), and contrary to the elemental rule that mere unwariness of a principal or the beneficiary of a trust can not be set up by an agent or trustee in support of an adverse claim against his principal or beneficiary.

(3) That the railway companies "through successive acts, natural enough, and at the time, apparently harmless (2115) * * * gradually let slip from them that exclusive ownership and control which they had at the beginning so much valued and so carefully guarded (2115)," but that **"there is nowhere any indication that the railways intended any such a result, and yet such, in our judgment, is the result.** This **unexpected outcome** was the product of several circumstances" (2113). The railway companies ex-

pressly contracted against adverse claims that they had relinquished their use and occupation of their joint railroads and terminal facilities, based either on the express acts or acquiescence or laches of their officers and agents, by the provisions of article 2 (127) of the articles of incorporation which prohibited the Des Moines Company from disposing "of the use of any part of its franchises" without "the assent in writing" of the railway companies, and by article 4 (128), which provides that "no contract, lease or other agreement amounting to a permanent charge upon the property * * * shall be entered into * * * by the board unless the same shall have been first approved by" the railway companies. The "board" could be composed only of nominees of the railway companies (128), and therefore these provisions directly limited the authority of the officers and agents of the railway companies who acted as their representatives on the board of the Des Moines Company and reserved to the respective boards of directors of the railway companies all authority relating to their rights to the joint use and occupation of their joint railroads and terminal facilities. Besides, no assertion or exercise of the corporate power of the Des Moines Company could destroy or affect in any way the property rights of the railway companies in their joint railroads and terminal facilities.

Third. That the Des Moines Company "must furnish its full terminal facilities in so far as reasonably necessary and required by the railways and they will pay therefor such reasonable sum as may be agreed upon between the terminal company and each of the railways, or in default of such agreement, as may be

fixed by the proper public tribunal" (2119); **but the Court of Appeals did not so decree** (2127). The learned Judge had previously stated, "that when the present operating contract is ended the rights of the parties respecting the use of the terminals by the railways are those which spring from their nature as carriers and their physical and business relation to each other as carriers in and entering a large terminal" (2119). The holding, "that the terminal company must furnish its full terminal facilities, etc.," is based on the assumption that the laws of Iowa require it to do so, contrary to the decision of the Supreme Court of that state in the case of Morgan v. Des Moines Union Railway Company, 113 Iowa 55-61, that the Des Moines Company was organized under the general railroad act of that state, which does not obligate corporations formed thereunder to afford their facilities to other companies except pursuant to their agreements.

The District Court held that the income in the treasury of the Des Moines Company and the joint railroads and terminal facilities belong absolutely to the Des Moines Company, but that the railway companies were entitled to use the joint railroads and terminal facilities on the payment of reasonable compensation to be fixed by the court in default of agreement of the parties (2036-2052; 2064-2065) and adjudged and decreed accordingly (2065). Both parties being dissatisfied prosecuted appeals (2068-2084).

The Court of Appeals entered an order and judgment (2127) requiring the District Court to modify its decree so as to "state the complete title to the property in controversy in the" Des Moines Com-

pany, and "that the only interest of the railway companies in the property or the management of the corporation is such as flows from stock ownership", and that "the income in the treasury of the company belongs to the railway companies".

On the ground that the decision that the title to the property in controversy is in the Des Moines Company and that petitioners have no right to use and occupy same, adversely affects the public interest (St. L., K. C. & C. R. R. Co. v. Wabash R. R. Co., 217 U. S., *l. c.* 251), is contrary to public policy (Central Transportation Co. v. Pullman Co., 139 U. S. 28, *l. c.* 29) (State v. Iowa Central Railway Co., 71 Iowa 410) (Section 2066 Statutes of Iowa) and violates the *quasi*-public and important private rights involved, petitioners submit that, in view of the division of the judges and the facts to which reference has been made as well as those referred to in the opposing opinions, the matter "is of sufficient importance and is sufficiently open to controversy to make it the duty of this court to issue the writ applied for" (LAU OW BEW, 141 U. S. 583, *l. c.* 587), review that decision and determine the claim of petitioners that the Des Moines Company holds their joint railroads and terminal facilities under and pursuant to the contract of January 2nd, 1882, and its articles of incorporation, subject to the joint use and occupation of the petitioners

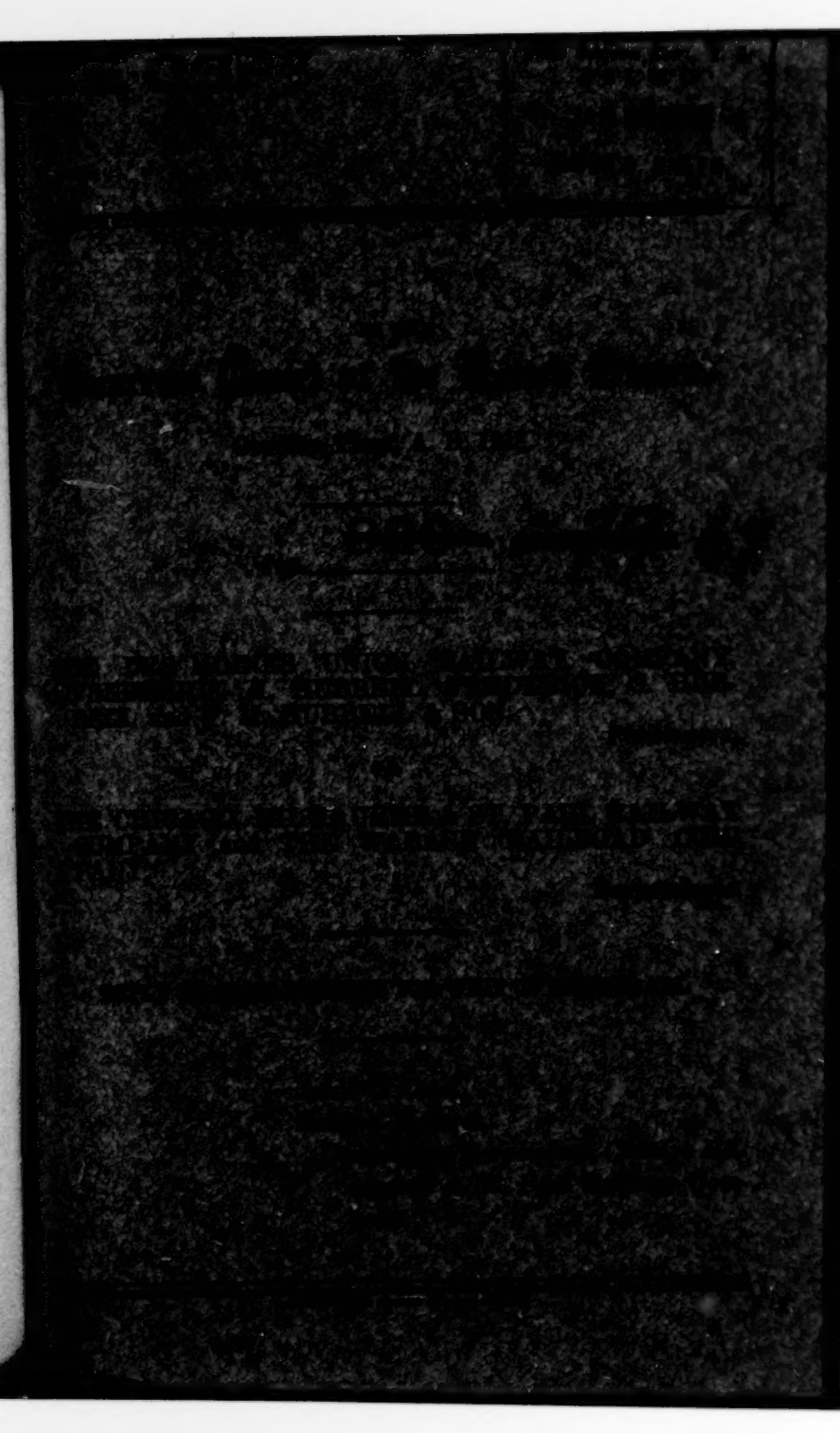
at cost, to be shared between them in accordance with their respective use.

John C. Cook

Bentan Hanson

James L. Minnis

Counsel for Petitioners Chicago, Milwaukee & St. Paul Railway Company and Wabash Railway Company.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1918.

No._____

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL and F. M. HUBBELL & SON,

Petitioners,

vs.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE WABASH RAILROAD COMPANY,

Respondents.

REPLY TO CROSS-PETITION FOR WRIT OF CERTIORARI.

The objection to the issuance of a writ of certiorari on the cross-petition herein may be briefly stated as follows: That the question involved is not of sufficient gravity and importance, nor sufficiently open to controversy, to call for the interposition of this court in granting the writ.

Two causes of action are involved in this litigation:

The first cause of action (Rec., 55-106 and 117) involves the right of the St. Paul Company, which owns

and operates more than 10,000 miles of railway, and of the Wabash Company, which owns and operates about 2,500 miles of railway, to continue to occupy and use in connection with their systems of railway, as they have for many years last past, about three miles of main line double track, including a bridge over the Des Moines River, and about 27 miles of side and switch tracks, team and warehouse and industry tracks, and a modern passenger depot and freight houses, all located in the center of business and population in the City of Des Moines, the commercial center of Iowa, having a population of about 125,000. This cause of action is called in the opinions of the court below *The Main Controversy.* (Rec., 2088.) That this cause of action or controversy involves questions of large public interest—and, therefore, questions of gravity and importance, and is sufficiently open to controversy—is clearly shown by the opinion of Judges Stone and Smith and the dissenting opinion of Judge Hook in the court below. (Rec., 2086-2120.)

The second cause of action (Rec., 106-113) relates wholly to the matter of accounting during the life of the operating agreement, which expired May 1, 1918, and involves merely the question of the ownership of certain funds in the treasury of the Des Moines Company. This cause of action in the opinions of the court below is called *Surplus Earnings.* (Res., 2115.) The court below—all judges concurring—held that these funds belong to the St. Paul and Wabash Companies. (Rec., 2115-2119 and 2120.) No public interest is involved in this cause of action, nor is there involved any rule or principle of law which the interest of the public requires this court to determine, and the cross-petition herein makes no such claim. The only reason assigned for the writ is that if the first cause of action, or main controversy, is to be reviewed here, then the second cause of action

should also be reviewed, regardless of the difference in the subject matter and the questions involved. It seems too plain for argument that each cause of action must be dealt with on its own merits, and that as the second cause of action or branch of the suit involves private interests only, and the decision of the court below in respect thereof being unanimous, and no rule of law on which there are conflicting decisions in the different circuits being involved, a writ of certiorari should not be granted for the purpose of reviewing that decision. If the controversy in this litigation had been confined to this single cause of action, and had been decided by the Circuit Court of Appeals as it was decided, there would be no grounds for granting the writ. Aside from this objection, this cause of action, as will be seen by reading the opinions of Judges Stone and Hook, was correctly decided by the court below and the question involved therein—whether the so-called "surplus earnings" belong to the St. Paul and Wabash Companies, as the court below held they do or to the Des Moines Company—is not sufficiently open to controversy to call for a review thereof by this court.

In addition to the facts stated in the opinions of the court below, we call attention to the following: In Section One of the operating agreement (Rec., 480), the Des Moines Company agreed *"to erect and furnish for the use of the parties of the second part (the railways), in said City of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots and roundhouses, shops, water tanks and yard appurtenances."* A considerable portion of the so-called "surplus earnings" arose from the renting of rooms and space in this passenger depot, the use of which belonged to the railways, and on the full cost of which the railways paid interest, taxes, insurance and the cost of repairs and

maintenance. Other portions of such surplus earnings were received from switching that was done with engines acquired at the cost of the railways. Every dollar expended in maintaining and operating these engines and in doing this switching service was borne by the railways and charged to them each month. The receipts from such rentals and switching, when collected, were credited on the monthly bills of the Des Moines Company against the railways *"from the time there were any such earnings."* (Rec., 327.) The first appearance of any such earnings was a small amount in the month of December, 1889. (Rec., 273.) This was nearly a year after the operating agreement had been executed, and nearly two years after the Des Moines Company took charge of the terminal property. These rentals and earnings arising subsequent to the making of the operating agreement, had there been any dispute concerning their ownership or disposition, might well have called into play the provisions relative to arbitration between the parties found in Section 28 of that agreement. (Rec., 487.) But no dispute arose over them, as it was conceded by all concerned that they should go into the monthly accounts between the Des Moines Company and the railways as a credit on operating expenses in favor of the railways. This was in line with the action of the executive and accounting officers of the Des Moines Company (Rec., 272-313), the formal resolution of the board of directors of that company (Rec., 497), and, as the court below decided, was in full accord with the spirit of the operating agreement. It is significant that the resolution of the board of directors of the Des Moines Company was adopted long after the executive and accounting officers had given the railway companies credit for these receipts on their monthly expense bills. (Rec., 497.)

It is respectfully submitted that no grounds exist for granting the cross-petition herein for a writ of certiorari.

JOHN C. COOK,
BURTON HANSON,
Counsel for Respondent, Chicago, Milwaukee & St. Paul Railway Company.

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Supreme Court, U. S.
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MAR 1 1920
JAMES D. MAHER,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. ~~270~~ 66

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY,

Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL *et al.*,

Respondents.

No. ~~270~~ 67

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL *et al.*

Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF AND ARGUMENT OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

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Counsel for Wabash Railway Company.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1919.

No. 278.

Chicago, Milwaukee & St. Paul Railway Company and Wabash Railway Company,

Petitioners,

vs.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son,

Respondents.

No. 279.

Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son,

Petitioners,

vs.

Chicago, Milwaukee & St. Paul Railway Company and Wabash Railway Company,

Respondents.

WRITS OF CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE EIGHTH JUDICIAL CIRCUIT.

BRIEF AND ARGUMENT OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

STATEMENT OF THE CASE.

The petitioners, Chicago, Milwaukee & St. Paul Railway Company, called the "St. Paul Company," and

The Wabash Railroad Company, called the "Wabash Company" and also referred to in the brief and argument herein as complainants filed their bill in the District Court of the United States for the Southern District of Iowa, against Des Moines Union Railway Company, called the "Des Moines Company," Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, called "the Hubbells," and also referred to in the brief and argument herein as the defendants, to establish their right as equitable tenants in common to the joint and exclusive use in perpetuity of the terminal facilities and property in the City of Des Moines, Iowa, held in the name of the Des Moines Company, and for an accounting of large sums of money, called "surplus earnings," collected from time to time by the Des Moines Company and the Hubbells for the use of such terminal facilities and property. (Rec., 53, 119.)

The railroads and terminal facilities in controversy include a double track railroad extending from a connection with the railroad of the Wabash Company at its terminus at the east limits of the City of Des Moines through the business center of the city over a bridge across the Des Moines River to a connection with the tracks of the railroad of the St. Paul Company at its terminus at Sixteenth street near the western limits of the city, a distance of about three miles; modern passenger depot, freight depot, sidetracks, switches, roundhouses, turntables and industry tracks connecting with all industries of importance in Des Moines, together with switch engines and other incidental facilities. (Rec., 183, 480, 1047.) The original outlay for the ground and rights of way was $461,257 and F. M. Hubbell estimated the value of the property at $2,000,000. (Rec., 478; 1094.) The surplus earnings at the time of the filing of the bill amounted to approximately $500,000. (Rec., 109, 194.)

The Hubbells claim that the complete title to and ownership of the terminal property and surplus earnings is in the Des Moines Company, and as holders of 2,500 shares out of the total of 4,000 shares of the capital stock of that company—1,000 shares of the remainder thereof being owned by the St. Paul Company and 500 shares by the Wabash Company—they have asserted the right to exclude the petitioners from the use of such terminal facilities at the expiration of a supplemental operating agreement, namely, on May 1, 1918, and to distribute such surplus earnings among the holders of such capital stock pro rata. (Rec., 329, 333.)

The Bill.

The bill of complaint as amended avers, among other things, that three railway companies—Des Moines & St. Louis Railroad Company, called "St. Louis Company," Des Moines Northwestern Railway Company, called "Northwestern Company," and St. Louis, Des Moines and Northern Railway Company, called "Northern Company"—predecessors in title to the St. Paul Company and the Wabash Company, acquired terminal property in the City of Des Moines and constructed thereon railroad tracks, switches, sidetracks, turnouts, depots and other terminal facilities for their joint use and occupancy; that pursuant to a contract dated January 2, 1882, said Railway Companies created the Des Moines Company and conveyed to it the terminal property so acquired subject to the joint use and occupation thereof in perpetuity, which use and occupation they reserved to themselves, their successors and assigns; that thereafter additional property was from time to time conveyed to the Des Moines Company, subject to such joint use and occupation; that the articles of incorporation of the Des Moines

Company provided, among other things, that all powers exercised by that company should be in accordance with the terms and spirit of the contract of January 2, 1882; that the affairs of that company should be managed by a board of directors to be nominated by the three Railway Companies, their grantees or assigns, and that the Des Moines Company should act as the agent of the three Railway Companies in operating, financing and developing such terminal property and facilities for their use and benefit; that on May 10, 1889, the Des Moines Company and the three Railway Companies entered into an agreement supplemental to the contract of January 2, 1882, defining in detail the relations and duties of the Railway Companies to each other and to the Des Moines Company in the enjoyment of such joint use and occupation of the terminal facilities and property for a period expiring *May 1, 1918;* that the Des Moines Company collected and received from time to time, for the use of such terminal facilities and property by others, income aggregating approximately $500,000, called surplus earnings; that the Hubbells unlawfully obtained control of the Des Moines Company by usurping its offices, and just prior to the commencement of this suit had set up the claim that they owned a large majority of its capital stock, were entitled to elect its directors and officers, and that the Des Moines Company owned such termined facilities and property in its own right, free from such joint use and occupation thereof by the St. Paul Company and Wabash Company, successors in interest of said three Railway Companies, except the rights conferred upon them by such supplemental agreement of May 10, 1889, and that it, said Des Moines Company, was entitled to receive and retain in its own right such surplus earnings so as aforesaid collected from others for the use of such terminal facilities and property.

The bill, besides praying for general relief, prays, among other things, that after May 1, 1918, it be declared that the St. Paul Company and the Wabash Company as successors and assigns of the three Railway Companies, are entitled to the joint and exclusive use in common and in perpetuity of such terminal facilities and property, on the terms stated in the contract of January 2, 1882; that the Hubbells be restrained from interfering with, or obstructing, such use; that the amount of such surplus earnings so collected and received from the use of such terminal facilities and property by others be ascertained and that the Des Moines Company be required to pay the same to the St. Paul Company and the Wabash Company. (Rec., 53, 119.)

The Answer.

The answer to the bill admits in substance the making and execution of the January 2, 1882, contract, the incorporation of that contract in the articles of incorporation of the Des Moines Company, that the various persons who had held title to property under that contract had conveyed the same to the Des Moines Company, but denies that such conveyances were made to that company as trustee, and avers that that company owned said property in its own right.

The answer also admits that the Hubbells have asserted the claim that upon the expiration of the supplemental agreement, May 1, 1918, the right of the St. Paul Company and the Wabash Company to use such terminal facilities and property will cease, and that if they should desire to use such terminal facilities and property thereafter, they could do so only under such contract as might be made therefor.

The answer also admits that the Des Moines Company

had received for the use of such terminal facilities and property by others income aggregating a large sum.

The answer denies that the St. Paul Company and Wabash Company, or either of them, have any right in such terminal facilities and property except such rights as were acquired under the supplemental agreement of May 10, 1889, or that said companies, or either of them, have any interest in, or right to, the surplus earnings so as aforesaid received by the Des Moines Company for the use of said terminal property and facilities by others. (Rec., 174-196.)

SUCCESSION OF ST. PAUL COMPANY AND WABASH COMPANY.

Wabash *Railway* Company, herein called the "Wabash Company," on July 1, 1916, succeeded to the title of the railway, property and franchises theretofore belonging to The Wabash *Railroad* Company, the original complainant in this bill, and was by order duly entered herein substituted in place of The Wabash *Railroad* Company as party complainant in this bill. (Rec., 2053.) The Wabash *Railroad* Company succeeded to the title of the railway, property and franchises of the Wabash Western *Railroad* Company, which latter company succeeded to the title of the railway, property and franchises of the St. Louis Company and of the Wabash, St. Louis & Pacific Railway Company. (Rec., 530-534.)

The St. Paul Company is the remote successor of the Northwestern Company and the Northern Company, the two companies last named having in 1891 consolidated under the laws of Iowa under the name of Des Moines Northern & Western *Railway* Company. (Rec., 694.) Thereafter, by foreclosure and sale, the railway, property and franchises of the last named company were acquired by the Des Moines Northern & Western *Railroad*

Company, and this last named company in February, 1899, conveyed all its railway, property, franchises, rights and interests to the St. Paul Company. (Rec., 673.)

The St. Paul Company having succeeded to all the property, rights, interests and privileges of the Northwestern Company and the Northern Company, and the Wabash Company having succeeded to all the property, rights, interests and privileges of the St. Louis Company, they likewise succeeded to all the property, rights, interests and privileges of the parties to the January 2, 1882 contract and to all the property, rights, interests and privileges of the St. Louis Company, the Northwestern Company and the Northern Company in the supplemental agreement of May 10, 1889. Ever since such succession by the St. Paul Company and Wabash Company, they have used the terminal properties in Des Moines under said contract of January 2, 1882, and said supplemental agreement of May 10, 1889, and such succession and use of the terminal properties in Des Moines have been recognized by the Des Moines Company and the Hubbells. Neither of said railway companies nor any of their predecessors ever had or now has access or entrance to the City of Des Moines except over the terminal properties in controversy.

Decree of the District Court.

The decree of the District Court adjudged

(a) That the Des Moines Company was organized for the purpose of furnishing terminal services to the St. Paul Company and the Wabash Company and their predecessor Railway Companies, and acquired the terminal property and facilities for that purpose; that such corporate obligation still exists in their favor and is absolute and paramount to any obligation of the Des Moines Company to serve other railway companies, and that after May 1. 1918—the

termination of the supplemental agreement of May 10, 1889—if the parties in interest are unable to agree upon the terms under which the St. Paul Company and the Wabash Company might continue to use such terminal property and facilities, the court, upon application, would fix the same.

(b) That the Des Moines Company is the absolute owner of the so-called surplus earnings, and that the St. Paul Company and the Wabash Company have no interest therein except such as accrued to them as stockholders of the Des Moines Company. (Rec., 2065.)

The St. Paul Company and the Wabash Company appealed from the entire decree to the United States Circuit Court of Appeals for the Eighth Circuit. (Rec., 2068.) The Des Moines Company and the Hubbells appealed from that part of the decree set out in paragraph "(a)" above. (Rec., 2077.)

DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS

The decree of the Court of Appeals adjudged

(a) That the decree of the District Court should be modified so as to state that the complete title of the terminal property and facilities was in the Des Moines Company; that the only interest of the St. Paul Company and the Wabash Company in such property and facilities, or in the management of the Des Moines Company, is such as flows from their ownership of stock of the Des Moines Company. (Rec., 2127.) *Hook, Circuit Judge, dissented as to this portion of the decree.* (Rec., 2021.)

(b) That the so-called surplus earnings belong to the St. Paul Company and the Wabash Company, and that a master should be appointed under instructions to ascertain the part due to each company upon a wheelage basis. (Rec., 2127.) *Hook, Circuit Judge, concurred in this portion of the decree.* (Rec., 2021.)

Writs of Certiorari.

The St. Paul Company and the Wabash Company petitioned this Court for a writ of *certiorari* to review the record in respect of that part of the decree of the United States Circuit Court of Appeals which adjudged that the complete title to the property and terminal facilities is in the Des Moines Company, and that the only interest of the St. Paul Company and the Wabash Company in such property and facilities or in the management of the Des Moines Company is such as flows from their stock ownership in the Des Moines Company. The Des Moines Company and the Hubbells petitioned this Court for a writ of *certiorari* to review the record in respect of that part of the decree of the United States Circuit Court of Appeals which adjudged that the so-called surplus earnings belong to the St. Paul Company and the Wabash Company. Both petitions were granted by this Court, and this case is here in response to these writs of *certiorari*. As the so-called surplus earnings branch of this case involves no public interest and no rule or principle of law which public interest requires this Court to determine, and as the decision of the Court of Appeals thereon was unanimous, presumably this branch of the case is here because the other branch, or the main controversy in the case, was brought here. Indeed, this was the ground of the Hubbells' petition.

Questions Involved.

The underlying questions are:

(a) Whether the Des Moines Company holds the title to the terminal property in trust for the St. Paul and Wabash Companies as equitable tenants in common therein and subject to their joint use and occupation upon the

terms described in the contract of January 2, 1882, with the result that following the expiration of the Supplemental Agreement on May 1, 1918, the St. Paul and Wabash Companies were, and are, remitted to the rights and obligations of that contract, as held by Judge Hook in his dissenting opinion, or whether the title to the terminal property is absolute and complete in the Des Moines Company, and the St. Paul and Wabash Companies' only interest therein is such as flows from stock ownership, as held by the majority opinion; and

(b) Whether the St. Paul and Wabash Companies are entitled to the so-called Surplus Earnings, as adjudged by the Circuit Court of Appeals—all the judges concurring.

The questions in paragraph (a) are raised by the following specification of error:

SPECIFICATION OF ERROR RELIED UPON.

The court below—Circuit Court of Appeals—erred in holding that the Railway Companies have parted with the exclusive ownership and control of the terminal property which they had reserved to themselves under the January 2, 1882 contract, and that the complete title to this property is in the Des Moines Company, and that the only interest of the St. Paul Company and the Wabash Company in such property, or in the control and management thereof or of the Des Moines Company, is such as flows from stock ownership. (Rec., 2114, 2118.)

STATEMENT OF FACTS.

It is not questioned by any of the parties in interest to this proceeding that the transactions and events out of which has grown the present controversy began with the existence of a trust under which the predecessor Railway Companies of the complainants were the beneficial owners in the property held by the Des Moines Company.

The majority opinion of the Circuit Court of Appeals assumes as the premise upon which its conclusions are founded the existence of this trust, and the result reached by it is based upon the theory that through inadvertent developments this trust has disappeared. (Rec., 2096, 2102.) This factor of inadvertence in the alleged dissolution of the trust is stated by that Court in the following language:

> "There is nowhere any indication that the railways intended any such result and yet such in our judgment is the result. This unexpected outcome was the product of several circumstances." (Rec., 2113.)

The dissenting judge in the Court of Appeals states that

> "The excerpt quoted above touches the quick of this controversy." (Rec., 2119.)

And in commenting upon it, he says that the conclusions of the majority are of this significance:

> "In other words the proprietary companies were not cognizant of the trend of the circumstances and the result held to follow though unexpected and not intended by them, is enforced because of legal presumption of intention of natural consequences of acts, regardless of intention in fact. The circum-

> stances relied on do not appear to me to have the significance attributed to them, but were it otherwise, the presumption should not be so broadly applied to the case of a trust, the destruction of which is claimed by those subject to the disabilities of trustees dealing for themselves." (Rec., 2119.)

The several tests of the rights of the parties must all eventually come to the issue disclosed by the above quotations from the majority and minority opinions of the Circuit Court of Appeals.

In such a situation it is believed that the facts of the case can be presented most significantly by classifying them in the following three groups:

I. A statement of those facts which were preliminary to the establishment of the trust and were the inducement for the same.

II. A statement of the terms of the trust and of its development in the corporate form which it eventually took, and in this respect the relation of the defendants Hubbell as the administrators and fiduciaries of the trust.

III. The independent transactions of the Hubbells in respect of the trust property and the several aliquot interests evidenced and measured by shares of stock of the corporate trustee.

I.

A STATEMENT OF THOSE FACTS WHICH WERE PRELIMINARY TO THE ESTABLISHMENT OF THE TRUST AND WERE THE INDUCEMENT FOR THE SAME.

The defendant F. M. Hubbell.

In 1880 the defendant F. M. Hubbell and Jefferson S. Polk were copartners, practicing law, trading in real estate and promoting railroad enterprises in and about the City of Des Moines, Iowa, under the firm name of

Polk and Hubbell. (Rec., 998.) The defendant Hubbell was president of and he and his partner Polk and two associates, J. S. Clarkson and J. S. Runnells, were the stockholders of the Narrow Gauge Railway Construction Company, a contracting company which had constructed certain railroad mileage in the vicinity of Des Moines. (Rec., 407, 408; 998.)

The railroad situation at Des Moines in 1880.

At this period the Wabash, St. Louis and Pacific Railway Company, referred to in the pleadings as the original Wabash Company, owned and operated a system of railways lying east and west of the Mississippi River, including a line extending from St. Louis to Albia, a point in the State of Iowa about 67 miles southeast of the City of Des Moines. (Rec., 998.) Polk and Hubbell being interested in a narrow gauge railroad partly constructed to the northwest of Des Moines from Waukee to Adel, a distance of about 7 miles, sought to interest the Wabash Company in the construction of new railroad mileage in and about the City of Des Moines, including the completion and development of the partially constructed road, of which they were the owners. (Rec., 998, 1001.)

The projected railroad construction in which Polk and Hubbell sought to interest the Wabash Company, may be roughly indicated by the letter Y. The stem of the Y represents a proposed extension of the road of the Wabash Company from Albia to Des Moines; the left arm of the Y a line extending northwesterly from Des Moines to Fonda, of which 7 miles of railroad between Waukee and Adel had already been constructed under the charter of a corporation controlled by Polk and Hubbell and known as the Des Moines Northwestern Railway

Company, hereafter referred to as the "Northwestern Company." The right arm of the Y represents a further projected line to extend in a general northerly direction from Des Moines to the Town of Boone.

A blue print of these roads as subsequently constructed appears in the record at page 197.

As the three projected roads converged at Des Moines, it was also proposed that proper terminals and terminal facilities in Des Moines be acquired for their joint and common use. (Rec., 412, 1001.)

The contracts with the defendant Hubbell and his associated interests.

On December 8, 1880, the defendant F. M. Hubbell, his partner Jefferson S. Polk and J. S. Clarkson and J. S. Runnells, being the same parties who owned and controlled the capital stock of the Narrow Gauge Railway Construction Company, entered into a contract with the Wabash Company providing for the construction of a line in extension of the line of that company along the stem of the Y from Albia to Des Moines, this line to be constructed at the cost of the Wabash Company in the name of the St. Louis Company, a corporation which the defendant Hubbell and his associates contracted to organize. This contract provided in substance that the defendant Hubbell and his associates would incorporate the St. Louis Company with a capital stock of two million dollars and authorized to construct a railroad from Des Moines, Iowa, to Albia in said state. They were to give their time, personal attention to and act as directors and officers of this enterprise, so far as necessary to locate and economically construct the railroad, but subject to the approval of the Wabash Company. They were personally to exert

themselves to procure subsidies in aid of the line and donations of lands, stations, right of way and other benefits in aid of its construction. They were to receive as compensation for their services, in all of the above respects from the time of the execution of the contract made by them to the completion of the railroad, the sum of $10,000 in money and a further sum of five per cent of the amount of all subsidies which should be actually paid, and five per cent of the value of donations in lands for right of way or station purposes and five per cent of the value of all other aid to the construction of the railroad accepted by the Wabash Company. (Rec., 396.)

The contract also provided that the defendant Hubbell and his three associates should each subscribe for one share of the stock, and that the balance of the stock should be subscribed for by a nominee of the Wabash Company, who should undertake to make payment of his subscription by constructing the proposed railroad. (Rec., 398.) James F. How became the nominee of the Wabash Company, and so subscribed for the balance of the stock, and the road was constructed by the Wabash Company in his name as contractor. (Rec., 999.)

On the same date with that of the above contract, namely, December 8, 1880, the line hereinbefore mentioned as controlled by Hubbell and his associates, namely, the Northwestern Company and a corporation named the Narrow Gauge Railway Construction Company, also owned and controlled by the same parties, entered into a contract with the Wabash Company, providing for the completion of the line of the Northwestern Company along the left arm of the Y from Des Moines to Fonda. This contract provided that the line should be constructed by the Construction Company in consideration of $7,000 per mile of bonds of the Wabash

Company, to be secured in part by a mortgage given by the Northwestern Company upon the proposed road, the stock of the Northwestern Company to be equally divided between the Construction Company representing Hubbell and his associates, and the Wabash Company. (Rec., 400.)

The contract also provided that, in order to supply the Construction Company with funds, the Wabash Company would purchase the mortgage bonds deliverable to the Construction Company on the basis of 95 per cent of their par value. (Rec., 406.) This formality was not followed, but the Wabash Company, instead of actually delivering the bonds to the Construction Company, provided it with funds direct by selling the bonds in the market. (Rec., 1001.)

No contract covering the construction of the line northwardly from Des Moines to Boone, along the right arm of the Y, appears in the record, the financing of this road having been undertaken by Gen. Grenville M. Dodge, as an independent enterprise. However, the actual construction work was performed by the Narrow Gauge Construction Company, which company operated from the office of Polk and Hubbell in the City of Des Moines. (Rec., 1170, 1180.)

The corporate organization of the three railway companies mentioned above.

On December 15, 1880, Polk, Clarkson, Runnells and Hubbell, in pursuance of the contract first mentioned above, incorporated the St. Louis Company under the laws of Iowa, for the purpose of constructing the proposed line along the stem of the Y from Albia to Des Moines. (Rec., 408.) Hubbell was made secretary of

the company and also a director, and held both positions until 1891. (Rec., 1297.)

On December 23, 1880, the same four individuals, pursuant to the contract last above mentioned, reincorporated said Northwestern Company for the purpose of completing the line along the left arm of the Y from Des Moines to Fonda (Rec., 725.) Hubbell was made treasurer of the company and also a director of the same, and served continuously in both capacities until the reorganization of said company in 1886, except in 1880, when he served as its assistant treasurer. (Rec., 1279.)

On April 4, 1881, the same four individuals, pursuant to an arrangement with said Dodge, incorporated the St. Louis, Des Moines and Northern Railway Company, hereinafter referred to as the "Northern Company," for the purpose of constructing the third line along the right arm of the Y from Des Moines to Boone. (Rec., 728.) Hubbell was made a director of the company and served in this capacity until 1890; he also served as treasurer of the company until 1883. (Rec., 1297.)

The construction work.

The actual construction work of the three lines, as well as the assembling the necessary terminal railways and facilities at Des Moines, proceeded actively during the year 1881.

The work on the line of the St. Louis Company was under the direction of James F. How, the subcontractor above referred to, designated by and representing the Wabash Company. (Rec., 419, 1001.)

The work on the lines of the Northwestern Company and of the Northern Company was under the direction of the Narrow Gauge Construction Company, and the

operations were conducted from the office of Polk and Hubbell. (Rec., 1170.)

The assembling of the terminal railways and facilities in Des Moines was also conducted from the office of Polk and Hubbell and was under the personal direction of Hubbell himself. (Rec., 981, 1181.) Hubbell also negotiated the purchase of all the real estate, and where condemnation proceedings were necessary these were conducted by Parsons and Runnells, attorneys for the Wabash Company at Des Moines. (Rec., 1001, 1002.)

The funds for the purchase and acquisition of real estate and other property were advanced by the Wabash Company and Gen. Grenville M. Dodge.

Such of the real estate acquired as was charged to the St. Louis Company, or to the Northwestern Company, was paid for by the Wabash Company and title to the same was taken in the name of James F. How individually or of James F. How, trustee, or was taken in the name of other individuals in the first instance and subsequently transferred to How in one of the above capacities.

Such of the real estate as was charged to the Northern Company was paid for by Dodge and the titles were taken in his name.

Certain property being largely property acquired as the result of condemnation proceedings, was taken in the names of either the St. Louis Company or the Northern Company. (Rec., 1045, 1181.)

At the close of the year 1881, the road of the Northwestern Company was opened for operation, and its trains were running into the Des Moines terminals, and the two other roads were well advanced. (Rec., 1053.) But no formal contract had yet been made for the per-

manent ownership and operation of the terminals, that is to say, the terminal development was still proceeding under the parol understanding dating back to the inception of the enterprise.

Thus, at this point, the following situation had developed:

The legal title to certain of the properties was in the Northern Company, which it had acquired by condemnation proceedings; the legal title to certain other property was in the St. Louis Company, which it had also acquired by condemnation proceedings; the remaining property was in the title of certain individuals, namely, Dodge and How, without specification of the terms of the trust, but the beneficiaries of the trust were the three railway companies, by or on whose behalf all of the above referred to properties had been acquired and which had provided the money for the acquisition thereof.

It therefore appears that operation had already begun on the terminal properties before any permanent plan for the proper holding of such properties for railroad purposes had been determined upon by the beneficiaries of the trust enterprise.

II.

A STATEMENT OF THE TERMS OF THE TRUST AND OF ITS DEVELOPMENT IN THE CORPORATE FORM WHICH IT EVENTUALLY TOOK, AND IN THIS RESPECT THE RELATION OF THE DEFENDANTS HUBBELL AS THE ADMINISTRATORS AND FIDUCIARIES OF THE TRUST.

As a result of the situation summarized at the conclusion of the foregoing subdivision, the parties to the enterprise entered into a certain contract which created the express trust lying at the foundation of this suit.

The contract of January 2, 1882 (Rec., 411).

This contract was made between the St. Louis Company, the Northwestern Company and the Northern Company as the beneficial owners of the terminal properties and G. M. Dodge, James F. How and James F. How, trustee, as the holders in trust of the legal titles to certain of the terminal properties. The Wabash Company also subjoined its consent to the execution of the agreement by the St. Louis and Northwestern Companies.

This contract states:

(1) That the three companies—St. Louis Company, Northwestern Company and Northern Company—are engaged in the construction of railways converging at Des Moines, and had theretofore agreed upon the purchase, construction and maintenance of terminal facilities at Des Moines, at their joint expense, *and that such terminal facilities should be held and used in common as provided in said contract.* (Rec., 412.)

(2) That in pursuance of the agreement theretofore made various purchases had been made of property in Des Moines in the name of the St. Louis Company, James F. How individually and as trustee, and Grenville M. Dodge, and the construction of buildings and other improvements upon the property so purchased had been commenced. (Rec., 412.)

(3) That the expense incurred by such purchases and improvements, and such others as might thereafter be made, should be borne one-half by the St. Louis Company, one-quarter by the Northwestern Company, and one-quarter by the Northern Company. (Rec., 412.)

(4) That it was understood that a "*Depot Company*" might be organized to take permanent charge of the

terminal property upon the terms set forth in the contract, and that said *"Depot Company"* might issue and deliver to the three railway companies its mortgage bonds to the amount of their respective portions of the cost of said purchases and improvements. (Rec., 412.)

(5) That the title to said terminal property should *be* and *remain* in a trustee to be named by the three railway companies *"but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described."* (Rec., 412.)

(6) That How and Dodge declare that their purchases of property were "made in their names upon the trusts above referred to, and agree to quitclaim and convey the same to said TRUSTEE *upon demand and reimbursement."* (Rec., 413.)

(7) That the St. Louis Company shall be charged with the police control, supervision and maintenance of the terminal property, and the expense thereof to be apportioned between it and the Northwestern and Northern Companies upon a wheelage basis. (Rec., 413.)

(8) That spur tracks shall be built connecting the terminal property or grounds with factories and other sources of trade in Des Moines, which tracks shall be adapted for use for both broad and narrow-gauge tracks. (Rec., 413.)

(9) That in the event that any company whose railroad does not extend to Des Moines shall effect an arrangement for running its trains into Des Moines over the railroad of the St. Louis Company, the Northwestern Company or the Northern Company, such company shall be entitled to the use of all of the terminal facilities upon the payment of a fair sum for rental and its proportion of maintenance, and that railroad companies

whose roads extend to Des Moines may be admitted to the use of such terminal facilities by agreement of all said companies. (Rec., 413-414.)

(10) That the grounds or terminal property to be held in common by the St. Louis Company, Northwestern Company and Northern Company under such contract are all east of Farnum street in the City of Des Moines. (Rec., 414.)

Speaking of this contract, Judge Stone, who wrote the majority opinion in the Court of Appeals, says:

(a) "An analysis of this contract shows a statement of the occasion and object of the contract, provisions for the title, the use and occupation, the maintenance and improvement of the property." (Rec., 2091.)

(b) "As to the companies (Railways), the contract not only declared some existing property rights, but attempted to define for the future the rights of title and usage of the terminal property. *The title contemplated was a trust.* The legal title to be 'in a trustee to be named by agreement of said companies.' The beneficial estate to be in the three companies in proportion to the parts each contributed to the payment therefor. While this proportional interest is not set forth in so many words, it is necessarily inferred from the combined circumstances that the companies were to pay therefor and for improvements thereto in proportion of one-half, one-fourth and one-fourth." (Rec., 2096.)

(c) *"The contract terms and intent as to ownership were a trust."* (Rec., 2102.)

In connection with the foregoing, particular attention is directed to the third article of the agreement, providing that a "Depot Company" *might be organized to take charge of the terminals, the same to be transferred to the Depot Company in such form of title as would permit it to mortgage the property as security for its bonds,* and also to the second and fourth articles of the agree-

ment providing that the title to the terminal properties *shall be* and *remain* in a trustee to be designated by the parties, *but subject to the use and occupation of the terminals by the three beneficiary railway companies.*

Following the execution of this contract, the parties in interest continued the work of completeing the three railway lines, the making of improvements of the terminal property at Des Moines by the construction of necessary buildings and facilities, the purchase of additional property, obtaining franchises, and connecting the tracks of the St. Louis Company, which were broad gauge, with the tracks of the Northwestern and Northern Companies, which were narrow gauge, by laying a third rail alongside of the rails of each of the three companies through the terminal property.

It is to be further noted that the enterprise was subsidized by aid voted by various counties through which the lines of the St. Louis, the Northern and the Northwestern Companies extended, and that it received further valuable subsidies in the form of donations of rights of way, among these being a right of way granted by ordinance of the City of Des Moines covering the main line of the terminal railway in the City of Des Moines. (Rec., 443, 788-816, 1049.)

The completion of the railroads.

During the years 1882 and 1883, the construction of the two remaining roads was completed. The line of the Northern Company was put into operation in August, 1882, and on January 4, 1883, stockholders of the St. Louis Company adopted a resolution formally accepting its road as completed between Albia and Des Moines. (Rec., 882, 1427.)

The incorporation of the Des Moines Union Railway Company.

On December 9, 1884, the board of directors of the Northwestern Company adopted a resolution reciting that, it having been agreed by the parties to the contract of January 2, 1882 that the property and franchises theretofore acquired, should be used for terminal facilities at Des Moines, it was desirable that a corporation be organized for the purpose of taking and holding such property and *"carrying out the objects of said contract of January 2, 1882," and that F. M. Hubbell and others act for this company in the organization of such corporation.* (Rec., 415.)

Accordingly on December 10, 1884, representatives of the Northwestern Company, of the St. Louis Company and of the Northern Company met in the City of Des Moines for the purpose of organizing the Depot Company, which the parties had agreed "might be organized to take permanent charge of the terminal property upon the terms set forth in the contract."

Present at the meeting were:

G. M. Dodge, representing himself and the Northern Company.

J. S. Polk and F. M. Hubbell, representing the Northwestern Company.

John S. Runnells and C. F. Meek, representing the St. Louis Company, and

James F. How, both as trustee and in his individual capacity.

The first action of this meeting was the adoption of the following resolution:

"Resolved, That for the purpose of carrying out

the objects and purposes of the agreement heretofore, to wit, on the second day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company and others (which is set out in full in the following Articles of Incorporation), the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company, to wit:" (Rec., 416.)

Following this resolution, articles of incorporation of the Des Moines Company were adopted which were preceded by the following:

"WHEREAS, The Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Ia., and have secured certain franchises, purchased certain realty and made certain improvements thereon—which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions, at their joint expense—in accordance with a contract made and entered into by and between said companies and Grenville M. Dodge and James F. How, trustee, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to wit:

(Here follows the contract of January 2, 1882, *verbatim et literatim*.)

"WHEREAS, each of said railway companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said companies, and

WHEREAS, it was provided in the contract aforesaid that a depot company might be organized to take permanent charge of the property, and it was the understanding of the parties that such company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto.

Now, THEREFORE, for the purposes aforesaid, as well as for those hereinafter expressed, the under-

signed hereby associate themselves in a body corporate, and adopt the following:

Articles of Incorporation." (Rec., 416-419.)

These articles, besides stating the name of the corporation, its principal place of business, the names of the officers and the first board of directors, the manner of calling meetings of the board of directors, the method by which the articles might be amended, and the term of the corporation, provided:

(1) That the nature of the business to be transacted by the *"Depot Company"* shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, including the construction, ownership and use of depots, freight houses, railway shops, and whatever else may be useful and convenient for the operation of the railways at the terminal point in Des Moines, as well as the transfer of cars from one railway to another, or from factories, warehouses and elevators to each other or to any of the railways in or around Des Moines; the *"Depot Company"* to possess all the powers conferred upon corporations for pecuniary profit under Chapter 1 of Title IX of the Iowa Code and the amendments thereto. (Rec., 420.)

(2) *That all the powers exercised by the "Depot Company" shall be in accordance with the terms and spirit of the January* 2, 1882, *contract.* (Rec., 420.)

(3) That the *"Depot Company"* shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other railway company, provided the assent in writing of the St. Louis Company, the Northwestern Company and the Northern Company shall be necessary before such lease or disposition can be made to any other than the three companies last named. (Rec., 420.)

(4) That the affairs of the *"Depot Company"* shall be managed by a board of eight directors, four of whom shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two of whom by the Northwestern Company, and two by the Northern Company. This provision applies to any grantee or assignee of either of these companies. (Rec., 421.)

(5) That no contract, lease or other agreement amounting to a permanent charge on the property of the *"Depot Company"* shall be entered into unless the same shall have been first approved by the St. Louis Company, the Northwestern Company and the Northern Company, or their assignees, and shall have been submitted to a meeting of the stockholders and approved by more than three-fourths of all the stockholders, and that no limitation whatsoever upon any of the franchises of the *"Depot Company"* shall be made by its board of directors except the same shall have been submitted to and approved by the stockholders. (Rec., 421.)

(6) That the capital stock of the *"Depot Company"* shall be $1,000,000, divided into shares of $100 each, to be paid at such times and in such manner as the board of directors may determine, and the board is authorized to receive in payment of such stock the property and franchises in Des Moines now held by the St. Louis Company, the Northwestern Company, the Northern Company, How and Dodge individually and How as trustee. (Rec., 420.)

The articles bear the signature of F. M. Hubbell, J. S. Polk and J. S. Runnels. (Rec., 422.)

F. M. Hubbell acted as secretary of the meeting which adopted these articles. (Rec., 423.)

Particular note should be given to that provision of

the articles of incorporation above quoted, which reads that:

> "All the powers exercised by this company (The Depot Company), shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." (Rec., 420.)

Particular attention is also called to the article giving a veto power in the management of the affairs of the *"Depot Company"* to each of the beneficiaries of the trust in the following terms:

> "No contract, lease or other agreement amounting to a permanent charge upon the property of the corporation, shall be entered into by the board, unless the same shall have been first approved by the Des Moines and St. Louis Railroad Company, the Des Moines, Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, or their assignees * * *." (Rec., 421.)

The resolutions of January 1, 1885.

Following the incorporation of the Des Moines Company, the stockholders of the St. Louis Company, the Northwestern Company and the Northern Company, at meetings held January 1, 1885, adopted resolutions reciting the execution of the January 2, 1882, contract, and the incorporation of the Des Moines Company December 10, 1884, and declaring:

(a) That each company accepted and ratified, so far as its interests were affected thereby, the articles of incorporation of the Des Moines Company *as in substantial accord and compliance with the terms and conditions of the January* 2, 1882, *contract,* and undertook to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of the Des Moines Company. (Rec., 424.)

(b) That the proper officers of each company be authorized, upon the issuance to it of the share of bonds and stock of the Des Moines Company to which it might be entitled under the contract, to convey, assign and transfer to the Des Moines Company all its right, title, and interest, of whatever name and nature, in and to the real estate, franchises, choses in action and right in possession or contingent, to all the property in the City of Des Moines east of Farnum street *then held, enjoyed or claimed by either or all the signatories of said January* 2, 1882, *contract, or any agent or trustee thereof, purchased, acquired or held in pursuance of that contract.* (Rec., 424.)

F. M. Hubbell presented the resolution adopted by the stockholders of the St. Louis Company and the Northwestern Company, and voted for their adoption. (Rec., 423, 426.)

On the same day, January 1, 1885, the first meeting of the board of directors of the Des Moines Company after its incorporation, was held. At this meeting, resolutions were adopted the preambles to which stated that the St. Louis Company, the Northwestern Company, the Northern Company, How both in his individual right and as trustee, and Dodge, had by their officers and by themselves personally notified the Des Moines Company that they had each approved of the organization of the Des Moines Company and had directed their officers and trustees to surrender and deliver to the Des Moines Company the railroad property and franchises mentioned in the contract of January 2, 1882, *and had requested the Des Moines Company to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in the January* 2, 1882 *contract,* and that said railway companies and individual signa-

tories to that contract had indicated their desire and purpose to transfer the property to the Des Moines Company in accordance with the terms of that contract, and that it was desirable that the Des Moines Company at once should take possession of such property and maintain, control and operate it and procure all necessary conveyances and transfers of the same and make provisions for, and pay for said property so proposed to be conveyed to it. The resolutions declared:

(a) That the Des Moines Company accepted the transfer and management and operation of such property theretofore owned by the St. Louis Company, the Northwestern Company, the Northern Company and others, parties to the January 2, 1882 contract, and assumed control thereof, and instructed its president to make such order as might be necessary to render *such control and management effective as provided in that contract.* (Rec., 433.)

(b) That the officers of the Des Moines Company be appointed a committee to confer with the parties to the January 2, 1882 contract, and agree with them severally upon the terms and price at which they would, respectively, assign, transfer and convey such property and franchises to the Des Moines Company, *and to procure from them, and each of them, such conveyances and transfers as might be necessary to fully invest the Des Moines Company "with the* TITLE, *control and management of said properties provided for in said contract of January 2nd,* 1882." (Rec., 433.)

(c) That to enable the Des Moines Company to pay for the property and to maintain, operate and improve the same, and purchase other property necessary to carry out its objects, the president and secretary of the company were authorized and directed to issue fully

paid capital stock not to exceed $1,000,000, and bonds not to exceed $500,000, and to secure said bonds were authorized and directed to execute in the name of the Des Moines Company a first mortgage or deed of trust covering all the property of the Des Moines Company, and that when the committee had agreed with the parties to the January 2, 1882 contract as to the amount of bonds and stock of the Des Moines Company necessary to be delivered to them, the president and secretary of the Des Moines Company should deliver said stock and bonds to the several parties on receipt of the conveyances and assignments of the property to be made to the Des Moines Company. (Rec., 434.)

Frederick M. Hubbell as a member of the board of the Des Moines Company voted in favor of these resolutions, and as secretary of that company acted as secretary of the meeting. (Rec., 435.)

In considering the significance of the foregoing resolutions it should be noted that the authority and direction given by them to the officers of the Des Moines Company to issue its bonds and stock is to be identified with the terms of the trust declared by the January 2, 1882, contract.

Respecting the issue of bonds authorized by the resolutions, the trust contemplated that the expenses incurred by the purchases and improvements representing the trust property should be borne by the beneficiaries in the proportion of one-half by the St. Louis Company and one-quarter by each of the other two companies and that, through a Depot Company, such beneficiaries might reimburse themselves for this expense by the acceptance of mortgage bonds to be issued to them by such Depot Company to the amount of their respective portions of the cost of said purchases and improvements.

Respecting the issue of stock, the trust authorized the Depot Company to take charge of the property upon the terms of the January 2, 1882 contract and the resolutions in harmony with this idea appointed a committee to confer with the parties to such contract for the purpose of procuring from them such conveyances and transfers as would be necessary to fully invest the Depot Company "with *the title, control and management of said properties provided for in said contract of January* 2, 1882"; thus, the stock to be issued by such Depot Company became an indicia of ownership of the several proprietors in the trust title to be conveyed to the Depot Company as contemplated by the resolutions.

Supplementary resolutions of November 5 *and* 8, 1887, *of the Des Moines Company and the proprietary companies, providing for the transfer of titles of the trust properties held by the individual trustees to the Des Moines Company.*

It is to be noted that more than two years intervened between the passage of the resolutions of January 1, 1885, and the date of the above resolutions. This delay, in providing for the transfer of the trust property, arose by reason of the following circumstances:

On May 29, 1884, receivers were appointed of the railroads and property of the Wabash, St. Louis and Pacific Railway Company. (Rec., 229.)

On July 15, 1885, James F. Joy, O. D. Ashley, Thomas H. Hubbard and Edgar T. Wells, representing the holders of the defaulted bonds of the Wabash Company, associated themselves together as a purchasing committee for the purpose of acquiring at foreclosure sale the properties of the company. (Rec., 540, 1864.)

As already stated, the Wabash Company had advanced

to the Northwestern Company the funds necessary to enable it to build the extension of its line from Des Moines northwesterly, and it had received from the Northwestern Company as security for these advances a mortgage upon all the property of the Northwestern Company. This mortgage secured an issue of bonds at the rate of $7,000 a mile, which were in default and had been acquired by the purchasing committee. It further appears that, although under the contract of 1882 the Northwestern Company should have contributed a quarter of the expense of acquiring the terminals held in trust for the proprietary companies and was to receive a quarter share in the trust enterprise, the Northwestern Company had in fact advanced only the sum of $3,000, and was insolvent. (Rec., 478.) This discrepancy, between its obligations under the contract of 1882 and the value of the one-quarter share with which it was to be vested in the trust enterprise, proved an obstacle in the consummation of the conveyance of the trust properties to the Des Moines Company as corporate trustee and the distribution of the trust interest in the several amounts provided for in the contract of 1882. There developed therefrom a negotiation between Polk and Hubbell, representing a half stock interest in the Northwestern Company, with the purchasing committee, above described, of the Wabash Company, which resulted in an agreement dated the 10th day of September, 1887, by the terms of which the purchasing committee of the Wabash Company, which latter Company had advanced the moneys which should have been advanced by the Northwestern Company and had succeeded temporarily to the equitable interest of the Northwestern Company, agreed to furnish to Polk and Hubbell the general mortgage bonds of the Wabash Company held by it, secured by mortgage upon the prop-

erties of the Northwestern Company, to enable Polk and Hubbell to bid in the properties of the Northwestern Company at foreclosure sale. (Rec., 1573.)

In consideration of the foregoing, the Northwestern Company was to be reorganized by Polk and Hubbell and the reorganized company was to execute and deliver to the purchasing committee its bond for $450,000, endorsed by Polk and Hubbell, in satisfaction of the Wabash bonds to be delivered, as above described, to Polk and Hubbell and also for the one-quarter interest in the trust properties assigned to the Northwestern Company under the contract of January 2, 1882. (Rec., 1574.)

Simultaneously with the conveyance above mentioned of such one-quarter interest to the reorganized Northwestern Company, the same was to be mortgaged back to the purchasing committee as further security of the bond for $450,000; and, if in the meantime the terminal property should be merged into a terminal company, the bonds and stock received from the terminal company in exchange for this one-quarter interest were to be transferred, in lieu of the property, to Messrs. Polk and Hubbell and retransferred by them to the purchasing committee, to be held by such committee as further security for the payments of the $450,000 above mentioned. (Rec., 1575-1576.)

It thus appears that the above transaction was designed merely to re-establish the Northwestern Company to its original status under the terms of the trust.

When the above arrangement had been agreed upon, the proprietary companies were for the first time in a position to cause conveyance of their trust properties from the individual trustees to the Depot Company under the directions contained in the resolution of Jan-

uary 1, 1885. The resolutions of November 5 and 8, 1887, were addressed to the same objects as the resolution of January 1, 1885, namely, the transfer of the trust properties to the Des Moines Company as corporate trustee, but were more specific and comprehensive in their terms by further providing, in detail, for the distribution of the bonds and stock of the Des Moines Company.

At a board meeting of the Northern Company held November 5, 1887, a resolution was passed requesting How to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that How had purchased such property with funds of the Wabash Company, but had taken the title in his name with the understanding that it should be transferred to the Des Moines Company *"under certain conditions."* (Rec., 435.) At the same meeting, another resolution was passed requesting Dodge to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that such property was acquired by him under an agreement with the Wabash Company that it should be transferred to the Des Moines Company *"under certain conditions."* (Rec., 436.)

At a board meeting of the St. Louis Company held November 8, 1887, a resolution was passed requesting How to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that he had purchased such property with funds furnished by the Wabash Company, taking the title in his name with the understanding that he should transfer such property to the Des Moines Company *"under certain conditions."* (Rec., 437.) At the same meeting, another resolution was passed requesting Dodge to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that such

property was acquired by him under an agreement with the Wabash Company that it should be transferred to the Des Moines Company *"under certain conditions."* (Rec., 438.)

At the same board meeting of the St. Louis Company November 8, 1887, the following resolution was unanimously adopted:

> *"Resolved*, that the president and secretary of this company be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company, a deed conveying to it all its real estate, rights of way, franchise, roadbed and other property of said company lying and being in the City of Des Moines, east of Farnum street, whether the same was acquired by grant from City of Des Moines or by purchase or condemnation, this resolution being offered *for the purpose of carrying out the contract of date January second*, 1882, *entered into by and between this company, the Des Moines North Western Railway Company, the St. Louis, Des Moines and Northern Railway Company and others."* (Rec., 439.)

At a board meeting of the Northwestern Company held November 8, 1887, a resolution was passed requesting How to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that he had purchased such property with funds furnished by the Wabash Company, taking the title in his name with the understanding that he should transfer such property to the Des Moines Company *"under certain conditions."* (Rec., 442.) At the same meeting another resolution was passed requesting Dodge to transfer to the Des Moines Company certain property, which resolution was preceded by a recital that such property was acquired by him under an agreement with the Wabash Company that it should be transferred to the Des Moines Company *"under certain conditions."* (Rec., 443.)

November 8, 1887, the St. Louis Company notified the Des Moines Company of the passage of the resolutions of its board of November 8, 1887, requesting How and Dodge to convey the property standing in their names to the Des Moines Company, which notice contained a copy of the resolutions as adopted. The St. Louis Company also on the same date, November 8, 1887, notified the Des Moines Company of the resolution adopted by its board November 8, 1887, directing its president and secretary to execute a deed of conveyance to the Des Moines Company, conveying all its rights of way, franchises, roadbed and other property in the City of Des Moines *for the purpose of carrying out the contract of January* 2, 1882, which notice contained an exact copy of the resolutions as adopted. (Rec., 439.)

November 8, 1887, the Northern Company notified the Des Moines Company of the resolutions adopted by its board November 5, 1887, requesting How and Dodge to convey to the Terminal Company the property purchased by them and standing in their names. This notice contains a copy of the resolutions as adopted. (Rec., 441.)

November 8, 1887, the Northwestern Company notified the Des Moines Company of the resolutions adopted by its board November 5, 1887, requesting How and Dodge to convey to the Des Moines Company the property purchased by them and standing in their names. This notice contains a copy of the resolutions as adopted. (Rec., 442.)

On the same day, to wit, November 8, 1887, a meeting of the directors of the Des Moines Company was held, there being present How, Runnells, Hubbell, Polk and Hays. (Rec., 1299.)

At this meeting a preamble and resolution was adopted

which recited the previous action of the St. Louis Company, the Northern Company and the Northwestern Company, as above, and directed

> "That on receipt from the Des Moines and Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railway Company and from James F. How, trustee, and G. M. Dodge of deeds to this company of the property standing in their name in the City of Des Moines, that the officers of this company be authorized to issue to said James F. How and G. M. Dodge, respectively, an agreement to deliver to them as soon as prepared, *bonds for the amount of money, with interest and taxes added, which will be shown by them at that time to have been expended by or through them for or on the property referred to.*
>
> The agreement for the delivery of bonds to be turned over to James F. How, trustee, to state that the same are for the benefit of the purchasing committee of the Wabash, St. Louis & Pacific Railway Company; also that the agreement issued by the officers of this company shall state that certificates can be prepared *and the officers of this company will issue to the St. Louis, Des Moines & Northern Railway Company certificates for one-fourth of the stock of the company and to James F. How, trustee, to be delivered to the purchasing committee of the Wabash, St. Louis & Pacific Railway Company certificates for three-fourths of the stock of the company.*" (Rec., 1300.)

It will be noted that the one-fourth stock interest deliverable under the above resolutions to the Northern Company was the interest originally assigned to it by the contract of January 2, 1882.

It will be further noted that the three-fourths stock interest assigned by the above resolutions to the purchasing committee of the Wabash Company represented its predecessors one-half interest under the contract of

January 2, 1882, and, in addition thereto, the one-fourth interest originally assigned to the Northwestern Company and which the purchasing committee had contracted to redeliver to the Northwestern Company as soon as Polk and Hubbell had carried out their undertaking to reorganize the Northwestern Company, as hereinbefore set forth.

Conveyances to the Des Moines Company, pursuant to the resolutions of January 1, 1885, and November 5 and 8, 1887.

The St. Louis Company, pursuant to resolutions of its stockholders of January 1, 1885, the resolutions of its board of directors of November 8, 1887, and the resolutions of the board of the Des Moines Company of January 1, 1885, on February 21, 1888, conveyed by warranty deed all its real estate, rights of way, railroad and franchises in Des Moines to the Des Moines Company. (Rec., 457.) Frederick M. Hubbell signed this deed of conveyance as secretary of the St. Louis Company, and testified that it was made pursuant to the resolution that such conveyance should be made to the Des Moines Company *"for the purpose of carrying out the contract of January 2, 1882."* (Rec., 1115.)

The Northern Company, pursuant to resolutions of its stockholders of January 1, 1885, and the resolutions of the board of the Des Moines Company of January 1, 1885, by quitclaim deed dated November 7, 1887, conveyed certain lots in the City of Des Moines to the Des Moines Company. (Rec., 455.)

The Northwestern Company made no conveyance to the Des Moines Company, as it had no property standing in its name, the property charged to the Northwestern Company having been paid for by the Wabash Com-

pany, and the title taken in the name of How. By the January 2, 1882, contract, the Northwestern Company, in common with the other railway companies, had an interest in the terminal property and the right to use the same in perpetuity.

James F. How as trustee made two deeds of conveyance to the Des Moines Company, one dated November 19, 1887, the other dated April 28, 1888, and one deed individually to the Des Moines Company, dated December 10, 1887. (Rec., 446, 448, 451.) These conveyances were made in pursuance of the resolutions adopted by stockholders of each the St. Louis Company, the Northern Company, and the Northwestern Company, January 1, 1885, the resolutions of the board of the Des Moines Company of January 1, 1885, and the resolutions of the board of directors of the Northern Company November 5, 1887, and of the St. Louis Company and Northwestern Company November 8, 1887. *Each of the deeds recited that the property was acquired and held by him in trust and was conveyed for the purpose and upon the terms set forth in the contract of January* 2, 1882.

Grenville M. Dodge made his deed of conveyance to the Des Moines Company November 7, 1887. (Rec., 453.) This conveyance was made pursuant to the resolution adopted by the stockholders of the Northern Company January 1, 1885, the resolutions of the board of the Des Moines Company of January 1, 1885, and of resolutions adopted by the board of directors of the Northern Company November 5, 1887, and of the St. Louis Company and Northwestern Company November 8, 1887.

All properties conveyed to the Des Moines Company subsequent to those above enumerated, and all the improvements made upon the terminal properties, were paid for either out of the revenue of the Des Moines

Company hereinafter referred to as "Surplus Earnings" or out of the proceeds derived from the sale of its bonds under its mortgage of November 1, 1887. F. M. Hubbell so testified. (Rec., 1095.)

Des Moines Company's Mortgage.

For the purpose of mortgaging the trust properties to reimburse the proprietary companies for the expense incurred by them in acquiring the terminal properties, as provided by Article Third of the contract of January 2, 1882, the Des Moines Company made its certain mortgage dated November 1, 1887. This mortgage recites, among other things, that for the purpose of paying for the property acquired by the foregoing conveyances, and to aid in the construction of the railway of the company, and to complete the necessary and desirable improvements thereon, the Des Moines Company proposed to issue its bonds in the amount of $800,000, to be dated November 1, 1887, payable thirty years after date, to be secured by mortgage covering all of its property, including the property conveyed by the deeds of conveyance from the St. Louis Company, Northern Company, How and Dodge. (Rec., 460, 461.) The execution of this mortgage was ratified by the stockholders of the Northwestern Company and the St. Louis Company at meetings held, respectively, January 2 and 3, 1890. (Rec., 474, 475.)

Meeting of Stockholders of the Des Moines Company of March 31, 1888. (Rec., 476.)

On March 31, 1888, a meeting of the stockholders of the Des Moines Company was held, at which meeting a board of directors was elected. How, on behalf of the St. Louis Company, nominated four persons to be voted for as directors to represent the interests of that company; F. M. Hubbell, on behalf of the Northwestern Company, nominated himself and one other to be voted

for as directors to represent the interests of that company; G. M. Dodge, on behalf of the Northern Company, nominated himself and one other to be voted for as directors to represent the interests of that company. The eight persons so nominated were elected as the board of directors. (Rec., 476.) *At this meeting a resolution was adopted that the St. Louis Company, the Northwestern Company and the Northern Company, their successors or assigns, pay the operating expenses, taxes and interest on the bonds that may be issued under the aforesaid Des Moines Company's mortgage.* (Rec., 477.) A resolution was also adopted reciting that the Wabash Company had expended $382,110.80, G. M. Dodge $74,088.01, Polk and Hubbell $2,000 and the Northwestern Company $3,058.40, for the property acquired for the Des Moines Company, and it was thereupon resolved that a corresponding amount in the bonds of the company be delivered to these parties respectively, in settlement of such expenditures. (Rec., 478.) This settlement was made and bonds were issued accordingly, pursuant to paragraphs third and fifth of the January 2, 1882 contract, which provided that "said company (the Depot Company) may issue and deliver to the companies parties hereto its mortgage bonds to the amount of their respective portions of the cost of said purchases and improvements. (Rec., 412.)

It is to be noted, in the above connection, that, when the issue of shares of stock of the Des Moines Company was authorized by the resolutions of November 8, 1887, above quoted, the distribution of stock to the proprietary companies therein provided for bore no relation to the several sums of money recited above as being advanced by each in purchasing the trust properties, but that such distribution was to be on the basis of the terms of the contract of January 2,

1882, and as also provided for in the hereinafter mentioned agreement supplemental thereto of May 10, 1889, namely one-half to the St. Louis Company and one-quarter to each the Northern Company and the Northwestern Company. (Rec., 483, 711.)

At the meeting of the stockholders held November 1, 1887, of the Des Moines Company a resolution was adopted providing for an amendment to Article 3 of the Articles of Incorporation of the company so as to increase the authorized capital stock of the company from $1,000,000 to $2,000,000. (Rec., 1298.)

Supplemental agreement of May 10, 1889. (Rec., 479.)

This agreement made between the Des Moines Company of the first part and the St. Louis Company, the reorganized Northwestern Company and the Northern Company of the second part, was entered into for the purpose of regulating the user among the proprietary companies of the jointly owned premises, and providing for the distribution of operating expenses, taxes, interest on bonds and so forth.

Col. Wells H. Blodgett, the general solicitor of the Wabash Company, who was present at the stockholders' meeting of the Des Moines Company, held on March 31, 1888, which authorized this agreement and who prepared the same, gives the following testimony as to why this supplemental agreement was suggested:

> "A. It was considered necessary to have something in addition to the agreement of January 2, 1882, for these reasons: In the first place the agreement of January 2, 1882, made no provision for the payment of interest and did not provide how the interest charge should be distributed among the railroad companies using the property. That was one reason. Another reason was, that the contract of January 2, 1882, did not obligate the railroad

companies who were parties to it or their assigns to use the terminal.

Q. Or pay interest?

A. Nor pay the interest. Let me see—there was the interest charge and the matter of using the property, and then the contract of January 2, 1882, put everything, all the expenses of maintenance and operation of all the property on a wheelage basis, and Mr. Hays and General Dodge and all the parties interested thought that the cost of operating the roundhouses should not be on a wheelage basis, but should be distributed among the railroad companies according to the number of engines that were housed and taken care of for each company; and those were the three things wherein, I think, the contract of May 10, 1889, differed from the contract of January 2, 1882.

Q. It was to cover those points?

A. It was for those reasons that all parties agreed it would be advisable to have a supplemental agreement." (Rec., 366.)

As above stated, the agreement had its inception in resolutions passed by the stockholders of the Des Moines Company at a meeting held March 31, 1888. There were present at this meeting Dodge, Polk, Hays, Hubbell, How, Blodgett and Martin. Among other things it was resolved that the Northwestern Company, the Northern Company and the St. Louis Company should pay operating expenses, taxes and interest on bonds *after deducting any amount received from other sources for rental,* prorated on a wheelage basis. (Rec., 477.)

Col. Blodgett was requested to prepare an agreement for thirty years from May 1, 1888, based on the above resolution and covering in detail the conduct and *operation of the Des Moines Company, "said agreement to be approved and executed by all lines now holding an interest in the property."* (Rec., 478.)

Said agreement was to provide that if, at the end of six months from the date of the same, either party to

the contract should feel that the terms of the same were unjust to them, and gave notice to that effect, it was to be a matter of readjusment.

And it was further resolved

> "that the terms and conditions on which the several lines now interested, or which may hereafter become interested, shall enjoy the use of these terminals, be fully set forth in a supplemental agreement to be made and executed between the Des Moines Union Railway Company and each of the lines using the said terminals." (Rec., 478.)

Pursuant to the resolutions above recited, the supplemental agreement of May 10, 1889, was made and executed. (Rec., 479.)

After reciting, among other things,

that the first party was the owner of valuable terminal facilities;

that the second parties have railroads in the State of Iowa which terminate at or run into and through the City of Des Moines and in order to prevent expense and facilitate public convenience, it had become important that the second parties should have the use of such terminal facilities;

and that for the protection of the parties thereto and their assigns, "it is important that the rights, duties and liabilities of each in regard to the whole subject matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance and repairs, shall be stated and defined";

It was agreed:

Section One: That the Des Moines Company was to provide, when its board of directors should deem expedient, a union passenger station and appurtenances for the use of the proprietary companies and shall acquire the additional real estate necessary therefor. (Rec., 480.)

Section Two: This relates to determining the amount of property required for the passenger depot. (Rec., 480.)

Section Three: The second parties agree to pay to the first party certain sums of money to be ascertained as follows. (Rec., 481.)

First: Five per cent interest upon the first party's mortgage bonds, "*less any deduction hereinafter provided for.*"

Second: The cost of maintenance, repairs, taxes and insurance shall be ascertained monthly.

Third: The cost of operation, except the expenses specified in Section Nine (relating to engines), shall be ascertained monthly.

Section Four: This reads:

> "Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month." (Rec., 481.)

Section Five: The second parties are to pay on a wheelage basis any sums in default due from other railroad companies for the use of the property. (Rec., 481.)

Section Six: The Des Moines Company is to maintain the premises, provide engines, employees, the moving and handling of cars of the second parties, and to switch cars and handle all freight, and house and care for all engines of the second parties. (Rec., 482.)

Section Seven: The accounts are to be presented monthly. (Rec., 482.)

Section Eight: The contract is made retroactive from May 1, 1888, as relating to rental necessary to pay interest upon mortgage bonds. (Rec., 482.)

Section Nine: This provides for the distribution of expense for caring for and repairing engines and operating engine houses. (Rec., 482.)

Section Ten: This provides that upon default in payment by one of the parties, the first party may, *"with the consent of the remaining parties of the second part,"* assign the rights of such defaulting party to any other party for such sum as the board of directors of the first party may determine. (Rec., 483.)

Section Eleven: *"The directors of the party of the first part hereto shall appoint an executive committee, of which each party of the second part shall have one member as its representative."* (Rec., 483.)

Section Twelve: The executive committee is to appoint the managing superintendent of the terminal properties, subject to the approval of the board of directors. (Rec., 483.)

Section Thirteen: The executive committee is to fix the superintendent's salary. (Rec., 483.)

Section Fourteen: This relates to use of terminal properties by passenger trains. (Rec., 483.)

Section Fifteen: The executive committee, subject to the board, shall make and enforce rules and regulations for the operations of the terminals. (Rec., 484.)

Section Sixteen: This relates to insurance. (Rec., 484.)

Section Seventeen: This provides for the keeping of books and accounts relating to such matters of agreement to be open to inspection. (Rec., 484.)

Section Eighteen: This provides for keeping records

of car movements and of all expenditures relating to cars and engines and the handling and switching of the same. (Rec., 484.)

Section Nineteen: This relates to distribution of cost of damages to rolling stock. (Rec., 484.)

Sections Twenty and Twenty-one: These are personal injury and property injury clauses. (Rec., 485.)

Section Twenty-two: This provides that the covenants, conditions and stipulations contained in the contract shall be binding for the term of thirty years from May 1, 1888. (Rec., 485.)

Section Twenty-three: The covenants and agreements of the second parties are several and not joint. (Rec., 485.)

Section Twenty-four: This *should be especially noted.* It provides that the St. Louis Company, as the owner of one-half of the capital stock of the Des Moines Company, "may sell and transfer one-half of said stock or one-quarter of the whole, to such railway company as may be acceptable to a majority of the parties of the second part, *in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto of the second part upon the same terms and conditions as those stipulated for the other parties of the second part.*"

It is then provided that only as aforesaid may other railroad companies be admitted *to the use* of the first party's property without the consent of all the parties of the second part. (Rec., 485-486.)

Section Twenty-five: This authorized the assignment or mortgage by any of the second parties to another railroad company, of all its rights under the agreement, but prohibited a mortgage or assignment of a portion of its rights and privileges therein. (Rec., 486.)

Section Twenty-six: This *should also be especially noted.* It recites that the second parties are entitled to share in the stock of the first party in the following proportions, to wit: The St. Louis Company, one-half; the Northwestern Company, one-quarter; and the Northern Company, one-quarter. It recites further that no shares have been issued, and provides that as the authorized capital of the Des Moines Company is two millions of dollars, or twenty thousand shares, one certificate of ten thousand shares shall be issued to the St. Louis Company, one certificate of five thousand shares shall be issued to the Northern Company and one certificate of five thousand shares shall be issued to the Northwestern Company, *"and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement,"* except qualifying shares issued to a member of the board of directors, which shall be retransferable to the company on whose request such shares shall be issued without the consent of the other companies. (Rec., 486-487.)

Section Twenty-seven: This recites that the second parties having obligated themselves to pay as part compensation for the use of the premises, a sum sufficient to pay interest on bonds of the first party, issued or thereafter issued, and provides that the first party will not dispose of such bonds except for the purpose of purchasing with them, or their proceeds, additional terminal property. (Rec., 487.)

Section Twenty-eight: This is an arbitration clause. (Rec., 487.)

The following features of the supplemental agreement should be noted to show its significant relationship as a supplement to the contract of January 2, 1382, creating the

trust interests, and as further identifying the proprietary companies with the trust properties.

First (Section 4): The Des Moines Company was not intended to acquire revenue over and above its cost of operation, as amounts derived from other railroad companies were to be deducted from expenses apportionable among the proprietary companies.

Second (Sections 11, 12, 13, 15): The proprietary companies were to control the management and operation of the Des Moines Company through an executive committee of three, each of the three proprietors to have one representative. The executive committee was to appoint the superintendent of the properties and make and enforce the rules and regulations for the use, management and operation of the terminals.

Third (Section 26): (A provision wholly foreign to the ordinary operating agreement made between railroads occupying co-ordinate positions.) The respective interests of the proprietary companies in the trust properties, as provided for in the contract of January 2, 1882, are recited and it is then provided that the authorized capital stock of two million dollars, shall be distributed in the relative amounts so originally assigned, namely:

One-half to the St. Louis Company and one-quarter each to the Northwestern and the Northern Companies, *in single certificates, nontransferable except by unanimous consent of the second parties to the agreement.*

Fourth (Section 24): The one exception to the above rule was that the St. Louis Company might transfer one-half of its interest, or one-quarter of the whole stock of the Des Moines Company, to such railroad company as might be acceptable to a majority of the parties of the second part. Only as aforesaid were other railroad com-

parties to be admitted to the use of the terminals without unanimous consent of the parties of the second part.

Fifth: That with the transfer of an aliquot portion of stock to another railroad company within the limitations of Section 24, went always a concomitant of user on a parity with the original proprietors. Thus the prerogatives of a tenant in common would be vested in each successive railroad stockholder acquiring its stock with unanimous consent (except in the one instant noted) of the other stockholders.

Sixth (Section 5): If any outsider so admitted defaulted in its obligations, the second parties were to reimburse the first party on a wheelage basis for the amount of such default, thus showing the responsibility of proprietors to protect their own interests.

Seventh (Sections 3 and 27): The second parties were to pay the interest on the mortgage bonds and the Des Moines Company had no right to dispose of bonds, except for the purpose of purchasing with them, or their proceeds, additional terminal property or for improving or equipping that now owned by the Des Moines Company. (Rec., 479-488.)

There was no provision for the payment by the proprietary companies of any rental or compensation for the use of the terminal properties, or for the service that the Des Moines Company obligated itself to render to the proprietary companies.

Finally it should be noted that it is the stockholders of the Des Moines Company, in their resolution of March 31, 1888, who are resolving alone that the Northwestern, the Northern and the St. Louis Companies shall assume the expenses, taxes and interest on bonds of the Des Moines Company, as subsequently set out in the agreement of May 10, 1889, and who are providing that said

agreement shall "be approved and executed by all the lines now holding an interest in the property." (Rec., 476.) This resolution was unanimously adopted by the stockholders, including F. M. Hubbell. (Rec., 479.)

From the foregoing it seems proper to assert, as an ultimate fact, that the supplemental agreement is, in a court of equity, nothing more than a written agreement between the equitable owners of the terminal property and their own trustee in possession settling the details of operation and accounting until May 1, 1918.

On May 18, 1889, the directors of the Northwestern Company approved and authorized the execution of the same, and on May 25, 1889, a similar resolution was adopted by the directors of the St. Louis Company. (Rec., 1454, 1433.) The agreement was duly executed by the parties thereto on May 25, 1889. (Rec., 1597.)

The amended articles of the Des Moines Company. (Rec., 488.)

In 1886 John S. Runnells, who for many years had been the local attorney of the Wabash Company at Des Moines, resigned to take up work at Chicago. (Rec., 359.) He was succeeded by A. B. Cummins, who was the personal counsel of the defendant Hubbell, and of all the Hubbell interests. At the same time Mr. Cummins was appointed general counsel of the Des Moines Company. (Rec., 1204, 1211, 1233, 1236.) Although General Dodge was at this time nominally the president of the Des Moines Company, he resided at New York and the whole management of the Des Moines Company was left to the defendant F. M. Hubbell, who, in addition to being an officer and a director of the same, was regarded as a con-

fidential agent of the Wabash Company at Des Moines. (Rec., 132-136, 233.)

In January, 1890, Mr. Cummins, acting ostensibly on his own initiative and independently of the defendant Hubbell, set about to procure amendments to the articles of incorporation of the Des Moines Company.

At a meeting of the stockholders of the Des Moines Company held January 3, 1890, at the suggestion of Mr. Cummins

> "James F. How moved that the question of amending the articles of incorporation of this company, as well as the question concerning the issue of stock for the purchase price of the property, be referred to Attorneys W. H. Blodgett and A. B. Cummins for their investigation and recommendation." (Rec., 1307.)

No report was ever made by this committee, and it appears from the correspondence that no conference took place between Blodgett and Cummins, but that Cummins alone redrafted the proposed amendments to the articles of incorporation. In a letter by Cummins to Dodge, dated January 27, 1890, Cummins explains that the amendments were directed to two purposes.

First, to clear up the ambiguity and uncertainty with respect to the amount of stock to be issued on account of the original purchase of the property.

Second, to enable the Des Moines Company to act in all matters, without the previous authority of three corporations. (Rec., 1212.)

In respect to this latter subject matter, he explained in the letter to Dodge:

> "I have endeavored to protect the interest of the minority as fully as it is protected in the present articles, that is to say, under the amendments as now proposed the company cannot do anything of im-

portance without the affirmative vote of the *one quarter of* the stock which your road will represent or the vote of one of the directors which you will always be able to control. By this arrangement, you will have *as effective a negative upon the* conduct of the company exerted directly by your stock, as you now have by requiring the previous formal action of the Des Moines & Northern Railway Company. I have given the matter the most careful attention, and while Mr. Hubbell was at first disposed to oppose the amendments which I have prepared, after a full explanation with him, I believe that he will support them. If this reaches you before he leaves New York, it will be well to talk the matter over with him. In any event give me your ideas as fully as you can, and particularly if you do not expect to be here." (Rec., 1212.)

At the time this letter was written, the defendant Hubbell was in New York, endeavoring to purchase an interest in the Des Moines Company. (Rec., 1013.)

On February 5, 1890, as will be set forth more in detail in the next subdivision of facts, Hubbell acquired from the purchasing committee of the Wabash Company one-half of its interest in the capital stock of the Des Moines Company, being one-quarter of the total interest in such stock. (Rec., 1599.)

On February 11th, the purchasing committee made a memorandum of agreement between it and Hubbell, wherein it was provided that the ownership of one-eighth of the stock in the Des Moines Company would permit one director to be nominated by any person or corporation holding one-eighth of the stock in such company. (Rec., 1601.)

The amendments to the articles of the Des Moines Company were passed at a so-called stockholders' meeting held at Des Moines, April 8, 1890. (Rec., 488.) No stock certificates of interest in the company had been issued

at this time. (Rec., 711.) The record of the meeting shows as present in person: How, Hays, F. M. Hubbell, Martin, F. C. Hubbell and Cummins, representing each one share, and present by proxy: Dodge and Blodgett, each representing one share. It is then recited that the Northwestern Company was present by Hubbell, its president, the Northern Company by Cummins, its vice president, and the St. Louis Company by How, its president.

It is, however, conceded that no one of these individuals held a proxy authorizing him to represent the interest of the company and that the directors of none of the three companies authorized any action to be taken amending the articles of the Des Moines Company. (Rec., 1165-1169.)

At this meeting the following amendments were adopted upon the vote of the eight individuals above named recorded as owning one share each of the Des Moines Company's stock (Rec., 489):

Article 1: This was not substantially changed. (For original articles see Record, 416.)

Article 2: The principal change in this article was the elimination of the provision that all powers exercised by the company should be in accordance with the terms and spirit of the January 2, 1882, contract, and the right of the company to lease or dispose of the use of any part of its franchise to any other railway company with the assent of the three Railway Companies.

Article 3: This was changed so as to provide, (a) for the increase formerly made by resolutions of March 31, 1888, of the authorized capital stock from $1,000,000 to $2,000,000; (b) the amount of stock to be paid for and actually issued; and (c) that all previous resolutions and issue of such capital stock be set aside.

Article 4: This was changed so as to provide that at all future elections of directors, *more than* seven-eighths of the votes of all the stock theretofore issued should be required to elect any director, *and that as to all matters except the ordinary operation of the property of the company the board of directors could act only upon the unanimous vote of the eight members of the board.*

Article 5: There was no substantial change made in this article excepting to provide for the annual election of the officers of the company, and that such officers might exercise such powers and be charged with such duties as usually pertain to their respective offices.

Articles 6, 7 and 8 were not changed.

Article 9: *This was changed so that the articles could be amended only by a vote of more than seven-eighths of all the stock instead of by three-fourths.*

Article 10: This was not changed.

There were added to the articles five new articles, to wit: Article 11, Article 12, Article 13, Article 14 and Article 15.

Article 11 related to the calling of special meetings of the stockholders.

Article 12 provided that each stockholder should have one vote for each share of stock owned, such vote to be cast either in person or by proxy.

Article 13 provided that it was not necessary in order to enable the company to carry on its business that all its authorized stock be issued.

Article 14 *approves, ratifies and confirms the purchase of the property theretofore conveyed to the Des Moines Company, and the conveyances made in pursuance thereof to that company, as well as the execution of the trust mortgage of that company.*

Article 15 purports to repeal, strike out and expunge the proceedings of the first meeting of the incorporators of the company held December 10, 1884, with certain preambles, which include the January 2, 1882, contract. (Rec., 416.)

Briefly stated, the effect of these amendments, if valid, was:

(a) To expunge from Article 2 of the original articles the provision that all powers exercised by the company should be in accordance with the terms and spirit of the January 2, 1882 contract, and that the right of that company to lease or otherwise dispose of the use of any part of its franchise to any other railway company could be exercised only on the assent of the three Railway Companies. With these exceptions, there remains no substantial difference between Article 2 of the original articles and Article 2 of the amended articles.

(b) To provide that 4,000 shares, aggregating $400,000, of capital stock together with the first mortgage bonds theretofore issued for that purpose constitute the fair value of the terminal properties acquired by the Des Moines Company. That of such total number of shares 2,000 be issued to the purchasing committee, 1,000 to the Northwestern Company and 1,000 to the Northern Company, and that the remaining capital stock, to wit, 16,000 shares or any part thereof, shall be issued only by authority of a resolution of the stockholders adopted by vote of *more than seven-eighths* of all the stock theretofore issued.

(c) To provide that *more than* seven-eighths of the votes of all the stock issued should be required to elect any director of the company, and that the board of directors could act only upon the unanimous vote of the eight members thereof.

(d) To require the vote of more than seven-eighths of all the stock to amend the articles of the company.

(e) To approve, ratify and confirm all purchases of property theretofore conveyed to the Des Moines Company and the conveyances made in pursuance thereof to such company, as well as the execution of the mortgage of that company.

(f) To attempt to repeal, strike out and expunge from the company's records the proceedings of the first meeting of the incorporators of the company, held December 10, 1884.

Particular attention is called to the limitations in the foregoing amendments that *more than seven-eighths* of the votes of all the stock issued shall be required to elect any director and to amend the articles of the company, and that the board of directors could act only upon the unanimous vote of the eight members thereof. These limitations should be read in the light of the transactions and correspondence hereafter set forth in the third subdivision of facts which establish a definite agreement among the representatives of the three proprietary companies that a one-eighth stock interest in the Des Moines Company shall be sufficient to represent "a proprietorship" in the Des Moines Company.

Annual Reports made by the Des Moines Company to the Executive Council of the State of Iowa for the purpose of the assessment of its properties for taxation by said Council. (Rec., 721.)

On December 31, 1888, 1889, and 1890, and on January 1, 1892 and 1893, the Des Moines Company made an annual report to the executive council of the State of

Iowa for the purpose of taxation. In each of these reports appears the following:

> "The Des Moines Union Railway Company is simply a 'Representative Company' acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines and Northwestern Ry. Company, and the Des Moines and Northern Railway Company, performing all the necessary work for them and charging each road at actual cost, its due proportion of the expense, thereby incurred. (Rec., 721.)"

These reports were under oath and the report for the year 1888 was verified by James F. How, vice president of the Des Moines Company and J. B. Van Dyne, general superintendent.

The report for 1889 was verified by Horace Seeley, general superintendent of the Des Moines Company.

The report for 1890 was verified by A. B. Cummins, vice president of the Des Moines Company, and Horace Seeley, general superintendent.

The report for 1891 was verified by F. C. Hubbell, president of the Des Moines Company, and Horace Seeley, general superintendent.

The report for 1892 was verified by A. B. Cummins, vice president of the Des Moines Company, and J. A. Wagner, superintendent. (Rec., 721-723.)

The fiduciary relations of F. M. Hubbell to the constituent companies in the trust and to the Des Moines Company.

F. M. Hubbell held in such companies positions as follows:

1. The St. Louis Company.
   Director—1880-1891.
   Secretary—1880-1891. (Rec., 1296.)

2. The Northwestern Company:
   Director—1881-1886.
   Treasurer—1881-1883, 1885-1886.
   Asst. Treasurer—1884.

3. Reorganized Northwestern Company:
   Director—1887-1892.
   President—1887-1892.

4. The Northern Company:
   Director—1881-1890.
   Treasurer—1881-1883.
   Secretary and Asst. Treasurer—1884.
   Vice President—1885-1888.
   Asst. Secretary and Treasurer—1889.
   Secretary—1890.

5. The consolidated corporation formed by the merger of the reorganized Northwestern and Northern Companies:
   Director—1891-1895.
   President—1891-1895.

6. The Reorganized Consolidated Company:
   Director—1895-1899.
   President—1895-1899.

7. The Des Moines Company:
   Director—1884, to the time of the institution of the suit.
   Secretary—1884, to the time of the institution of the suit. (Rec., 1296.)

At the date of the reorganization of the Northwestern Company, the firm of Polk and Hubbell, through their ownership of the Narrow Gage Railway Construction Company, had acquired and held one-half of the stock of the Northwestern Company. (Rec., 400, 1104.) Under the reorganization of the Northwestern Company as

hereinbefore set forth, Polk and Hubbell acquired a majority of the capital stock of the reorganized company and held the same up to the time of the merger of that company with the reorganized Northern Company. (Rec., 621.)

The controlling interest in the Northern Company at all times was held by General Dodge, although the firm of Polk and Hubbell had acquired a minority interest in the stock through the Narrow Gage Railway Construction Company. (Rec., 1163.)

Upon the merger and consolidation of the reorganized Northern and Northwestern Companies, a majority of the capital stock was acquired by the firm of Polk and Hubbell and was held continuously by the Hubbell interests until the same was sold to the St. Paul Company in 1898.

It thus appears that, at the time of the important transactions involved in this litigation, the defendant F. M. Hubbell was an officer and director of the Des Moines Company and of its three proprietary companies and was the dominating stockholder of the Northwestern Company and of its successor the Consolidated Company.

F. M. Hubbell presented the resolutions adopted by the stockholders of the St. Louis Company and the Northwestern Company and voted for their adoption at the meeting held January 1, 1885, authorizing, among other things, the conveyance to the Des Moines Company of the real estate and franchises of said two Railway Companies in the City of Des Moines. (Rec., 424, 428.)

F. M. Hubbell, as a member of the board of directors of the Des Moines Company, voted in favor of the resolutions adopted by that company at a meeting held January 1, 1885, accepting the transfer, management and operation of the property theretofore held by the several

parties acquiring the same in the interests of the three Railway Companies and instructing its president to take such action as should be necessary to render such transfer, management and operation effective as provided in the January 2, 1882 contract. (Rec., 432.)

F. M. Hubbell signed the deed of the St. Louis Company, conveying its title to the properties to be held in the common interest, to the Des Moines Company, as secretary, and testified that such deed was made for the purpose of carrying out the January 2, 1882, contract. (Rec., 457.)

F. M. Hubbell executed the Des Moines Company mortgage, dated November 1, 1887, as secretary of that company. (Rec., 459.)

F. M. Hubbell was present at the stockholders' meeting of the Des Moines Company held March 31, 1888, and acted as secretary of that meeting, which adopted the resolution requesting that the supplemental agreement of May 10, 1889, be made and voted for the same. (Rec., 476.)

F. M. Hubbell signed the supplemental agreement as secretary of the Des Moines Company, as secretary of the St. Louis Company and as president of the Northwestern Company. (Rec., 479.)

Following the execution of the supplemental agreement of 1889, F. C. Hubbell, a son of F. M. Hubbell, and a member of the firm of Hubbell and Son, became the president of and a director in the Des Moines Company and held these offices continuously up to the time of the insituation of the present suit. (Rec., 1183.)

III.

THE INDEPENDENT TRANSACTIONS OF THE HUBBELLS IN RESPECT TO THE TRUST PROPERTY AND THE SEVERAL ALIQUOT INTERESTS EVIDENCED AND MEASURED BY SHARES OF STOCK OF THE CORPORATE TRUSTEE.

On June 12, 1888, Hubbell wrote to O. D. Ashley, president of the Wabash Company, saying:

> "I have been asked several times whether a quarter interest in the Des Moines Union Railway stock could be bought, and, if so, at what price. I, of course, am unable to give any satisfactory answer. If you have a price at which you would be willing to part with a quarter interest in the Des Moines Union Railways Company stock and are willing that I should offer it, I would like to do so. If you do not wish me to offer it for sale, shall I refer the parties to you?" (Rec., 1059.)

On June 16, 1888, Mr. Ashley replied as follows (italics ours):

> "Yours of June 12th received. My impression is that the purchasing committee will be glad to sell a one-quarter interest in the Des Moines Union Railway stocks if they could obtain a fair price for it, but I have always supposed *that it would be necessary to confine the sale to such railway companies as would be interested in the station.* It seemed to be desirable to offer the stock to the Chicago and Northwestern, if we could get that company to come into the station.
>
> *Was there not an understanding or agreement as to the sale of the stock when the Terminal Company was formed and would it not be prejudicial to the interest of the whole to part with the stock to outsiders?*
>
> I should like to hear from you on this point, after which I will bring the subject before the purchasing committee, as soon as possible." (Rec., 1059.)

On June 18, 1888, Hubbell replied to Ashley in part as follows (italics ours):

"Yours of June 16th at hand. *I agree with you that the sale of a quarter interest in the stock of the Terminal Company should be made only to a railway company, who will join with the Wabash in* making a contract with the Des Moines Union, guaranteeing the interest upon the bonds and operating expenses, etc.

I think it would be prejudicial to sell any of this stock to outsiders, and I understand it, as you do, that the stock cannot be sold without the consent of the different railroad companies who now form the Terminal Company." (Rec., 1060.)

Following the exchange of the above letters, the defendant Hubbell suggested that the purchasing committee surrender to the Des Moines Company a portion of the stock issuable to the St. Louis Company under the resolutions of 1887. This proposal was made in connection with the consideration of a preliminary draft of the supplemental agreement of May 10, 1889, prepared pursuant to the resolutions of March 31, 1888. The proposal was rejected on September 17, 1888, in a letter from James F. How to Polk and Hubbell, reading in part as follows:

"Mr. Ashley is in town and I have just had a talk with him concerning the amendments to the proposed contract for the use of the Des Moines Union Depot that you desire, viz.: that the purchasing committee should surrender one-fourth of their stock for the benefit of the Depot Company. Mr. Ashley says that this is an arrangement which he could not agree to on behalf of the purchasing committee being satisfied that they would not approve the surrender of any of their stock without a consideration." (Rec., 1594.)

In the above connection, attention is called to Section twenty-four as embodied in the final draft of the agreement of May 10, 1889 (hereinbefore summarized), providing that the St. Louis Company, as the owner of one-half of the capital stock of the Des Moines

Company, may sell and transfer one-half of said stock or one-quarter of the whole to such railway company as may be suitable to a majority of the parties of the second part, in which case it is agreed that such railway company may be admitted as one of the parties to the agreement of May 10, 1889, upon the same terms and conditions as those stipulated for the other parties to such agreement; and the further proviso that, except as aforesaid, other railroad companies shall be admitted to the use of the terminal property, only upon the unanimous consent of the constituent companies.

Attention is also called in this respect to Section twenty-six which in providing for the issue of shares to the constituent companies, in the proportions allotted under the contract of January 2, 1882, requires that the certificates therefor shall express on their face that they are not transferable in whole or in part, without the consent in writing of all of the constituent companies.

In the early part of February, 1890, Hubbell went to New York to persuade Ashley to give him an option on one-half of the purchasing committee's interest in the Des Moines Company, that is a one-quarter interest in the Des Moines Company. As a result of this, on February 5, 1890, Ashley, as secretary of the purchasing committee, gave the following option in writing:

> "I will give you for the purchasing committee the option of buying of them $135,000 of the bonds of the Des Moines Union Railway Company and one-quarter interest in the capital stock of that company for $135,000 and accrued interest from November 1, 1889, at any time within ten days from this date. Payment to be made in cash if the option is availed of by you." (Rec., 1599.)

Thereupon Hubbell explained the situation to Dodge, who asked to participate in the purchase, by taking one-

half of the optioned stock and bonds. Hubbell consented to this and thereupon closed his option by the following letter addressed to Ashley, dated February 5, 1890 (Rec. 1599):

> "I hereby accept the proposition made by you, for the purchasing committee to me, for the sale to me of $135,000 of Des Moines Union Railway Company bonds, and a one-quarter interest in the capital stock of that company, and hand you now $10,000 and will pay the balance as soon as you deliver the property."

On this letter is endorsed a receipt, dated February 5, 1890, reading:

> "Received of F. M. Hubbell his check for ten thousand dollars on account of $135,000 Des M. U. R. Co. bonds and one-quarter of the stock of said company as per letter written to him by me in behalf of the purchasing committee. O. D. Ashley."

On February 11, 1890, a bill of sale covering one-half of the bonds and one-half of the stock, included in the above option, was executed by Mr. Ashley and delivered to Mr. Hubbell. (Rec., 1601.)

This memorandum of agreement, made between the purchasing committee and Hubbell, recites that in the articles of incorporation of the Des Moines Company it is provided that the Wabash Company shall nominate four directors of the Des Moines Company; that the stock of the Des Moines Company is now held by different parties and in different proportions from what it was when said articles were adopted and that it was agreed therefore between the purchasing committee and Hubbell, who had acquired a one-eighth ownership of the stock of the Des Moines Company, that the purchasing committee would consent to such change in the articles of the Des Moines Company as would permit one director to be nominated by any person or corporation holding one-

eighth of the stock of the Des Moines Company. (Rec., 1031.)

The recital above made that Hubbell had acquired a one-eighth ownership was due to the fact that, by virtue of his understanding with Dodge, the one-quarter interest in the Des Moines Company, although optioned by him, was divided between him and Dodge; and at the same time and as part of the same transaction, a similar agreement covering the other eighth was executed by the purchasing committee and delivered to Dodge. (Rec., 1002.)

At the time of the above transaction, Hubbell began negotiating with the purchasing committee of the Wabash for the purchase of an additional one-eighth share of its interest in the Des Moines Company.

On April 1, 1890, he wrote Ashley as follows:

> "In our last interview at your office it was understood that you would talk with Mr. Joy and Mr. Wells of the purchasing committee and write me upon what terms you would sell a one-eighth interest in the capital stock of the Des Moines Union Railway Company. Thinking that this matter might have escaped your memory I beg to say that I would like to hear from you in regard to it." (Rec., 1061.)

Ashley replied on April 5, 1890, as follows (our italics):

> "I have yours of April 1st this morning. The result of my conversation with Messrs. Joy and Wells is a rather vague idea that we ought not to sell $100,000 of the Des Moines Union Railway Terminal bonds and one-eighth interest in the capital stock at less than $115,000 and accrued interest on the bonds, and I do not feel authorized to offer it at any less price. If, however, you will make me a definite bid of the best price you can, I will communicate it to the other members of the committee and will give you an early and definite reply. *It must be understood, of course, that a one-eighth interest in the capital stock shall be sufficient to represent a pro-*

prietorship in the company according to the understandings we had when you were here.'' (Rec., 1602.)

Hubbell accepted the terms proposed and consummated the purchase of the additional bonds and an additional one-eighth interest in the Des Moines Company, on June 5, 1890. (Rec., 1080.)

On June 5, 1890, a bill of sale was made by the purchasing committee to Hubbell, selling him fifty bonds of one thousand dollars each of the Des Moines Company and one-eighth of its capital stock for the sum of $57,763. The bill of sale also provided that, upon payment of the above sum, the purchasing committee would deliver said five hundred shares to Hubbell by a certificate transferred by endorsement; and it further agreed to have the same transferred on the books of the Des Moines Company, so far as the vote of the directors of the Des Moines Company representing the St. Louis Company will secure said transfer. (Rec., 1613.)

Pursuant to the above, in due course, the certificate above provided for was issued to Hubbell.

At a stockholders' meeting of the Northwestern Company held on October 12, 1891, at which meeting it appeared that F. M. Hubbell and F. M. Hubbell and Son held sixty-five hundred shares and G. M. Dodge thirty-five hundred out of a total of ten thousand and four shares, it was resolved to consolidate the Northwestern Company with the Northern Company, pursuant to the terms of a certain agreement, set out in full in the resolution, made between Dodge and Humphreys as first parties and Hubbell as second party. In this agreement Dodge agreed to convey to the consolidated company, among other things, one-eighth of the capital stock of the Des Moines, being the stock acquired by him from the purchasing committee of the Wabash Company, and

Hubbell agreed to convey to the consolidated company one-quarter of the capital stock of the Des Moines Company, being the two-eighths of the stock acquired by him in February and in June, 1890, from the purchasing committee of the Wabash Company, and to receive as consideration for his two-eighths share $60,000 in first mortgage bonds of the consolidated company. (Rec., 1461.)

At the time of the consolidation of the Northern and Northwestern Companies each of the companies held a one-fourth interest in the capital stock of the Des Moines Company, these shares being the shares originally assigned to each of said companies under the contract of January 2, 1882.

In addition to these shares Dodge and Hubbell undertook to transfer to the consolidated company their aggregate three-eighths interest mentioned above, so that it was contemplated that the consolidated company upon its formation would become the owner of seven-eighths of the stock of the Des Moines Company, the other eighth remaining in the hands of the purchasing committee of the Wabash Company.

The parties also agreed that contemporaneously with the consolidation of the Northern and Northwestern Companies, the consolidated company should execute and deliver to the Metropolitan Trust Company of New York a trust mortgage upon all of the properties so acquired by it, except stock of a certain coal company and five-eighths of the capital stock of the Des Moines Company. (Rec., 1462.)

Pursuant to the above arrangement, Dodge and Hubbell transferred their respective interests in the Des Moines Company to the consolidated company and the certificates were issued on January 15, 1892. (Rec., 711.)

Thereafter, pursuant to a resolution passed by the board of directors of the consolidated company on October 4, 1893, said five-eighths ($250,000 par value) of the stock of the Des Moines Company was pledged with nineteen one thousand-dollar bonds of the Des Moines Company to F. M. Hubbell & Son, to secure an indebtedness owing Hubbell & Son by the consolidated company of $122,000. (Rec., 1480-1481.)

On January 29, 1894, at a meeting of the board of directors of the consolidated company, at which were present: Hubbell, Martin, Cummins, Denman and Thompson, a resolution was passed reciting that the company was indebted to F. M. Hubbell & Son in the amount of $128,833.33, which indebtedness was long past due; that the company had in its treasury certain of its first mortgage bonds, amounting to $225,000, which it has been unable to dispose of at 55 per cent of their par value, although in its said efforts said bonds were offered to each of the stockholders of the company, as well as in the markets at said price; that the company was also the owner of 2,500 shares of the capital stock of the Des Moines Company, *"which shares of stock have no market value"*; that Hubbell and Son have offered to accept said $225,000 first mortgage bonds at 55 cents on the dollar of their face value and have offered to purchase said capital stock of the Des Moines Company at 10 per cent of the par value thereof, and to cancel therefor the debt of the consolidated company to Hubbell and Son, and to assume and pay a certain indebtedness of the consolidated company, amounting to $20,000, to the Metropolitan Trust Company; and which thereupon resolved that the treasurer of the company be authorized and directed to transfer to Hubbell and Son said bonds and said shares of stock, upon surrender of the notes of the consolidated company, evidencing the $128,000 of

debt, and upon receiving an agreement from Hubbell and Son to pay the debt due the Metropolitan Trust Company. The records show that this resolution unanimously passed with F. M. Hubbell not voting. (Rec., 1482-1484.)

Although F. M. Hubbell abstained from voting at the meeting, it is undisputed that he was in complete control of the company. Of the seven members of the board of the company, three (F. M. Hubbell, F. C. Hubbell and H. D. Thompson) were members of Mr. Hubbell's family, and a fourth (A. B. Cummins) was the personal attorney for the Hubbell interests. (Rec., 1096.)

Following the pledge of the above shares to Hubbell and prior to the actual purchase of the shares, a meeting of the board of directors of the Des Moines Company was held, to wit: On October 4, 1893, at which the following minute was adopted:

> "The Des Moines & Northwestern Railway Company, by its president, F. M. Hubbell, stated that they had found it necessary to transfer 2,500 shares of their stock in the Des Moines Union Railway Company to F. M. Hubbell and Son, by Certificate No. 26, dated October 4, 1893, and asked that the directors of this company consent to the transfer above mentioned."

Thereupon it was resolved that the consent to such transfer be given. (Rec., 1333.)

On the same date these shares were transferred in the name of F. M. Hubbell and Son on the books of the Des Moines Company and continued under that same registered number up to the institution of this suit. (Rec., 711.)

An examination of the records will disclose that no approval of the above transaction was given by Wabash Company or the St. Louis Company, as required pur-

suant to Sections twenty-four and twenty-six of the Supplemental Agreement of May 10, 1889.

Following the above transaction whereby Hubbell & Son obtained possession of five-eighths of the stock of the Des Moines Company a report was made to the executive counsel of the State of Iowa differing materially from the reports made for the years 1888, 1889, 1890, 1891 and 1892 hereinbefore set out. These earlier reports all stated that the Des Moines Company was merely a representative company acting as an agency at Des Moines for the three proprietary companies. The report for 1893 which was verified by A. B. Cummins, vice president of the Des Moines Company, and J. A. Wagoner, superintendent, the first named being the personal attorney of the Hubbell interests, contained the following statement:

> "The Des Moines Union Railway Company is the owner of the property hereinbefore described and in addition to leasing the same to the Wabash Railroad Company the Des Moines, Northern and Western Railway Company and the Chicago Great Western Railway Company perform certain services for these companies and collect from them as rental for such services the aggregate amount of its expenses, which expenses are paid by the several railway companies in proportion to the use of the property and services rendered, as provided by contracts existing between this company and the said Wabash Railroad Company, the Des Moines, Northern and Western Railway Company and the Chicago Great Western Railway Company." (Rec., 724.)

Agreement of July 31, 1897. (Rec., 506.)

On July 31, 1897, a so-called agreement of ratification and confirmation was entered into between the Wabash Company, the Des Moines Company and the Consolidated Company, F. C. Hubbell signing as president for the last

two companies. This agreement recites the existence of the supplemental agreement of May 10, 1889, the parties thereto; that the Wabash Company now operates the St. Louis Company; that the Northwestern Company and Northern Company have ceased to own and operate their respective railroads, and that the consolidated company is now the owner of the same; that the Wabash Company and the consolidated company had been using the terminal properties for a long time past and that it is doubted whether said contract is legally binding upon the Wabash Company and the consolidated company. It is thereupon agreed that the contract shall become binding upon these two last named companies, as successors to their respective predecessors, and it concludes with the statement:

> "that so much of said contract, a copy of which is hereto attached, as relates to the issuance and distribution of the capital stock of the said Des Moines Company, is no longer binding and that the capital stock of the said Des Moines Company is held as follows:
>
> 500 by the purchasing committee of the Wabash Company.
>
> 1,000 by the Des Moines & Northwestern Railway Company.
>
> 2,500 by F. M. Hubbell and Son.
>
> A list is also given of shares issued qualified directors." (Rec., 506.)

The evidence introduced by the Hubbells in support of their plea of estoppel and laches.

The Hubbells have set up in their answer, among other things, the following:

> "That the facts with reference to the ownership of the terminal property and stock in controversy have been known to the complainants and to their predecessors in interest ever since the dates of the

transactions complained of and were so known to the complainants and their predecessors in interest for many years prior to the commencement of this suit and that the complainants have been guilty of laches and their claims are stale and are barred and are not cognizable in equity." (Rec., 193.)

As supporting this plea of estoppel and laches, the Hubbells introduced certain evidence of negotiations occurring in the ten-year period between 1897 and the date of the institution of this suit, between the operating officials of the Wabash and St. Paul Companies and themselves, for an operating contract in substitution for, or in extension of, the supplemental contract of May 10, 1889, all of which negotiations failed.

In so far as these negotiations are concerned, as well as the "series of acts and circumstances" referred to in the majority opinion of the Circuit Court of Appeals we ask the Court to keep constantly in mind in connection with the defense of estoppel, namely, that the Hubbells themselves were the officers and directors of the Des Moines Company upon whom the proprietary companies and their respective operating and other officials were accustomed to rely for all information respecting the trust enterprise. Mr. How, who represented the Wabash Company during the development of the enterprise, retired as a director of the Des Moines Company in 1892 and died prior to 1897. (Rec., 1677.) The late Chas. M. Hays, who later was the active representative of the Wabash Company, resigned in 1895 and was succeeded by Joseph Ramsey, Jr. (Rec., 1659.) For all information respecting the terminals Ramsey was dependent on the Hubbells. (Rec., 1666.)

The St. Paul Company was a stranger to the terminal enterprise until 1898, when it purchased the property of the reorganized Consolidated Company and the officials

of the St. Paul Company were dependent upon the Hubbells for all information respecting not only the terminal enterprise but also the Consolidated Company.

A careful analysis of certain of the documents offered by the Hubbells in support of their plea of estoppel will develop a studied abuse of this relation of confidence.

It is sufficient in this connection to refer two letters which they themselves have offered in evidence.

On December 2, 1898, following the purchase of the consolidated company by the St. Paul Company, Mr. Roswell Miller, president of the last named company, wrote F. M. Hubbell as follows:

> "I observe that the contract between the Des Moines Union Railway Company and the Des Moines Northern and Western Railroad Company is only for twenty years. I think it should be for fifty years. Have you any objection to extending it for so long?" (Rec., 1765.)

And on the same date Mr. Miller wrote asking Hubbell to send copies of any trackage contracts that were in existence. (Rec., 1766.)

On the following day F. M. Hubbell replied stating that there was no trackage contract except *the lease* (our italics) with the Des Moines Union Railway Company, a copy of which he had previously given to the St. Paul Company, which was of course the supplemental contract of May 10, 1889. It thus appears that at the very outset of his dealings with the St. Paul Company F. M. Hubbell deliberately suppressed the contract of January 2, 1882. (Rec., 1767.)

The Hubbells' claim that the properties of the Des Moines Company were not held in trust for the use and occupation of the complainants thereby presenting the controversy as to the so-called Surplus Earnings.

No question as to the equitable ownership of the terminal properties by the proprietary companies was ever made until October, 1905, when at a meeting in Chicago between the officers of the St. Paul and Wabash Companies and F. M. Hubbell the disposition of the so-called surplus earnings of the Des Moines Company, which had recently become a subject of controversy, was under consideration.

The history of the controversy as to the so-called surplus earnings is briefly as follows:

At the time of the execution of the supplemental agreement of May 10, 1889, it was contemplated that the only source of revenue of the Des Moines Company, independent of the contributions made by the proprietary companies, would be rentals paid by other railway companies admitted by contract to the use of the terminal properties.

Shortly afterwards, however, other sources of revenue developed. These were the switching of cars to and from industries adjacent to the terminal properties and rentals for unused office space in the Union passenger station.

The question then arose as to the proper disposition of these unexpected revenues.

Under the supplemental agreement of May 10, 1889, all expense incident to the ownership and operation of the terminal properties was charged against the proprietary companies on a wheelage basis and bills there-

for were rendered monthly. In determining the amount payable by each proprietary company there was, however, deducted from the bill its proportionate share on a wheelage basis of

> "The amount, if any, which other railroad companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month." (Rec., 481.)

It is reasonably clear that switching charges and rentals from the station property are within the purview of the language above quoted, and the subsequent conduct of the parties confirms such construction.

The board of directors of the Des Moines Company at a meeting held February 11, 1891, adopted a resolution ordering:

> "That the rents collected for the use of the company's real estate and the switching charges paid in be credited on the bills of the different tenant companies occupying this company's terminals, giving to each company its share ascertained by wheelage." (Rec., 497.)

This resolution was adopted by the unanimous vote of the eight directors of the Des Moines Company, including the defendant F. M. Hubbell, and particular attention is called to it as it is in line with the provisions of the supplemental agreement that the proprietary companies should have the full use and benefit of the terminal property including the proposed union depot building to be erected for their "use." (Rec., 480.)

Pursuant to the above resolution of the board of directors of the Des Moines Company all revenues from outside sources were credited to the proprietary companies on their monthly bills until January 7, 1892, when the board of directors adopted the following minute:

> "Whereas this company is in need of a cash capital with which to purchase supplies and pay current bills

which come in before it receives its monthly revenue from the tenant companies, therefore be it resolved: That until the further action of the board the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies but shall be used for the aforesaid purposes." (Rec., 499.)

On March 1, 1892, the auditor of the Wabash Company wrote to the superintendent of the Des Moines Company inquiring why no credit for switching revenues and rentals of real estate had been made on the bills for the preceding two months.

To this letter the superintendent of the Des Moines Company replied as follows:

"DES MOINES, IOWA, March 2, 1892.

D. B. Howard, Auditor,
Wabash Railway,
St. Louis, Mo.

DEAR SIR:

Replying to yours of the 1st inst. in regard to the allowance of switching, rentals, etc., that should be made on our bills for the months of December and January, I have to say that at a meeting of the executive committee held January 7, 1892, it was decided not to distribute these collections for a period of time until the Des Moines Union Railway Company could accumulate a small fund for working capital. I presume this will continue in effect until January, 1893. You will be furnished each month a statement showing the amount of this rental and your proportion of the same so you can make a charge against the D. M. U. Railway Company and carry it on your books as you see fit for future adjustment.

Yours very truly,
HORACE SEELEY,
Superintendent."

This is written on the letterhead of the Des Moines Union Railway Company, general offices, G. M. Dodge,

president, F. M. Hubbell, secretary, H. Seeley, superintendent. (Rec., 338.)

Following the above action of the board of the Des Moines Company the outside revenues derived from switching and real estate rental were accumulated in a separate cash fund to be used as working capital. In the earlier period of the enterprise these earnings were relatively small and a number of years elapsed before a substantial fund had been accumulated. In the meanwhile the Hubbells had caused the consolidated company to transfer to the firm of F. M. Hubbell & Son 2,500 shares of the stock of the Des Moines Company, and when the St. Paul Company and the Wabash Company, having ascertained that the fund had accumulated in an amount greatly in excess of the requirements of the Des Moines Company for working capital, suggested that the excess be distributed among the proprietary companies in accordance with the practice and understanding of the parties, as evidenced by the resolution of February 11, 1891, the Hubbells failed to comply with the request. The subject became a matter of controversy which culminated in a meeting at Chicago in October, 1905, when the defendant F. M. Hubbell stated that he would not consent to the distribution of any part of the surplus earnings and that, moreover, upon the expiration of the supplemental agreement on May 1, 1918, the St. Paul Company and the Wabash Company could not have the right to use the terminals except upon such terms and conditions as *he* might make. (Rec., 329, 333.)

At the next meeting of the directors of the Des Moines Company representatives of the St. Paul Company and of the Wabash Company each filed a written protest against the refusal of the Des Moines Company to credit the surplus earnings in reduction of the monthly bills

rendered against the proprietary companies and made formal demand that without further delay all monies arising from rents of real estate, switching charges, etc., theretofore and thereafter collected, be credited on the bills rendered against the proprietary companies on a wheelage basis. (Rec., 334.)

Within a year thereafter the complainants commenced the present suit. (Rec., 3.)

BRIEF OF ARGUMENT.

I.

BY THE TERMS OF THE CONTRACT OF JANUARY 2, 1882, THE ST. LOUIS COMPANY, THE NORTHWESTERN COMPANY AND THE NORTHERN COMPANY, PREDECESSORS OF THE COMPLAINANTS, ESTABLISHED FOR THEIR JOINT AND SEVERAL BENEFIT AN EXPRESS TRUST IN CERTAIN RAILROAD PROPERTIES THERETOFORE ACQUIRED IN THEIR COMMON INTEREST.

(1) The terms of the trust so created by this instrument were as follows:

It is recited:

(a) That "the companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for (of) terminal facilities in the City of Des Moines *to be held and used in common as hereinafter provided.*" (Rec., 412.)

(b) That in pursuance of said agreement various purchases have been made of real property in the City of Des Moines by a number of parties, individual and corporate. (Rec., 412.)

It is then agreed:

(a) That the expense of such purchases shall be borne in the proportion of one-half by the St. Louis Company and one-quarter by each of the other two companies *and "that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said company may issue and deliver to the companies, parties hereto, its mortgage bonds* to the amount of their respective portions of the cost of the said purchases and improvements." (Rec., 412.)

(b) That "the title to said property is to *be and*

remain in a trustee to be named by agreement of said companies *but subject to the joint use and occupation of all of said railway companies upon the terms herein described.*" (Rec., 412.)

(c) That the individual signers to the agreement "hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quitclaim and convey the same to said *trustee upon demand and reimbursement.*" (Rec., 412.)

(2) Under the terms of the trust the status of the proprietary companies was as follows:

(a) With respect to the premises subject to the trust the equitable interest of each was that of proprietorship, equivalent to an estate in fee in real property.

Brown v. *Fletcher*, 235 U. S., 589.

Pomeroy's Equity Jurisprudence, Fourth Edition, Section 975.

(b) With respect to each other they held equitable estates in a tenancy in common.

Pomeroy's Equity Jurisprudence, Fourth Edition, Section 147.

II.

THE DES MOINES COMPANY WAS ORGANIZED PURSUANT TO THE EXPRESS PROVISIONS OF ARTICLE THIRD OF THE TRUST INSTRUMENT TO MAKE EFFECTIVE THE DEVELOPMENT OF THE TRUST IN CORPORATE FORM AS THEREIN AUTHORIZED, AND THE TERMINAL PROPERTIES OWNED BY THE PROPRIETARY COMPANIES WERE CONVEYED TO AND ACCEPTED BY IT FOR THIS PURPOSE.

This is established by the following facts:

(a) At the meeting of the incorporators of the Des Moines Company it was resolved:

"That for the purposes of carrying out the objects and purposes of the agreement heretofore, to wit, on the 2nd day of January, 1882, made and en-

tered into between the Des Moines and St. Louis Railway Company and others (which is set out in full in the following Articles of Incorporation), that the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company, to wit:"

Thereafter follow the Articles of Incorporation of the Des Moines Company, including within them the contract of January 2, 1882. (Rec., 416.)

(b) The Articles of Incorporation provide that "all the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." (Rec., 420.)

(c) At meetings of stockholders held January 1, 1885, of each of the Railroad Companies, party to the contract of January 2, 1882, it was duly resolved that such company accept and ratify the Articles of Incorporation of the Des Moines Company "as in substantial accord and compliance with the terms and conditions of the contract of January 2, 1882," and "undertake to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company," and that, in pursuance thereof, upon the issuance to it of the *bonds and stock* of said company to which it may be entitled *under said contract*, its proper officers be authorized to "convey, assign and transfer" to said Des Moines Company the properties "held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof, purchased, acquired or held in pursuance of said contract." (Rec., 423-428.)

At meetings of stockholders held November 5 and 8, 1887, of each of said companies, it was further resolved that, whereas, under said contract of January 2, 1882, it was *intended* that the properties standing in the name of trustees should be transferred to the Des Moines Company *under certain conditions*, said trustees be requested to transfer to the Des Moines Company said properties upon receiving from it, in mortgage bonds of the Des Moines Company, the amount of money advanced for the

payment of its aliquot share of the capital stock thereof, said bonds and stock to be transferred to the proprietary company in lieu for the money advanced by said company to make the purchases, etc. (Rec., 435-442.)

(d) The Des Moines Company, by resolution of its board of directors, adopted January 1, 1885, reciting that, whereas, the Railroad Companies, parties to the contract of January 2, 1882, have notified the Des Moines Company that they severally approve of the organization of the Des Moines Company and have directed their officers, agents and trustees to surrender and deliver to such company the "railroad properties and franchises mentioned in said contract, and have requested it to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in said contract and that said railway companies and individual signatories have indicated their desire and purpose to transfer said property to this company, *in accordance with the terms of said contract,*" duly resolved that said Des Moines Company "accepts the transfer and management and operation of said properties • • • and assumes control thereof from this date, so far as practicable, and it hereby instructs its president to make such order as may be necessary to render such control and management effective *as provided in said contract.*" (Rec., 432.)

It further resolved that its officers be appointed a committee to confer with the several parties to said contract and "agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this company and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this company with *the* TITLE, *control and management of said properties provided for in said contract of January* 2, 1882." (Rec., 433.)

(e) Each Railroad Company, party to the contract of January 2, 1882, served notice upon the Des Moines Company of its resolution, as above set forth, requesting the transfer to the Des Moines Company *under certain conditions* of the properties thereto-

fore acquired subject to the terms of the contract of January 2, 1882; and the individual holders of said property thereupon made deeds of conveyance to the Des Moines Company reciting that for "convenience the legal title to said property was conveyed to me in trust" and that "said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882," and that by the resolutions above set forth "it was intended that said property * * * should be transferred to the Des Moines Union Railway Company *under certain conditions*," and the Railroad holders of certain of said properties executed and delivered their several quit-claim deeds for a like purpose. (Rec., 432-442, 446, 455-457.)

III.

THE PROPRIETARY COMPANIES HAD NO CORPORATE POWER TO ALIENATE THEIR EQUITABLE ESTATES IN THE TERMINAL PROPERTIES IN THE CITY OF DES MOINES, ACQUIRED TO BE HELD AND USED BY THEM IN COMMON.

(1) The transfer of terminals to the Des Moines Company except as trustee of the proprietary companies would dismember the railway lines of the latter and cut them off from their entrance to the City of Des Moines. It is settled law that such alienation of property and franchises is *ultra vires*.

Central Transportation Company v. *Pullman Company*, 139 U. S., 28.

Northern Pacific Railway Company v. *Ely*, 197 U. S., 1.

Northern Pacific Railway Company v. *Townsend*, 190 U. S., 267.

Section 2066 of Code of Iowa of 1897.

State v. *Central Iowa Railway Company*, 71 Iowa, 410.

Connor v. *Tennessee Central Railway Company*, 109 Fed. Rep., 931.

(2) The Des Moines Company is a railway company and not a terminal company, and its railway lines are not open to use by connecting carriers as a matter of right.

Title IX, Chapter 1, page 587, Code of Iowa, 1897.

Title X, Chapter 5, page 748, Code of Iowa, 1897.

Morgan v. *Des Moines Union Railway Company*, 113 Iowa, 561.

Chicago, Milwaukee and St. Paul Railway Company v. *Iowa*, 233 U. S., 334.

Iowa v. *Chicago, Milwaukee & St. Paul Railway Company*, 152 Iowa, 317, 321.

Section 3 of Interstate Commerce Act.

(3) The transactions should receive a construction which would sustain rather than invalidate them.

Hobbs v. *McLean*, 117 U. S., 567, 576.

IV.

THE ALLOTMENT OF SHARES OF CAPITAL STOCK OF THE DES MOINES COMPANY TO THE SEVERAL PROPRIETARY COMPANIES IN THE RELATIVE PROPORTIONS OF THEIR SEVERAL PROPRIETARY INTERESTS IN THE TRUST PROPERTIES AS FIXED BY THE CONTRACT OF JANUARY 2, 1882, WAS INTENDED TO EVIDENCE AND MEASURE THEIR SEVERAL UNDIVIDED ESTATES IN THE PROPERTY SO HELD BY SUCH CORPORATE TRUSTEE.

Under the contract of January 2, 1882, it was contemplated that a corporation might act as trustee to hold title to the terminal properties for the benefit of the proprietary companies. (Rec., 412.) The proprietary companies incorporated the Des Moines Company to act as such trustee. (Rec., 416.) Its capital stock was issued to them in the several proportions of their respec-

tive estates in the trust properties and was intended to represent the same:

(1) The Articles of Incorporation provide:

The Board of Directors of the Des Moines Company was to be designated by the proprietary companies and not by the stockholders, and representation in this respect was to be based upon relative proprietary interests. (Rec., 421.)

The Board of Directors of the Des Moines Company had no power to take any corporate action, except upon consent of the three proprietary companies. (Rec., 421.)

(2) Under the agreement of May 10, 1889, it was provided that

Shares should be issued to the proprietary companies in proportions relative to their several proprietary interests, as fixed by the contract of January 2, 1882, and in the instance of each proprietary company the shares so allotted to it should be evidenced by a single certificate expressing upon its face that the same should not be transferable in whole or in part without the consent in writing of all the proprietary companies. (Section twenty-six, Rec., 486.)

The St. Louis Company as the owner of one-half of the capital stock of the Des Moines Company might sell and transfer one-half (no more and no less) or one-quarter of the whole to such railway company as may be acceptable to a majority of the proprietary companies, *in which case it was agreed that such railway company may become the purchaser of said stock and may be admitted as one of the proprietors.* Only as aforesaid should other railroad companies be admitted *to the use of* the property of the Des Moines Company without the consent *of all* the proprietors. (Section twenty-four, Rec., 485.)

Thus an ownership by a railroad company of an aliquot share of capital stock acquired pursuant to the terms of Sections twenty-four and twenty-six

carried with it a right of user equivalent to a tenancy in common.

(3) Under the Amended Articles of Incorporation of the Des Moines Company, it was provided that its shares should be allotted to the proprietary companies in the relative amounts of their respective proprietary interests as fixed by the contract of January 2, 1882. (Rec., 491.)

In contemplation of the segregation of proprietary interests into *eighths* instead of *quarters*, it was further provided therein that "at all future elections it shall require the votes of more than seven-eighths of all the stock theretofore issued to elect any director," and that in all matters except the ordinary operation of the property "the Board of Directors can act only upon the *unanimous vote of the eight members thereof.*" (Rec., 491, 492.)

(4) The transactions between Hubbell and the purchasing committee of the Wabash Company, whereby Hubbell and Dodge acquired certain stock interests in the Des Moines Company subsequently transferred by them to a proprietary company were had with the express understanding that an ownership in a railroad company of an aliquot amount of the capital stock of the Des Moines Company would represent a proprietorship in such company. (Rec., 1603.)

V.

"THE SERIES OF ACTS AND CIRCUMSTANCES" THROUGH WHICH, IN THE MAJORITY OPINION OF THE COURT OF APPEALS, THE PROPRIETARY COMPANIES ARE SUPPOSED TO HAVE "GRADUALLY LET SLIP FROM THEM THE EXCLUSIVE OWNERSHIP AND CONTROL WHICH THEY HAD AT THE BEGINNING SO MUCH VALUED AND SO CAREFULLY GUARDED" WERE ALL IN HARMONY AND CONSISTENT WITH THE CONTINUED EXISTENCE OF THEIR RESPECTIVE PROPRIETARY INTERESTS.

THESE ACTS AND CIRCUMSTANCES ARE TO BE INTERPRETED IN THE LIGHT OF THE FOLLOWING PRINCIPLE, NAMELY, THE EQUITABLE INTEREST THAT EACH OF THE RAILWAY COMPANIES, PARTY TO THE CONTRACT OF JANUARY 2, 1882, ACQUIRED IN THE TERMINAL PROPERTIES OF THE DES MOINES COMPANY WAS MORE THAN A RIGHT IN PERSONAM OR CHOSE IN ACTION—IT WAS A RIGHT IN REM, NAMELY, AN ESTATE IN PROPERTY VESTED IN THIS RESPECT TO THE SAME EXTENT AS THOUGH THE LEGAL TITLE THERETO HAD BEEN CONVEYED TO SUCH COMPANY.

Brown v. *Fletcher*, 235 U. S., 589.

Pomeroy's Equity Jurisprudence, Fourth Edition, Section 975.

(1) The Articles of Incorporation of the Des Moines Company, adopted December 10, 1884, are based upon the premise that the Des Moines Company was organized for the sole purpose of making effective the trust created by the contract of January 2, 1882.

The resolution of the incorporators of the Des Moines Company, adopting its articles, recites that such company is organized for the purpose of making effective the trust created by the contract of January 2, 1882, and said contract is embodied in said articles as part of the organic law of the Des Moines Company. (Rec., 416.)

(2) In respect of the terminal properties, it was provided by the contract of January 2, 1882, that *"the title to said property shall be and remain in a trustee to be named by agreement of said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described," and that "said trustee," upon receiving quitclaim and conveyance to it*

of the trust properties should issue bonds secured by a mortgage upon the same to "reimburse" the temporary trustees for advances made by them or their beneficiaries in acquiring such properties. (Rec., 412.)

The conveyances made by the temporary trustees to the Des Moines Company, the making of its mortgage of November 1, 1887, and the delivery by it of its bonds secured thereby to the temporary trustees and their beneficiaries, as "reimbursement" for advances made in acquiring the trust properties, were transactions all had in compliance with the trust instrument of January 2, 1882.

(3) After the concentration of the trust properties in the Des Moines Company, no equitable tenant in common in such trust properties ever conveyed, released or otherwise relinquished to the Des Moines Company, its equitable estate therein.

(4) The resolution of the stockholders of the Des Moines Company of March 31, 1888, providing for the making of a supplemental agreement fixing the terms and conditions upon which the proprietary companies should enjoy the use of the terminal properties, and the agreement of May 10, 1889, made pursuant to such resolution between the Des Moines Company and the three proprietary companies are based upon and presuppose the continuing existence of the contract of January 2, 1882, and of the trusts created thereby. (Rec., 476, 479.)

Said supplemental agreement of May 10, 1889, provided in substance for (a) a regulation in detail among the proprietary companies of the use of their common tenancy, (b) a defining of terms for distributing among the proprietors the cost of maintenance, operation thereof and interest on bonds, and (c) a fixing of the manner in which the several equitable estates in the trust property should be represented and regulated through the issue of the shares of the corporate trustee. (Rec., 479.)

(5) The amendments to the articles of the Des Moines Company were illegally adopted, but, without respect to their legality, they did not purport to and could not alter or destroy the equitable estates in common of the proprietary companies in the terminal properties.

VI.

TO GIVE THE ACTS AND CIRCUMSTANCES HEREINBEFORE ENUMERATED A CONSTRUCTION OR ASPECT IN DEROGATION OF THE EQUITABLE ESTATES IN COMMON OF THE PROPRIETARY COMPANIES PURSUANT TO THE CHARACTERIZATION THEREOF OF THE MAJORITY OPINION OF THE CIRCUIT COURT OF APPEALS WOULD BE TO PERMIT TRUSTEES OR FIDUCIARIES NOT ONLY TO REPUDIATE THE RIGHTS OF THEIR CESTUIS QUE TRUSTENT, BUT TO ACQUIRE FOR THEMSELVES THE BENEFICIAL INTERESTS IN THE TRUST ESTATES.

(1) The Circuit Court of Appeals in its majority opinion holds that a trust was created under the terms of the contract of January 2, 1882; that the beneficiaries thereunder, the proprietary companies, at all times intended the continuance of such trust, but that the same through acts of inadvertence of the beneficiaries "apparently harmless" was destroyed, and that the Des Moines Company became an independent corporation holding the trust properties free from the terms of the trust and under the control of the Hubbells.

A trustee is not permitted to assert in his own behalf any right or interest in trust properties resulting from the inadvertence of his beneficiaries.

Bigelow on Estoppel, 6th Ed., page 589.

(2) As an officer, director and agent of the Des Moines Company, Hubbell was bound by the terms of the trust.

(3) The consolidated company, a successor in interest to the properties acquired to be held and used in common, of which Hubbell was also an officer and director, and the controlling stockholder, was subject to the disabilities of a fiduciary; for cotenants occupy to each other the position of express trustees in respect of the property held in common.

Rothwell v. *Dewees*, 2 Black, 613, at 618.
Bissell v. *Foss*, 114 U. S., 252, at 259.
Turner v. *Sawyer*, 150 U. S., 578, at 586.
Starkweather v. *Jenner*, 216 U. S., 524, at 528.

Therefore, Hubbell, as a successor to the consolidated company in ownership of a portion of the stock in the Des Moines Company, by a transaction in which he was virtually both seller and buyer, was a fiduciary in respect of the trust properties, for he could have rights no greater than those of his controlled vendor.

VII.

THE FIVE-EIGHTHS STOCK INTEREST IN THE DES MOINES COMPANY HAVING BEEN ACQUIRED BY THE HUBBELLS FROM THE CONSOLIDATED COMPANY OF WHICH THEY WERE DOMINATING STOCKHOLDERS AND DIRECTORS IN VIOLATION OF THEIR FIDUCIARY OBLIGATIONS TO THE PROPRIETARY COMPANIES, THE DECREE HEREIN, IN ADDITION TO THE PRIMARY RELIEF ASKED, QUIETING THE EQUITABLE TITLES OF THE COMPLAINANTS IN THE TRUST PROPERTIES SHOULD ALSO PROVIDE FOR A RESCISSION OF THE STOCK TRANSACTION AND FOR A REDEMPTION OF THE SHARES BY THE COMPLAINANTS ON EQUITABLE TERMS.

(1) The transaction was intrinsically a fraud.

(2) The stock having been acquired by the Hubbells for the purpose of destroying the trust, the transaction is voidable by the beneficiaries thereof.

Rothwell v. *Dewees*, 2 Black, 613, at 618.

VIII.

NO FACTS APPEAR IN THE RECORD CONSTITUTING AN ESTOPPEL OR LACHES DEFEATING THE EQUITY OF THE COMPLAINANTS.

(1) It is essential to the application of the doctrine of estoppel that a party asserting it must have been misled to his prejudice.

Braut v. *Virginia Coal & Iron Company et al.*, 93 U. S., 326.

Bigelow on Estoppel, 6th Ed., page 476.

Herman on Estoppel, page 797.

Chicago, Milwaukee & St. Paul Railway Company v. *Des Moines Union Railway Company and others*, 165 Iowa, 35.

(2) Laches can never be asserted, upon an equivocal state of facts.

Speidel v. *Henrici*, 120 U. S., 377.

IX.

THE SURPLUS EARNINGS WERE PROPERLY AWARDED TO THE COMPLAINANTS BY THE UNANIMOUS DECISION OF THE CIRCUIT COURT OF APPEALS.

(1) The surplus earnings are apportionable to the proprietary companies under Section Four of the supplemental agreement of May 10, 1889, as construed by the parties themselves.

Topliff v. *Topliff*, 122 U. S., 121, 131.

(2) The surplus earnings were determined to belong to the proprietary companies by formal action of the directors of the Des Moines Company, including the Hubbells, and such adjustment is binding upon the Des Moines Company.

Central Trust Company v. *Wabash, St. Louis and Pacific Railway Company*, 34 Fed. Rep., 254.

ARGUMENT.

I.

BY THE TERMS OF THE CONTRACT OF JANUARY 2, 1882, THE ST. LOUIS COMPANY, THE NORTHWESTERN COMPANY AND THE NORTHERN COMPANY, PREDECESSORS OF THE COMPLAINANTS, ESTABLISHED FOR THEIR JOINT AND SEVERAL BENEFIT AN EXPRESS TRUST IN CERTAIN RAILROAD PROPERTIES THERETOFORE ACQUIRED IN THEIR COMMON INTEREST.

It is the claim of the complainants in this case that the Des Moines Company holds title to the terminal railway properties at Des Moines in trust for their joint use and occupation. This claim has its foundation in the contract of January 2, 1882, made between the "St. Louis Company," the "Northwestern Company" and the "Northern Company," James F. How, James F. How, trustee, and Grenville M. Dodge.

To appreciate fully what was then done and what was intended to be secured thereby, this contract should be read in the light of those events and transactions which are set forth in Subdivision I of the statement of facts, which were preliminary to the establishment of the trust, and were the inducements for the same. From these facts it appears that Hubbell and his partner Polk, were the promoters, and that the Wabash, St. Louis & Pacific Railway Company, predecessor of the Wabash Company, was the financial sponsor of the enterprise, having as its object the construction and ownership of terminals at Des Moines to the end that the railroads which eventually became the Northwestern and the Northern Companies, lying as the arms of a Y, to the northwest and north of Des Moines, should be connected with the railroad which eventually became the St. Louis

Company, the stem of the Y, lying to the south of Des Moines through the terminal properties to be owned in common interest at Des Moines.

At the inception of this enterprise none of these three companies extended into the City of Des Moines, and the Wabash Company undertook also to finance the construction work to extend the respective lines for this purpose. Polk and Hubbell were the local people at Des Moines promoting all these activities. They, with others, incorporated the St. Louis Company for the purpose of constructing the extension from Albia to Des Moines on the south. They also reincorporated the Northwestern Company for the purpose of completing the left arm of the Y from Des Moines northwest to Fonda, to connect with and become a part of the railroad theretofore promoted by Hubbell. They also incorporated the Northern Company for constructing the third line along the right arm of the Y from Des Moines to Boone.

All this was done pursuant to written agreements, among these an agreement made December 8, 1880, between Hubbell, Polk, Clarkson and Runnells of the one part, owning and controlling the capital stock of the Narrow Gauge Railway Construction Company, and the Wabash Company on the other part. The first parties were to give their time, personal attention to and act as directors and officers of the enterprise. They were personally to exert themselves to procure subsidies in aid of the line and donations of lands, rights of way and other benefits in aid of construction.

The construction work of the three lines, as well as the assembling of the necessary terminal railways and facilities at Des Moines proceeded actively in 1881, and the operations were conducted from the office of Polk and Hubbell. Hubbell negotiated the purchase of real estate

for the terminal properties at Des Moines, and the funds therefor were advanced by the Wabash Company and by Gen. Grenville M. Dodge. Four parties acquired this real estate to be used for the common purpose. The St. Louis Company and the Northern Company acquired certain property largely obtained through condemnation proceedings. James F. How and Grenville M. Dodge took title to the remainder of the properties, Dodge paying for certain of the properties that were credited to the Northern Company.

At the close of the year 1881, the road of the Northwestern Company was open for operation, and its trains were running into the Des Moines terminals, and the two other roads were well advanced.

Thus, at this point, the following situation had developed:

The legal title to certain of the properties was in the Northern Company, which it had acquired by condemnation proceedings; the legal title to the certain other property was in the St. Louis Company, which it had also acquired by condemnation proceedings; the remaining property was in the title of certain individuals, namely, Dodge and How, without specification of the terms of the trust, but the beneficiaries of the trust were the three railway companies, by or on whose behalf all of the above referred to properties had been acquired, and which had provided the money for the acquisition thereof. It therefore appeared that operation had already begun on the terminal properties before any definite plan for the permanent holding of the properties for railroad purposes had been determined upon by the beneficiaries of the trust.

The above situation prompted the making of the contract of January 2, 1882 (Rec., 411), which lies at the foundation of the rights of the parties to this suit.

The three railroad companies and the two individuals above named joined in making it, and the Wabash Company subjoined a consent to the execution of the contract by the St. Louis and Northwestern Companies. The first five paragraphs of the contract are the substructure of this controversy. They are very simple and very clear in their terms. We quote them here in full:

"First.

The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance, at their joint expense for terminal facilities in the City of Des Moines *to be held and used in common* as hereinafter provided.

Second.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually, James F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third.

It is mutually agreed by the parties above named, that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

Fourth.

The title to said property shall be and remain in a trustee to be named by agreement of said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth.

The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement." (Rec., 412, 413.)

From the above certain things are obvious.

(a) The Railroad Companies, parties to the agreement, had theretofore agreed that the terminal facilities, being then acquired at Des Moines, should be held and used in common by them, and that this contract of January 2, 1882, should provide the basis for this common tenancy.

(b) The common properties were held in severalty by four parties: two corporate and two individual. It was apparent that tenure for railroad purposes could not continue in this form and that, therefore, these several trustees must convey to a common trustee.

(c) It was therefore agreed that title was *to be and remain in a trustee, but subject to the joint use and occupation of all of said Railroad Companies upon the terms defined in the agreement.*

(d) The individual signers declared that the purchases made in their names were taken in trust and they agreed to quitclaim and convey the same to this single trustee *upon demand and reimbursement.*

(e) It was agreed that the contemplated trustee might be a Depot Company, to be organized to take

permanent charge of the property upon the terms set forth in the contract, and that said company might issue and deliver its mortgage bonds to the three constituent companies to the amount of their respective portions of the cost of said purchases and improvements.

It is very clear from the foregoing that the parties intended to vest in the three Railroad Companies a common proprietorship in the terminal properties acquired in their common interest, and it is also very clear that the parties intended to finance the properties so to be owned by them by an issue of bonds secured upon their common title.

Note particularly in this respect, that the temporary holders in trust of the properties are to convey and quit claim to a *trustee* (not to a vendee), only upon demand and reimbursement.

Note further in this respect that the expenses incurred by purchases and improvements are to be borne in the proportion of one-half by the St. Louis Company and one-quarter by each of the other two companies, and that the Depot Company, to be organized for the purpose of taking charge of the property, is to issue and deliver its mortgage bonds to the above companies to the amount of their respective portions of cost of the said purchases and improvements.

It follows beyond question that the title of the Depot Company in the terminal properties was to be of the character that would permit it to mortgage them to secure such bond issue, and that in this respect it must necessarily have been intended to act as a trustee agent, mortgaging the beneficial interests or the equitable estates of the three proprietary companies in their common tenancy; for the individual title holders were to convey the properties, for which they were to be reim-

bursed through these bonds, only to a *trustee* and not to a vendee.

The scheme of reimbursement thus contemplated was identical with that in common use among railroad companies, namely, the mortgaging of properties bought with current funds for the purpose of reimbursing the railroad treasury to the end that the railroad investment might be transferred to a permanent capital obligation. If the three proprietary companies had taken legal title as tenants in common, instead of equitable titles in this respect, they would have reimbursed themselves with a bond issue in identically the same manner.

The majority opinion of the Court of Appeals, has properly described the effect of the above contract as follows:

> "As to the Companies, the contract not only declared some existing property rights, but attempted to define for the future the rights of title and usage of the terminal property. The title contemplated was a trust. The legal title to be 'in a trustee to be named by agreement of said companies.' The *beneficial estate* (italics ours) to be in the three companies in proportion to the parts each contributed to the payment therefor." (Rec., 2096.)

This Court has stated in the case of *Brown* v. *Fletcher*, 235 U. S., 589, that the equitable interest of a *cestui que trust is* more than a chose in action or a right *in personam*. It says that

> "the modern cases do not treat the relation between trustee and *cestui que trust* as contractual."

The interest of the *cestui* is *in rem*. It is an estate in property to the same extent as if the property was in his possession and it passes by deed. In such case an instrument of alienation is not an assignment of a chose in action. It is a deed, or if not called a deed, "an evidence of the assignee's right, title and estate in and to property."

As stated in Pomeroy's Equity Jurisprudence, Fourth Edition, Section 975:

> "In fact, the entire dealing of equity with the subject of equitable estates, and the fundamental distinctions between equitable and legal conceptions and modes are based upon the notion that equitable estates are in the truest sense property, and not mere rights to obtain certain equitable remedies."

In analyzing the subsequent transactions of the parties, this principle is important in determining their significance and effect.

It is to be noted that the ownership and control of property rights of this character, is *that* which the majority opinion of the Court of Appeals states was never intended to be released by the proprietary companies, and yet that Court says that through their acts of inadvertence, they have "gradually let slip from them that exclusive ownership and control which they had at the beginning so much valued and so carefully guarded." It is also to be noted, that the title to such property has thus gradually faded away to the advantage and interest of their own creature, the trustee, created by them with the sole object of conserving in each of them its equitable estate in common therein.

When an estate in trust is once solemnly created, transactions thereafter had between the trustee and his beneficiary will be presumed to be in harmony with and in furtherance of the trust estate so set up, for as is said in *Brown* v. *Fletcher,* above referred to, "the relation between the trustee and the *cestui que* trust is not contractual."

They are indeed one

> "and a proceeding by the beneficiary or his assignee for the enforcement of rights in and to the property, held—not in opposition to but—for the benefit of the beneficiary, could not be treated as a suit on a

contract, or as a suit for the recovery of the contents of a chose in action, or as a suit on a chose in action." (p. 599.)

It follows that if, after making the trust instrument of January 2, 1882, the record had shown merely the organization of a railroad corporation by the three proprietary companies, warranty deeds of conveyance by the temporary trustees of the terminal properties to such corporation, and the issuing of mortgage bonds by such corporation in amounts sufficient to reimburse the grantors for such warranties of conveyance, all these acts would be *presumed* to have been done in furtherance of the trusts established by the contract of January 2, 1882.

It will appear, however, that in the corporate and intercorporate procedure had subsequent to the making of this contract, the parties to the same, with painstaking repetition of expression, contained in resolution, articles of incorporation and deed, took every step possible to continue the existence of the equitable tenancy in common set up among them in the terminal properties at Des Moines.

II.

THE DES MOINES COMPANY WAS ORGANIZED PURSUANT TO THE EXPRESS PROVISIONS OF ARTICLE THIRD OF THE TRUST INSTRUMENT, TO MAKE EFFECTIVE THE DEVELOPMENT OF THE TRUST IN CORPORATE FORM, AS THEREIN AUTHORIZED, AND THE TERMINAL PROPERTIES OWNED BY THE PROPRIETARY COMPANIES WERE CONVEYED TO AND ACCEPTED BY IT FOR THIS PURPOSE.

At the first meeting of incorporators of the Des Moines Company, held at Des Moines, December 10, 1884, the proceedings state that the meeting was held for the purpose of organizing a Union Depot and Railroad Company,

to be run and operated in and around the City of Des Moines, Iowa, *in pursuance of the contract of January* 2, 1882. (Rec., 416.)

There were present at this meeting, Grenville M. Dodge, who appeared for himself and in the interest of the Northern Company; Polk and Hubbell, who appeared for the Northwestern Company; Runnells and Meek, who appeared for the St. Louis Company, and How, appearing as trustee and in his individual capacity. It was resolved:

> "That for the purpose of carrying out the objects and purposes of the agreement heretofore, to wit, on the 2nd day of January, 1882, made and entered into between the Des Moines and St. Louis Railroad Company and others, (which is set out in full in the following articles of corporation) that the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company."

The articles begin with a recital that the St. Louis Company, the Northwestern Company and the Northern Company and Dodge and How have purchased properties upon certain agreed conditions at their joint expense in accordance with the contract of January 2, 1882.

Thereafter said contract is set out in full in said articles.

It is then recited that it was provided in said contract that a Depot Company might be organized to take permanent charge of the property, and that it was understood that the Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties.

In Article 2, it is stated that the object of the Company shall be to construct, own and operate a railway in and about the City of Des Moines, and that "*all the powers exercised by this company shall be in accord-*

ance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." (Rec., 420.)

It is to be noted that the articles provide that the affairs of the company shall be managed by a board of eight directors, four of whom shall be nominated by the Wabash Company and two by the Northwestern Company and two by the Northern Company; that no contract, lease or agreement, amounting to a permanent charge upon the properties of the Depot Company, shall be entered into by the board without having the approval of the three proprietary companies. (Rec., 421.)

Thereafter, on January 1, 1885, the three proprietary companies passed identical resolutions, accepting and ratifying the articles as in substantial accord and compliance with the terms and conditions of the January 2, 1882 contract, and requesting the temporary individual trustees to convey the properties held by them under the terms of the January 2, 1882, contract, to the Des Moines Company. (Rec., 423, 424, 429.)

On the same day the Des Moines Company adopted a resolution reciting that it had been notified by the proprietary companies that each had approved its organization and had directed its officers and trustees to deliver to the Des Moines Company the railroad properties and franchises mentioned in the contract of January 2, 1882, *and had requested the Des Moines Company to take possession of and maintain and operate the same for the purposes and on the terms mentioned in the January 2, 1882 contract.* It was therefore resolved that the Des Moines Company accept the transfer and management and operation and assume control thereof, so far as practicable, and instruct its officers to make such order as may be necessary to render *such*

control and management effective as provided in said contract, and its officers were appointed as a committee to confer with the parties to the January 2, 1882, contract, to agree upon the terms and price at which they would respectively convey such property and franchise to the Des Moines Company *and to procure from them and each of them such conveyances and transfers as might be necessary to fully invest the Des Moines Company with* THE TITLE, *control and management of such properties provided for in the January* 2, 1882 *contract.* (Rec., 432, 433.)

Hubbell, as a member of the board of the Des Moines Company, voted in favor of these resolutions, and as secretary of that company acted as secretary of the meeting. (Rec., 435.)

Owing to the receivership of the Wabash, St. Louis and Pacific Railway Company and the consequent insolvency of the Northwestern Company, for whose benefit the Wabash Company had advanced funds, and the consequent inability of the parties to the terminal enterprise to arrange for the assignment to the Northwestern Company of its one-quarter estate in the trust properties, no further action was taken to vest in the Des Moines Company title to the properties that it was to hold in trust, until November 5 and 8, 1887, when each of the proprietary companies passed resolutions reciting that the temporary trustees had taken title to certain properties, which were to be transferred to the Des Moines Company *under certain conditions*, and requesting that these temporary trustees convey the properties held by them to the Des Moines Company, for the purpose of carrying out the contract of January 2, 1882. (Rec., 435, 437, 442.)

In the instance of the St. Louis Company and the

Northwestern Company, with respect to the properties to which each took title for the common enterprise, they directed their own officers to make conveyance of the same to the Des Moines Company *for the purpose of carrying out the contract dated January* 2, 1882. (Rec., 436, 438, 439, 442, 443.)

On November 8, 1887, the three companies served notice upon the Des Moines Company that they had passed these resolutions. (Rec., 439, 441, 442.) On the same day the board of directors of the Des Moines Company adopted a resolution directing its officers, upon receiving conveyance of the properties in question, to deliver bonds to How and Dodge for the amount of money which will be shown by them to have been expended for, or on the property referred to, and that certificates for one-quarter of the stock be issued to the St. Louis Company and three-quarters of the stock be issued to the purchasing committee of the Wabash Company. (Rec., 1300.)

Pursuant to the foregoing, the St. Louis Company conveyed the properties held by it for the enterprise to the Des Moines Company (Rec., 457), *and Frederick M. Hubbell, who signed this deed of conveyance as secretary, testified that it was made pursuant to the resolution that such conveyance should be made to the Des Moines Company for the purpose of carrying out the contract of January* 2, 1882. (Rec., 1115.) The Northern Company conveyed its interest by quitclaim deed. How and Dodge made two deeds of conveyance. The How deeds recited that the property was acquired and held by him in trust and was conveyed *for the purpose and upon the terms set forth in the contract of January* 2, 1882. (Rec., 446, 448, 451.)

For the purpose of mortgaging the trust properties, to reimburse the proprietary companies for the ex-

penses incurred by them in acquiring the terminal properties as provided by Article Third of the contract of January 2, 1882, the Des Moines Company made its certain mortgage dated November 1, 1887, to secure an issue of bonds amounting to $800,000. (Rec., 474, 475.)

The conveyances above recited, the execution of the mortgage of the Des Moines Company and the issuance of its bonds thereunder were all "approved, ratified and confirmed" in their original significance by virtue of Article 14 of the amended articles of the Des Moines Company, adopted at a meeting of its stockholders on April 8, 1890. (Rec., 494.)

The foregoing facts speak for themselves.

They show that with painstaking effort in corporate action, all the parties in interest strove to make an effective conveyance of the legal titles acquired in their common interest to the Des Moines Company to the end that their equitable and common estates therein should continue, to be availed of thereafter, for the purposes of their joint use and occupation of the terminal properties.

The status thus reached in the affairs of the proprietary companies was never thereafter altered by any act which resulted in the defeasance or alienation of the estates thus created.

In this respect, the following is to be noted:

(1) That a right of possession adverse to the user incident to the equitable estates of the proprietary companies never arose in favor of the Des Moines Company, even if it could be assumed that the Des Moines Company, in its capacity as trustee, could acquire a right by adverse user; for from the inception of the enterprise and during the period in which the four temporary trustees held title to the terminal property; during also the period after the conveyance of the same to the Des Moines Com-

pany, the permanent trustee, namely, from 1888, up to the making of the supplemental agreement of May 10, 1889; and since the making of said last named agreement to the present time, the three proprietary companies have been in constant use and possession of the premises operated by the Des Moines Company, thus asserting through several distinct periods and varieties of legal tenure, a continuing proprietorship therein.

(2) No instrument of any kind or character was ever executed by any proprietary company, or by any of its successors, releasing or conveying to the Des Moines Company its estate in the common property.

(3) Estates in property do not pass by acts of inadvertence to parties who are not innocent purchasers for value, and particularly in this respect to those holding a fiduciary relationship to the alleged grantors.

(4) The privity of relationship in respect of the controversy here involved is between the proprietary companies and their trustee. Therefore the transactions by which Hubbell acquired his stock in the first instance from the purchasing committee of the Wabash Company, even if admitted to be anomalous (an admission denied) could not alienate or release the trust estates set up by the proprietary companies, or relieve the Des Moines Company from its duties as a trustee or create an estoppel in its favor in this respect. They could not create an estoppel in favor of Hubbell, for the nature of interest, which an individual holding stock in the Des Moines Company (assuming his title in the same) could have in the trust properties, is not on trial here.

III.

THE PROPRIETARY COMPANIES HAD NO CORPORATE POWER TO ALIENATE THEIR EQUITABLE ESTATES IN THE TERMINAL PROPERTIES IN THE CITY OF DES MOINES ACQUIRED TO BE HELD AND USED BY THEM IN COMMON.

One of the necessary objects of the proprietary companies in acquiring properties at Des Moines, upon which to construct and operate terminals, was to serve the public. The Railway Companies could exercise their powers of condemnation, by which a portion of the properties were acquired, only upon this theory. Moreover, with this same idea in view, three townships of Boone County, Iowa, voted and paid over to the Northern Company $61,337.72, for the purpose of aiding the Northern Company in constructing its railway from Boone to a connection with the line of the Wabash Company, and each township by ordinance provided that the tax for raising this money be due and payable when the railroad connection to be so required shall have been completed and cars running thereon. These conditions were accepted in writing. (Rec., 789-797.) Green County voted taxes amounting to $27,732.49 and Calhoun County likewise voted $19,587.28 to the Northwestern Company for a similar purpose. (Rec., 797-820.)

On March 22, 1881, the City of Des Moines passed an ordinance granting a right of way to the St. Louis Company over, across and along certain streets in said city, upon which eventually became located the main lines of railroad of the Des Moines Company. This grant was made upon the condition that the Railroad Company locate and build passenger stations in East and West Des Moines, and that cars should be running into the city by the first day of January, 1882. By express provision,

the ordinance was to operate as a contract between the City of Des Moines and the St. Louis Company, upon acceptance of the same by the latter. (Rec., 443-445.)

Thus the proprietary companies having accepted public funds for the purpose of uniting their properties through the ownership of a common terminal, having exercised the sovereign right of condemning private property for this purpose, and having received a charter from the state to enable them to operate as an entity the terminal properties so acquired by them, it was beyond their power to put themselves in a position with respect to this railroad company and to the properties to which it took title in trust for their use and occupation, whereby they would be unable to serve the public.

In view of this principle, not only every presumption will be indulged to interpret their acts as intending to keep intact the joint control acquired over the terminal properties by virtue of their ownership in the same, but it should also be held that if attempt were made by them to part with this control their acts for such purpose should be regarded as ineffectual.

The contentions of the defendants in this case run counter to the above principle.

It is asserted by them that the proprietary companies deliberately abandoned their trust estates by selling properties, acquired by them for the purpose of making connections between their respective railroads, to an independent railroad company and deliberately became minority stockholders in such company, thus making imminent a situation now claimed by the defendants to have arisen, namely, a status of being strangers to properties which they had appropriated and otherwise obtained by sovereign prerogative for a public trust.

That it was not within their power to abandon title to railroad properties so acquired is the settled law of the land.

This Court has repeatedly decided that a railway corporation cannot alienate or turn over to another railroad corporation its railroad in whole or in part without the express consent of the state, under whose franchise the railroad was constructed or acquired.

Central Transportation Company v. *Pullman Company*, 139 U. S., 28.

Mr. Justice Gray, who wrote the opinion in this case, reviewed the law on this subject and stated the above principle as the "clear result" of the decided cases.

This Court by subsequent decisions has reaffirmed and followed the opinion of Mr. Justice Gray, and in applying the principle asserted therein, it has repeatedly held that railway properties dedicated to public use cannot be lost by adverse possession.

Northern Pacific Railway Company v. *Ely*, 197 U. S., 1.

Northern Pacific Railway Company v. *Townsend*, 190 U. S., 267.

Section 1300 of the Iowa Code of 1873, which is the same as Section 2066 of the Iowa Code of 1897, is as follows:

"SALE OR LEASE OF RAILROAD PROPERTY—JOINT ARRANGEMENT. Any railway corporation may sell or lease its property and franchises to, or make joint running arrangements not in conflict with law, with any corporation owning or operating any connecting railway, and any corporation operating the railway of another shall be liable in the same manner and extent as though such railway belonged to it."

It will be seen from the provisions of this statute that if it be desired to sell or transfer railroad property, the entire railroad together with its franchises—and not a part—must be sold or transferred. The Iowa statute does not permit a railroad to be dismembered, or the franchises under which it was constructed to be disrupted. The railroad and franchises are a unit, and are required to be held and used as a unit, and when transferred must be transferred as a unit. *State* v. *Central Iowa Ry. Co.*, 71 Iowa, 410. That a part of a railway system cannot be separated from its franchises is clearly shown in the opinion of Mr. Justice Lurton in *Connor* v. *Tennessee Central Railway Co.*, 109 Fed. Rep., 931.

The fact that the proprietary companies held their terminal properties at Des Moines in a common proprietorship makes but a distinction without a difference in the application of the above principle; since one owning a tenancy in a common estate has rights of user in all the properties of such estate (subject to like rights in its other tenants) equivalent to an exclusive proprietorship therein, and thus unity of ownership in terminals makes permanent for each carrier the means of interchange of through traffic with its associates.

If, then, it was beyond the power of the proprietary companies to convey away, or, as the District Court put it, "chop off," the most essential parts of their railways terminating in the City of Des Moines they, of course, could not by acquiescence or by a *"series of acts or circumstances,"* as the majority opinion of the Circuit Court of Appeals states, *indirectly or unintentionally, "gradually let slip from them the exclusive ownership and control which they had at the beginning so much valued and so carefully guarded."* (Rec., 2114.)

In the case of *State* v. *Central Iowa Railway Co.*, 71

Iowa, 410, the rule is announced that, where a line of railroad has been built by aid of taxes levied for that purpose, the line in aid of which the tax was voted must be operated as a whole, and a portion thereof cannot be leased or operated separately to the injury of any locality on that line. A railroad company which avails itself of such aid assumes relations to the public different from those resulting from a mere private contract.

The majority opinion seeks to avoid the application of the above principle by yielding to an adroit but insidious "concession" of the Hubbells that the Des Moines Company must furnish reasonable and necessary terminal facilities to the St. Paul and Wabash Companies upon payment therefor of such reasonable sum as may be agreed upon, or in default of such agreement *"as may be fixed by the proper public tribunal."* This conclusion rests upon the erroneous assumption that the Des Moines Company is a union railway depot company or terminal company, and as such is under legal obligation to permit the use of its tracks and terminal facilities by any railway company entering the City of Des Moines upon reasonable terms, which if not agreed upon between the parties may be fixed by some proper public tribunal.

The Des Moines Company, however, was not organized under the Statutes of Iowa as a union railway depot company, or as a terminal company, with the obligations usually charged upon such companies to serve other railroads. The statutes of the state provide for only two kinds of railroad companies, namely:

(a) Corporations for the construction and operation of railways. (Title IX, Chap. 1, page 587 *et seq.*, Code of Iowa 1897.)

(b) Corporations for the construction and main-

tenance of union railway depot companies. (Title X, Chap. 5, page 748 *et seq.*, Code of Iowa 1897.)

In the case of *Morgan* v. *Des Moines Union Railway Company*, 113 Iowa, 561, the Supreme Court of Iowa held that the Des Moines Company was organized under the former of the above statutes, namely, the general railroad incorporation law of the state, and that it therefore had rights and duties measured by this statute and not by the union railway depot act. This decision, being the construction by the highest Court of the state of a state law as applied to the status of the Des Moines Company, is conclusive here.

There is no statute of the State of Iowa which requires one railway company to give the use of its railroad tracks or terminal facilities to another railway company. The sole statute bearing on the subject is Section 2116 of the Code of Iowa, 1897, page 751, which in substance requires connecting carriers to interchange and transport empty and loaded cars. The statute was so construed in *Chicago, Milwaukee and St. Paul Ry. Co.* v. *Iowa*, 233 U. S., 334, sustaining the construction given to it by the Supreme Court of Iowa in the same case, 152 Iowa, 317, 321. Such an obligation is, of course, wholly distinct from a duty to permit one railway company to use the tracks or terminals of another.

Section 3 of the Interstate Commerce Act, in providing for the interchange of traffic between connecting carriers, makes by express provision the same distinction in the clause reading:

> "But this shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

From the foregoing it follows that, if the proprietary companies have lost the equitable estates once existing

in them in the Des Moines terminals, they have no power by common law or statute to compel the Des Moines Company to give to them upon any terms the use of these terminals.

With such consequence resulting from any termination of the ownership in the Des Moines terminals originally existing in the proprietary companies, not only should their unintentional and "apparently harmless" acts never be interpreted as effecting a separation of such ownership from their other railway properties, but it should also be held that, even with design, they could not bring about such a result.

Hobbs v. *McLean*, 117 U. S., 567, 576.

IV.

THE ALLOTMENT OF SHARES OF CAPITAL STOCK OF THE DES MOINES COMPANY TO THE SEVERAL PROPRIETARY COMPANIES IN THE RELATIVE PROPORTIONS OF THEIR SEVERAL PROPRIETARY INTERESTS IN THE TRUST PROPERTIES AS FIXED BY THE CONTRACT OF JANUARY 2, 1882, WAS INTENDED TO EVIDENCE AND MEASURE THEIR SEVERAL UNDIVIDED ESTATES IN THE PROPERTY SO HELD BY SUCH CORPORATE TRUSTEE.

It is asserted by the Hubbells that the issuing of capital stock of the Des Moines Company to the proprietary companies was intended to represent in part the purchase price paid by the Des Moines Company for the conveyance to it of the beneficial interest of the proprietary companies in the Des Moines terminals, and is therefore inconsistent with the continuance of these equitable estates in the proprietary companies.

An analysis of the circumstances under which this capital stock was issued, the basis of its distribution and the limitations in its attributes and transferability will show quite a contrary intent.

To protect rights or conserve interests, a court of equity will always ignore form for substance. It is admittedly a legal fiction that regards the stockholders of a corporation as not in fact the owners of its corporate property, and when an instance arises in which it appears that shares of stock are not intended to evidence a thing of value separate and distinct from an aliquot interest or estate in the properties themselves of a corporation, a court of equity to protect such interests in corporate properties otherwise created and intended to be preserved will not hesitate to ignore the conventional status of such shares.

Judge Hook of the Court of Appeals has stated the principle clearly in his dissenting opinion in this case. He says:

> *"But the doctrine of a corporate entity separate and apart from the persons composing the corporation is after all a mere legal fiction established for convenience and to serve the ends of justice.* (Our italics.) It does not go beyond that. In equity the shell artificially assumed is not impermeable. The court will look through it and regard the kernel, and whenever justice requires will hold the stockholders as the corporation. That is being constantly done in equity in determining public rights as affected by the corporate association of particular individuals and the rights of the individuals among themselves and with respect to their organization." (Rec., 2123.)

That in this case the stock of the Des Moines Company was not intended to be issued as a substitute thing of value for the equitable estates of the proprietary companies in the terminal properties, but was intended to measure their respective aliquot shares in their equitable estate in common is evidenced by all the facts. Of this Judge Hook says:

> "After the conclusion is reached that the terminal

company had by gradual action thrown off its trust character and had become independent, attention is directed to the transactions in its stock. The power asserted by the individual defendants to control the terminal company and thereby to exclude the plaintiffs from the use of the terminals rests upon their possession of five-eighths of the issued capital stock. *There is, however, abundant proof that the stock of that company was intended only to represent the interests of railroad companies actually using the terminal facilities and as a method of apportionment among them. The stock was not intended as a source of personal or individual profit apart from railroad use. Stock ownership and terminal use were inseparable.* I know of no public policy or rule of law against such a status of corporate stock or its enforcement as between the parties who established it. If it were formally expressed in the corporate charter the world would have to take notice. But as between the parties themselves, those participating and having actual knowledge, internal evidence may disclose it. It should always be in mind that in this case there are no innocent purchasers relying upon public records. The contract of 1882 specified the proportional interests of the three original railroad companies and foreshadowed the organization of the terminal company to take the place of an individual trustee. *In* 1884 *the terminal company was organized for the expressed purpose of carrying out the contract.* My brothers see in the articles of incorporation some evidence of a departure from the trust and the beneficial relations, but it seems to me that *the intention to maintain them was asserted and reasserted as definitely and positively as words would permit.* (Our italics.) While, as customary, the charter made provision for a capital stock, the connection between the distribution and future ownership of such thereof as might be issued and the railroad use of the property was manifested not only in that instrument but afterwards in many ways by both the railroad companies and the terminal company." (Rec., 2120.)

The Des Moines Company was incorporated Decem-

ber 10, 1884 (Rec., 416), but no certificates of stock were issued until after the attempted amendments to its articles of incorporation made at the alleged stockholders' meeting of April 8, 1890. (Rec., 488.) It is a fact, however, that the legal issuing of stock took place under the agreement of May 10, 1889 (Rec., 479), which, as will hereafter appear, was intended to regulate in detail the user and distribute the cost of operation and other expenses of the terminal properties among the proprietary companies; and which also allotted the stock of the Des Moines Company to the proprietary companies in specific amounts and defined its attributes and the limitations on its transferability. It is well settled that the issuing of certificates is not essential to make stock outstanding.

Hawley v. *Upton*, 102 U. S., 316.

Farmers Mutual Telephone Co. v. *Howell*, 122 Iowa, 22.

Article 3 of the original articles of incorporation of the Des Moines Company provided that the capital stock of the corporation should be one million dollars to be divided into shares of $100 each to be paid in at such time as the board of directors may determine, and the board was authorized to receive in payment therefor the properties and franchises held by the St. Louis Company, the Northwestern Company, the Northern Company, James F. How and Grenville M. Dodge. (Rec., 420.)

At a meeting of the stockholders of the Des Moines Company, held on November 1, 1887, Article 3 was amended by making the capital stock two million dollars and again providing that the board of directors be authorized to receive in payment therefor the properties and franchises in the City of Des Moines, held by the above mentioned parties. (Rec., 1297-8.) At this meeting the board also adopted a resolution, offered by F. M. Hubbell, authorizing the issue of $800,000 of mortgage

bonds of the company, and it is to be noted that the execution of this mortgage was ratified by the stockholders of the Northwestern Company and of the St. Louis Company at meetings held respectively on January 2 and 3, 1890. (Rec., 474, 475.)

As a matter of fact stock of the Des Moines Company was never issued, to the proprietary companies, either in form or amount, or under circumstances, which could identify its issue in any way as a substituted consideration for the supposed conveyance to the Des Moines Company of the equitable estates of the proprietary companies in the terminal properties.

Stockholders' Meeting of the Des Moines Company Held March 31, 1888.

At a stockholders' meeting of the Des Moines Company, held March 31, 1888 (Rec., 476), it was recited that, for the cost of acquiring the terminal properties, the parties are entitled to the following amounts:

Wabash Company	$382,110.80
Grenville M. Dodge	74,088.01
Polk and Hubbell	2,000.00
Northwestern Company	3,058.40

It was therefore resolved that *in settlement of* said amounts:

382 bonds be issued to the purchasing committee of the Wabash Company
74 bonds to Grenville M. Dodge
2 bonds to Polk and Hubbell
3 bonds to the Northwestern Company.

These bonds were to be those to be issued under the mortgage of the Des Moines Company, dated November 1, 1887, and authorized by the resolution of the stockholders of the same date above referred to, and in due course the bonds above authorized were delivered to the several parties entitled to receive the same in reimbursement of their advances. (Rec., 459.)

These proceedings were all had in exact accord with the contract of January 2, 1882, which it will be remembered provided that the terminal properties should be permanently financed by the issue of mortgage bonds which were to be used *to reimburse* the several parties to the trust instrument in the "amount of their respective portions of the cost of said purchases and improvements." The temporary trustees, namely, the two railroad companies and the two individuals, were to severally convey the trust properties acquired by them to the new "*trustee* upon demand and reimbursement."

The capital stock of the Des Moines Company, under the resolutions adopted at the respective stockholders' meetings of the proprietary companies, held on November 5 and 8, 1887, was to be delivered with the bonds above provided for to the proprietary companies "in lieu for the money advanced" to purchase the terminal properties. From this it is quite evident that the parties intended such stock to represent their several equitable estates in the terminal properties, for, as above shown, the bonds of the Des Moines Company were made the means of completely reimbursing the temporary trustees for their advances, and the capital stock to be issued with them, pursuant to the above resolutions, could thus have office only as identifying the estates of the proprietors.

The agreement of May 10, 1889, making provision for the issue of this stock, gives it attributes to make effective the above intent. This agreement, the detail purposes of which are to be hereafter discussed in a further subdivision of this brief, had its inception in another resolution adopted at the stockholders' meeting of March 31, 1888, above referred to.

It was resolved that the three proprietary companies

should "pay the operating expenses, taxes and interest on bonds that are, or may be issued, after deducting an amount received from any other sources for rental, prorated on a wheelage basis," and it was further resolved that "Col. Blodgett be requested to prepare an agreement for thirty years from May 1, 1888, based upon the above resolution and covering in detail the conduct and operation of the Des Moines Union Railway Company, said agreement to be approved and executed by all the lines now holding an interest in the property." (Rec., 477-8.)

As the result of this resolution and further provisions of the same, to be hereafter commented upon, the agreement of May 10, 1889 (Rec., 479), was drafted and executed. Sections twenty-four and twenty-six of this agreement defined the characteristics of the shares of stock to be issued by the Des Moines Company, and by virtue of their provisions, such shares became in fact then legally outstanding. This is important to remember in considering the effect of the resolution relating to the issue of stock subsequently attempted to be adopted by the stockholders of the Des Moines Company at the illegal meeting held by them on April 8, 1890 (Rec., 494), at which an attempt was also made to amend the articles of incorporation.

Sections twenty-four and twenty-six of the agreement of May 10, 1889, carried out the understanding of the trust instrument, that the tenancy in common should be divided into aliquot estates, each of which should be at least one-quarter of the entire common estate. It will be remembered that, by the provisions of this trust instrument, the St. Louis Company was to have a one-half interest and the Northwestern and Northern Companies a one-quarter interest each in the trust properties. (Rec., 412.)

In Article 4 of the original articles of incorporation this understanding was recognized and given force by the proviso that four members of the board of directors were to be nominated by the Wabash Company (controlling the St. Louis Company), and two members by each the Northwestern Company and the Northern Company. (Rec., 421.)

Section twenty-six of the agreement of May 10, 1889, again protects the aliquot interests of the proprietary companies on the above basis in the common estate. It recites that the second parties "are entitled to the shares of stock of said first party in the following amounts, or proportions, to wit:

The St. Louis Company to one-half said shares.

The Northwestern Company to one-quarter said shares, and the Northern Company to one-quarter said shares."

It then provides, "that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of $100 each, the same shall be issued and held as follows, to wit:

One certificate of ten thousand shares shall be issued and delivered to the 'St. Louis Company.'

One certificate for five thousand shares shall be issued and delivered to the 'Northern Company,' and

One certificate of five thousand shares shall be issued and delivered to the 'Northwestern Company,' and *all of said certificates shall express upon their face that they are not transferable in whole or in part without the consent in writing of all the parties of the second part to this agreement.*" * * * (Rec., 487.)

Here was obviously shown the intent to evidence the ownership of the several estates of the respective par-

ties by the capital stock of the Des Moines Company and not, as contended by counsel for the defendants, to artificially substitute rights *in personam* identified with shares in a corporation as the sole prerogatives of the stockholders from the rights *in rem*, which theretofore were vested in them, and which, the Court of Appeals has held, they never intended to abrogate or surrender.

The issuing of shares or certificates has no magic in and of itself to alter the status of the proprietors of a corporation in their relation to its properties. Intent, as determined by what the parties in fact did in such a transaction, will be the controlling factor in an analysis of their interests. The distribution then of stock in single blocks among the parties in the proportions of their several estates, with attributes of alienation limited to unanimous consent to the end that the common estate should continue in the proprietors as an entity, was but the means of evidencing, through the conventions of a corporation, the titles of the several parties in the trust properties. Judge Hook says of this:

> "There is, however, abundant proof that the stock of that Company (Des Moines Company) was intended only to represent the interests of the Railroad Companies actually using the terminal properties, and as a method of apportionment among them. The stock was not intended as a source of personal or individual profit apart from railroad use. Stock ownership and terminal use were inseparable." (Rec., 2120.)

The above idea is emphasized by the provisions of Section twenty-four of this agreement of May 10, 1889. It provides:

> "That the 'St. Louis Company' as the owner of one-half of the capital stock of the 'Des Moines Company' may sell and transfer one-half of said stock, or one-quarter of the whole to such railway company as may be acceptable to a majority of the

parties of the second part; *in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of the second part.* Only as aforesaid shall other railroad companies be admitted to the use of the property of the first party, without the consent of all of the parties of the second part, and the compensation to be paid by any other railroad company, or person not a party hereto (or provided for as aforesaid), for the use of said depot or terminal facilities, or any part thereof, shall be determined by the Board of Directors of said first party." (Rec., 487.)

Note that here the St. Louis Company may sell a one-quarter interest (no more and no less), that is one of the aliquot estates in the common tenancy with the consent of the majority of the parties, and that with the transfer, under such circumstances, of the stock representing such aliquot estate, is to pass as a concomitant, a right of user on a parity with the original proprietors who, as it will hereafter appear in an analysis of the agreement of May 10, 1889, paid no rent for the use of their own premises, and received in the reduction of the cost of operation of the terminal properties, revenue derived from outside companies who were not stockholders and were thus not proprietors in the enterprise. *Thus, the prerogatives of a tenant in common would be vested in each successive railroad stockholder acquiring its stock as provided in Section twenty-four.*

From the foregoing it appears that as the result of the action taken at the meeting of the stockholders of the Des Moines Company held March 31, 1888, *and the delivery pursuant thereto of bonds of the Des Moines Company to reimburse those who had advanced the moneys to acquire the terminal properties, and of the execution of the agreement of May* 10, 1889, *between the*

Des Moines Company and the three proprietary companies, they and their corporate trustee had consummated the plan contained in the contract of January 2, 1882, to organize a corporate trustee whose bonds should be used to reimburse them for advances made on account of the terminal properties and whose stock was to be issued as evidencing their respective equitable estates in the common property to which such trustee was to take title.

Stockholders' meeting of the Des Moines Company of April 8, 1890.

In the latter part of 1888, or in 1889—in any event, sometime after the passing of the resolution of March 31, 1888, A. B. Cummins became the personal counsel of the Hubbells and the Hubbells' interests, and also the General Counsel of the Des Moines Company. (Rec., 1204, 1211, 1233, 1236.) Although General Dodge was at the time nominally the president of the Des Moines Company, he resided at New York, and the whole management of the Des Moines Company was left to Hubbell, who, in addition to being an officer and an agent of the same, was regarded as the confidential agent of the Wabash Company at Des Moines. (Rec., 132-136, 233.)

In January, 1890, Mr. Cummins, acting ostensibly on his own initiative and independently of Hubbell, conceived the idea that certain amendments should be made to the articles of the Des Moines Company. He had had nothing to do with the drafting of the contract of January 2, 1882, or with the drafting or adoption in 1884 of the articles of the Des Moines Company, and he testified that, while he was familiar with the contract of May 10, 1889, he had had nothing to do with the negotiations and formulation of this agreement. (Rec., 1205.)

At a meeting of the stockholders of the Des Moines Company held January 3, 1890, at the instance of Cummins the question of amending its articles and of issuing stock for the purchase price of the properties was referred to Attorneys Blodgett and Cummins. (Rec., 1307.) No conference, however, took place between Blodgett and Cummins, and Cummins alone redrafted the proposed amendments to the articles. In a letter to Blodgett dated January 22, 1890, he urges the necessity of a redraft of the articles (Rec., 1210), and in a letter to Dodge dated January 22, 1890, he writes that

> "you will observe that these amendments are directed to two purposes: First, to clear up the ambiguity and uncertainty with respect to the *amount* of stock to be issued on account of the original purchase of the property. Second, to enable the Des Moines Union Railway Company to act in all matters without the previous authority of three corporations." (Rec., 1212.)

In addition to preparing the drafts of amendments to the articles, Cummins also drafted all resolutions, planned the procedure for the stockholders' meeting of April 8, 1890, and as he said parcelled out the resolutions among the members who were present to be offered from time to time. (Rec., 1217.)

The record of the meeting shows that among others he attempted to accomplish three things:

> *First.* To distribute among the proprietary companies, instead of two million dollars of capital stock to represent their respective interests in the terminal properties, as provided by the agreement of May 10, 1889, four hundred thousand dollars of stock for this purpose, to be divided in exactly the same proportions as provided by said agreement.
>
> In this respect he still left intact the characteristics and the limitations relating to the issue of the capital stock, as provided in Sections twenty-six and twenty-four of the agreement of May 10, 1889. The remainder of the stock in excess of the four hun-

dred thousand dollars was to be issued only by authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all of the stock theretofore issued.

Second. To alter aliquot interests in the common properties from quarters to eighths. In this respect it required the votes of *more* than seven-eighths of all the stock theretofore issued to elect a director; but "to authorize the execution of mortgages, to issue bonds, to enter into contracts, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other things that may be proper or necessary for the corporation to do * * * except the ordinary operation of the property, the board of directors can act only upon the unanimous vote of the eight members thereof." Moreover, a vote of more than seven-eighths of all the stock was required to amend the articles. (Rec., 492-3.)

Third. To repeal, strike out and expunge the proceedings of the meeting of the incorporators held December 10, 1884 (being the meeting at which the original articles were adopted), "with certain preambles including a contract executed on the 2nd day of January, 1882." (Rec., 494.)

Before discussing the significance of the above amendments, attention should be called to the fact that the so-called stockholders' meeting, at which they were supposed to have been adopted, was for the reasons hereafter shown, undoubtedly illegal. Of this the majority opinion of the Court of Appeals says that "the claim that the amendments were never properly adopted is well taken, but not open to the complainants," and the reason assigned for the latter conclusion is that the proprietary companies were present at this meeting by authorized agents, and that under such circumstances the *legally* ineffectual attempts to amend articles and pass resolutions amounted in fact to a contractual understanding between them, creating a situation inconsistent with the contentions now advanced by the complainants.

In weighing the reasoning by which such conclusion was reached, it is to be remembered that the interests at issue and supposed to have been disposed of at this meeting, in the manner above stated, were equitable estates in real property vested in the proprietary companies to the same extent from the standpoint of being actually owned and possessed property, as if the legal title to such real estate, as well as the beneficial interest therein, had stood in their respective names. It is beyond question that property rights of such character can be transferred, released or surrendered in the instance of corporations only by corporate action, evidenced by some form of instrument of assignment. In the case of *Brown* v. *Fletcher* (*supra*) this Court has said that they passed by deed.

In the light of the above principle, the legality of the stockholders' meeting of April 8, 1890, is important for the purpose of determining what in fact could have legally taken place there affecting the *property* rights of the proprietary companies.

The majority opinion of the Court of Appeals says:

> "When the corporation undertook to amend its fundamental law, that could be legally done only by the stockholders. There was no stock issued; there was only a right to stock through the contract of 1889." (Rec., 2110.)

The minutes of the meeting show as present in person How, Hayes, F. M. Hubbell, Martin, F. C. Hubbell and Cummins as representing one share each and by proxy, G. M. Dodge by L. M. Martin, representing one share and W. H. Blodgett by J. F. How, representing one share. It is then recited that:

> "There was also present the 'Northwestern Company' by F. M. Hubbell, president.
> The 'Northern Company' by A. B. Cummins, president.

The 'St. Louis Company' by J. F. How, president."

It was then "determined that all the stockholders of said company were present either in person or by proxy duly filed with the secretary of the company." (Rec., 489.)

F. M. Hubbell testified that neither the stockholders nor directors of any proprietary company had adopted any resolution or had issued any proxy authorizing anyone to be present at such stockholders' meeting of April 8, 1890, or to vote thereat any share or shares of stock of such company. (Rec., 1165-1169.) It is thus apparent that, so far as corporate action of the Des Moines Company is concerned, the resolutions offered at such stockholders' meeting of April 8, 1890, purporting to amend its articles and providing for the issue of its capital stock, were not legally adopted.

But the factors that made the corporate action of the Des Moines Company illegal, also show want of corporate action on the part of the proprietary companies, sufficient to surrender or release to their corporate trustee, their respective estates in common in the terminal properties; for without yet considering what the parties intended to accomplish at the stockholders' meeting of April 8, 1890, it is very clear that Hubbell, Cummins and How could not, either individually or by concerted action, convey away the several estates of their principals. *These principals could alone do this through execution of their own deeds of assignment.* Furthermore, in the sense of severally representing their own companies in the making of a supposed contract at this meeting, these parties could have acted only in an oral manner, for the record in writing there made, even if signed by the parties present, could only purport to represent the sole corporate action of the Des Moines Company.

The intent of the parties in amending the articles of incorporation of the Des Moines Company and the result thereby accomplished, irrespective of the legality of the stockholders' meeting.

(1) *The status of the parties.*

There were no innocent purchasers for value in the transactions had at the so-called stockholders' meeting of April 8, 1890. The relations of the proprietary companies with the Des Moines Company, was not contractual, for the Des Moines Company was an active trustee created by the proprietary companies to conserve their several equitable estates. Likewise, in respect of protecting their common title to and the common use of the terminal properties, each cotenant stood in its relations with its other cotenants in a noncontractual status, for as to their common vested interests, the proprietary companies were made by law reciprocal trustees.

Rothwell v. *Dewees*, 2 Black, 613, at 618.
Bissell v. *Foss*, 114 U. S., 252, at 259.
Turner v. *Sawyer*, 150 U. S., 578, at 586.
Starkweather v. *Jenner*, 216 U. S., 524, at 528.

Thus, as a result of this trust relationship, no cotenant could take advantage of inadvertent or legally insufficient acts of another cotenant to the derogation of its ownership or right of use in the common properties.

It follows therefore that, if the proprietary companies came to the above stockholders' meeting with their rights in the above respect intact, these rights could have been parted with in favor of the Des Moines Company, or of one cotenant as against another only by an act of clear intent and some form of separate or con-

certed assignment in writing, based upon due corporate action and an actual consideration.

In the absence of the above facts, no estoppel could arise in favor of one as against the others, and if these facts existed the doctrine of estoppel to protect an altered status of interests need not be invoked.

That all of the above essentials of intent and action were wanting in the transactions of the parties will appear upon analysis thereof.

(2) *The reasons assigned by Cummins for the making of the amendments.*

These reasons were threefold:

(1) He thought it "very wise to have it so arranged that every railroad that might come into the depot in the future might become the owner of one-eighth of the capital stock." (Rec., 1208.)

(It is to be remembered in this respect that the agreement of May 10, 1889, authorized the sale of proprietary interests only in quarters.)

(2) He thought that two millions of capital stock should not be distributed among the stockholders. (Rec., 1208.)

(3) He thought that the articles of incorporation were inconsistent with the contract of January 2, 1882. In this respect he had told the parties "that the contract provided for a title of the property in trust for the three companies which had signed it and for the joint use and occupation" of the terminal properties. (Rec., 1209.) He was therefore of the opinion that in view of the conveyances which had been made to the Des Moines Company and the reimbursement in bonds, and the provision in its articles "for the issuance of capital stock for the remainder of the purchase price, if any, that it was imperative to clear up the title and get rid of any question of doubt respecting the ownership of the Des Moines Union Railway Company and its right to manage its own property. These were the reasons which led up to my suggestion that there ought to be an amendment to the articles of incorporation

that would put this company, beyond any question, in the ownership and control of its property. * * *" (Rec., 1210.)

In other words, the situation may be summed up as follows:

The personal counsel for the Hubbell interests, at a time when Hubbell had already purchased from the Wabash purchasing committee a two-eighths interest in the stock of the Des Moines Company and was engaged in negotiating for the purchase of a further one-eighth interest in the same, having reached the conclusion that trust estates were undoubtedly provided for by the proprietary companies under the contract of January 2, 1882, and having the belief that the Des Moines Company might have taken title to the terminal properties for the purpose of carrying out these trusts, decided that it would be advisable to alter the articles of the trustee by a "nunc pro tunc" declaration of intent for the purpose of causing it to repudiate retroactively these very obligations, which were the sole excuse for its existence.

That is to say, having speculated upon the possible existence of trust estates in the proprietary companies, he intended to remove the cloud in this respect upon the titles of the trustee, the Des Moines Company, by destroying these estates without a penny of consideration to the beneficiaries thereof, without any authority from them, without the execution by them of any instrument of assignment and alone through this form of corporate action of the trustee.

The evidence of Mr. Cummins, relating to the above subject matters is equivocal. He admits on cross-examination that the trust had never been abrogated, except (as he puts it), "as in the original articles themselves, or the amendment" later made, "increasing the capital stock to two million dollars." (Rec., 1241.) Yet

he repeatedly states that the amendments to the articles attempted to be made at the meeting of April 8, 1890, were not intended to affect titles. "That," he said, "had been effected before." (Rec., 1247.) While the trust was not entirely abrogated (whatever this may mean), the original articles, the conveyances made to the Des Moines Company, and the conduct of the parties, in his view, had partially brought this about. (Rec., 1248.) He was clearing up uncertainties in this respect as he would "in a bill to quiet title to property upon which I might think there was a cloud." (Rec., 1258.) The trust created by the contract of 1882 was destroyed in part, in his opinion, by the articles of incorporation. (Rec., 1244.)

He never stated what part of the trust estate was left or what was the value of this remainder which he proposed to destroy without consideration to the beneficiaries through a repudiation of the same by the corporate action of the trustee.

If the foregoing was his intent, was not his letter of January 7, 1890 (Rec., 1211), to Dodge somewhat disingenuous in stating that the amendments were intended "to clear up the ambiguity and uncertainty with respect to the *amount* of stock to be issued on account of the original purchase of the company, and to enable the Des Moines Union Railway Company to act in all matters without previous authority of three corporations."

There is no evidence in the record that the proprietary companies or their authorized agents had the slightest idea that the proceedings of April 8, 1890, were intended to terminate a trust or to effect a surrender of trust estates.

Indeed to suggest such an intent is to insult intelligence, for if Hubbell, Cummins and How intended and

tried to surrender at the stockholders' meeting of April 8, 1890, the equitable estates of their principals they were engaged in perpetrating a fraud upon them; since, if this was the nature of the transaction, the proprietary companies not only did not receive a dollar of consideration in exchange for their interests, but they also gave up the distribution among themselves of the entire capital stock of their trustee, namely $2,000,000, and accepted in lieu thereof, only one-fifth of such stock, namely $400,000, leaving the remainder to be sold to other railroad companies, thus reducing their stockholding interests in the property, if this was all they were to have, to a relatively small proportion of what was originally intended.

The result of the amendments, assuming their validity.

(1) *The amendment dividing aliquot interests into eighths instead of quarters.*

This amendment continues that attribute of the stock of the Des Moines Company consonant with the intent of the parties that stock should represent proprietorship in the terminal properties, for it is to be remembered that under the agreement of May 10, 1869, provision was made for the admission of railroad companies as outsiders to the use of the terminals without the ownership of stock, with the proviso that they should pay rental, which was to be used in reducing the cost of operation among the proprietary companies. If a railroad company, holding an eighth interest in the capital stock of the Des Moines Company, was to acquire thereby no rights of user or proprietorship in the terminal properties, because thereof, why the comment of Mr. Cummins that it would be wise to permit railroads to come in upon the ownership of eighths, instead of quarters?

Unanimous consent of the proprietors was required before stock could be purchased by another railroad company, and likewise this unanimous consent was required before a railroad company, without capital stock, could be permitted to use the terminals. If stock holding as such brought no prerogatives of ownership, why should it be sold to newcomers only in eighths, instead of in single shares.

(2) *Amendment authorizing the issue of four hundred thousand dollars of capital stock, instead of two million dollars, in proportions identical with those provided for in the agreement of May* 10, 1889.

This amendment left intact, both as to apportionment and characteristics, all the attributes of the capital stock of the Des Moines Company contemplated in the contract of January 2, 1882, in the original articles adopted December 10, 1884, and provided for in detail in the agreement of May 10, 1889, with one significant difference, namely, if the allotment of stock to every proprietary company was not to represent its equitable estate in the terminal properties, the stockholders were voluntarily or unwittingly, *and without consideration*, surrendering the right to have distributed among them the entire capital stock of the Des Moines Company, and were accepting in lieu thereof, an aggregate distribution among them of only one-fifth of its capital stock, with the proviso that the remaining four-fifths might eventually be sold, presumably to other railroad companies. Thus, if they were only stockholders, and not tenants entitled to a common use of the properties, their proportionate interest in the terminals was reduced from one-quarters to possibly one-twentieths.

(3) *Article* 15 *expunging the proceedings of the meeting of December* 10, 1884. (Rec., 494.)

It is difficult to understand what was expected to be accomplished by the so-called expunging of the proceedings of the meeting of incorporators held six years earlier. Assuming that it is possible to wipe resolutions from records, corporate actions had as a result thereof, will not thereby be given an altered significance.

Intent cannot be made retroactive.

But irrespective of intent, the rule is elementary that existing rights are not affected by changes in the charter or articles of a corporation.

Woodruff v. *Trapnall,* 10 How. (U. S.), 190.
Curran v. *State Bank of Arkansas,* 15 How. (U. S.), 304.
Hawthorne v. *California,* 2 Wall. (U. S.), 10.

If the proprietary companies did not intend to and did not in fact convey their equitable estates to the Des Moines Company by the deeds of the temporary trustees, executed and delivered to it in 1887 and 1888, the action had at the meeting of the Des Moines Company on April 8, 1890, surely did not effect such conveyances. If, on the other hand, Article 15 was intended to be prospective in effect, for the purpose of removing a cloud on titles, it was equally ineffectual. Moreover, it is inconceivable that, if such was the intent of the parties at the time it was adopted, they did not pursue the obviously effective course of executing mutual quitclaim deeds of their equitable estates to the Des Moines Company. To be sure, one cannot understand what would prompt them to do so under an arrangement which would not give them a dollar of consideration for the assignment of their property rights.

In contrast with any such possible corporate action, by amended Article 14, they "approved, ratified and confirmed" in their full and original significance, the conveyances made by the temporary trustees to the permanent trustee, and the issuance of the mortgage bonds in reimbursement therefor, thus reiterating all that they intended to do by virtue of the resolutions of January 1, 1885, and of November 5 and 8, 1887, and the deeds of conveyance made pursuant thereto.

(4) *The resolution adopted fixing the value of the terminal properties at* $861,257.21, *as of the date of the conveyance thereof, instead of* $461,257.21, *being the actual cost thereof as recited at the meeting of stockholders of March* 31, 1888, *and the issuing of* $400,000.00 *of capital stock upon the basis of the above value.* (Rec., 494.)

After the amendments to the articles of incorporation were adopted, Mr. Cummins offered a resolution which was unanimously adopted, reciting in substance that there was some uncertainty in the records of the company respecting the purchase price of the terminal property; that it was agreed that the same should be purchased at its fair value, payable partly in mortgage bonds and partly in capital stock; that it was agreed that said property was fairly worth the sum of $861,257.21 (that is $400,000 more than the aggregate amount recited in the resolution of March 31, 1888 (Rec., 476), above referred to, to be due the several parties therein named "for money expended for the property acquired for this company," and for which bonds had been delivered in reimbursement), of which purchase price the purchasing committee of the Wabash Company, as the real owner of the St. Louis Company, is entitled to $470,110.80, the

Northwestern Company $215,058.40, the Northern Company to $100,000, G. M. Dodge to $74,088.01 and Polk and Hubbell to $2,000; that by a settlement theretofore made, the purchasing committee has received 270 bonds of $1,000 each, G. M. Dodge 74 bonds, Polk and Hubbell 2 bonds and the Northwestern Company 115 bonds, making in all 461 bonds; that as a further part of said purchase price, the Des Moines Company has paid to the purchasing committee, G. M. Dodge and the Northwestern Company $257.21; that there still remains $400,000 of the purchase price yet unpaid to be paid in capital stock; that by agreement between the several persons and corporations owning the property prior to the transfer so much of the purchase price as was to be paid in capital stock was to be divided one-half to the St. Louis Company, one-quarter to the Northern Company and one-quarter to the Northwestern Company; that the articles have been amended to conform to the true intent of the several parties.

It was thereupon resolved:

First. That the purchase price of the property originally acquired, be fixed at $861,257.21.

Second. That the payment of a portion of said purchase price, as above set forth, be confirmed and approved.

Third. That, to complete the payment of such purchase price, one-half of the stock be issued to the purchasing committee, one-quarter to the Northern Company and one-quarter to the Northwestern Company.

Fourth. That proceedings heretofore had, respecting the issuance of capital stock so far as said proceedings are inconsistent with the amendments to the articles of incorporation or with this resolution, are hereby modified.

Certain things are obvious from the foregoing resolution. It is a colorable recital of facts, made in conventional form, to give the stock interests of the several

proprietary companies theretofore issued under the agreement of May 10, 1889, an appearance of being fully paid and of being issued as a substitute for the properties conveyed to the Des Moines Company.

The arbitrary *fixing* of the purchase price of the property *"as of the date of the conveyance thereof,"* at $861,257.21, instead of $461,257.21, flies in the face of the settlement made between the proprietary companies and the Des Moines Company, pursuant to the resolution of March 31, 1888 (Rec., 476), in which it appeared that the cost of the properties aggregated $461,257.21, and wherein it was resolved, as provided for by the contract of January 2, 1882, that the temporary trustees should be reimbursed for this amount in the proportion of their several advances by the mortgage bonds of the Des Moines Company. The reimbursement thus provided for had taken place, and the transactions identified with the transfer of title to the trustee company were a concluded subject matter.

The fixing of such purchase price at four hundred thousand dollars in excess of the amount for which the temporary trustees were reimbursed in the bonds of the Des Moines Company, and the identification of the capital stock of such company as a consideration paid to the proprietary companies to represent the values of such excess, is also directly contrary to the resolutions adopted on November 5th and on November 8, 1887, by the proprietary companies, providing that the stock of the Des Moines Company should be transferred together with its bonds "in lieu for the money advanced," to purchase the terminal properties and the consummation of this proviso by the issuing of stock pursuant thereto under the agreement of May 10, 1889.

The recitals therefore, above summarized from the

resolution adopted April 8, 1890, are disingenuous and contrary to fact. Whatever their intent be, they must have been ineffectual, for they could not recall a concluded transaction and manufacture corporate assets for stock where none had theretofore existed.

Moreover, that the scheme was disingenuous, and that the purchase price of the property was artificially fixed for the purpose of giving the capital stock to be issued, an appearance of being fully paid, Mr. Cummins himself expressly states. He found that there were 461 bonds outstanding and he added $400,000 to the actual cost of the terminal properties *as of the date of the conveyance thereof,* because he "thought it would *stand* $400,000 without creating any liability upon the part of those who held it to make good for unpaid stock, if the company should get into trouble and fall into the hands of a receiver." (Rec., 1241.) Referring to the equity above actual cost, he said:

> "Of course I understand it couldn't have sold for $400,000 at that time." (Rec., 1240-1.)

The ineffectuality of the resolution, however, upon the theory upon which it was based, is exposed in the distribution of stock in the original proportions contemplated by the trust instrument, namely, in one-half and one-quarters and not on what could have been the only theory of adding stock to bonds to make up an increased purchase price, namely, by prorating stock in the same ratio that bonds were distributed on the assumption that each party, conveying property to the Des Moines Company, should receive his pro rata share of the increased value, representing the purchase price to the Des Moines Company, of such property over and above the actual cost of the same, paid for by the bonds already delivered to him for purposes of reimbursement.

The foregoing amendments could not affect the con-

veyance to the Des Moines Company of the equitable estates of the proprietary companies, which had theretofore continued to be vested in them, for the Des Moines Company as a trustee could not by its own corporate process repudiate or destroy the trust estates. Independent corporate action on the part of the proprietary companies could alone produce such a result. *And as hitherto stated, after the conveyances made by the temporary trustees to the Des Moines Company as the permanent trustee of the trust properties, in the fall of* 1887 *and the winter of* 1888, *no deeds, conveyances or assignments of any character were ever made by the proprietary companies, or any of them, to the Des Moines Company of any of their interests in the trust properties and no corporate action for this purpose was ever thereafter had by any of them.*

It is difficult to appreciate how these several companies could be legally present at a stockholders' meeting through the agencies of the above individuals, but, without respect to this query, it is beyond question that any action taken by these persons at such stockholders' meeting of the Des Moines Company must be regarded as identified alone with *its* corporate activities.

Whatever their intent and in whatever capacity each of them may have appeared at such stockholders' meeting, it was not within their power, either by individual or concurrent action, to convey away, release or alter the status of the respective equitable estates in the terminal properties then existing in the proprietary companies.

It is fitting to conclude this subdivision with the statement that Hubbell testified repeatedly to the fact that he never regarded the amendments, supposed to have been made at the stockholders' meeting of April 8, 1890, as having any effect on the title to property or on the value

of the stock. (Rec., 1081.) He relied upon the deeds made by the temporary trustees to the Des Moines Company, the original articles of incorporation, and the agreement of May 10, 1889, which he construed as a lease, as establishing in the Des Moines Company the beneficial interests which gave his stock holdings value. (Rec., 1075, 1083.)

(5) *The amendments to the articles were not published so as effectively to eliminate the contract of January 2, 1882, from the original articles of incorporation.*

Finally and wholly apart from all other infirmities in the alleged proceedings for the amendment of the articles of incorporation, we insist that the proceedings taken were wholly ineffectual to discharge the Des Moines Company from its charter obligations to observe the trust created by the contract of January 2, 1882, by virtue of the incorporation of said contract in its articles as a part of its organic law.

By Chapter 88 of the acts of assembly of Iowa of 1888, in force April 8, 1890, it is provided:

> "That any of the provisions of the Articles of Incorporation may be changed at any annual meeting of the stockholders or special meeting called for that purpose; but said changes shall not be *valid* unless recorded and *published* as the original articles are required to be; and said changes in the articles need only be signed and acknowledged by the officers of said corporation."

Pursuant to the above provision, the Des Moines Company published notice of the amendments to its articles, and this published notice, which appears in the record as Exhibit 614 (Rec., 2010), contains no reference whatever to the new article 2, supposed to be substituted in place of the original article 2, which contained the provision that

"All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract (recited in the preamble of the articles), entered into on the 2nd day of January, A. D. 1882."

We submit, therefore, that the above provision of the original articles is in full force and effect, and has been in no manner or to no extent impaired by the supposed amendments of April 8, 1890.

The above conclusion is fortified by what the Supreme Court of Iowa has said respecting the effect of these amended articles. In *Morgan* v. *Des Moines Union Railway Company* (the Des Moines Company here), 113 Ia., 561, the question of the powers of that company was in issue. The court, after quoting article 2 of the original articles, states:

"These articles were afterwards amended, but in no way was the language set out qualified in the amendment."

It is also to be noted that Judge Wade of the District Court, in referring to the amendment to the articles of incorporation, says:

"It does not appear that it was intended to affect any right then existing, and even if such intention existed on the part of anyone, it was not manifest, and I find nothing which would give it effect." (Rec., 2047.)

The independent transactions of F. M. Hubbell in respect of the trust properties.

That it was farthest from the intent of the purchasing committee or of the defendants to repudiate or destroy the trust estates, is demonstrated by the contemporaneous transactions taking place between Hubbell and the purchasing committee, set out in full in the third subdivision of the statement of facts, and now to be commented upon.

The above transactions resulted in two successive purchases by Hubbell from the purchasing committee of the Wabash Company of first, a quarter interest in the stock of the Des Moines Company, of which General Dodge took one-half, thus vesting in each of these parties an eighth interest in such stock, and second, a further purchase by Hubbell from the purchasing committee of an eighth of the total amount of stock of the Des Moines Company, thus leaving the purchasing committee of the Wabash Company with only an eighth interest in the Des Moines Company, instead of its original one-half.

In considering the significance of these transactions, which thus resulted in the transfer of stock ownership, it is very important to note that Dodge and Hubbell became but the channel by which the one-eighth interest, acquired by Dodge, and the two-eighths interest acquired by Hubbell, were transferred at the inception of its existence, to the consolidated corporation composed of the union of the Northern and Northwestern Companies and controlled by Hubbell and Dodge, Hubbell owning approximately six thousand out of ten thousand shares of this company. Thus, these transactions were not the source of the five-eighths stock holding interest which Hubbell now has in the Des Moines Company and upon which he bases his claim to control the corporation.

The foregoing is important in a determination of what both Hubbell and Ashley, in their negotiations, understood to be the nature of the property interests evidenced by the capital stock of the Des Moines Company. The correspondence and transactions of the parties, relating to these stock transfers, is set out in full in subdivision III of the statement of facts and particular attention is called to the same.

On June 12, 1888, Hubbell wrote Ashley, asking permission to offer for sale a quarter interest in the Des

Moines Company to parties making inquiry of him. (Rec., 1059.) On June 16, 1888, Ashley replied stating that he thought the purchasing committee would be glad to sell a one-quarter interest, but that he had always supposed "that it would be necessary to confine the sale to such railway companies as could be interested in the station." He mentioned the Chicago and North Western Ry. Company and further said:

> "was there not an understanding or agreement as to the sale of the stock when the terminal company was formed and would it not be prejudicial to the interest of the whole to part with the stock to outsiders." (Rec., 1059.)

On June 18, 1888, Hubbell replied:

> "I agree with you that the sale of a quarter interest in the stock of the terminal company should be made only to a railway company, who will join with the Wabash in making a contract with the Des Moines Union, guaranteeing the interest upon the bonds and operating expenses, etc. * * * I understand it, as you do, that the stock cannot be sold without consent of the different railroad companies who now form the Terminal Company." (Rec., 1060.)

At this juncture it is at least clear that Hubbell was working in harmony with the conception that stock could only be sold in one-quarter interests and must eventually be held by railroad companies who would thereby enter the terminal enterprise on a parity with the original proprietors. This idea was in exact harmony with the intention constant with the proprietary companies, that stock should be identified with ownership and therefore should represent an aliquot estate in the tenancy in common.

Later in the year 1888, Hubbell unsuccessfully attempted to persuade the purchasing committee to surrender a one-quarter interest of the stock to the Des

Moines Company, presumably to enable that company to sell the aliquot portion of the estate represented by it to another railroad company. In February, 1890, Hubbell obtained from Ashley an option to buy $135,000 of the bonds and a one-quarter interest in the capital stock of the Des Moines Company for $135,000 (Rec., 1339), and as a result of this option, Dodge and he acquired from the purchasing committee each an eighth interest in the stock of the Des Moines Company. (Rec., 1601.)

Memoranda of agreement in identical form, made between the purchasing committee and Hubbell and Dodge respectively, relating to these one-eighth stock transfers, are very important. This memorandum recites that in the articles of incorporation of the Des Moines Company, it is provided that the Wabash Company shall nominate four directors; that the stock of the Des Moines Company is now held by different parties and in different proportions from what it was when said articles were adopted, and that it was agreed therefore, between the purchasing committee and Hubbell (and Dodge) who had acquired a one-eighth ownership of the stock of the Des Moines Company that the purchasing committee would consent to such change in the articles of the Des Moines Company as would permit one director to be nominated by any person or corporation holding one-eighth of the stock of the Des Moines Company. (Rec., 1601.)

In other words, the parties controlling the three proprietary companies had agreed that thereafter aliquot estates in the common tenancy might be transferred in eighths, instead of quarters. This is what was cared for as before shown in the amendments made in the articles of the Des Moines Company.

In the last transaction had between Hubbell and the purchasing committee, it conclusively appears that both

parties always understood ownership of stock to be identical with ownership of property, and that in this respect, an eighth interest would be sufficient to represent a proprietorship, for they expressly said so.

At the time of the foregoing transactions Hubbell began negotiating with the purchasing committee of the Wabash for the purchase of an additional one-eighth share of its interest in the Des Moines Company. On April 1, 1890, he wrote Ashley, asking the terms upon which such one-eighth interest could be purchased. (Rec., 1061.) On April 5, 1890, Ashley replied, giving his price with this statement contained in his letter:

> "IT MUST BE UNDERSTOOD, OF COURSE, THAT A ONE-EIGHTH INTEREST IN THE CAPITAL STOCK SHALL BE SUFFICIENT TO REPRESENT A PROPRIETORSHIP IN THE COMPANY ACCORDING TO THE UNDERSTANDING WE HAD WHEN YOU WERE HERE." (Rec., 1063.)

On these terms Hubbell consummated the purchase of the additional one-eighth interest in the Des Moines Company. When certificates of stock were eventually issued by the Des Moines Company a one-eighth interest was issued to Hubbell, a one-eighth to Dodge, and a few months later an additional one-eighth was transferred to Hubbell; and as before stated, on the consolidation of the Northern and Northwestern Companies on October 12, 1891, these two parties transferred their interest in the Des Moines Company to the consolidated company, thereby giving that company with the original two one-quarter interests, derived from its constituent companies, a seven-eighths interest in the estate in common. (Rec., 1461.)

It is contended by counsel for the defendants that the sale by the purchasing committee of an aliquot portion of its stock in the Des Moines Company to individuals, represents an anomaly in the contention that stock

was intended to evidence proprietorship in the trust properties, and that, therefore, the purchasing committee perpetrated a disingenuous transaction upon Hubbell. The answer to this proposition is very clear. It is true that the scheme contemplated, that railroads alone could be proprietors in the common enterprise, as is shown by Section twenty-four of the agreement of May 10, 1889, and could only become such upon unanimous consent. Still this is not to say that, with all parties agreeing and having full knowledge of the situation, Hubbell could not have been made a proprietor to the extent to which persons, as distinguished from railroads, might be able to benefit thereby. *It is to be remembered that the character of the beneficial interest that Hubbell and Dodge acquired in the stock transferred to them, is not on trial and should have no bearing or influence in this case. Hubbell presumably wished to acquire such stock for a sale at a profit to other railroad companies who might seek to use the terminals, and he and Dodge in fact became merely the channel by which they did transfer at a profit their respective interests to the proprietary company controlled by them; but whether or no the transfers of stock to Hubbell and Dodge were anomalous in the sense that there could not be vested in them as individuals that character of beneficial interest in the common estate which could only be enjoyed by railroad companies, it is beyond question that this anomaly had no equivocation of a character that could possibly destroy the proprietary estate of the purchasing committee as the successor of the St. Louis Company, as long as it was expressly agreed between the parties "that a one-eighth interest in the capital stock shall be sufficient to represent a proprietorship in the company."* (Rec., 1603.)

It is appropriate to conclude this subdivision by calling attention to the annual reports that were made by

the Des Moines Company for purposes of taxation to the executive council of the State of Iowa, on December 31, 1888, 1889 and 1890, and on January 1, 1892, and 1893. In each of these reports appears the following:

> "The Des Moines Union Railway Company is simply a 'Representative Company' acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines and Northwestern Ry. Co., and the Des Moines and Northern Railway Company, performing all the necessary work for them and charging each road at actual cost, its due proportion of the expense, thereby incurred." (Rec., 731.)

The officers of the company verified these reports, and in the instance of 1891, F. C. Hubbell was the verifying president. (Rec., 721, 723.) It is significant that the report signed and verified on February 16, 1894, immediately succeeding the transaction of January 29, 1894, by which Hubbell acquired his five-eighths interest in the Des Moines Company, states that the Des Moines Company "is the owner of the property hereinbefore described." (Rec., 724.)

V.

"THE SERIES OF ACTS AND CIRCUMSTANCES" THROUGH WHICH, IN THE MAJORITY OPINION OF THE COURT OF APPEALS, THE PROPRIETARY COMPANIES ARE SUPPOSED TO HAVE "GRADUALLY LET SLIP FROM THEM THE EXCLUSIVE OWNERSHIP AND CONTROL WHICH THEY HAD AT THE BEGINNING SO MUCH VALUED AND SO CAREFULLY GUARDED" WERE ALL IN HARMONY AND CONSISTENT WITH THE CONTINUED EXISTENCE OF THEIR RESPECTIVE PROPRIETARY INTERESTS.

THESE ACTS AND CIRCUMSTANCES ARE TO BE INTERPRETED IN THE LIGHT OF THE FOLLOWING PRINCIPLE, NAMELY, THE EQUITABLE INTEREST THAT EACH OF THE RAILWAY COMPANIES, PARTY TO THE CONTRACT OF JANUARY 2, 1882, ACQUIRED IN THE TERMINAL PROPERTIES OF THE DES MOINES COMPANY WAS MORE THAN A RIGHT IN PERSONAM OR CHOSE IN ACTION—IT WAS A RIGHT IN REM, NAMELY, AN ESTATE IN PROPERTY VESTED IN THIS RESPECT TO THE SAME EXTENT AS THOUGH THE LEGAL TITLE THERETO HAD BEEN CONVEYED TO SUCH COMPANY.

The conclusions reached in the majority opinion of the Court of Appeals are based upon the premise of the existence of a trust and the loss by the beneficiaries of this trust, without their design or intention, of all their rights under the same through successive acts on their part "natural," "harmless" and inadvertent. In the above respect the Court said:

> "(a) The title contemplated was a trust. The legal title to be 'in a trustee to be named by agreement of said companies.' The beneficial estate to be in the three companies in proportion to the parts each contributed to the payment therefor." (Rec., 2096.)
>
> "(b) Thus the railways themselves had, through a series of acts and circumstances extending over many years, gradually let slip from them the exclusive ownership and control which they had at the

beginning so much valued and so carefully guarded." (Rec., 2114.)

"(c) There is nowhere any indication that the railways intended any such result, and yet such, in our judgment, is the result. This unexpected outcome was the product of several circumstances." (Rec., 2113.)

Judge Hook in his dissenting opinion has the following to say of the position of the majority:

"In both aspects of its position towards the proprietary companies the terminal company was in a high sense their trustee; and according to salutary principles it was bound to maintain the integrity of that relation. Being itself a corporation, its fiduciary obligations and disabilities rested equally upon its officers through whom alone it could act. The limitations upon the right of a person in such a capacity to act for his personal benefit with respect to the subject of the trust are familiar. Never are they less than that the dealing must be open, avowedly at arm's length, and without contrivance or concealment. The individual defendants, one or the other or both, were, at all the times material in this case, officers and directors of the terminal company. The conclusion of my brothers, briefly stated, is that by a series of transactions occurring in a long course of years the original character of the terminal company was gradually changed into that of an independent corporation, and that the control of it was lost by the railroad companies and was acquired by the individual defendants who were its officers. But they say: *'There is nowhere any indication that the railways intended any such result, and yet such, in our judgment, is the result. This unexpected outcome was the product of several circumstances.'* In other words, the proprietary companies were not cognizant of the trend of the circumstances, and the result held to follow, though unexpected and not intended by them, is enforced because of a legal presumption of intention of natural consequences of acts, regardless of intention in fact. The circumstances relied on do not appear to me to have the

significance attributed to them, but were it otherwise the presumption should not be so broadly applied to the case of a trust the destruction of which is claimed by those subject to the disabilities of trustees dealing for themselves. *The excerpt quoted above touches the quick of this controversy.* In my opinion the various transactions thought to produce a result so unexpected and unforeseen should be severally examined in the light of the surroundings at the time they occurred. If in one aspect they were then consistent, or not apparently inconsistent, with the frequent and studied declarations of the object of the terminal organization and that view was then reasonably entertained by the railroad companies, that view should prevail in a court of equity rather than a shrewder one tending to a conclusion in favor of participants who were bound in good conscience to the contrary." (Italics ours.) (Rec., 2119.)

A sufficient answer to the theory upon which the conclusions in the majority opinion are reached ought to be that it is based upon a fundamentally erroneous conception of the principle of law, applicable to the status of the parties. It is assumed that, upon the creation of the Des Moines Company designed as the corporate entity to hold legal title to the terminal property owned by the proprietary companies, the future relations between that company and the proprietary companies would be contractual. Such was not in any respect the essence of this relationship, for properties charged with a trust are "held—not in opposition to but—for the benefit of the beneficiary." (*Brown* v. *Fletcher,* 235 U. S., 589.) Thus, in equity the parties were, in respect of the trust proprietors, one and the same. (Pomeroy's Equity Jurisprudence, Fourth Edition, Section 975.) Beneficial estates, established and reserved upon such a principle of law, cannot be lost by inadvertence to the very party created to hold them intact, for a conveyance to it, the trustee, is in fact

a conveyance to the *cestui*. This principle is the true guide to a proper interpretation of the "series of acts and circumstances" relating to the trust properties.

This series of acts and circumstances upon which the majority opinion of the Court of Appeals relies for its conclusions is as follows:

(1) *The Articles of Incorporation of the Des Moines Company adopted December* 10, 1884. (Rec., 416.)

These articles are based upon the premise that the Des Moines Company was organized for the sole purpose of making effective the trust created by the contract of January 2, 1882; for the resolution of the incorporators adopting them so recites, the contract of January 2, 1882, is set forth in them as a preamble to their provisions, and article 2 thereof provides that all the powers exercised by the company shall be in accordance with the terms and spirit of said contract.

After the concentration of the trust properties in the company organized for the above purpose, no equitable tenant in common in such trust properties ever conveyed, released or otherwise relinquished to it its equitable estate therein.

(2) *Deeds of Conveyance.*

By article fifth of the contract of January 2, 1882, the temporary trustees declared that the purchases made by them were made in their names upon the trusts set up in said instrument, and they agreed to quitclaim and convey the same to the permanent trustee, provided for by such instrument, upon demand and reimbursement. Their several deeds of conveyance of the properties so acquired by them were premised upon resolutions of the

respective proprietary companies and of the Des Moines Company, adopted for the purpose of vesting the terminal properties in the Des Moines Company as the permanent trustee thereof under the provisions of the contract of January 2, 1882.

(3) *The Mortgage of the Des Moines Company.*

It is stated that, since the Des Moines Company was required to make a mortgage upon the properties to which it took title to reimburse the temporary trustees for the cost of the purchases made by them, it must be presumed that the Des Moines Company took not only the legal but the beneficial interests in the properties conveyed to it. Such a statement ignores the principle that the attributes of a trust are to be limited alone by the intent of the parties setting up the same. Trustees may be given powers to sell and reinvest the proceeds of trust property, and to mortgage the same in the interests of the trust estate. The term "trustee" and the term "reimbursement" were used advisedly in the fifth article of the contract of January 2, 1882. It was the clear intent of the parties by their deliberate expression in that contract that a *"trustee"* should take title to the properties, that a *"trustee"* should mortgage these properties and issue its bonds and that a *"trustee"* by means of these bonds should *"reimburse"* the temporary trustees for the advances made on acount of the terminal properties. Thus, the making of the mortgage by the Des Moines Company, the issuing of the bonds thereunder and the delivery of the same to the temporary trustees of the terminal properties in exchange for the deeds of conveyance were a literal compliance with the provisions of the contract of January 2, 1882.

(4) *The Supplemental Agreement of May* 10, 1889. (Rec., 479.)

This agreement had its inception in a resolution adopted at a stockholders' meeting of the Des Moines Company on March 31, 1888. (Rec., 476.) It was resolved that the proprietary companies shall "pay the operating expenses, taxes and interest on bonds that are or may be issued, after deducting any amount received from other sources for rental, prorated on a wheelage basis, and that said payments, including interest charges shall be made monthly." It was further resolved "That Colonel W. H. Blodgett be requested to prepare an agreement for thirty years from May 1, 1888, based on the above resolution and covering in detail the conduct and operation of the Des Moines Union Railway Company. Said agreement to be approved and executed by all the lines now holding an interest in the property.

Said agreement shall provide that if, at the end of six months from the date of the same, either party to the contract shall feel that the terms of the same are unjust to them, and give notice to that effect, it shall be a matter for readjustment." (Rec., 478.)

And it was also resolved "that the terms and conditions on which the several lines now interested, or which may hereafter become interested, shall enjoy the use of these terminals, be fully set forth in a *supplemental agreement* to be made and executed between the Des Moines Union Railway Company and each of the lines using the said terminals." (Rec., 478.)

Of the necessities for this agreement, Col. Blodgett, who drew the same, said:

> "A. It was considered necessary to have something in addition to the agreement of January 2, 1882, for these reasons: In the first place the agreement

of January 2, 1882, made no provision for the payment of interest and did not provide how the interest charge should be distributed among the railroad companies using the property. That was one reason. Another reason was, that the contract of January 2, 1882, did not obligate the railroad companies who were parties to it or their assigns to use the terminal.

Q. Or pay interest?

A. Nor pay the interest. Let me see—there was the interest charge and the matter of using the property, and then the contract of January 2, 1882, put everything, all the expenses of maintenance and operation of all the property on a wheelage basis, and Mr. Hays and General Dodge and all the parties interested thought that the cost of operating the roundhouses should not be on a wheelage basis, but should be distributed among the railroad companies according to the number of engines that were housed and taken care of for each company; and those were the three things wherein, I think, the contract of May 10, 1889, differed from the contract of January 2, 1882.

Q. It was to cover those points?

A. It was for those reasons that all parties agreed it would be advisable to have a supplemental agreement." (Rec., 366-367.)

He also called attention to the fact that, in respect to the payment of the interest on the mortgage bonds of the Des Moines Company, the contract was to be made retroactive from May 1, 1888, and that the thirty-year period of its proposed existence was to be identical with the time in which the bonds of the Des Moines Company were to be outstanding. (Rec., 367.)

It is to be observed that at the date of this meeting of the stockholders of the Des Moines Company, a date *subsequent* to the conveyance of the terminal properties to the Des Moines Company, and to the execution of the Des Moines Company's mortgage, all of the parties distinctly recognize the continuing existence of the con-

tract of January 2, 1882, as it is elementary that a supplemental agreement presupposes the continuing force and vitality of the instrument upon which it is based.

From the above, it is also apparent that the agreement of May 10, 1889, was intended to be merely a regulation of the joint relations of the proprietary companies in the use of their common properties. This is evident not only because Col. Blodgett so states, but because the proprietary companies were resolving not separately but in the form of a resolution adopted by their corporate trustee that they should bear the operating expenses, taxes and interest charged upon their own properties, with the proviso that, if at the end of six months any one of them should regard the terms of the contract unjust, notice should be given to that effect and it should be a matter for readjustment; and that the agreement should be a "*supplemental agreement*," thus intending to keep in full force and effect the contract of January 2, 1882, and to supplement it with details necessary to make possible a harmonious joint user of the terminal properties by its three proprietors.

In objection to the above, it is stated that the preambles of the contract recite that the Des Moines Company became incorporated and organized under the laws of the State of Iowa, for the purpose of owning and operating a line of railway in the City of Des Moines, etc. (Rec., 363.)

Judge Hook, in his dissenting opinion answers the foregoing by saying that

> "in a preamble it was recited that, in pursuance of its charter, it acquired and owned a railway. The charter was that of 1884, into which the contract of 1882 was written." (Rec., 2121.)

An analysis of the terms of the contract also discloses

a recognition of the proprietorship of the second parties thereto in the terminal properties.

(a) No rental was required of the second parties; whereas, it provided for the payment of rental by other railroads who (without becoming stockholders) might be admitted to the use of the terminal properties with the unanimous consent of the second parties.

(b) The Des Moines Company was not intended to acquire revenue over and above its cost of operation, as amounts derived from other railroad companies were to be used to reduce the expense of operating the terminals assumed by the proprietary companies.

(c) The proprietary companies were to assume the control and operation of the Des Moines Company, through an executive committee of three, each of the three proprietors to have one representative. The executive committee was to appoint the superintendent of the properties and to make and enforce the rules and regulations for the use, management and operation of the terminals.

(b) Sections twenty-four and twenty-six identified the second parties to the agreement as proprietors of the properties, by providing the terms and conditions under which stock in representation of their proprietary interests was to be allotted to them, and in identifying the ownership of stock with the right of use and occupation.

(e) If an outsider should default in its obligations, the second parties were to reimburse the first party on a wheelage basis for the amount of such default, thus showing the responsibility of proprietors to protect their own interests.

The foregoing shows that the agreement of May 10, 1889, was made supplemental to the contract of January

2, 1882, for the purpose of settling the details of operation and accounting among the proprietors until May 1, 1918.

(5) *The issue of capital stock.*

The subject matter of the issue of capital stock has already been fully developed. The record shows that it was neither issued to reimburse the temporary trustees or their beneficiaries for advances made by them in acquiring the terminal properties, nor distributed in relation to such advances, but was issued in exact accord with the contract of January 2, 1882, and of the supplemental agreement of May 10, 1889, with the intent that it should represent the several aliquot estates of the proprietary companies in the common tenancy.

(6) *The Amended Articles of Incorporation.*

Full comment has been made upon this subject matter under title IV of this brief.

(7) *The agreement of July* 31, 1897. (Rec., 506.)

The sole object of this agreement was to make the Wabash Railroad Company, as successor to the St. Louis Company, and the Des Moines, Northern and Western Railway Company (the consolidated company) as successor to the Northwestern and Northern Companies, parties to the supplemental agreement of May 10, 1889. It is therein stated that so much of said contract "as relates to the *issuance and distribution* of the capital stock of said Des Moines Company is no longer binding and that the capital stock of said Des Moines Company is held as follows:" Thereafter, F. M. Hubbell & Son is listed, among others, as holding twenty-five hundred shares.

It is contended that this latter recital is a statement made by the Wabash Railroad Company inconsistent with the continuance of the trust established by the contract of January 2, 1882.

The above may be answered by saying that since it is an attribute of common tenancies that each title holder therein, irrespective of his proportionate interest, has a right of user of the common premises on a parity with all other tenants in common, the assignment by a proprietary company of an allotment of stock to an individual instead of to another railroad company is certainly not an act inconsistent with the continued existence of a proprietary interest in the terminal properties in such railroad assignor to the extent of any aliquot share of the same still held by it; and that the nature of the interest of an individual stockholder, assuming his rightful ownership of such stock in the terminal properties, is not on trial here.

Furthermore, the statement quoted from the above contract has a significance directly contrary to that contended for by the defendant. The sole object of the contract was to bring the consolidated company and the Wabash Company within the terms of the supplemental agreement of May 10, 1889. If stock in the Des Moines Company was not intended to represent proprietary shares in its properties, it would have been idle and irrelevant to recite in such contract its distribution and ownership. The purpose of this recital was undoubtedly to lock up, so to speak, the successor companies as tenants in common with the remaining tenants in common in said property in respect of their joint and several obligations. Finally it may be noticed that no allusion was made to the agreement of July 31, 1897, in the opinions of the court below except in the majority

opinion in connection with the disposition of the surplus earnings, where as affecting these earnings the majority opinion states:

> "A subsequent contract of July 31, 1897, does not affect this controversy." (Rec., 2114.)

VI.

TO GIVE THE ACTS AND CIRCUMSTANCES HEREINBEFORE ENUMERATED A CONSTRUCTION OR ASPECT IN DEROGATION OF THE EQUITABLE ESTATES IN COMMON OF THE PROPRIETARY COMPANIES, PURSUANT TO THE CHARACTERIZATION THEREOF, OF THE MAJORITY OPINION OF THE CIRCUIT COURT OF APPEALS, WOULD BE TO PERMIT TRUSTEES OR FIDUCIARIES, NOT ONLY TO REPUDIATE THE RIGHTS OF THEIR CESTUIS QUE TRUSTENTS, BUT TO ACQUIRE FOR THEMSELVES THE BENEFICIAL INTERESTS IN THE TRUST ESTATES.

The Circuit Court of Appeals in its majority opinion holds that a trust was created under the terms of the contract of January 2, 1882, that the beneficiaries thereunder or proprietary companies at all times intended the continuance of said trust, but that the same, through acts of inadvertence "apparently harmless," was destroyed, and that the Des Moines Company became an independent corporation holding the trust properties free from the terms of the trust and under the control of the Hubbells.

The principle announced in the title to this subdivision of the brief is to be applied to the conclusions of the Circuit Court of Appeals as above stated. It has application to the parties in interest in their relation to the terminal properties in several aspects, namely:

(1) To the Des Moines Company and to any officer, director or agent thereof, making a claim on its behalf or to his own advantage inconsistent with the rights or

interest of the proprietary companies as beneficiaries of the trust assumed by the Des Moines Company.

(2) To any cotenant in the common equitable estate, whether one of the proprietary companies or a successor in interest thereto by assignment of its estate as against the interest of any other cotenant in the common equitable estate.

At all times during the transactions involved in this litigation, F. M. Hubbell was an officer and director of the Des Moines Company and of each of the three proprietary companies and the controlling stockholder of the Northwestern Company and of its successor the consolidated company from which he acquired the five-eighths interest in the stock of the Des Moines Company, upon which he now bases his claim. (Rec., 1296.)

In the above respect he actively participated in the management of the corporate affairs of the Des Moines Company and of the Northwestern and the consolidated companies, and he was, moreover, the individual upon whom the Wabash Company and its successor, the purchasing committee, relied in confidence for the purpose of protecting their interest in the terminal properties at Des Moines.

Therefore, as an officer, director or agent of the Des Moines, he was bound by the terms of the trust and in this respect could not take advantage of any act of a proprietary company in derogation of its beneficial interest in the trust estate. A trustee is not permitted to assert in his own behalf any right or interest in trust properties resulting from the inadvertence of his beneficiaries. (Bigelow on Estoppel, 6th Edition, page 568.)

Likewise, as an officer, director and controlling stockholder of the consolidated company, a successor in interest to an aliquot estate in the properties acquired

to be held and used in common, he controlled the acts of a trustee and was thus bound as a fiduciary, for cotenants occupy to each other the position of express trustees in respect to the property held in common.

In the case of *Bissell* v. *Foss*, 114 U. S., 252, at page 259, it is said:

> "It is true that one of two or more tenants in common, holding by a common title, cannot purchase an outstanding title or incumbrance upon the joint estate for his own benefit. Such a purchase enures to the benefit of all, because there is an obligation between them, resulting from their joint claim and community of interest, that one of them shall not affect the claim to the prejudice of the others. *Rothwell* v. *Dewees*, 2 Black, 613; *Van Horne* v. *Fonda*, 5 Johns. Ch. 388; *Lloyd* v. *Lynch*, 28 Penn. St. 419; *Downer* v. *Smith*, 38 Vt. 464."

See, also, to the same effect the case of *Rothwell* v. *Dewees*, 2 Black, 613, at page 618, in which it is said:

> "In the case of *Van Horne* v. *Fonda*, 5 Johns. Chy. R., 407, the rule is very fully laid down by Chancellor Kent, that where two devisees or tenants in common hold under an imperfect title, and one of them buys in the outstanding title, such purchase will enure to their common benefit upon contribution made to repay the purchase money."

See, also, *Turner* v. *Sawyer*, 150 U. S., 578, at page 586, and *Starkweather* v. *Jenner*, 216 U. S., 524, at page 538.

The principle announced in the above authorities, which makes one cotenant a trustee for another, where he buys an outstanding title of the common estate, would, of course, apply with peculiar force where one would attempt to acquire a control or title to the common estate as against the other by taking advantage of his unintentional acts in derogation of his title. If the foregoing be true, of course, it also follows that Hubbell, as a successor to the consolidated company in ownership to

a portion of the stock in the Des Moines Company, by a transaction in which he was virtually both seller and buyer, could have rights no greater than the consolidated company, his controlled vendor. Thus, whatever his status as an individual stockholder in respect of the terminal properties of the Des Moines Company, he may not assert thereby a control over the properties of the Des Moines Company inconsistent with the trust estates of the proprietary companies therein.

It is appropriate here to submit to this Court the form of relief which should be awarded the complainants in the enforcement of their proprietary interests in the terminal properties. The trust established by the contract of January 2, 1882, has never been abrogated. The period of the supplemental agreement of May 10, 1889, has expired. The rights of the proprietors should be protected upon the basis of the attributes belonging to their equitable estates established by the original trust instrument, and this Court is, therefore, asked to decree that the complainants are entitled to the use and occupation of the terminal properties in perpetuity, the cost of operation to be divided between them on a basis of wheelage, as provided in Article Sixth of the contract of January 2, 1882. (Rec., 413.)

VII.

THE FIVE-EIGHTHS STOCK INTEREST IN THE DES MOINES COMPANY HAVING BEEN ACQUIRED BY THE HUBBELLS FROM THE CONSOLIDATED COMPANY, OF WHICH THEY WERE DOMINATING STOCKHOLDERS AND DIRECTORS, IN VIOLATION OF THEIR FIDUCIARY OBLIGATIONS TO THE PROPRIETARY COMPANIES, THE DECREE HEREIN, IN ADDITION TO THE PRIMARY RELIEF ASKED QUIETING THE EQUITABLE TITLES OF THE COMPLAINANTS IN THE TRUST PROPERTIES, SHOULD ALSO PROVIDE FOR A RESCISSION OF THE STOCK TRANSACTION AND FOR A REDEMPTION OF THE SHARES BY THE COMPLAINANTS ON EQUITABLE TERMS.

Enough has already been said to demonstrate the clear right of the complainants to the primary relief asked in the amended complaint quieting their equitable title to the trust properties and protecting them in the use and enjoyment thereof upon the basis of the contract of January 2, 1882.

It is unthinkable that these great public carriers, serving a populous community by means of railway facilities, which they and their predecessors established in the exercise of corporate franchises derived from the State of Iowa, and in a large measure through the aid of grants and subsidies provided by the community itself, should be cut off from the use of these facilities as the result of machinations of their own fiduciary and trustee.

The granting of a decree enforcing alone the right of the complainants to the use and enjoyment as equitable tenants in common of the terminal properties, would, however, leave undetermined a subordinate but important question as to the proper disposition of the shares of the Des Moines Company claimed to be owned by F. M. Hubbell & Son.

It was never intended by the proprietary companies

or their predecessors that any of the shares of the Des Moines Company should be permanently divorced from the beneficial ownership, use and enjoyment of the terminal properties.

By the contract of January 2, 1882, as already pointed out, an undivided quarter interest in the terminals represented a proprietorship thereof, and a one-quarter interest was allotted each to the Northwestern Company and the Northern Company and a one-half interest to the St. Louis Company, leaving in the possession and control of the St. Louis Company a surplus quarter interest which might be sold to another railway company. It was then understood and agreed by the proprietary companies that this surplus quarter interest held by the St. Louis Company might be sold to another railway company desiring to use the terminals, but only sold to such railway company and "not to outsiders."

This agreement was recognized by F. M. Hubbell in his correspondence with Ashley in 1888. (Rec., 1060.) A year later it was definitely incorporated in the supplemental agreement of May 10, 1889, as Section twenty-four thereof. (Rec., 485.)

Afterwards, as testified by A. B. Cummins, the personal counsel of the Hubbell interests, and the general counsel of the Des Moines Company, the proprietary companies determined to broaden the trust enterprise so "that all the railroads in Des Moines could be brought into these terminals" and "that each railroad that might come into the depot in the future might become the owner of one-eighth of the stock." (Rec., 1208.)

This merely involved a redivision of the shares of the trust enterprise into eighths instead of quarters, each interest to be measured by one-eighth of the stock of the Des Moines Company—a division which, as a

glance at a railroad map will show, corresponds precisely to the number of railroads entering Des Moines.

At this juncture, F. M. Hubbell again approached Ashley respecting the purchase of the surplus interest held by the St. Louis Company and in the months of February and August, 1890, he induced Ashley to part with three-eighths of the stock of the Des Moines Company held by the St. Louis Company, upon the distinct understanding "that a one-eighth interest in the capital stock shall be sufficient to represent a *proprietorship* in the company." (Rec., 1602.)

That this transaction was in furtherance of the trust enterprise and not in destruction of it is clear.

That it was not intended that Hubbell individually should permanently hold the stock is equally clear.

In the hands of Hubbell, the stock of the Des Moines Company could have no legitimate value, except for the purpose of resale to other companies who could be admitted with the original proprietors as equitable tenants in common in the use and occupation of the terminals.

What effort, if any, was made by Hubbell to bring in new proprietors does not appear.

It does appear, however, that within a year after the above transaction, Hubbell and Dodge resold at a profit to themselves the three-eighths interest, acquired as above, to the consolidated company formed by the union of the Northwestern and Northern Companies, which it is to be noted was directly in line with the definite understanding of the various parties that shares in the Des Moines Company could only be held by railway companies using the terminals.

For the two-eighths interest sold by Hubbell, he received from the consolidated company its first mort-

gage bonds at par, in the amount of $60,000, which was at the rate of $30,000 for each one-eighth interest. (Rec., 1461.)

The shares remained in the treasury of the consolidated company for nearly two years when, together with certain other shares, they were removed therefrom by the Hubbells by successive transactions, to which the attention of this Court is especially directed.

At a meeting of the board of directors of the consolidated company, held October 4, 1893, on motion of A. B. Cummins, a director of that company, and the personal counsel of the Hubbell interests, it was resolved to pledge five-eighths of the stock of the Des Moines Company, out of the seven-eighths then held by the consolidated company, as security for certain alleged outstanding notes of that company held by F. M. Hubbell & Son. (Rec., 1480.)

Inasmuch as this pledge of the five-eighths interest in the Des Moines Company was given, or attempted to be given, on the threshhold of a receivership, as security for *antecedent* indebtedness of the consolidated company, the pledge was voluntary and without consideration and consequently was invalid. (Jones on Collateral Securities, Section 360a.)

The next step taken by the Hubbels was in the nature of a *pro forma* foreclosure of the invalid pledge.

At a meeting of the board of directors of the consolidated company held January 29, 1894, less than four months after the transaction above mentioned, on motion of A. B. Cummins, a resolution was adopted surrendering to F. M. Hubbell & Son, in satisfaction of a certain part of the consolidated company's alleged note indebtedness the five-eighths interest in the Des Moines

Company's stock at 10 per cent of its face value or at a rate of $5,000 for each one-eighth interest. (Rec., 1482.)

That F. M. Hubbell abstained from voting either for or against the resolution of the board of directors of the consolidated company is, we submit, of no consequence. He was the president of the company, and he and his firm owned and controlled a majority of its capital stock and he dictated and controlled the action of the directors in all respects. Of the seven members of the board of directors, three (F. M. Hubbell, F. C. Hubbell and H. D. Thompson) were members of Mr. Hubbell's immediate family and a fourth, A. B. Cummins, was the personal attorney for the Hubbell interests.

As F. M. Hubbell himself had valued a one-eighth interest at $30,000, in the sale made to the consolidated company two years earlier, giving to the five-eighths he took from the consolidated company under the resolution last above mentioned for $25,000 a valuation of $150,000, it is unnecessary to argue that the transaction in and of itself was a fraud on the consolidated company, its stockholders, bondholders and other creditors. Moreover, the alleged notes of the consolidated company, which the Hubbells surrendered at their *face* value, in payment for these shares in the Des Moines Company were unsecured, save as they themselves had sought to secure them by the invalid pledge made three months earlier: The property of the consolidated company, including an additional two-eighths interest in the Des Moines Company, was encumbered by a mortgage to the Metropolitan Trust Company of the City of New York, securing an issue of bonds upon which a default was imminent. The notes of the consolidated company, which the Hubbells so surrendered at their *face* value, were junior in equity to the outstanding mortgage bonds, and as to these the record states "that the company had

made strenuous efforts to dispose of the same at 55 per cent of their face value" but had been "wholly unable to do so." (Rec., 1482.)

The immediate purpose of the above transaction was to enable F. M. Hubbell to remove from the treasury of the consolidated company, of which he was the president, a director and the dominating stockholder, certain assets which were unpledged but held by the company in trust for its creditors to apply the same to the full payment of a certain uncollectible indebtedness held by his own firm; thus preferring his own firm over other creditors equally entitled to the benefit of the free assets of the company, including among these creditors the holders of bonds secured by the mortgage to the Metropolitan Trust Company and then unsalable in the market on the basis of 55 per cent of their face value.

The ultimate purpose of the transaction was to place in the possession, and under the dominion and control of F. M. Hubbell, shares of the Des Moines Company, of which he was also an officer and director, to be employed by him in furtherance of a scheme to destroy the proprietary interests of the consolidated company and the Wabash Company in the terminal properties held in trust by the Des Moines Company. At this time he was, it will be recalled, negotiating to sell his interest in the consolidated company to the St. Paul Company.

Against these transactions, the complainants are clearly entitled to equitable relief.

As stated at the outset, it was never intended that the stock of the Des Moines Company should be permanently divorced from the beneficial ownership, use and enjoyment of the terminal properties. Representing, as it unquestionably did, the several proprietary or aliquot interests in the trust properties, each of the proprietary

companies was an express trustee of the other as to the common property held in equitable title and was precluded from dealing with the trust properties or with any interest therein to the injury of one or more of the equitable cotenants. The disability of one equitable cotenant to thus deal with the trust properties is an incident of the reciprocal trusteeship existing between cotenants. (*Rothwell* v. *Dewees*, 2 Black, 613.)

The defendant Hubbell, as an officer, director and dominating stockholder of the consolidated company, had no right to take from its treasury on *any* terms an interest in the Des Moines Company to be employed in his hands to lessen or impair or undermine the interests which that company retained in the Des Moines Company and had pledged to the Metropolitan Trust Company.

The consolidated company had no right to give to anyone, much less to F. M. Hubbell & Son, an interest in the Des Moines Company to be employed in the hands of the taker to lessen or impair or undermine the interests in the Des Moines Company held by the St. Louis Company.

Moreover, in the present instance, each of the equitable cotenants had agreed with the others and with the Des Moines Company that no share in the Des Moines Company could be transferred without the consent of all of the proprietors, and it was further agreed that all stock certificates of the Des Moines Company "shall express upon their face that they are not transferable in whole or in part, without the consent in writing" of the proprietary companies. (Rec., 487.)

That F. M. Hubbell, as secretary of the Des Moines Company, issued the stock certificates of the Des Moines Company, without placing thereon this legend is not disputed.

That F. M. Hubbell never obtained from the St. Louis Company or from the Metropolitan Trust Company, as mortgagee of the consolidated company, a written consent or any other consent to the transfer of the five-eighths interest here in question is also not disputed.

Upon these facts the complainants have a clear remedy.

The original pledge of the five-eighths interest to F. M. Hubbell & Son, having been made without notice either to the St. Louis Company or to the Metropolitan Trust Company, as mortgagee of the consolidated company, and the pledge having been foreclosed without public sale or judicial sale, but under a fraudulent private sale had under action of the board of directors of the consolidated company dominated by Hubbell, a sale made without notice either to the St. Louis Company or to the Metropolitan Trust Company, it follows (viewing the transaction most favorably from the standpoint of the Hubbells), that the shares passed to the Hubbells and have been continuously held by them, subject to redemption on equitable terms by the St. Louis Company and the Metropolitan Trust Company or those claiming under it.

Nor is the right of the complainants to equitable relief barred by laches. The fraud was not discovered until after the institution of this suit, and it is elementary that laches does not operate until the fraud is discovered.

As the proprietary companies and their successors held equitable estates in the terminal property as tenants in common, it was immaterial in respect of their rights of use and occupation of the same which company held the major portion of the Des Moines Company's stock. The Hubbells having diverted and obtained possession of 2,500 shares of the Des Moines Company's stock in violation of their trust obligations, the right to redeem the same belongs jointly and severally to the complainants

in their status as tenants in common. Therefore, they ask that said 2,500 shares so diverted and held by the Hubbells be surrendered to the complainants upon reimbursement to the Hubbells for the amount claimed to have been paid by them for such shares, to wit: $25,000, with interest thereon from January 29, 1894.

It will be recalled in this connection that the unanimous vote of the stockholders of the Des Moines Company is necessary to elect a director and that the unanimous vote of the eight directors of the company is necessary for the election of officers. The Hubbells controlled the board of the company and held its principal offices at the time of the institution of this suit and the complainants are unable to dislodge them. They are usurping the several offices they hold in plain violation of the community principle upon which the Des Moines Company was organized and have arrogated to themselves, as individuals, the management of the vast property interests held in trust by the Des Moines Company. As the corporate representative and agency of the proprietary companies, the Des Moines Company has ceased to function and, unless equitable relief in this respect is awarded to the complainants, a dissolution of the Des Moines Company is the only alternative to perpetual domination and control of its affairs by these thoroughly discredited defendants, who assert their control by the suffrage of shares of stock held under a title which is fraudulent *per se* and is voidable by the complainants upon settled principles of equity. In such a situation, affecting as it does not only the rights of these complainants as public carriers but also the vital interests of the City of Des Moines, an application of the well settled principles of equity above developed seems eminently proper and just.

VIII.

NO FACTS APPEAR IN THE RECORD CONSTITUTING AN ESTOPPEL OR LACHES DEFEATING THE EQUITY OF THE COMPLAINANTS.

That the doctrine of estoppel has no application in this controversy, except as it may operate against the Hubbells, is too clear for argument.

It is fundamental that no man can set up another's act or declaration as a ground of an estoppel, unless he, himself, has been misled or deceived thereby.

Further, as stated by Mr. Justice Field, speaking for this Court in *Brant* v. *Virginia Coal & Iron Company et al.*, 93 U. S., 326, at page 337:

> "It is also essential for its application with respect to the title of real property that the party claiming to have been influenced by the conduct or declarations of another to his injury was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. Where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

As F. M. Hubbell was an officer and director in the Des Moines Company and had for years been directing the trust enterprise, his actual knowledge of the condition of the title was certainly as good, in fact far superior to that of the proprietary companies and their representatives. Manifestly, he can claim no estoppel against them.

He, however, by reason of his official relation to the trust enterprise was the principal, if not the only, channel of information available to them in respect thereof. They were entitled to rely implicitly upon any statement

which he might make with reference thereto, and he is estopped to repudiate any such statement.

Take, for example, his dealings with Ashley in 1890 when he acquired the three-eighths interest in the Des Moines Company's stock:

He induced Ashley to part with the stock in question upon the distinct understanding that a one-eighth stock interest "shall be sufficient to represent a proprietorship in the company." He now seeks to repudiate this understanding, but is estopped to do so because, if a one-eighth interest was *not* sufficient to represent a proprietorship,

(a) Hubbell so represented the fact to Ashley;

(b) The circumstances were such that knowledge of the truth was imputed to Hubbell; and

(c) Hubbell thereby induced Ashley to change his position.

There are here present all of the elements of a complete estoppel:

Bigelow on Estoppel, 476.

Herman on Estoppel, 797.

The Hubbells insist, however, that at various times, especially during the period between 1897 and the date of the institution of this suit, the complainants had dealings or negotiations with the Hubbells for an extension of the supplemental agreement of May 10, 1889, and that by reason of these negotiations:

(a) They had induced the Hubbells to believe that the stock in the Des Moines Company represented valuable property rights;

(b) That they had led the Hubbells to believe that they recognized them as the lawful owners of the five-eighths interest in the stock of the Des Moines Company, and

(c) That in reliance upon these representations of the complainants they served with-

out direct compensation as officers and directors of the Des Moines Company for a long period of years solely for the purpose of building up the terminals and making the terminals valuable so as to enhance the value of their stock interest in the Des Moines Company.

We shall refer briefly to these propositions in their order, as stated.

The record discloses no representation on the part of the complainants, or either of them, respecting the property rights represented by the Des Moines Company stock apart from the definite agreement and understanding between F. M. Hubbell and Ashley already mentioned, namely, that a one-eighth stock interest in the Des Moines Company should be sufficient to represent a proprietorship in that company. How valuable such proprietorship may be the complainants do not know and have never stated. They do, however, regard it as an immensely valuable interest and have always so regarded it; and inasmuch as the five-eighths stock interest claimed to be owned by the Hubbells is equivalent to five proprietary interests in the Des Moines Company, it follows that the stock interests claimed to be owned by the Hubbells are very valuable. If their title to this five-eighths interest were good, they could readily dispose of the same to various railway companies whose lines enter the City of Des Moines, a number of which are already using the terminals and paying substantial rentals therefor.

The title under which the Hubbells claim to hold this stock has already been discussed.

Neither of the complainants had any knowledge of the purpose for which this stock had been acquired until Hubbell declared it in 1905, and they had no knowledge as to the character of the Hubbells' title thereto until the

Hubbells themselves introduced in evidence in this suit the records of the consolidated company, to which the attention of this Court has already been directed.

Afterwards the complainants amended the bill so as to obtain a decree setting the transactions aside.

The first definite advice to the Wabash Company of Hubbell's claim to own this stock interest came to it as follows:

Ashley, on behalf of the Wabash purchasing committee, was negotiating to sell certain of the Des Moines Company's bonds when the point was raised that by reason of foreclosure proceedings and reorganizations of the Northwestern and Northern Companies, parties to the supplemental agreement of May 10, 1889, these companies had ceased to exist, and that the reorganized consolidated company, their successor, was under no definite contract obligation to use the terminals and pay its proportion of the interest on the Des Moines Company's bonds. (Rec., 1561.) Ashley at once wrote Hubbell asking that he arrange for the execution of a new agreement with the reorganized consolidated company as a party, the agreement

> "to be exactly as before, except that the time must be made to correspond with the life of the bonds, or to be made for a period to extend beyond their maturity." (Rec., 1673.)

Upon receipt of this letter Hubbell wrote Cummins directing that he prepare a new agreement and suggesting certain changes, the significance of which, in the light of subsequent developments, cannot possibly be misunderstood.

We call especial attention to the following suggestions made in his letter to Cummins. He says:

> "On page one of the present contract, the extent of the present railway seems to be limited to the

east boundary line of the city on the east and to Farnham street on the west. I suggest that there be no limit either east or west."

The purpose of this we will indicate later.

He further says:

"I think it advisable to have the new contract recognize the ownership of the stock as it now exists, hence the last seven lines of Sec. 24 are unnecessary, as the Wabash Company and the D. M. N. & W. Company, each being bound to always have a director in the D. M. Union Company, can decide whether or not new railroad companies shall be admitted." (Rec., 1674-1675.)

Following the directions contained in the above letter Cummins prepared a new agreement which Hubbell mailed to Col. Blodgett with a letter from which we quote the following:

"Mr. Ashley wanted it sent to you for approval. As soon as it is approved, if you will return it to me I will have it printed in the form of a pamphlet and we will execute it in that form instead of the long sheet written in type.

If you have occasion to amend this contract, please do so as quickly as you can and return it to me and if the amendments are agreed to, we will proceed to print, say one hundred copies, four of which we will execute as originals, one for each party to the contract.

Mr. Ashley is in a great hurry for this contract and I therefore ask you to be as expeditious as possible." (Rec., 1679.)

The draft of contract so prepared by Cummins under Hubbell's directions, and forwarded by Hubbell to Col. Blodgett, contained the following provision relative to the Des Moines Company's stock:

"It is stipulated and agreed * * * that the capital stock of the said Des Moines Union Railway Company is now *rightfully* held as follows, to wit: Purchasing committee of the Wabash,

St. Louis & Pacific Railway Company	500 shares
Des Moines and North Western Company	1,000 shares
F. M. Hubbell & Son	2,500 shares

In spite of Hubbell's obvious anxiety to have the agreement approved and executed without revision, Col. Blodgett withheld his approval. A protracted negotiation ensued, but the parties failed to agree on a new instrument to be substituted for the supplemental agreement of May 10, 1889.

To analyze the correspondence and other data relative to this negotiation would be impracticable.

It is sufficient to say that a careful examination of this evidence will fail to disclose a single fact or representation on the part of the complainants, or their predecessors, which was inconsistent with the continued existence of the trust established by the contract of January 2, 1882.

Failing to agree upon a new agreement to substitute for the supplemental agreement of May 10, 1889, the parties, in order to cover the point originally raised by Mr. Ashley, executed the instrument known and heretofore referred to as the agreement of ratification and confirmation of July 31, 1897. This instrument contains the following provision:

> "That so much of said contract, a copy of which is hereto attached (contract of May 10, 1889) as relates to the issuance and distribution of the capital stock of the said Des Moines Company is no longer binding and that the capital stock of the Des Moines Company is held as follows:
> 500 by the purchasing committee of the Wabash Company, 1,000 by the Des Moines and Northwestern Railway Company and 2,500 by F. M. Hubbell & Son." (Rec., 506.)

This was certainly not an admission on the part of the complainants or their predecessors that the 2,500 shares

referred to were *rightfully* held by the Hubbells, the word "rightfully" inserted in the original draft of agreement submitted by Hubbell having been stricken out by Col. Blodgett. It was merely a recital of the fact not now disputed that the Hubbells then *held* the stock, and the recital was made under circumstances that did not put the Wabash Company upon inquiry as to the validity of their title.

At the time this so-called agreement of ratification was signed, the Wabash Company had no knowledge or no means of knowledge of the transaction under which the Hubbells acquired possession of this five-eighths stock interest in the Des Moines Company, and they had no knowledge or means of knowledge of the fraudulent purpose for which it was acquired until October, 1905. Moreover, at the time the agreement was executed the consolidated company was still under the domination and control of the Hubbells and could not effectively ratify a fraudulent transaction of which the Hubbells were beneficiaries.

The record further shows that after the St. Paul Company had succeeded to the rights of the consolidated company there were further negotiations with Mr. Miller, on the part of the St. Paul Company, and Mr. Ramsay, on the part of the Wabash Company, for an extension of the supplemental agreement of May 10, 1889.

Mr. Ramsay, called as a witness by the Hubbells, testified that he entered into these negotiations without having considered whether the Wabash Company had any right to use the terminals independent of the contract of 1889. Answering the question whether he had heard either of the Hubbells at any time set up a claim that the Wabash Company would not have the right to use that property after the expiration of the contract of 1889, he testified:

"I never heard any such claim set up." (Rec., 1264.)

Moreover, as we have already pointed out, both Mr. Miller and Mr. Ramsay and the other operating officials of the St. Paul and Wabash companies were dependent upon the Hubbells themselves for information respecting the terminal situation.

That the Hubbells, thus situated, cannot claim an effective estoppel by reason of any act or representation of the officials of the St. Paul and Wabash companies, is clear.

If, however, authority is necessary on this point, the case of *Chicago, Milwaukee and St. Paul Railway Company* v. *Des Moines Union Railway Company et al.*, 165 Iowa, 35, will serve the purpose.

This case grows out of another transaction of the Hubbells in connection with the terminal properties at Des Moines.

The salient features may be briefly stated:

At the time the Hubbells took from the treasury of the consolidated company the five-eighths stock interest in the Des Moines Company, which they now claim to own, they were negotiating to sell their holdings in the consolidated company to the St. Paul Company.

The terminus of the line of the consolidated company was at Farnam street, afterwards 16th street, where it connected with the tracks of the Des Moines Company at the latter's westerly yard limit.

This terminus was so fixed both by the contract of January 2, 1882, and the agreement supplemental thereto of May 10, 1889.

As soon as the negotiations with the St. Paul Company had taken the definite form of a contract, the Hub-

bells moved out the yard limit sign to 28th street so as to include in the terminal properties of the Des Moines Company, and exclude from the properties of the consolidated company, one mile of railway between 28th street and 16th street belonging to the consolidated company.

It was in furtherance of this fraud that Hubbell in his letter to Cummins of December 31, 1896, wrote:

> "On page one of the present contract, the extent of the present railway seems to be limited to the east boundary line of the city on the east and to Farnam street on the west. I suggest that there be no limit either east or west." (Rec., 1674.)

Early in 1898, in anticipation of the transfer of their interest in the consolidated company to the St. Paul Company, the Hubbells caused the Des Moines Company to assume possession and maintenance of this mile of railway, and when the consolidated company was transferred to the St. Paul Company the Hubbells represented to the latter that the line of the consolidated company terminated at 28th street.

From that time on until 1907 the Des Moines Company retained possession of and asserted control and ownership of the one mile of railway between 16th street and 28th street.

The true situation was not discovered until 1907 when the St. Paul Company promptly instituted suit to recover the property. The Hubbells resisted the suit and urged there, as they urge here, the plea of estoppel and acquiescence. In rejecting the plea, the Supreme Court of Iowa said:

> "The evidence to sustain the plea of estoppel tended to show that, with knowledge of plaintiff (St. Paul Company) and its grantor (the reorganized Consolidated Company) defendant (the Des Moines Company) expended large sums of money in grad-

ing, laying sidetracks, and maintaining the road. These expenses, however, were incurred with knowledge on the part of the officers of the defendants (F. M. Hubbell and F. C. Hubbell) that it did not own the road and that it was in reality the property of plaintiff or its grantor, and, this being so, it could not have been misled to its prejudice by the acquiescence of plaintiff in what was being done, to say nothing of plaintiff's ignorance concerning its title and that of its grantor. That there can be no estoppel under these circumstances is too elementary to require citation of authority."

With this recent expression of the Supreme Court of Iowa, upon an identical state of facts, we might well conclude the discussion.

The Hubbells claim, however, that they have devoted the better part of their lives to the building up of these terminals without compensation and without hope of compensation except such as might flow from the increased value of their stock.

Even if this were true it would not help them for the reason pointed out by the Supreme Court of Iowa.

It is, however, not true.

The record shows that the Hubbells devoted their time and energy to the trust enterprise for a period of fifteen years prior to the time when they acquired stock in the Des Moines Company. They were working then without compensation and were certainly working without hope or expectation of a reward flowing from the increased value of their stock, since they held no stock. The truth is that the management of the terminal enterprise was merely incidental to the real estate operations conducted for many years by the Hubbells under the firm name of F. M. Hubbell & Son. A dominant position in the management of the Des Moines Company gave them a grip upon the development of a great and

growing city; and it was their control and manipulation of the terminal enterprise which enabled them to conduct their real estate operations successfully and profitably, a fact admitted with obvious reluctance by F. C. Hubbell, under cross-examination. (Rec., 1199.) That their real estate operations were successful is not disputed, the vast extent of their holdings of real estate in the City of Des Moines being plainly indicated by the deed to the "Trustees of Hubbell Estate," executed December 31, 1903. (Rec., 681.)

In concluding this subdivision, and also in concluding the argument in number 278, we submit the following propositions, which have a direct materiality to every phase of this controversy:

Estoppel, acquiescence, ratification, laches and kindred equitable defenses, which have been developed by chancellors in furtherance of substantial justice, can never rest securely upon an equivocal state of facts. As stated in Bigelow on Estoppel, 6th Ed., page 641: *"Certainty* is essential to all estoppels." This is especially true of estoppel by laches. The law does not require a party to come into court to assert his rights until his rights have been clearly, directly and indubitably assailed. This rule is peculiarly applicable to the case of a trust. As pointed out by Mr. Justice Gray, speaking for this Court in *Speidel* v. *Henrici*, 120 U. S., 377, 386, time does not begin to run against a trust until

> "it is openly disavowed by the trustee, insisting upon an adverse right and interest which is *clearly* and *unequivocally* made known to the *cestui que trust;* as when for instance such transactions take place between the trustee and the *cestui que trust,* as would in case of tenants in common amount to an ouster of one of them by the other."

The complainants have been in undisputed use and enjoyment of the terminal properties continuously since

the establishment of the trust in 1882—originally under the contract of January 2, 1882, *alone*, and subsequently under this contract as supplemented by the agreement of May 10, 1889. At no time did the Des Moines Company by any *clear* and *unequivocal* action (even at the illegal stockholders' meeting of April 8, 1890), repudiate the trust or indicate any purpose to repudiate it. Nor did either of the Hubbells ever repudiate or question the trust until October, 1905, and promptly thereafter the complainants commenced this suit.

IX.

THE SO-CALLED SURPLUS EARNINGS WERE PROPERLY AWARDED TO COMPLAINANTS BY THE UNANIMOUS DECISION OF THE CIRCUIT COURT OF APPEALS.

The controversy as to the so-called "surplus earnings" presented in No. 279 will only become material in the event that this Court decides that the complainants have no proprietary interest in the Des Moines Company.

The Circuit Court of Appeals—all judges concurring—held that the revenues received by the Des Moines Company, and referred to as surplus earnings, belonged to the St. Paul and Wabash Companies. The majority opinion based such conclusion upon its interpretation of the supplemental agreement of May 10, 1889, taken as a whole, and the construction placed upon it by the acts of the parties thereto for a series of years following its execution. Judge Hook based his conclusion in the above respect not only upon the grounds above stated, but also upon the broader ground that the increments of the trust properties belonged to the proprietors under the terms of the trust.

Since the opinion of the Circuit Court of Appeals on this branch of the case was unanimous, and since the is-

sue thus disposed of involves no public interest and no rule or principle of law, which public interest requires this Court to determine, it may be that this court will conclude to dismiss as improvidently granted the *writ of certiorari* in No. 279, issued upon the petition of the Hubbells. *Furness Withy & Co., Ltd.*, v. *Yang-Tsze Insurance Association, Ltd. et al.*, 242 U. S., 430.

In the contingency, however, of this Court reaching a consideration of the question presented in No. 279, we submit the following brief remarks supplementary to the statement as to this controversy embodied in our preliminary statement of facts:

At the time of the filing of the bill of complaint in this suit, the so-called surplus earnings amounted to approximately $500,000. (Rec., 109-194.)

Although the record does not show the amount of these accumulations at the present time, the testimony having been taken a number of years ago, it seems proper to state to the Court that these accumulations now amount to approximately two million dollars, or a sum equivalent to approximately 300 per cent of the Des Moines Company's outstanding capital stock.

As explanatory of the large amount of these accumulations, it should be noted that they are in no sense surplus earnings, but are the *gross* receipts of the Des Moines Company for switching, demurrage on cars of the proprietary companies and excess baggage carried by them; and also for rental of parts of its property, principally unused space in the Union Passenger Station and privileges in connection therewith; all of the expenses incident to the production of these earnings being borne by the proprietary companies.

The proprietary companies paid the interest charge on all the capital invested in the terminal enterprise; they

paid the taxes on the Union Station, the cost of heating it and lighting it and operating it; they paid the cost of operating the engine houses and the cost of turning, housing and maintaining the engines, the cost of furnishing water and fire, cost of firing and fueling the engines; in short, all of the operating expenses incident to the creation of the revenues denominated by the Hubbells as surplus earnings were borne by the proprietary companies. (Rec., 320-323.) It was, of course, the intention of the parties that all revenues of the Des Moines Company should be applied in the reduction of operating expenses charged to the proprietary companies, and the agreement of May 10, 1889, was authorized and drawn on this theory. Furthermore the resolution authorizing it provided that if at the end of six months any party thereto should feel that the terms were in any respect unjust and should give notice to that effect, the subject should be one for readjustment.

In the agreement itself it was provided (in Article twenty-eight) that if any question arose respecting any matter *not* provided for in the agreement, the same should be adjusted by arbitration, the arbitrators to "determine what would be just and equitable for each of said parties to do in and about the matter in dispute."

It seems that as early as December, 1889, the question arose as to whether or not these particular revenues should be credited to the proprietary companies under Section four of the agreement, and as soon as receipts of this character arose, the accounting officers of the Des Moines Company, by direction of its executive committee and its president, credited the amount of such receipts upon the monthly bills against the proprietary companies. This was done for a period of nearly two years. (Rec., 272-313.)

Thereupon, as shown in the statement of facts, the board of directors of the Des Moines Company, at a meeting held February 11, 1891, adopted a resolution ordering:

> "That the rents collected for the use of the Company's real estate and the switching charges paid in be credited on the bills of the different tenant companies occupying this Company's terminals, giving to each Company its share ascertained by wheelage." (Rec., 497.)

A year later the board ordered a temporary suspension of the practice pending the accumulation of a small fund for working capital, but distinctly recognized the right of the proprietary companies to receive these revenues. (Rec., 499, 338.)

Thus, the conclusion reached by the Court of Appeals, relating to the disposition of excess earnings, is in exact accord with the interpretation placed upon the provisions of the supplemental agreement of May 10, 1889, by the parties themselves, as disclosed by their acts in the disposition of these earnings, until the Hubbells, in the interest of their claim of corporate control, determined to repudiate this interpretation.

Of course, if the Des Moines Company had undertaken to withhold these revenues from the proprietary companies, they would have at once demanded a readjustment of the matter as being manifestly unjust to them or would have asked that the matter be determined by arbitration under Section twenty-eight on just and equitable principles, and inasmuch as the proprietary companies were paying all the expenses incident to the production of these earnings, their right to receive them could not have been questioned.

The Board itself, therefore, undertook to adjust the matter, and we submit adjusted it properly upon either

one or the other of the following interpretations of its acts.

If it be contended that under a literal construction of Section four of the supplemental agreement of May 10, 1889, it is doubtful whether the same be broad enough to include these accumulations, this doubt was resolved against the Des Moines Company by reason of the practical construction given to this section by the Des Moines Company's board of directors. *Topliff* v. *Topliff*, 122 U. S., 121, 131.

If, however, it be assumed that these revenues are not covered and disposed of by Section four, then it follows that no definite disposition thereof was made by the supplemental agreement, and the matter was open for adjustment "upon just and equitable" principles by a board of arbitrators under Section twenty-eight. In this situation the board of directors of the Des Moines Company, acting as such arbitrators, deliberately adjusted the matter in the only way it could be disposed of without doing violence to every principle of justice and equity. *Central Trust Company of New York* v. *Wabash, St. Louis and Pacific Railway Company*, 34 Fed. Rep., 254.

It is submitted, therefore, that the decision of the Circuit Court of Appeals in No. 279 should be affirmed or that the *writ of certiorari* issued therein should be dismissed.

In Conclusion.

The complainants ask the following relief:

In Case No. 278. (a) That the Court determine that the Des Moines Company took title to all properties vested in it subject to the terms of the contract of January 2, 1882, and holds them in trust for the complainants

herein subject to their joint use and occupation in perpetuity, as provided in said contract. (b) That the defendants F. M. Hubbell, F. C. Hubbell and the firm of F. M. Hubbell & Son be directed to surrender and deliver to the complainants 2,500 shares of the capital stock of the Des Moines Company upon payment to them of the sum of $25,000, with interest thereon from January 29, 1894, or in the alternative that said F. M. Hubbell, F. C. Hubbell and F. M. Hubbell and Son, and each of them, be perpetually restrained, by the order and injunction of this court, from selling, pledging or otherwise disposing of said shares of capital stock of the Des Moines Company, issued in their names, and that as holders of stock certificates, representing the same they and each of them be restrained by the order and injunction of this court from exercising any control or management of the terminal properties, excepting such as shall be in accordance with the terms and spirit of the contract of January 2, 1882.

In Case No. 279. That the decree of the Circuit Court of Appeals be affirmed or, in the alternative, that the writ of certiorari issued therein be dismissed.

All of which is respectfully submitted.

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BURTON HANSON,
Counsel for Chicago, Milwaukee & St. Paul Railway Company.

WINSLOW S. PIERCE,
LAWRENCE GREER,
ROBERT J. CARY and
F. C. NICODEMUS, JR.,
Counsel for Wabash Railway Company.

MAR 23 1920
JAMES D. MAHER,

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 66

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,

Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL *et al.*,

Respondents.

No. 67

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL *et al.*,

Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

JOHN C. COOK,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 278.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL et al.,
Respondents.

No. 279.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL et al.,
Petitioners,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Respondents.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

REPLY BRIEF OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND WABASH RAILWAY COMPANY.

The brief and argument filed in this cause by counsel for the Des Moines Union Railway Company and F. M. Hubbell and F. C. Hubbell, is not

responsive in its fundamentals to the brief filed by the complainants. Where reference is made to the argument of the complainants, comment is addressed to quotations, detached from their context, taken from the separate briefs filed by them in the Circuit Court of Appeals.

No attempt has been made to approach the issues upon the theory followed by the majority opinion of the Court of Appeals, or upon the basis of the argument presented by the complainants in the analysis of the facts offered in answer to such theory or of the several points made respecting the same.

Nor do we find in their brief any reference whatsoever to the dissenting opinion of Circuit Judge Hook.

One gathers from a reading of the brief that the conclusions of counsel are based upon the supposition that the trust admittedly created by the contract of January 2, 1882 was abandoned because of the incorporation of the Des Moines Company, and of the conveyance to such Company of the various terminal properties acquired by the temporary trustees.

In this respect counsel have not attempted to reply to the reasons presented in the brief of the complainants showing that the incorporation of the Des Moines Company, the several resolutions of its stockholders and directors, the resolutions of the proprietary companies and the deeds of conveyance, made to the Des Moines Company as a result thereof, were a development in corporate form of the trust created by the parties to the contract of January 2, 1882.

The brief is based wholly upon the supposition that the trust created by the contract of January

2, 1882 would necessarily be destroyed because of the several conveyances in fee simple to the Des Moines Company of the terminal properties, the titles to which were assembled in the names of the temporary trustees.

All subsequent discussion is based upon this supposition.

For instance, the analysis of the Amendments to the Articles of the Des Moines Company proceeds on the stated theory that they represent the thought that it was intended that the defendant company theretofore acquired absolute title to the terminal properties, and that thus such amendments are corroborative thereof.

In view of such a situation, it is submitted that it would serve no useful purpose in clarifying argument to review in detail the several points attempted to be made by counsel for the Hubbells. It is submitted that they have all been anticipated and adequately answered in the original brief filed on behalf of the complainants, and that therefore this reply can be made responsive in the best sense by analyzing a case recently decided by this Court, showing that counsel for the Hubbells have wholly misconceived the true principles governing the issues involved.

In the case of *Chicago, Milwaukee and St. Paul Railway Company* vs. *Minneapolis Civic and Commercial Association*, 247 U. S. 490 this Court determined the status of the parties in the instant case upon a set of facts so coincident in fundamentals and detail with the facts now before the Court that the opinion there rendered could be applied without substantial alteration as decisive of the case at bar.

This Court in an opinion written by Mr. Justice Clarke delivered June 10, 1918, subsequent

to the decision of the Circuit Court of Appeals in this case held that the Minneapolis Eastern Railway Company, a Company developed in the interest of two trunk lines entering Minneapolis, which jointly owned its capital stock, was not an independent corporation and had no power to publish tariffs covering service over its lines which the proprietary companies themselves might render.

Although the decision is fresh in the minds of the Court, a brief restatement of the facts will emphasize its coincidence with the case at bar.

The Minneapolis Eastern Railway Company, referred to herein as the Eastern Company, was organized under the laws of Minnesota as a railway company to construct and operate a railway from Minneapolis to St. Paul. It was organized as an independent corporation by a group of mill owners, and, unlike the Des Moines Company, it was not organized by, or in the interest of, or to take title to properties owned by the other railway companies which became its proprietors.

After the organization of the Eastern Company had been completed, but before any right of way had been acquired or any construction work done, the Chicago, Milwaukee & St. Paul Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, referred to herein collectively as the proprietary companies

> "came into exclusive control of the corporation and a board of directors satisfactory to them was elected, with the result that the only road which the company ever built or operated (omitting small fractions) was one mile of main track and one mile and a half of yard track and sidings in the City of Minneapolis" (p. 494).

Although the Eastern Company, like the Des Moines Company, was incorporated as a railroad company, and not as a terminal company, it became in point of fact the corporate instrumentality of the proprietary companies whereby, to avoid duplicating terminal facilities in a congested district, they were enabled

> "to construct and operate but one track to the group of industries to be served, instead of each building and maintaining its own track, and to construct and use that track in common so that each might have the benefit of it as fully as if it were the sole owner" (p. 500).

There is here to be noted a significant point of difference in the facts of the two cases:

The Des Moines Company was organized for the sole purpose of holding legal title to the facilities in Des Moines to be used in common by the railway companies which became the owners of its stock, and this purpose was declared in the definite provisions of the contract of January 2, 1882, which was embodied in its Articles of Incorporation as the statute law of its existence. No such declaration of purpose was made by the Eastern Company either at the time of its incorporation or subsequently, but this Court nevertheless found as a fact that such was the purpose for which it was originally acquired and afterwards utilized by the proprietary companies; and made this finding by reason of a series of acts and circumstances which, curious as it may seem, are strikingly like those which the Circuit Court of Appeals held in the case at bar, effected an unintended and unexpected destruction of the proprietary interests of the present complainants or their predecessors in the properties held by the Des Moines Company.

We quote further from this Court's opinion:

"Almost immediately after the organization of the Eastern Company, the three companies entered into a written contract, effective for over 39 years, until May 1, 1918, which is of much significance in determining the decisive fact in the case, as we have stated it.

"This contract provides:

(1) That only 300 shares of the authorized 10,000 shares of capital stock of the Eastern Company shall be issued, and of these, 75 shares each must be issued to the Omaha and Milwaukee Companies, 145 shares to a trustee for the Eastern Company, and the remaining 5 shares shall be issued as qualifying shares to directors. The 145 trust shares 'shall not be transferable except by the written consent of all (3) said parties hereto, and any transfer thereof without such consent shall be void and of no force or effect.'

(2) The Eastern Company shall execute in proper form 150 bonds of $1,000 each and a mortgage on all the property and franchises of the company to secure their payment. The Milwaukee and Omaha Companies agree each to purchase, at 80% of their par value, one-half the amount of such of these bonds as it may be necessary to issue to pay for the right of way, construction and equipment of the railroad;

(3) That the Milwaukee and Omaha Companies shall have 'equal and the same rights in and to the said railway . . . in all respects;' that they shall pay the same charge for switching their respective cars by said railway, and that no partiality or favor shall be shown to either;

(4) That the superintendent having charge of the operation of the railroad, shall be appointed 'by the consent and mutual agreement of all the parties to these presents;'

(5) That the Eastern Company shall

charge all parties one dollar for switching each loaded car, but a rebate of fifty per cent. of this charge shall be made to the Milwaukee and Omaha Companies;

(6) If any other company having equal facilities with the Eastern Company for reaching mills in Minneapolis shall promptly and satisfactorily do the switching for the second and third parties (the Milwaukee and Omaha companies) then the Eastern Company with the written consent of the Omaha and Milwaukee Companies, will do switching for such railroad companies over the said railroad of the Eastern Company on the same terms that switching is done for the said second and third parties (the Milwaukee and Omaha Companies) over such railroad but without rebate to any company" (pp. 495-496).

The agreement here summarized is so similar in its basic aspects as well as in detail to the supplemental agreement of May 10, 1889, between Des Moines Company and its proprietors, as strongly to suggest that it may have been utilized as a model by the draftsman of the latter instrument.

Like the supplemental agreement of May 10, 1889, it provided for the issue of the stock of the company in quarters, each quarter representing or evidencing a proprietorship equivalent to an equitable tenancy in common, one of these quarters being allotted to each of the proprietary companies and the surplus quarters being issued to a "trustee for the Eastern Company." The nature of the trust is not disclosed, but it is not improbable that the parties intended that the surplus quarters might be sold to other trunk line companies desiring to use the facilities of the Eastern Company, as in the instant case was provided in

section twenty-four of the supplemental Agreement of May 10, 1889.

Provision was also made for the control and operation of the properties of the Eastern Company by representatives of the two proprietary companies, the stipulations in this respect being substantially the same as those provided in sections eleven, twelve and thirteen of the Supplemental Agreement of May 10, 1889.

Summarizing the effect of the above mentioned provisions of the Agreement, this Court said:

> "It deprived the Board of the power: to issue the capital stock of the company and to finance its affairs; to select a superintendent to operate the company's two and one-half miles of track, by requiring that such selection be made only with the consent and mutual agreement of the three companies; to make mutual agreements for the interchange of business with any other company except with the mutual consent of the Milwaukee and Omaha Companies; and it renders one-half (save five shares) of the stock which it permits to be issued, transferable only with the written consent of the Milwaukee and Omaha Companies. Thus, the making of this contract was an obvious surrender by the Eastern Company of substantially all freedom of corporate action and an assumption of control over that company by the Milwaukee and Omaha Companies, which converted it largely into a mere agency or instrumentality for doing their bidding" (pp. 496-497).

It will be recalled that the Des Moines Company was repeatedly declared by the Hubbells to be precisely such an agency or instrumentality in the reports made year after year under oath to the taxing authorities of the State of Iowa, which re-

ports were made subsequent to every transaction which they now claim was destructive of the trust.

This Court then recites certain acts of administrative control exercised thereafter by the proprietary companies, among these being the division of an accumulated surplus of $95,000 equally between the two proprietary companies in the form of a stock dividend, the purchase by the proprietary companies in equal proportions of certain refunding bonds issued by the Eastern Company, and submits the following conclusion:

> "With the facts thus summarized, it is difficult to conceive of a plan for the control of a jointly owned company and for the operation of a jointly owned track more complete than this one is and it is sheer sophistry to argue that, because it is technically a separate legal entity, the Eastern Company is an independent public carrier, free in the conduct of its business from the control of the two companies which own it and therefore free to impose separate carrying charges upon the public" (p. 498).

Without underestimating the difficulty of conceiving as an original proposition a plan of joint control more complete and effective than the plan above outlined, credit for such an accomplishment is due the organizers of the Des Moines Company for the following reasons, among many others:

> (a) The Des Moines Company was created without corporate power or capacity to take title to the terminal properties in Des Moines, except upon a trust to hold the same in perpetuity "subject to the joint use and occupation of" the proprietary companies, for its Articles of Incorporation are premised upon the terms of the contract of January 2, 1882, which is recited in the same in full as a preamble, and it is further provided that all powers

exercised by such Company shall be in accordance with the terms and the spirit of the aforesaid contract.

There was no such limitation upon the corporate power of the Eastern Company.

(b) The original Articles of Incorporation of the Des Moines Company vested the management of the affairs of the Company in a Board of eight Directors, all of whom were to be nominated by the proprietary companies, or any grantees or assignees of either of them, and the Board of Directors was not permitted to make any contract, lease, or other agreement amounting to a permanent charge on the property of the Des Moines Company without the approval of the three proprietary companies or their assignees, and without further approval of the holders of more than three-fourths of the stock of the Des Moines Company.

There was no such limitation upon the power and authority of the stockholders and Board of Directors of the Eastern Company.

(c) Substantially all of the provisions of the tripartite agreement between the Eastern Company and its proprietary companies which are summarized in the extracts from the opinion of this Court quoted above are embodied in the Supplemental Agreement of May 10, 1889, between the Des Moines Company and its proprietors, and there are superadded thereto further and more stringent provisions evidencing the identity of the stock interest and property interest of the proprietary companies, among these being (1) the provision requiring the stock of the Des Moines Company to be issued in quarters represented by single certificates, *all* of which were to be non-transferable, without the unanimous consent of the proprietary companies; (2) the provision admitting a railway company becoming the purchaser of a surplus quarter interest in the stock of the company to the use and occupation of the terminal

properties of the Des Moines Company on a parity with the three original proprietors; and(3) the provision that in case any difference should arise between the parties respecting any matter *not* expressly provided for in the Agreement, the same should be referred to a board of arbitration to be determined not upon the basis of the legal rights of the Des Moines Company, as the holder of the legal title to the terminal properties, but upon principles of justice and equity.

Following the enumeration of the facts which, in its opinion, establish the character of the Eastern Company as the mere corporate agency or representative of the two proprietary companies, facts which manifestly fall far short of the facts disclosed in the case at bar, this Court further says:

"To accomplish this end they resorted to the familiar device of incorporating the Eastern Company, and in order that their purpose might not be defeated in the future, by the design or business necessity of either company, the contract between them which we have discussed, was entered into to prevent the corporate organization of the Eastern Company and the control of its operations from being changed by either owning company without the consent of the other, and the evidence makes it very clear that all through its corporate life the Eastern organization has been consistently used as a mere agency of the two owning companies to accomplish their original purpose.

"Much emphasis is laid upon statements made in various decisions of this Court that ownership, alone, of capital stock in one corporation by another, does not create an identity of corporate interest between the two companies, or render the stockholding company

the owner of the property of the other, or create the relation of principal and agent or representative between the two. *Pullman's Palace Car Co.* v. *Missouri Pacific Ry Co.*, 115 U. S. 587; *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364, 391; *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 413; *Interstate Commerce Commission* v. *Stickney*, 215 U. S. 98, 108; and *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 529, 530, and it is argued that since the order of the Commission requires that the tracks, the title to which is in the Eastern Company, be treated as the property of the stock owning companies, the effect of it, if enforced, will be to deprive the Eastern Company of its property without compensation and to render valuless its capital stock owned by the Milwaukee and Omaha Companies.

"While the statements of the law thus relied upon are satisfactory in the connection in which they were used, they have been plainly and repeatedly held not applicable where stock ownership has been resorted to, not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency of instrumentality of the owning company or companies. *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S., 257, 273, and *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516. In such a case the courts will not permit themselves to be blinded or deceived by mere forms or law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require.

"Satisfied as we are by the evidence that the Eastern Company is a completely controlled agency of the two companies which

> own its capital stock, we agree with the Supreme Court of Minnesota that the fact that the legal title to what are obviously terminal or spur delivery tracks is in the Eastern Company should not be permitted to become the warrant for permitting a charge upon shippers greater than they would be required to pay if that title were in the owning companies" (pp. 500-501).

From the foregoing it is quite clear that this decision must control the case at bar, unless it is distinguishable by reason of the fact that at the time the decision was rendered the whole capital stock of the Eastern Company was held apparently in equal proportions by the proprietary companies, whereas in the case at bar a part of the capital stock of the Des Moines Company is now claimed to be owned by the defendants Hubbell.

To urge such a distinction is to ignore the underlying principle of this Court's decision.

This Court held that the Eastern Company was organized and established by the two proprietary companies as a convenient and customary means of creating a tenancy in common in the railway property held in legal title by the Eastern Company "so that each might have the benefit of it as fully as if it were the sole owner."

The proprietary interest was represented by shares of stock of the Eastern Company issued to the proprietary companies, and at the date of this Court's decision the tripartite agreement between the Eastern Company and the proprietary companies had expired and the sole evidence or indicia of their title to and right to use and enjoy the common property was the certificates of capital stock of the Eastern Company. In other words, this Court disregarded the conventional status of the shares and held that in the

possession of the proprietary companies such shares represented a right to the common use and enjoyment of the properties held by the Eastern Company precisely as if that right had been definitely expressed upon the face of the stock certificates themselves.

The Des Moines Company was organized under substantially the same conditions as the Eastern Company and for the same purpose, and its capital stock was allotted to the proprietary companies for the same purpose as the stock of the Eastern Company was allotted to its proprietary companies, and, curiously enough, in the same identical proportions.

It is true that at a subsequent date certain shares of the Des Moines Company passed from the control of the proprietary companies into the hands of the defendant Hubbell, but this was not intended to destroy, and, in the nature of things, could not destroy the right of user or the equitable estates inhering in and represented by the shares retained by the proprietary companies for the reason—if for no other reason—that the parties themselves expressly so stipulated.

At the time the Purchasing Committee sold three one-eighth interests to the defendant Hubbell, retaining one-eighth in its own treasury, it was expressly agreed, as we have repeatedly pointed out in our original brief, "that a one-eighth interest in the capital stock should be sufficient to represent a proprietorship in the company" (Rec., 1603).

Moreover, even if there had been no express agreement of this character, the Court, in order to sustain the transaction, would be obliged to imply one. It is quite evident that the Milwaukee Company and Omaha Company could not now de-

feat the deliberate judgment of this Court by the simple device of selling to an individual, much less an individual who is an officer and director of the Eastern Company, a portion of their stock of the Eastern Company. If such a transaction were presented surely this Court would hold that the Milwaukee Company and the Omaha Company had no corporate power to alienate their interest in the corporate property of the Eastern Company by a transfer of their shares of stock of the Eastern Company, thereby disabling themselves in the performance of their public duties and in the exercise of their corporate franchises. Such a transaction if not held void would be construed as implying a reservation in the Omaha Company and the Milwaukee Company of every right of user represented by their original allotments of stock.

Certainly there is no substantial reason why an eighth stock interest in the Des Moines Company should not be given the same attributes as a one-quarter or a one-half stock interest in the Eastern Company—especially as the record in this case makes it abundantly clear that all of the parties so intended.

To argue further that the parties always intended that an allotment of stock in the Des Moines Company, originally an allotment of one-quarter and subsequently an allotment of one-eighth, should represent a proprietorship, is surely unnecessary. The evidence on this point is overwhelming.

In this connection, we desire, however, to refer again to the provisions of the Articles of Incorporation of the Des Moines Company attempted to be amended at the illegal stockholder's meeting of April 8, 1890.

Article IV provides that

> "At all future elections of directors it shall require the votes of more than seven-eighths of all the stock theretofore issued to elect any director."

The same Article provides that

> "With respect to the matters above mentioned, and all other matters, except the ordinary operation of the property, the Board of Directors can act only upon the unanimous vote of eight members thereof."

And Article IX provides that the Articles may only be amended by a vote of "more than seven-eighths of all the stock in favor thereof."

These provisions give a veto, amounting to a power of strangulation, to a vote of one-eighth of the stock of the Des Moines Company.

What conceivable reason could there be for giving to an eighth stock interest a veto power of this character in perpetuity, unless it be given as supplementary to or complementary of a proprietorship of which the primary attribute is a right to use and occupy the terminal facilities of the Des Moines Company in common with other proprietary companies as contemplated and provided for by the express provisions of the contract of January 2, 1882.

The theory upon which counsel for the defendants have developed their brief, namely, that there is great significance in the fact that the temporary trustees conveyed to the Des Moines Company titles in fee simple to the properties assembled for the proprietary Companies under the trust instrument of January 2, 1882, with the supposed result that such absolute conveyances were incon-

sistent with the establishment and continuance of a trust in the Des Moines Company, is cast in a series of questions beginning on page 264 of their brief, relating to subject matters upon which it is suggested that counsel for the complainants have been silent.

It is submitted that the queries raised by such questions have been fully disposed of, in our original brief, under Points I, II, V and VI, discussing the plan of the trust created, the reasons for the conveyance of complete legal titles in the trust properties to the Des Moines Company, and the harmonious relationship of the subsequent acts and circumstances to the trust thus created and developed.

Nevertheless, at the risk of repetition, we desire to answer categorically the questions thus submitted:

> Question (1). "If the organization of the defendant company was for the sole purpose of providing the corporate trustee referred to in the contract of 1882, as claimed on pages 99-100 of their argument, why did they organize a corporation having the power and assuming the obligation of a Railway Company and why did they organize a corporation for pecuniary profit?"

Previous to the making of the contract of January 2, 1882, the terminal properties acquired in the common interest of the three proprietary companies were held in the names of two corporations and two individuals. These properties were intended to be used for railroad purposes. It was, therefore, essential that they be concentrated in a railroad corporation having power to exercise all the prerogatives and to perform all of the functions of a common carrier, to the end that the

proprietary companies might effectively enjoy for railroad purposes the properties acquired and held for their common benefit. Furthermore, it was essential that these properties be conveyed to a single railroad corporation, to make practicable the mortgaging of the same and the issuing of bonds, in compliance with the terms of the trust instrument. An identical course was pursued by the organizers of the Eastern Company in the case of *Chicago, Milwaukee and St. Paul Railway Company* v. *Minneapolis Civic and Commercial Association*, above analyzed.

A railway corporation for pecuniary profit was organized because no other corporate form of railway company was possible under the laws of Iowa and, furthermore, because under paragraph Tenth of the trust instrument (Rec., p. 413) it was provided that railroad companies other than the proprietary companies might be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and (their) its proportion of the maintenance account."

> Question (2a). "If it was the purpose to transfer to the defendant Company simply the legal title to the Terminal property then why the following:
>
> Why did the Des Moines Northwestern Railway Company, in whose name the title to no part of the Terminal stood, in January, 1895, (1885) pass a resolution authorizing its officers to transfer to the Terminal Company all of its interests in the Terminal Company of whatever kind and character?"

In vesting the trust properties in a corporate trustee, as provided for by the trust instrument, it was appropriate that the proprietary companies should as they did do on January 1, 1885, take

coincident corporate action with this end in view. In this respect, the resolutions adopted by the stockholders of the Northwestern Company, on January 1, 1885, were identical with the resolutions passed by the St. Louis and Northern Companies on the same date. By these several resolutions, each proprietary company in unequivocal terms accepted the incorporation of the Des Moines Company as the corporate trustee provided for by trust instrument, and it was appropriate that concerted action be taken by the proprietary companies to vest in such corporate trustee the trust properties assembled in the names of the temporary trustees. Thus, in a determination of the character of estate intended to be conveyed by the proprietary companies to the Des Moines Company, it is without significance that the stockholders of the Northwestern Company adopted the above resolution, notwithstanding, that it had taken title to no part of the trust properties. *On the other hand, the fact that the Northwestern Company did not, as both shown and asserted by counsel for the Hubbells on pages 67 and 70 of their brief, make any deed of conveyance of any kind or character to the Des Moines Company is highly significant in demonstrating that the proprietary companies did not intend to convey their equitable estates in common to the Des Moines Company, for as this Court has said in Brown* v. *Fletcher, 235 U. S. 589, an equitable estate is an estate in property to the same extent as if the legal title thereto were vested in the beneficiary and such an estate passes by deed.* It is beyond question, as counsel for the Hubbells themselves state, that the proprietary companies had equitable estates in common in the terminal properties, while the

temporary trustees held legal title thereto. Therefore, if it had been the intent of the proprietary companies that such equitable estates should pass with the legal estates in the terminal properties to the Des Moines Company, the Northwestern Company could have divested itself of its own interests in this respect only by proper deed of conveyance.

> Question (2b). "Why did the Northwestern Company, the Northern Company and the St. Louis Company, each, in their resolutions of January, 1885, authorizing their officers to convey this property, use this language: 'convey, assign and transfer to said company all its right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract.' (Rec., Vol. II, p. 427.)"

The proprietary companies established their trust by virtue of the contract of January 2, 1882. The Des Moines Company became the corporate trustee provided for in this contract, both by express declaration of the incorporators and by virtue of the recital of the trust instrument in the Articles of Incorporation and the declaration contained in Article 2 that "all the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." The Des Moines Company in its resolution of January 1, 1885, accepted the trust and directed

its officers to procure the necessary conveyances and transfers to fully invest it with *the title* provided for in the trust instrument. For the purpose of carrying out the terms of the trust as expressly provided by the trust instrument, it was essential that the corporate trustee take legal title to the trust properties in fee simple. The trust estates thus being established and reserved by instruments other than the deeds of conveyance made by the temporary trustees, it was both appropriate and essential that the conveyances made by them should be without reservation.

> Question (2e). "Why did Col. Blodgett, whose integrity and ability are unchallenged, who had lived these transactions and who knew the intention better than can counsel or the Court, in preparing the deed of the St. Louis Company in carrying out these resolutions, prepare a warranty deed, and why did he formulate it so as to convey not only the property which stood in the name of that Company but also 'all of the real estate within the City of Des Moines * * * also all its embankments, bridges, sidetracks, * * * all its railroad property acquired or to be acquired and everything appurtenant to said railroad'?" (p. 458)

The answer to this is covered by our answer to Questions (2a) and (2b), and we may also add that Col. Blodgett, precisely because he was a lawyer of unchallenged ability, prepared the deed of the St. Louis Company in the form stated in the question, knowing that the warranty deed was not to be the instrument within which the trust was to be reserved.

Counsel for the Hubbells, failing to appreciate the significance of the principle here involved,

assert that the embodiment of the trust instrument in the Articles of Incorporation was a "mere solecism" and an "incongruity" (Brief, p. 191).

From their standpoint this is indeed true; and their own admission that their whole argument is utterly inconsistent with the existence of these reservations in the organic law of the Des Moines Company is the best possible demonstration of the complete fallacy of their fundamental contention.

> Question (2d). "Why did the Northern Company in its deed after describing the property which stood in his name use the following language:
>
> 'Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the revrsion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, etc.'?" (p. 456).

The answer to this is covered by our answer to Questions (2a) and (2b).

> Question (2e). "Why was it provided in the original articles of incorporation of the defendant Company that its capital stock should be issued in payment for the Terminal property?"

It was for the reason that it was contemplated that the stock would be apportioned among the proprietary companies as evidencing and measuring their respective equitable estates in the com-

mon properties, precisely as was done with the stock of the Eastern Company in the case of *Chicago, Milwaukee and St. Paul Company* v. *Minneapolis Civic and Commercial Association, supra.*

> Question (2f). "Why was it recited in the contract of May 10th, 1889, that the defendant Company owned this property?"

The primary purpose of this agreement was to give assurance to the holders of the bonds issued under the mortgage of the Des Moines Company that the interest on such bonds would be duly and punctually paid by the proprietary companies, and this agreement was formulated and executed primarily as an additional security for the bonds issued under the mortgage, which mortgage also recited that the Des Moines Company was the owner of the terminal properties. Moreover, Judge Hook, in his dissenting opinion calls attention to the fact that such recital of ownership is based upon the provisions of the charter of the corporation and that in such charter is incorporated the trust instrument.

> Question (3). "If the contract of May 10th, 1889, was supplemental to the contract of January 2, 1882, why does it not recite this fact?"

This fact is recited in the resolution authorizing this supplemental agreement and a further recitation of the fact was unnecessary, especially in view of the fact that the agreement is fundamentally a supplemental agreement, in that it only provides for the details of operation of the terminals for the period of thirty years, whereas, the contract of January 2, 1882, is perpetual. In connection with this subject matter, we wish to refer

to the assertion in the brief of counsel that we have misquoted the resolution authorizing the supplemental agreement by stating that it provided for a thirty year agreement, whereas, the record in fact shows that the resolution provided for an agreement not for *thirty years* but for *three years.* (Brief, pp. 266-268.) It is true that the record is as stated by counsel for the Hubbells, but it obviously contains in this respect a typographical error which has been treated as such from the inception of this litigation, and no suggestion was ever made in oral argument or printed argument, of which we are aware, that the fact was otherwise.

In concluding our reply argument we especially direct this Court's attention to that division of the brief of counsel for the Hubbells (pp. 258, 259) where they defend their alleged title to the five-eighths stock interest in the Des Moines Company which they took from the treasury of the consolidated company under the several transactions analyzed in Point VII of our original brief.

Their defense of these transactions is not even a plea in confession and avoidance; it is indeed a plea of guilty.

The statement that the mortgage debt to the Metropolitan Trust Company through whom the St. Paul Company claims title has long since been paid is not true. The record shows that the mortgage to the Metropolitan Trust Company was duly foreclosed, that the bondholders themselves were forced to buy in the property and that there was a substantial deficiency which ought to have been satisfied by application of the unmortgaged assets wrongfully appropriated by the Hubbells (Rec., 651).

The Hubbells are, however, mistaken in assuming that the security holders of the defunct consolidated company are alone entitled to complain of the breach of trust. As we pointed out in our original brief (Points VI and VII), the consolidated company as one of the equitable tenants in common was itself subject to all the disabilities of a fiduciary in dealing with aliquot interests in the trust properties and the defendants Hubbell stand in no better position than their controlled vendor.

The Hubbells do not attempt to controvert this proposition, and we submit that it is incontrovertible.

To emphasize and illustrate the application of this proposition we refer again to the case of *Chicago, Milwaukee and St. Paul Railway Company* v. *Minneapolis Civic and Commercial Association, supra.*

Let it be assumed that an individual who was an officer and director of the Eastern Company and also a director of one or both of the proprietary companies by a series of transactions that were fraudulent *per se* and confessedly in violation of the express provisions of the tripartite agreement had obtained possession of the 145 shares (the two surplus quarters) of the stock of the Eastern Company which under the terms of the tripartite agreement had been issued to "a trustee for the Eastern Company" and let it be further assumed that this individual should assert that his possession and alleged ownership of these shares established the autonomy and independence of the Eastern Company so that it was free to do what this Court held that it could not do in the case in question. Would any lawyer seriously

contend that the two proprietary companies, upon a discovery of the fraudulent character and object of the transaction, would not be entitled to a rescission of the transaction and a restoration of the *status quo ante?*

The fact that such relief in the instant case will deprive the Hubbells of any legitimate profit which they might still realize by transferring the shares to other railway companies is of no consequence. Equity is indifferent to the ill-fortunes of a faithless fiduciary. As the Hubbells, lured by the hope and expectation of inordinate gain, elected to ignore the requirements of conscience and good faith and set about deliberately to destroy property interests of immense value belonging to their *cestuis que trustent,* surely they will not be heard to complain if at the end of a long, tedious and costly litigation a court of equity should give the injured *cestuis* their full and complete measure of equitable relief.

Finally attention should be called to the fact that such complete measure of relief cannot be given the complainants with the continuance in the Hubbells of the five-eighths stockholding interest in the Des Moines Company now claimed to be owned by them, for any decree which protects the right of user belonging to the complainants as equitable tenants in common of the terminal properties and still leaves the Hubbells identified with, or in control of, the corporate activities of the Des Moines Company without responsibility in this respect either to the public or to the complainants, and with power to exploit such control in furtherance of the private real estate operations of F. M. Hubbell and Son in the industrial precincts of the City of Des Moines, would both perpetuate

a situation in principle indefensible and create paralysis in the legitimate development of the trust enterprise and in the performance by the proprietary companies through it of their duties to the public.

The brief and argument of counsel for the Hubbells upon the controversy as to the so-called surplus earnings, is equally as unresponsive as their argument on the main case. We have nothing to add to the argument in our original brief on this controversy, except to reiterate our belief that it involves no public interest and no rule or principle of law which public interest requires this Court to determine, and that the writ of *certiorari* issued on petition of the Hubbells may properly be dismissed.

In the brief of counsel for the Hubbells (p. 269), they question the statement in our original brief that these accumulations now amount to approximately $2,000,000.00, and say:

> "There is nothing in the record to sustain this statement and it is not true as a matter of fact. The record does show that a substantial sum involved in this issue."

As we stated in our original brief, the record does not show the amount of these accumulations at the present time, the testimony having been taken a number of years ago.

It seems proper, however, that this Court should be apprised of the precise condition of the case at the time of the argument, relying in this

respect upon the good faith of counsel. The fact is that on December 31, 1917, these accumulations, as reported by joint accountants employed to audit the books of the Des Moines Company, amounted to $1,730,582.58. The subsequent accretions, including interest on the fund, practically all of which is in cash, should bring the present total to a figure well above $2,000,000.00.

All of which is respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1918

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, AND WABASH RAILWAY COMPANY,

Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL AND F. M. HUBBELL & SON,

Respondents.

No. 66

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

F. W. LEHMANN AND
J. L. PARRISH,
Of Counsel for Respondents.

FRED J. S. FLEISCH PRINTING CO., ST. LOUIS

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IN THE

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Petitioners,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL AND F. M. HUBBELL & SON,

Respondents.

No. 819

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

The Parties.

The petitioners, the Chicago, Milwaukee and St. Paul Railway Company and the Wabash Railway Com-

pany, have each of them a line of railroad terminating at Des Moines, Iowa.

The respondent, the Des Moines Union Railway Company, owns and operates the railway terminal system which is used by the Milwaukee and Wabash and some other railway companies at Des Moines.

The respondents, F. M. Hubbell and F. C. Hubbell, are officers of the Des Moines Union Railway Company and have been for thirty years or more.

The respondents, F. M. Hubbell and Son are stockholders in the Des Moines Union Railway Company.

The Subject of Contention.

The nucleus of the property of the Terminal Company was acquired about 1882 and prior thereto by the Milwaukee and Wabash Companies, or rather by their predecessors, also railroad companies, and owning and operating the same lines of railroad now owned and operated by the Milwaukee and Wabash.

These predecessor companies organized or caused to be organized, the Des Moines Union Railway Company, with authorized capital stock of one million dollars and with authority for the issuance of bonds.

By deeds absolute and unqualified in form, the predecessors in title of the petitioners, conveyed this terminal property to the corporation they had created and as consideration for such conveyance they took four hundred thousand dollars of the bonds of this terminal company and all of its capital stock.

Other property was later and from time to time acquired by the company and paid for by its bonds or by proceeds of the sale of bonds.

The capital stock of the Des Moines Union was taken

by the companies which created it, one-fourth to each of the two original companies which are predecessors of the Milwaukee, and one-half to the predecessor of the Wabash.

The amount of this capital stock was fixed in the first instance at one million of dollars, increased then to two million dollars, and finally left at two million as being authorized, but only four hundred thousand as having been paid for and as so adjusted and issued one-half of the stock was assigned to the Wabah predecessor and the other half to the Milwaukee predecessors.

Of this stock F. M. Hubbell and Son have acquired twenty-five hundred shares by purchase from the predecessors of the Milwaukee and the Wabash, and the stock holding in the Terminal Company now is and has been for more than twenty years as follows:

The Wabash..... 500 shares.
The Milwaukee.....1,000 shares.
F. M. Hubbell & Son.....2,500 shares

The Question in the Case

Is as to the title by which the Terminal Company holds its property.

It got that property from the predecessors of the petitioners and they had unquestioned and unqualified good title. It got it by deeds which by their terms conveyed to the Terminal Company the same unquestioned and unqualified good title which the grantors had. And it paid full rounded measure of value therefor in its stocks and bonds.

Nonetheless, the petitioners contend that at some

time in the course of dealing between the parties, there was in some way, some sort of an easement in this property reserved to the grantors, an easement which gave to them the entire beneficial use, right and interest in the property in perpetuity, and that the Terminal Company by the deed absolute to it and for which it gave full value, got only the barren legal title.

Under this contention the Terminal Company must operate this property always for the use and behoof of the petitioning railway companies, for the bare cost of operation so far as they are concerned, with no allowance on account of the value of the property employed, and moreover, all rents, incomes, earnings and profits, the fruit of the use of the property by or for third parties, must go to these same petitioning railway companies.

The shares of stock of the Terminal Company are thus rendered entirely worthless, which the railway companies can well afford since they absorb everything as owners of the dominant estate. F. M. Hubbell & Son, however, lose everything.

The Decision of the Court of Appeals

Was against this contention of the railway companies, and held that the Des Moines Union Railway Company was the owner of its property, that it had in fact gotten what it had bought and paid for, and that the predecessors of the petitioners had parted with what they had sold and received the price for. The Wabash and the Milwaukee seek by their petition a review of this decision.

The Beginning of the Enterprise.

From our point of view the petition for certiorari herein is not entirely accurate in its presentation of the facts of the case, and we therefore think it appropriate to make a statement in chronological order of the acts and contracts involved, and to let these, as far as possible, speak for themselves in the very words of the record.

Three companies, predecessors of the petitioners, prior to 1882 determined on building lines of railroad to Des Moines, one of them, now the Wabash, from the south, and two of them, now the Milwaukee, from the north and northwest. They acquired land in Des Moines to be used by them for terminal purposes jointly, the purchase being made in part directly by the railroad companies and in part by James F. How and General G. M. Dodge, as trustees.

The Contract of January 2nd, 1882.

The arrangement between the companies, the Des Moines & St. Louis (predecessor of the Wabash), and the Des Moines Northwestern and St. Louis, Des Moines and Northern (predecessors of the Milwaukee), was expressed in a writing between these original companies and Col. How and General Dodge of date, January 2nd, 1882 (Rec., Vol. 2, p. 411).

It provided:

"FIRST.

The companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance, at their

joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

SECOND.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually; James F. How, trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

THIRD.

It is mutually agreed by the parties above named that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said company may issue and deliver to the companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

FOURTH.

The title to said property shall be and remain in a trustee to be named by agreement of said companies, but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

FIFTH.

The individual signers hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement.

SIXTH.

The Des Moines and St. Louis Company shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two companies, the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

SEVENTH.

The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration."

The remaining provisions of the contract need not be here considered.

It is obvious that under this contract the Railroad Companies were the absolute owners of this property with right to use it or dispose of it as they might agree among themselves, subject only to the right of Col. How and General Dodge to be reimbursed for what they had paid for lands purchased by them.

The contract does not provide, as stated on page 4 of the petition, that the property constituting its subject matter "should be held in perpetuity subject to the joint use and occupation of all said railway companies."

No trustee was ever named by the parties under paragraph four of the contract.

Operation under and according to the terms of this contract, each company doing its own switching over the tracks with simply police control, etc., by the Des Moines and St. Louis, proved to be unsatisfactory.

Organization of the Des Moines Union Railway Company.

December 10th, 1884, the Des Moines Union Railway Company was organized under the laws of Iowa relating to corporations for pecuniary profit. This was done at the instance of the railroad companies, parties to the agreement of January 2nd, 1882, and was contemplated by paragraph three of that agreement.

The agreement of January 2nd, 1882, is recited and set out in full in the Articles of Incorporation and then it is further recited (Vol. 2, p. 419):

> "Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said companies, and
>
> Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, **and it was the understanding of the parties that such company might acquire, operate and maintain said**

property in such manner as best to serve the interest of the parties hereto.

Now, therefore, for the purposes aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following Articles of Incorporation."

The following among the articles of incorporation are pertinent to be considered:

ARTICLE 2.

The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Ia., as well as the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by chapter 1 of Title IX of the Code, and the amendments thereto. All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, trustee, and Grenville M. Dodge. The said company shall have the right to lease or otherwise

dispose of the use of any part of its franchises to any other railway company—provided that the assent in writing of the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

ARTICLE 3.

The capital stock of this corporation shall be one million ($1,000,000.00) dollars, which shall be divided into shares of one hundred ($100.00) dollars each and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge.

ARTICLE 4.

The affairs of the Company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of each year. The provisional Board of Directors, who shall hold office until the first Thursday in January, A. D. 1886; shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company,

and no stockholders shall be eligible for membership of the Board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive.

The provisions herein with respect to nomination for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the Stockholders as hereinbefore provided.

The Directors shall elect, from their number, a President, Vice-President, Secretary and Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

ARTICLE 9.

These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the

Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation—published in the City of Des Moines, Iowa."

It is to be observed:

First: The business of the corporation was expanded greatly beyond what was to be done under the agreement, as it was "the construction, ownership and operation of a railway in, around and about the City of Des Moines" and all sorts of things and everything incident thereto.

Second: The corporation was organized for pecuniary profit.

Third: The Company could not lease or otherwise dispose of its franchises without the consent of the Railroad Companies.

Fourth: The stock of the Company was to be paid for by the property held under the agreement of January, 1882.

Fifth: The members of the Board of Directors were to be nominated, four by the Des Moines & St. Louis Co. and two by each of the other Railroad Companies.

Sixth: No contract, lease or other agreement amounting to a permanent charge upon the property of the corporation could be made by it without approval of the Railroad Companies.

Seventh: These Articles could be amended only by a

vote of more than three-fourths of the shareholders and by such vote could be amended.

None of these provisions of the Articles of Incorporation limited or impaired in any way the title to the property which was to be and later was conveyed to the Terminal Company. The railroad companies and Col. How and General Dodge had an absolute title to the property and they conveyed all the title and all the interest they had to the Terminal Company.

The restrictive provisions of the Articles of Incorporation simply determined the mode in which and the limitations under which the powers of the Terminal Company were to be exercised.

Resolutions for Transfer of Property to Des Moines Union Railway Company.

On January 1st, 1885, at a meeting of the shareholders of the St. Louis, Des Moines & Northern Co. the following resolution providing for the conveyance and transfer of all its right and interest in the terminal property at Des Moines to the Des Moines Union Railway Company was unanimously passed (Vol. II, p. 423):

> "Whereas, The Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract; and

Whereas, On the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated, and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate property, rights and franchises in the City of Des Moines, east of Farnham Street in said city of the aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

Now, Therefore:

1. Resolved, That this Company accepts and ratifies, so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

2. Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract to convey, assign and transfer to said Company all its rights, title and interest of whatever name and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said city, now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract."

At the same meeting the following resolution pro-

viding for the transfer of the management and operation of the property was passed (Vol. IV, p. 1474):

> "Resolved, That the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines so far as the same may now be vested in the Company on the first day of January or as soon thereafter as practicable, leaving the question of settlement between this Company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein."

On the same day like resolutions were passed at the shareholders' meeting of the two other Railway Companies.

It is to be observed that by these resolutions the Railroad Companies intended three things—first, a ratification of the incorporation of the Des Moines Union Company, which involved approval of the ownership of the terminal property by that Company; second, a sale of the terminal property to the Des Moines Union Company in consideration of its stocks and bonds, and, third, the immediate transfer of the control, management and operation of the property to the Des Moines Union, leaving the settlement of the amount of stocks and bonds to be paid for the property to be determined thereafter.

On the same day at a meeting of the Directors of the Des Moines Union Company the following resolutions were adopted (Vol. II, p. 433):

> "Resolved,
>
> FIRST.
>
> That this Company accepts the transfer and management and operation of said property in

the City of Des Moines, east of Farnham Street in said city, heretofore owned and controlled by the Des Moines & St. Louis Railroad, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as practicable, and it hereby instructs its President to make such order as may be necessary to render such control and management effective, as provided in said contract.

SECOND.

That the President, Vice-President, Secretary and Treasurer of this Company be, and they are hereby, appointed a committee to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said properties provided for in said contract of January 2nd, 1882.

THIRD.

That to enable this Company to pay for the property and to maintain, operate and improve the same, and purchase other property necessary to carry out its objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same, the President and Secretary of this Company are hereby authorized and directed to issue full-paid capital stock of this Company not to exceed one million ($1,000,000.00) dollars and not to exceed five hundred (500) bonds of this Company, of the denomination of one thousand dollars ($1,000.00); the form to be agreed upon hereafter by this Board.

And to secure said bonds, the President and Secretary are authorized and directed to execute, in the name of this Company, a first mortgage or deed of trust, conveying all of said property so to be conveyed to this Company or thereafter to be acquired, to a trustee therein named, the form of which deed of trust shall be hereafter determined by this Board.

And when said committee shall have agreed with the said several parties to said contract as to the amount of bonds and stocks of this Company necessary to be delivered to them, and each of them, in payment for said railroad property and franchises, the President and Secretary of this Company shall deliver the same to said several parties as each appear to be entitled, on receipt of the conveyances and assignments of said property so to be made to this Company."

Here, then, was the assent of the Des Moines Union to purchase this property with its stocks and bonds and at once to take over its control, operation and management.

The Terminal Mortgage.

But financial difficulties intervened. The railroad enterprises were not prosperous and nothing was done in the way of carrying out these resolutions until some time in 1887, when a mortgage by the Des Moines Union of all its property was prepared by Col. Blodgett, the General Counsel of the Wabash and of the Des Moines and St. Louis. The mortgage is dated November 1st, 1887, but was acknowledged February 28th, 1888, and recorded May 21st, 1888 (Vol II, p. 459).

The mortgage recites that the Des Moines Union is

"fully authorized to locate, construct, own and operate a railway in, around and about the City of Des Moines" and that it "has undertaken and partially completed the construction of a railroad in the City of Des Moines," and that it "has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said city, and valuable franchises from the City Counsel of said city" (Vol. II, p. 460), and

> "Whereas, For the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds to the amount of eight hundred thousand ($800,000) dollars, to be dated on the first day of November, 1887, in accordance with the resolutions and orders of its Board of Directors at a duly called and authorized meeting thereof."

The mortgage described the property covered by it by detailed descriptions which include all the property that was ever within the scope of the agreement of 1882 and then to leave no doubt contains this paragraph (Vol. II, p. 464):

> "Also all the property and realty embraced in the several conveyances made to the said Des Moines Union Railway Company by James F. How, Trustee, James F. How, Grenville M. Dodge, the Des Moines Northwestern Railway Company, the Des Moines and St. Louis Railway Company, and the St. Louis, Des Moines & Northern Railway Company, or any other person or corporation not specially named above, and for which conveyances reference is hereby prayed to the records of said Polk County, Iowa."

The mortgage was in the general form usual at that time.

While this mortgage was in the course of preparation, the Railroad Companies and the Terminal Company were engaged in carrying out the purposes of the resolutions of 1885.

Resolutions for Conveyance by How and Dodge.

Those resolutions, through inadvertence, perhaps, contained no direction to the Trustees, Col. How and General Dodge to make conveyance of the property held by them, and this omission was now supplied.

November 5th, 1887, the Board of Directors of the St. Louis, Des Moines and Northern passed the following resolutions (Vol. II, p. 435):

> "Whereas, James F. How has prior to 1881 and since then purchased certain property and made expenditures on same as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and
>
> Whereas, Under an agreement between the Company and the Wabash, St. Louis & Pacific Railway Company and others it was intended that said property, standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions, it is hereby
>
> Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased on receiving from said Company a stipulation that as soon as practicable after the transfer said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the pay-

ment of said property and improvements, with interest on same and taxes paid thereon and also three-fourths of the stock of the Des Moines Union Railway Company, said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company or their successors or assigns in lieu for the money advanced by said Company to make the purchase of the above property and improvements and the payment of taxes for this Company.

Whereas, Grenville M. Dodge has prior to 1881 and since then purchased certain property and made expenditures on the same as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above so purchased on receiving from said Company a stipulation that as soon as practicable said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced by him for the payment of said property and improvements, with interest and taxes on the same, and also one-fourth of the capital stock of the Des Moines Union Railway Company."

Similar resolutions were passed by the two other Railroad Companies on November 8th (Vol II, p. 437 and 442).

Assent by the Terminal Company.

And on November 8th the Terminal Company passed resolutions assenting to the proposals of the Railroad Companies (Vol. IV, p. 1299) and authorizing the delivery of its stocks and bonds in payment of the property conveyed to it.

The Deeds of Conveyance.

Conveyances were now made by the Trustees, Col. How and General Dodge, of the land standing in their names (Vol. II, pp. 446 to 453).

Under date of November 7th, 1887, the St. Louis, Des Moines and Northern made a deed to the Des Moines Union of the property standing in its name, which, after describing the property conveyed, reads as follows (Vol. II, p. 456):

> "Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part and assigns forever."

There could hardly be left in the grantor after all this, the entire beneficial interest in the property.

Under date of February 21st, 1888, the Des Moines and St. Louis Company executed a deed which, after specifically describing a number of parcels of real estate conveyed by the deed, proceeds (Vol. II, p. 458):

> "And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, sidetracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have acquired by grant, donation, purchase or otherwise and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance "Granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said city between Court Avenue and Vine Streets. And the said Des Moines and St. Louis Railroad Company hereby covenants to warrant and defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it."

The contention is made in the face of this warranty deed that the grantor reserved to itself and to the two other Railroad Companies the entire beneficial interest in all the property conveyed.

The bonds of the Terminal Company were delivered to the Railroad Companies, and by them were sold

upon the general market. It is conceded by petitioners that the bonds were a lien upon the property of the Terminal Company, but it is contended that the stock represents no sort of beneficial interest in that property.

Actual possession of the property was taken by the Terminal Company May 1st, 1888, and ever since then that Company has held possession of and has operated the property.

The Operating Contract of 1889.

Under date of May 10th, 1889, a contract was made between the Terminal Company and the three Railroad Companies, effective from May 1st, 1888, and to run for thirty years from that time, providing for the use and operation of the property by the Terminal Company.

This contract was prepared by the General Counsel of the predecessor of the Wabash Company.

The preliminary recitals of this contract are as follows (Vol. II, p. 479):

> "This agreement, made and entered into this 10th day of May, A. D. 1889, by and between the Des Moines Union Railway Company, of Des Moines, Iowa, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part, witnesseth that:
>
> Whereas, The said party of the first part is the owner of valuable terminal facilities in the City of Des Moines, Iowa, hereinafter described; and
>
> Whereas, The respective parties of the second part have railroads in the State of Iowa which

terminate at, or run into and through, said City of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party; and

Whereas, Said party of the first part has become incorporated and organized under the laws of the State of Iowa for the purpose of owning and operating a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham street, in western part thereof; and

Whereas, Said party of the first part, in pursuance of said charter, has acquired and now owns a railway in said city, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, Said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and

Whereas, For the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject-matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined.

Now, therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows:"

The contract then provides for the acquisition of

more property and the construction of more facilities by the Terminal Company, as follows (Vol. II, p. 480):

> Section One. The party of the first part agrees to proceed with reasonable dispatch, and whenever its Board of Directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said City of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots, round houses, shops, water tanks and yard appurtenances, as the Board of Directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase, or otherwise, such additional real estate as may be necessary.
>
> Section Two. The amount of such additional grounds, and the form, character and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement and repairs thereof, shall in all matters not otherwise specifically provided for herein, be determined by the Board of Directors of said first party."

Other sections of the contract prescribe details of the service to be rendered and the charges therefor.

There are sections dealing with the transfer of stock in the Terminal Company to be considered later.

This contract was observed by the parties and their successors until the close of its term.

Amendment of Articles of Incorporation of the Des Moines Union Railway Company.

The petition for certiorari, p. 6, states that:

> "He (F. M. Hubbell) caused the records of the Des Moines Company (the Terminal) **without**

knowledge or consent of the railway companies to purport to show that at a meeting of its stockholders, when in fact no stock had been issued or subscribed, its articles of incorporation had been amended so as to eliminate all the rights and interests of the railway companies in their joint railroads and terminal facilities and create a colorable claim that the Des Moines Company had acquired them, etc."

This is a charge, certainly a suggestion, that the amendments to the articles of incorporation were furtively made by Mr. Hubbell.

A recital of what was done, with references to the record, will show that nothing was done without the presence of all parties in interest and participation by them.

It is true that at this time no certificates of shares had been printed and issued to the parties entitled, but the authorized amount of capital stock had been determined, its issuance in payment of property received had been directed and the amount due to each of the railroad companies had been settled.

The integrity of the records of these various corporations is not impeached, and there is nothing in the testimony to contravene any recital of facts in them.

At the annual meeting of the stockholders of the Terminal Company held January 3rd, 1890, among other things done, a Board of Directors for the ensuing year was elected. General G. M. Dodge presided at the meeting.

J. F. How, on behalf of the Wabash Railroad Co., operating the Des Moines and St. Louis R. R. Co., nominated Jas. F. How, C. M. Hays, W. H. Blodgett and A. B. Cummins "to be voted for as directors of

of the Des Moines Union Railway Company to represent the said Wabash Railroad Company, it having been certified to this meeting by the secretary of the Wabash Railroad Company and Des Moines and St. Louis Railroad Company that the above named gentlemen had been duly nominated as candidates for directors in this company on behalf of the Wabash Railroad Company, and the Des Moines and St. Louis Railroad Company" (Vol. IV, p. 1306).

Col. Jas. F. How was a vice-president of the Wabash Company and C. M. Hays was its general manager.

The same record shows that General Dodge, on behalf of the Des Moines and Northern nominated himself and L. M. Martin as directors of the Terminal, and F. M. Hubbell, on behalf of the Des Moines and Northwestern, nominated himself and F. C. Hubbell to represent his company.

The men nominated were all elected. Here was an annual meeting, of which every stockholder had constructive notice, and which was attended in the only way in which corporations can attend, that is, by personal representatives, by every stockholder in the company, and those representatives were on behalf of the Wabash, Col. J. F. How and Chas M. Hays; on behalf of the Des Moines and Northern, General G. M. Dodge and L. M. Martin, and on behalf of the Des Moines & Northwestern, F. M. Hubbell and F. C. Hubbell.

Further proceedings were had at this meeting as follows (Vol. II, p. 1307):

> "James F. How moved that the question of amending the articles of incorporation of this Company, as well as the question concerning issuing of stock for the purchase price of the

terminal property be referred to Attorneys W. H. Blodgett and A. B. Cummins for their investigation and recommendation."

Thus, what the petition for certiorari says was done by F. M. Hubbell "without knowledge or consent of the railway companies" was initiated at a meeting presided over by Gen. Dodge of the Des Moines and Northern, being moved by Col. How of the Wabash and referred for investigation and recommendation to Col. Blodgett and Hon. A. B. Cummins, both representing the Wabash.

This meeting adjourned without action on the amendments to February 18th. Meanwhile the attorneys were busy. Mr. Cummins prepared the amendments and sent them to Col. Blodgett for review (Vol IV, p. 1598).

At the February meeting, there being present A. B. Cummins, representing the Wabash, L. M. Martin for the Des Moines and Northern and F. M. and F. C. Hubbell of the Des Moines and Northwestern, the proceedings had were as follows (Vol. IV, p. 1311):

"The secretary reported that notice of the meeting had been duly published and also reported that he had, pursuant to the articles of incorporation, notified each stockholder of the time, place and object of this meeting, which notice contained the amendments proposed to be offered to the articles of incorporation.

Upon motion of A. B. Cummins the report of the secretary was adopted and this meeting declared to be duly and legally called, for the purpose of considering and adopting or rejecting amendments to the articles of incorporation.

Thereupon A. B. Cummins presented certain amendments to the articles of incorporation.

Thereupon F. M. Hubbell moved that the meeting of stockholders do now adjourn for the purpose of having further opportunity to examine said amendments, to meet on Tuesday, the 8th day of April, 1890, at ten o'clock a. m., which motion being seconded, was unanimously carried and thereupon the meeting of stockholders adjourned to meet as aforesaid."

At the meeting on April 8th there were present three men who had been elected as Wabash directors of the Terminal Company, viz., J. F. How, C. M. Hays and A. B. Cummins; one a director representing the Des Moines and Northern, viz., L. M. Martin, and the Hubbells, F. M. and F. C., representing the Des Moines and Northwestern.

The record, Vol. II, p. 488, *et seq.*, shows that the amendments to the articles of incorporation were offered one by one, the different individuals present each taking a hand, and all were unanimously adopted.

Under the law of Iowa, it was necessary for the officers of the Des Moines Union Company to certify the adoption of these articles of amendment and formally to acknowledge the certificate.

This was done by F. M. Hubbell, F. C. Hubbell, L. M. Martin, A. B. Cummins and Horace Seeley on April 10th, 1890; by James F. How, Charles M. Hays and Wells H. Blodgett on April 14th, 1890; by G. M. Dodge, April 16th, 1890, and by H. D. Thompson, April 21st, 1890 (Vol. IV, pp. 1604-1610).

The articles as thus amended and certified were filed for record with the local recorder on April 23rd, 1890, and with the Secretary of State on May 12th.

And then notice of these amendments under signature of General Dodge as president of the company,

attested by F. M. Hubbell as secretary, was published in the Des Moines Leader for four consecutive weeks, from April 23rd to May 20th, 1890.

And under these amended articles and in accordance with them all parties concerned voted their stock, elected directors and did business generally without complaint for seventeen years, or until about the time of the institution of this suit.

These amendments were made in light and leisure, not in haste and darkness as charged in the petition.

And so Mr. Hubbell did not cause the records of the Terminal Company "without knowledge or consent of the railway companies to show" that the articles of incorporation were amended, but all concerned, the representatives of all the railroad companies, and particularly the Wabash, believed that amendments were necessary and acting with great deliberation, after successive adjournments and always under the advice of competent counsel, made, published, declared and accepted those amendments.

Issuance of the Capital Stock of the Terminal Company.

The petition (p. 6) states that F. M. Hubbell caused 4,000 shares of the stock of the Terminal Company "to be issued under Article III of the alleged amended articles, which falsely stated the stock would be issued in payment for the property, bonds having been previously issued for that purpose. The stock was therefore issued without consideration."

This is distinctly misleading in its suggestion. What was done respecting the stock of the Terminal Company, from beginning to end was with the knowledge,

approval and active participation of each and every one of the railroad companies, the original ones and their successors and assigns.

Article III of the original articles of incorporation of the Terminal Company (Vol II, p. 420), provided that the capital stock of the corporation should be one million dollars and the board of directors was authorized to receive in payment therefor the Des Moines properties and franchises of the three railroad companies.

These properties and franchises had been acquired from time to time since 1880. When they incorporated the Terminal and took over the property, they gave bonds to the parties who had advanced money for the property in amounts equal to the money advanced and as further consideration for the property acquired distributed the stock one-half to the Des Moines and St. Louis and one-fourth to each of the other companies (Vol. II, pp. 423, 435, 436, 437, 438, 442).

In November, 1887, the articles of the Terminal Company were amended increasing the capital stock to two million dollars (Vol. IV, p. 1298).

The contract of May 10th, 1889, precedes by nearly a year the amendments to the articles of the Terminal Company made in 1890. This contract recites, section 26, that the Des Moines and St. Louis Company is entitled to one-half of the capital stock of the Terminal Company, and the two other companies each to one-fourth. It further recites that "no certificates for said shares have yet been issued to said parties," and then proceeds to say that certificates shall be issued for ten thousand shares, par value one hundred dollars each, to the Des Moines and St. Louis and for

five thousand shares to each of the other railway companies (Vol. II, pp. 486 and 487).

But no stock certificates were in fact printed and issued to the railway companies at this time. They proceeded in the view, however, until in 1890 they amended the articles of incorporation, that they held stock in the Terminal Company in the amount and proportion stated in the agreement of May 10th, 1889.

There was no doubt some water in this stock, but of this the petitioners cannot complain, for they or their predecessors did the watering.

Mr. Cummins set about to correct this evil by an amendment to the third article of incorporation of the Terminal Company, which provided, among other things (Vol. II, p. 490):

> "The capital stock of the corporation shall be two million dollars ($2,000,000), which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the Terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds theretofore issued for that purpose constituting the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught.
>
> Said four thousand shares of the capital stock shall be issued to the following corporations and in the following proportions:
>
> Two thousand shares to the purchasing committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des

Moines and St. Louis Railroad Company, and the present owner of the property known as the Des Moines and St. Louis Railroad.

One thousand shares to the Des Moines and Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and

One thousand shares to the Des Moines and Northern Railway Company, successor to the St. Louis, Des Moines and Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, sixteen thousand shares, or any part thereof, shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered."

At this same meeting of the Terminal Company Mr Cummins introduced a resolution which explained and was intended to explain the action of the meeting with respect to the capital stock. The resolution recited that by inadvertence there was some uncertainty in the records of the Company as to the price at which the property had been acquired, and all parties being agreed that the property and franchises incident thereto should be purchased at its fair value payable partly in bonds and partly in stock fully paid and it being agreed that the property was fairly worth the sum of $861,257.11, and the relative shares of this to which the parties respectively were entitled having been ascertained and having been adjusted and paid so far as payable in bonds, it was resolved unanimously (Vol. II, p. 496):

"1st. That the purchase price of the property

originally acquired by the Company, as above stated, be fixed at said sum eight hundred sixty-one thousand two hundred fifty seven and 21/100 ($861,257.21) dollars as of the date of the conveyance thereof.

2nd. That the payment of a portion of such purchase price in first mortgage bonds, as above set forth, be confirmed and approved.

3rd. That to complete the payment of such purchase price, the president and secretary are hereby authorized to issue certificates for thirty-nine hundred and ninety-two (3,992) shares of stock, which shares, including eight already issued on behalf of said parties, aggregate four thousand (4,000) shares, as follows:

To the purchasing committee of the Wabash, St. Louis and Pacific Railway Company, nineteen hundred and ninety-six (1,996) shares.

To the Des Moines and Northern Railway Company nine hundred and ninety-eight (998) shares, and to the Des Moines and Northwestern Railway Company nine hundred and ninety-eight (998) shares.

4th. That the proceedings heretofore had respecting the issuance of capital stock, so far as such proceedings are inconsistent with said amendments to the articles of incorporation or with this resolution, are hereby modified to conform hereto."

Certificates of shares were now issued as provided in this resolution to the several parties on the 8th day of April, 1890 (Vol. II, p. 711).

Acquisition of Terminal Stock by F. M. Hubbell & Son.

The petition states that (p. 6):

"by mesne assignments F. M. Hubbell and his son, F. C. Hubbell, acquired individually five-

> eighths thereof, or 2,500 shares, from the company they dominated in a trade at the alleged price of ten cents on the dollar, in violation of the agreement that the stock would be sold "only to a railroad company who would join with the Wabash in making a contract with the Des Moines Company, guaranteeing interest upon the bonds, operating expenses, etc."

There was no such agreement as that stated between any of the parties, nor has the inference that F. M. Hubbell & Son acted in bad faith, in acquiring their stock any foundation in the testimony.

The original articles of incorporation contained no restriction on eligibility to ownership of stock. They did impose as a qualification for the directorship that the person must be nominated by one of the three railroad companies and they did restrict the company itself as to the disposition or burdening of the property. The parties evidently thought that individuals might become shareholders (Vol. II, p. 420-421).

The agreement of May 10th, 1889, in Section 26, did contain a restriction on the transfer of Terminal stock viz.: "all of said certificates (of shares) shall express upon their face that they are not transferable in whole or in part without the consent in writing of all the parties of the second part to this agreement (the three railroad companies) except that any shares of stock" issued to qualify some one as a director may be retransferred, etc., etc. (Vol. II, p. 487).

The three railroad companies consenting, anybody could acquire stock in the Terminal Company.

The articles of incorporation as amended in April, 1890, provided in Article 3 that the stock was transferable only on the books of the Company by and with

the consent of three-fourths of all the directors, except in case of a transferee who is or becomes the owner of one of the three lines of railroad involved and a director could not be elected except by vote of more than seven-eighths of the stockholders (Vol. II, p. 491).

Here again individuals are not disqualified, but the power of rejection is reserved to one-eighth of the shareholders.

On February 5th, 1890, Mr. O. D. Ashley, who was secretary of the Purchasing Committee of the old Wabash Company and president of the Company itself, which owned all the stock and bonds of the Des Moines and St. Louis Company, wrote F. M. Hubbell, saying (Vol. IV, p. 1599):

> "I will give you for the Purchasing Committee the option of buying of them $135,000 of the bonds of the Des Moines Union Railway Company, and one-fourth interest in the capital stock of that company for $135,000 and accrued interest from November 1st, 1889, any time within ten days from this date. Payment to be made in cash if the option is availed of by you. (Signed) O. D. Ashley, Sec'y Pur. Com."

General Dodge came into this transaction for one half of it, leaving Mr. Hubbell with the remaining half as to which the Purchasing Committee solemnly authorized and empowered "said Des Moines Union Railway Company, or the proper officers thereof, to issue to said Hubbell or his assigns, one-eighth of all the capital stock in the said Des Moines Union Railway Company" and further, "The said Purchasing Committee hereby guarantees the approval by the Des Moines and St. Louis Railroad Company of the

transfer of said stock to said Hubbell within sixty days" (Vol. IV, p. 1601).

This sale to Hubbell was reported in writing to the Purchasing Committee and on motion of General Hubbard was approved (Vol. IV, p. 1558).

April 8th, 1890, this sale of stock was approved by the directors of the Des Moines and St. Louis Company, they being James F. How, C. M. Hays, H. S. Priest, George S. Grover, F. M. Hubbell and A. B. Cummins, all save Mr. Hubbell being Wabash representatives (Vol. II, p. 1434).

And the Des Moines Union Company itself on April 8th, by vote of all its directors, ratified and approved the sale and ordered the transfer of the certificates both to F. M. Hubbell and to General Dodge (Vol. II, p. 1312).

Pursuant to these transactions a certificate for five hundred shares was on April 8th, 1890, issued to F. M. Hubbell and for a like number to General Dodge (Vol. 2, p. 711).

April 5th, 1890, Mr. Ashley as president of the Wabash Railroad Company wrote to Mr. F. M. Hubbell as follows, viz. (Vol. IV, p. 1602):

> "I have yours of April 1st, this morning. The result of my conversation with Messrs. Joy and Welles is a rather vague idea that we ought not sell $100,000 of the Des Moines Union Railway Terminal bonds and one-eighth interest in the capital stock at less than $115,000 and accrued interest on the bonds, and I do not feel authorized to offer it at any less price. If, however, you will make me a definite bid of the best price you can, I will communicate it to the other members of the committee and give you an early and definite reply. It must be understood, of course,

> that a one-eighth interest in the capital stock shall be sufficient to represent a proprietorship in the Company according to the understanding we had when you were here."

The negotiations opened by this letter resulted in a contract on June 5th, 1890, for the purchase by Hubbell of $50,000 of bonds and 500 shares of the stock of the Des Moines Union Company for $57,736. Transfer of the shares on the books of the Des Moines Union was guaranteed "so far as the vote of the directors of said Des Moines Union Railway Company, representing the Des Moines and St. Louis Railway Company will secure said transfer (Vol. IV, p. 1613).

The directors of the Des Moines and St. Louis Company, on February 11th, 1891, by unanimous vote approved the sale of the stock to Hubbell; Hays and How of the Wabash Company being present (Vol. IV, p. 1438).

The Des Moines Union on the same day approved the sale and made the transfer by unanimous vote of its directors (Vol. IV, p. 1320).

The foregoing are the contracts and agreements under which Mr. Hubbell first got the Terminal stock.

The petition (p. 5) assumes to quote from an agreement providing that this stock would be sold "only to a railway company who will join with the Wabash in making a contract with the Des Moines Union guaranteeing interest on the bonds, operating expenses, etc." No such words are to be found in any agreement between any of the parties; no such restriction on transfer of stock is contained in any of the articles of incorporation, original or amended.

More than a year and a half prior to the sale of the

stock to Hubbell he wrote to O. D. Ashley, president of the Wabash, saying that he had been asked whether Des Moines Union stock could be bought and at what price. In his answer, Ashley said the Purchasing Committee would be glad to sell a quarter interest at a fair price, but he said, "I have always supposed that it would be necessary to confine the sale to such railway companies as would be interested in the station." Hubbell in his reply said, "I agree with you that the sale of a quarter interest in the stock of the Terminal Company should be made only to a railway company who will join with the Wabash in making a contract with the Des Moines Union guaranteeing the interest upon the bonds and operating expenses, etc." He says that a certain Mr. Jones has been making inquiries about the shares, but he takes no stock in Jones (Vol. III, pp. 1059-1060). The last letter was written on June 18th, 1888. The subject of sale or purchase of stock by anyone in the Des Moines Union was not broached again until February 5th, 1890, when an entirely new and distinct chapter was opened by the option which Mr. Ashley gave to Mr. Hubbell.

The two transactions were distinct and unrelated, and they were eighteen months apart in time. Nothing was said in 1890 as to limiting sales of Terminal stock to certain railway companies. It is evident that Mr. Ashley, on behalf of the Wabash Company, wanted to market some Terminal stock and bonds. The transactions with General Dodge and F. M. Hubbell were sales of bonds and stocks pure and simple. And in making these sales the Purchasing Committee acted with full knowledge of the situation. Months passed by before the last sale was consummated by transfer of the stock. In truth, the money paid at the time was a

great desideratum, and the record shows that it was paid by Dodge and Hubbell to the Purchasing Committee and by that committee to the Wabash Company.

Relation of the Milwaukee Company to These Shares.

The Milwaukee Company has acquired the two Northern lines and in connection with them one thousand shares of the stock of the Terminal. The original Northern Companies lost the properties by foreclosure. New companies were formed, which afterward were consolidated. In the course of these proceedings Hubbell and Dodge transferred their Terminal shares to the consolidated company, which then had 3,500 shares. The consolidated company did not fare well, and being in need of money, pledged 2,500 of its Terminal shares to F. M. Hubbell & Son. These shares were by agreement of the parties taken by F. M. Hubbell & Son in liquidation of some indebtedness. This was in 1893.

This Northern Company found itself very dependent upon the Milwaukee, and whether it would prosper or not was determinable by the division of rates it secured from the Milwaukee. To get a better division the Hubbells, who were largely interested in the securities of the Northern Company, both stocks and bonds, in the year 1894 gave a large block of the stock of the Northern Company, 16,800 shares, to the Milwaukee, together with an option to the Milwaukee to purchase 16,468 shares more at a low price and the exercise of this option would give the Milwaukee full control of the Northern Company (Vol. II, p. 838, and Vol. IV, p. 1618).

At the very beginning of the negotiations leading up

to these contracts which were executed in July, 1894, although dated March 15th, and indeed so early as February 22nd, 1894, Mr. Hubbell wrote to Mr. Miller, president of the Milwaukee Company, as follows:

> "Your favor of the 20th is received and noted. Enclosed I send you a copy of the articles of consolidation and incorporation and trust mortgage of the Des Moines, Northern and Western Railway Company. There has been bonds issued on this property to the amount of $2,770,000. I have no printed copy of the articles of incorporation of the Des Moines Union Railway Company, but will say they were drawn by our attorney, Mr. A. B. Cummins, and I think are all right, and if important to you, can have a copy made and sent you. The amount of bonds authorized by that corporation is $800,000, bearing 5 per cent interest, of which amount $612,000 have been issued. I enclose plat of Des Moines Union. We have about five miles of right-of-way occupied by about twenty miles of track. **The Des Moines Northern and Western Railway Company own one-fourth of the capital stock of the Des Moines Union Railway Company. The Wabash own one-eighth and five-eighths is owned by individuals.**
>
> If you desire any further information, I shall be glad to furnish it" (Vol. IV, p. 1617).

Thus the Milwaukee was advised from the beginning and before it came into the situation of the precise facts as to this Terminal stock, viz.: one-eighth held by the Wabash, one-fourth by the Northern Company, which the Milwaukee contemplated getting and subsequently did get, and five-eighths by individuals.

The Wabash, of course, knew that individuals held Terminal stock, because it had sold it to them.

Year after year passed, with frequent directors' meetings and annual and perhaps other shareholders' meetings of the Terminal Company, and always the Wabash and the Milwaukee were represented and always the Hubbells were present and at the shareholders' meetings they voted and were recognized as having the right to vote the 2,500 shares of Terminal stock held by them, and shown to be held by them by the books of the Company.

The Ratification Agreement of 1897.

More than this, in the year 1897 a revision of the contract of May 10th, 1889, was desired by the Wabash. For the present purpose it is not necessary to detail the negotiations which followed. There resulted a contract, dated July 31st, 1897, which in some measure is a revision, but more strictly a ratification of the old agreement (Vol. II, p. 506).

There seemed to be some doubt whether the railroad companies, then the Wabash and the Des Moines, Northern and Western, were bound by the old agreement and that was settled and the contract ratified and confirmed by the railroad companies in every respect with this exception, viz. (Vol. II, pp. 508-509):

> "But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:
>
> The Purchasing Committee of the Wabash, St. Louis and Pacific Railway Company, 500 shares.

The Des Moines Northern and Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares.

Of the above shares belonging to said Purchasing Committee, two shares stand upon the books of the Company as follows: Joseph Ramsey, Jr., 1 share, and H. L. Magee, 1 share.

Of the shares belonging to the Des Moines Northern and Western, Railroad Company, two shares stand upon the books of the Company as follows: A. B. Cummins, 1 share, and F. M. Hubbell, 1 share.

Of the shares belonging to said F. M. Hubbell & son, five shares stand upon the books of the Company as follows: F. M. Hubbell, 1 share; F. C. Hubbell, 1 share; C. Huttenlocher, 1 share; H. D. Thompson, 1 share; A. N. Denman, 1 share."

And this contract of 1897 was formally ratified, approved and confirmed by the directors of the Wabash (Vol. IV, p. 1540); by the directors of the Des Moines, Northern and Western (Vol. IV, p. 1497), and by the directors of the Des Moines Union (Vol. IV, p. 1357).

Acquiescence.

Nearly ten years passed after this without challenge of the rights of F. M. Hubbell & Son as shareholders. And during all the years they were giving their service in official relations to the development of the Terminal Company and its business, and they did this without pay, and that service constant and continuous, faithful and arduous, was accepted without question by these petitioners who now say the Hubbells have no beneficial interest whatever in the property they have served and managed so well.

In Conclusion.

The case involves no profound questions of law.

The three railway companies, predecessors of the petitioners at the time of the contract of 1882, and under it, owned the property in question and every interest in that property.

The individual parties to that contract, Col. How and General Dodge, had no interest or right except to be reimbursed for what they had paid out, and they were so reimbursed.

As the railway companies made the agreement of 1882 so they could change it, and they did.

They created the Terminal Company, and they did this for the very purpose of having it acquire, own, operate and develop this property.

They transferred this property to the Terminal Company by conveyances as comprehensive in description of the rights and interests conveyed as the learning of experienced lawyers could devise.

They mortgaged this property, issued bonds secured by this mortgage, and sold those bonds to the public.

They issued stock against that same property and sold the stock.

The stock had for its basis the same property and the same interest in that property that underlaid the bonds.

The organization of the Terminal Company, the conveyance of the property to it, the contract of 1889, the amendments to the articles of incorporation in 1890, the sales of stocks and bonds, the ratification agreement of 1897, all were known to, participated in and approved by the persons who at the time were the ac-

credited representatives of these petitioners or their predecessors.

And there is not involved in this controversy anything of public interest or importance. The Terminal Company is discharging its public functions and duties and will continue to do so. Its property is affected with a public interest and is dedicated to the public use, and its obligations in this respect are the same whoever its shareholders may be or whatever may be their interest in the property. The controversy is essentially of a private nature. It is whether, notwithstanding the conveyance of the property in the most absolute terms and for a good consideration, the grantors reserved the entire beneficial interest in the property and the grantee got only a barren legal title. This affects the parties not as carriers, but as proprietors, for only proprietory rights are involved.

Respectfully submitted,

F. W. LEHMANN,
J. L. PARRISH,
Of Counsel for Respondents.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918

No._____

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL AND F. M. HUBBELL & SON,

Petitioners,

vs.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND THE WABASH RAILROAD COMPANY,

Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, respectfully petition this Court to grant a writ of certiorari to the Circuit Court of Appeals for the Eighth Judicial Circuit, to remove therefrom, for review here, the record in the case

therein pending, numbered 4885, wherein the petitioners are appellees and the respondents are appellants.

Two controversies are involved in the case, one of which was decided in favor of petitioners and the other against them and in favor of the respondents hereto.

The two controversies are fully presented by the same record and certified copies of that record accompany the petition for certiorari filed by the respondents hereto. And while the two controversies are more or less distinct, they rest upon the same evidence and grow out of the same series of transactions.

The questions to be determined are of the same general nature, involving the construction of contracts and of articles of incorporation as fixed by their terms and the conduct of the parties under them.

Your petitioners believe that if the case is one appropriate for review on writ of certiorari as to one of the controversies therein, it should in justice to all the parties be brought before the Court in its entirety, and being advised that they cannot otherwise have a review of the decision and decree herein, in so far as adverse to them, they respectfully submit this cross-petition for a writ of certiorari.

What is dealt with and designated by the parties and by the Court of Appeals as the "main" controversy or question in the case is presented by the petition of the respondents hereto. The question presented by these petitioners is designated by the parties and the Court as that of the "surplus earnings."

The "main" question is as to the rights of the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company, hereinafter called the

Railway Companies, and the Des Moines Union Railway Company, hereinafter called the Terminal Company, in and to the property to which the Terminal Company holds title and which it uses in the course of its operations as a Terminal Company.

The contention of the Railway Companies is that they are the real and beneficial owners of the property, and that the Terminal Company simply holds the title in trust for them, or that the ownership of the Terminal Company is subject to an easement in favor of the Railway Companies which gives them the right to the use of the property in perpetuity for terminal purposes at actual cost of operation, maintenance and taxes, they getting the benefit in reduction of the cost of operation of all revenue from whatever source obtained, thus depriving the Terminal Company of all beneficial interest in the property, and making its shares of stock worthless to the owners of them.

The issued capital stock of the Terminal Company amounts to four hundred thousand dollars divided into four thousand shares of the par value of one hundred dollars each, of which the Wabash Company owns and holds five hundred shares, the Chicago, Milwaukee and St. Paul Company, one thousand shares, and F. M. Hubbell & Son, twenty-five hundred shares. F. M. Hubbell & Son bought their shares from the predecessors in right and title of the Railway Companies.

The real purpose of this branch of the case, and the effect of the contention of the Railway Companies, if sustained, is to nullify and render worthless the shares of F. M. Hubbell & Son.

The determination of this "main" controversy, the Court of Appeals said, was "the definition of the legal

effect of certain instruments and acts of the parties or their predecessors in interest."

This question was decided by the Circuit Court of Appeals in favor of these petitioners, the Court holding that the Terminal Company was the absolute owner of its property, and that the rights of the Railway Companies therein or thereto were simply those of share holders in the Terminal Company.

The Surplus Earnings

controversy is the subject of this petition or cross-petition for certiorari and we may say as the Court of Appeals said of the main "controversy," that the determination of it is "the definition of the legal effect of certain instruments and acts of the parties or their predecessors in interests," and the same instruments and the same acts of the same parties are involved in the petition and cross-petition. This a statement of the case will show.

In December, 1880, the Des Moines and Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, to which companies the Chicago, Milwaukee and St. Paul Railway is the successor, and the Des Moines and St. Louis Railway Company to which the Wabash Railroad Company has succeeded, desired to bring their lines to the city of Des Moines, the first two from the North and Northwest and the third from the South.

Among other things done by them was the acquisition of certain real estate in the city of Des Moines, respecting which they made an agreemnt on January 2nd, 1882, reciting the acquisition of the property and providing that the expense of acquiring and improv-

ing it should be borne one-fourth each by the Northern companies and one-half by the Southern. We can speak of them hereafter, the Northern companies as the Milwaukee and the Southern as the Wabash.

The property had been acquired chiefly in the names of in dividuals who were confessedly trustees for the railroad companies.

The contract provided:

> "Third: * * * It is understood that a depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements."
>
> "Fourth: The title to said property shall be and remain in a trustee to be named by agreement by said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein prescribed."
>
> "Tenth: In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to inure to the companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account to be determined in the same manner as the sums due from the other companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the parties hereto." (Record, pp. 120-122.)

The Wabash Company was to have control, supervision and maintenance of the property and the expense of this was to be borne by the several companies on a wheelage basis.

The companies operated under this contract for some years, each doing its own terminal work, that is, employing its own engines and crews and moving its own cars.

This was not a satisfactory method of operation and in December, 1884, the Railway Companies organized the Terminal Company under the laws of the State of Iowa governing corporations for pecuniary profit, to carry out, as they said, the objects and purposes of the contract of January 2nd, 1882.

They provided for a capital stock of one million dollars "which shall be divided into shares of one hundred ($100.00) dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine and the Board are authorized to receive in payment therefor the property and franchises in the city of Des Moines now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, trustee, Jas. F. How and Grenville M. Dodge." (Record, pp. 9-11.)

There was no restriction in the articles as to who might become a stockholder in the Company, but the directors were distributed among the Railway Companies, four to the Northern companies and four to the Southern. And no stockholder was eligible to a directorship unless nominated by a Railway Company.

The terminal property held by and for the Rail-

way Companies was in time duly conveyed to the Terminal Company. The consideration for such conveyance was the proportion of each of the Railway Companies of the stock and bonds of the Terminal Company. Bonds to the extent of Eight Hundred Thousand Dollars, secured by mortgage on all the property of the Terminal Company, were authorized and executed November 1st, 1887, and something above four hundred thousand of these were delivered to the parties entitled to them on account of the property then and previously conveyed to the Terminal Company. Other of the bonds were issued from time to time as other property was acquired.

No shares of capital stock were then actually printed or issued, but the parties assumed the existence and outstanding of ten thousand shares of one hundred dollars each, one-fourth as held by each of the Northern Companies and one-half by the Southern Company.

May 1st, 1888, the Terminal Company took actual possession of its property and has ever since operated the same.

The delay in the proceedings was due undoubtedly to the fact that the railway enterprises were not prosperous, the Record showing a foreclosure of mortgages in every case except that of the Terminal Company.

May 10th, 1889, the contract was made between the Terminal Company and the Railway Companies, which underlies the contention as to "surplus earnings." It was to be effective from May 1st, 1888, and to run for a period of thirty years from that date. (Record, pp. 150-159.)

When this contract was executed, the capital stock

of the Terminal Company was owned, one-fourth by each of the predecessors of the Milwaukee Company and one-half by the predecessor of the Wabash.

The contract recited that the Terminal Company was the owner of valuable terminal facilities in the city of Des Moines and that it was important that the Railway Companies should have use of them. Also that the Terminal Company should from time to time acquire other and further facilities, among them a union passenger depot, freight depots, etc., etc., the amount, character, cost and management of these to be determined by the Board of Directors of the Terminal Company.

Section three of the contract provided:

> "Each of said parties of the second part (Railway Company) for itself and its assigns, agrees to pay to said party of the first part (Terminal Company) a sum of money to be ascertained as follows, to-wit:
>
> 1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.
>
> 2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid

during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round houses, transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof."

Section nine makes special provision as to the operation of engine houses, which need not be further considered.

Section four is as follows:

Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, *there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof,* for the preceding month, *and the remainder* shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month, and it is expressly understood and agreed that in computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard guage cars, and that the term "wheelage" as used in this contract means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

Provisions of the contract for the enforcement of payment need not be considered.

The contract recites the shareholding in the Terminal Company by the Railway Companies as above set forth, and further the authorized capital stock having been increased to two million of dollars "that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of one hundred dollars each, the same shall be issued and held as follows, to-wit: One certificate of ten thousand shares shall be issued and delivered to the Des Moines & St. Louis Railroad Company; one certificate for five thousand shares shall be issued and delivered to the St. Louis, Des Moines & Northern Railway Company, and one certificate for five thousand shares shall be issued and delivered to the Des Moines & Northwestern Railway Company, and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement, except that any shares of stock issued on request of either of said companies to any person, to qualify him as a member of the Board of Directors shall be retransferable to the company on whose request it shall have been issued without the consent of the other companies; but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued, unless consented to by the other parties of the second part.

The bonds of the Terminal Company were negotiable and were in fact sold on the open market.

The Railway Companies were interested in the Terminal Companies in two ways, first as shareholders

and second as entitled to service by the Terminal Company in accordance with the terms of the contract.

Neither of these interests was an equal one as between the companies. As shareholders, two of them had one-fourth each, and the other had one-half. So far as the service was concerned each was to pay for such service as it received, that is on a wheelage basis.

As shareholders each, if the company made any net earnings out of its property, was entitled to the proportion indicated by its holding of capital stock. As to service it paid for what it got on the terms to which it had agreed.

The charge for the service was to be ascertained as to all the companies by ascertaining certain costs and expenses, deducting therefrom certain items of credit and then dividing the remainder between the Railway Companies on a wheelage basis.

There is no controversy here as to the wheelage basis, nor as to the items of charge, which are: (1) interest on bonds, (2) maintenance and repair, (3) taxes, (4) insurance, and (5) costs and expenses of every nature connected with operation.

From the sum of these items of charge there is to be a deduction and it is as to this that the controversy arises.

The contract provides that the aggregate of the items of charge having been ascertained "there shall be deducted therefrom *the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property or parts thereof.*"

The Terminal Company has such contracts and the amounts received under them have always been deducted from the ascertained items of charge against the Railway Companies.

And the Terminal Company has other sources of revenue. From time to time it moves cars from and to industries located on its lines to carriers other than the Railway Companies and other than those with which it has contracts, and for this it makes and collects a charge.

It leases portions of its depot building for news and cigar stands and for restaurant purposes. And it has acquired property in advance of its immediate use for terminal purposes and lets this for various purposes. The returns from this switching service and these rentals are known as "surplus earnings." At the time of the trial in the District Court these earnings aggregated about a half million dollars and they have accumulated since at the rate of about a hundred thousand dollars a year.

The Railway Companies contend that these surplus earnings should be deducted from the monthly aggregate of the items of charge against them under the contract of May 10th, 1889. The petitioners contend that, inasmuch as none of the moneys from which the "surplus earnings" are derived are "amounts to which *other railway companies* may be under obligation to pay by *virtue of contracts* for the use of said property," they should not be so deducted.

The Circuit Court of Appeals decided this adversely to these petitioners, saying of the contention of the petitioners that

> "*this latter contention is a strict construction of the exact wording of the contract.* It is not in our judgment a fair construction of the spirit of the agreement. This conclusion is based both upon the history of the transaction and upon the meaning to be given to this precise language when read in connection with the entire contract."

The provision of the contract here in question, that is, section four, is clear and unambiguous in itself, providing for deduction from the aggregate of charge, the moneys received on a single account, being the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property.

To deduct the rentals of news and cigar stands and payments for restaurant privileges is to add to the deduction provided for in the contract deductions of a very different kind, and is to write something into the contract which the parties did not write there.

"The meaning to be given this precise language when read in connection with the entire contract," is the same as when considered by itself, for this section is the only one in the entire contract dealing with this subject in any way. No other clause alludes to it even remotely and so cannot in any way qualify it.

Nor is the spirit of the agreement in any wise offended, and on the contrary, the "strict construction of the exact wording of the contract" is "a fair construction of the spirit of the agreement."

The contract is one for services by the Terminal Company, involving the use of its property, to be rendered to the Railway Companies. It did not involve the use of properties not used for terminal railway purposes. It had nothing to do with news stands or restaurants.

The Railway Companies were shareholders in the Terminal Company. Indirectly they were proprietors, and in such proportion as they had deliberately determined a number of times by agrement with each other. If there were any profits resulting from any use of this property other than that provided for by this contract

each company had its share in those profits in the measure of its indirect share of the property itself.

These "surplus earnings" were incidents of the proprietorship of the Terminal property and not incidents of the service contract between the Railway Companies and the Terminal Company.

"The history of the transaction" leads to the same conclusion. There were no individual shareholders in the Terminal Company until some time in 1890, when F. M. Hubbell and General G. M. Dodge acquired shares. Until now it was a matter of small significance what was done with the surplus earnings, for two reasons, i. e., they were small in amount and they went to the benefit of the Railway Companies in any event, and whether on a wheelage or a stock basis made no practical difference.

On February 11th, 1891, was had the first action respecting them. On that day it was ordered by the Board of Directors of the Terminal Company:

> "That the rents collected for the use of the Company's real estate, and the switching charges paid in, be credited on the rolls of the different tenant companies occupying this Company's terminals, giving to each Company its share ascertained by wheelage." (Record, p. 497.)

This was a disposition of these earnings by the Terminal Company and the authority of the Terminal Company therefor was regarded as necessary. The earnings were earnings of the use of the property and not earnings of the service rendered by the Terminal Company to the Railway Companies. So they belonged to the owner of the property, and consequently the owner of the property determined the disposition of them.

On the 7th day of January, 1892, the holdings of F. M. Hubbell had increased to one thousand shares and G. M. Dodge still held five hundred, and the Board of Directors of the Terminal Company again exercised the right of disposing of these earnings by the following resolution, viz.:

> "Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies.
>
> Therefore, Be It Resolved: That until the further action of the Board the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purposes." (Record, p. 499.)

And from this time on without question these earnings were dealt with by the Terminal Company as its own, and growing yearly in amount they were used in the acquisition of more property and in the making of improvements and extensions or accumulated as a surplus in the treasury until after January, 1906, a period of fourteen years, and but a short time prior to the beginning of this litigation.

Meanwhile the shareholding interests in the Terminal Company had greatly changed.

In April, 1890, the articles of incorporation of the Terminal Company were materially amended. At the meeting of the shareholders making these amendments on motion of A. B. Cummins, there was a valuation of the property of the Terminal Company in order to fix its fair worth in bonds and stocks, he being evidently of opinion that $2,000,000 of stock with the bonds that had been issued constituted a material over-valuation. The fair value was fixed at $861,257 and 21/100, the

individual interests in which were settled as follows, viz.:

The Wabash	$470,110.80
The Des Moines & N. W.	215,058.40
The St. L., Des Moines & N.	100,000.00
G. M. Dodge	74,088.01
Polk & Hubbell	2,000.00
	$861,257.21

On this account bonds had been issued as follows:

The Wabash	$270,000.00
G. M. Dodge	74,000.00
Polk & Hubbell	2,000.00
Des Moines & N. W.	115,000.00
	$461,000.00

This left aside from $257.21 settled in cash, $400,000, which went in shares of the Terminal Company to the parties entitled, $200,000 to the Wabash and $100,000 to each of the two Northern Companies.

But with this adjustment of the Terminal stock in view the Wabash Company had a short time before sold one-eighth of its allotment to F. M. Hubbell and the same amount to G. M. Dodge and a month or more later sold 500 more shares to F. M. Hubbell, so that on June 5th, 1890, the stockholding stood:

The Wabash	500	shares
Milwaukee predecessors	2,000	"
F. M. Hubbell	1,000	"
G. M. Dodge	500	"

January 15th, 1892, Dodge and Hubbell transferred their shares to a consolidated company which was the

immediate predecessor of the Milwaukee, giving it 3,500 shares and leaving the Wabash with five hundred.

October 4th, 1893, the consolidated company pledged 2,500 of its shares to F. M. Hubbell & Son as collateral for indebtedness and January 29th, 1894, sold the stock so pledged in liquidation of debt to F. M. Hubbell & Son.

Ever since January 29th, 1894, the stock of the Terminal Company has been owned:

The Wabash	500	shares
The Milwaukee, or predecessor	1,000	"
F. M. Hubbell & Son	2,500	"

It so appeared on the record and the Wabash Company was well aware of it all of the time. It had sold 1,500 of its own shares and knew where they had gone.

The Milwaukee Company became interested in the Northern railways in 1894 and acquired a majority of their capital stock in large part by gift from F. M. Hubbell & Son and in lesser part by purchase. The Milwaukee Company was advised that the consolidated Company owner of the two Northern railways, owned also 1,000 shares of the Terminal Company and no more, that the Wabash owned 500 and that private parties owned 2,500, or a majority.

With this knowledge the Milwaukee acquiesced in the disposition made of the surplus earnings for more than twelve years, after it acquired its interest in the Terminal Company.

The Circuit Court of Appeals in its opinion said and held that "a subsequent contract of July 31st, 1897, does not affect this controversy."

In this we think the Court erred, for the contract of July 31st, 1897, was a reaffirmation in terms of the

contract of May 10th, 1889. From the beginning to the time the new contract was made the "surplus earnings" had been disposed of as determined by the Directors of the Terminal Company and ever since January 7th, 1892, they had so far as disposed of, been appropriated to the uses of the Terminal Company for the acquisition of additional property. And this disposition of the earnings was deliberately approved by Mr. Hays, the Wabash representative on the Board. June 7th, 1894, Mr. Hays wanted time to consider the appropriation made to discharge a mortgage debt on some newly acquired property. June 19th, 1894, he gave his consent. In August of that year and again in November he approved of other like dispositions of these monies. At the November meeting of the Terminal Board, Mr. Cummins representing Mr. Hays, a resolution was passed directing that a certain mortgage debt be paid out of the "surplus earnings" and providing in terms that

> "The term 'surplus earnings' as herein used means that fund arising from the rentals of real estate and from switching charges." (Record, p. 1344.)

Why such a resolution? If every penny received by the Terminal Company from any and all sources must be deducted from the aggregate of the charges against the tenant companies, there would be and could be no "surplus earnings." The very use of the term was an acknowledgment that the parties recognized the meaning of the contract to be expressed by what the Court of Appeals spoke of as its exact wording.

December 28th, 1896, Mr. Ashley, President of the Wabash, wanted a new contract with the Terminal

Company, because of a foreclosure of mortgage against one of the tenant companies, which had weakened the position of the Terminal bonds on the market.

When it came to drafting the new contract, changes were desired and proposed by the Wabash as to the surplus earnings, and they were spoken of as changes.

Mr. F. C. Hubbell for the Terminal wrote to Mr. Ramsey of the Wabash, as follows:

> "Referring to the new terminal contract, I have seen the correspondence between you, Mr. Blodgett and Mr. Cummins. With respect to the Des Moines Union's revenue from rental and switching, would say that this fund has always been controlled by the Terminal Company, and is the only money which it has to use for other than strictly operating expenses. We therefore feel that the new contract should leave this fund the property of the Terminal Company. The rental and switching is a small item, and is now being used to pay our floating debt, consisting of $31,000 held by Commercial Bank of St. Louis, which will consume this fund for a good many years." (Record, p. 1680.)

On the same day, February 18th, 1897, Mr. Cummins wrote to Col. Blodgett, General Counsel of the Wabash, as follows:

> "Have your favor of the 16th inst., and have carefully considered the amendments that you propose to the terminal contract, and the reasons which are stated in Mr. Ramsey's letter *for the changes.*" (Record, p. 1684.)
>
> * * * * * * *
>
> "*With respect to the change in Sec.* 4, *which would require the Des Moines Co. to credit upon its expenses and disbursements the accounts re-*

ceived by it for switching charges, rental of houses and things of that character, Mr. Hubbell has written to Mr. Ramsey recalling to his attention the situation, which absolutely precludes the disposal of such revenues of the company in that way." (Record, p. 1686.)

February 24th, 1897, Mr. Cummins wrote to Mr. Hubbell, saying, "I have a telegram from Col. Blodgett asking me to send a copy of the *amended articles* of the company," etc.

March 26th, 1897, Col. Blodgett wrote to F. M. Hubbell, enclosing proposed amendments to the contract which he speaks of as changes. The second change is as follows:

"2nd. I send Section 3 in two forms, and I need not go into any detailed explanation of them. Number one is founded upon the theory that the Des Moines Company may do a switching business during the whole period of the lease, paying, on a wheelage basis, the same proportion of interest charges, cost of maintenance and operating expenses, as is paid by the tenants, and using its net revenue throughout the term in improving the property. That is the form suggested by Mr. Ramsey and myself.

Number two presents the section as you and Mr. Ashley suggested. Under it you are to switch and handle cars for others than tenant companies, and collect the revenue, until the net profits, together with the rentals from portions of the ground, amount to fifty thousand dollars, of which sum thirty-five thousand dollars is to be applied on the floating debt, and the balance used for a working fund. And after the fifty thousand dollars has been realized, all the net revenues from switching is to go to the tenant companies to re-

duce their expenses, on a wheelage basis." (Record, p. 1687.)

Different changes were proposed by different parties, but not accepted, and the matter was closed by a ratification agreement of date July 31st, 1897.

At this time all the original parties to the contract of 1889 except the Terminal Company had gone out of business because of insolvency and new companies owned and operated their lines of railroad, one company having now acquired both Northern lines. The new contract recited this history and further that "it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines Northern and Western Company." It was provided as follows:

> "Now, therefore, in consideration of the premises and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Wabash Company and the Des Moines, Northern & Western Company.
>
> And the said Wabash Company for itself agrees *to make the payments therein provided for at the times and in the manner prescribed for the said Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company,* and when the said Wabash Company ceases to operate the railroad of the said Des Moines & St. Louis Company its obligation to so pay, and all the obligations herein assumed by it, shall at once determine and be and become the obligations of whatever company operates the said railroad, it being the intention that the obligations of the said contract, so far as they pertain

to the Des Moines & St. Louis Railroad Company, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property leased in the said contract, to assume all the obligations therein or hereby undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein, and as though it had been named in and was a party to the said contract when originally made, *and to pay to the said Des Moines Company at the times and in the manner therein prescribed, the sums of money which may become due, computed according to the terms and provisions of the said contract with respect to a tenant company;* and the said Des Moines, Northern & Western Company further agrees that the obligations therein named and hereby assumed shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee, or successor of the said Des Moines, Northern & Western Company in the ownership or operation of the said Des Moines, Northern & Western Railroad, and any company succeeding the Des Moines, Northern & Western Company, in such ownership or operation shall be held by the operation of trains over the said Des Moines, Northern & Western Railroad, and upon the property leased in the said contract, to assume all the obligations therein expressed and herein undertaken by said Des Moines, Northern & Western Company.

But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:

The purchasing committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.

The Des Moines, Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares." (Record, p. 506.)

Here is not only a ratification or adoption of the contract by the Wabash Company and the company to which the Milwaukee is successor, but a reiterated agreement to pay to the Terminal Company at the time and in the manner prescribed in the contract the sums of money "which may become due *computed according to the terms and provisions of said contract with respect to a tenant company.*"

And added to this is the very express recognition of the fact that there is a large, a majority interest in the shares of the Terminal Company which is independently and individually held and is interested in the construction of the contract according to its express terms.

And from this time until 1906 the contract was construed according to its terms, surplus earnings being used from time to time for the acquisition of additional property, without protest from any one and with the approval of all concerned.

In view of all the facts, preceding, attending and following the execution of the contract of July 31st, 1897,

there was manifest error in holding that it "does not affect this controversy."

The history of this transaction has in considerable part been given, but there is much more in the record of the same nature, and much of that related to the main controversy which bears directly and indirectly upon the question of surplus earnings. The Hubbells, father and son, gave liberally and freely, the son for many years entirely, their time and service to this enterprise. They fostered it during all the thirty years of the contract of 1889, which certainly they would not have done if this contract had been a barren one and their stockholdings barren also. True, for a time they were interested in the Northern railroads, but from the time the Milwaukee acquired its holdings in these they had, if the contention of the respondents now made is warranted, no interest whatever in the Terminal Company, except the holding of stock which was forever precluded from yielding any profit. Still they conducted its business, managed and directed its affairs for years and were permitted to do this by respondents without the pay of a dollar, conduct upon both sides inconsistent with any view other than that they had a substantial beneficial interest as large stockholders in the Terminal Company.

We submit that the Circuit Court of Appeals erred in holding:

I. That the contention of petitioners that the only character of credit items to which the respondents were entitled under the contract "were such as were paid by some other railway by virtue of a contract for the use of the property" while "a strict construction of the exact wording of the contract" is not "a fair construction of the spirit of the agreement."

II. That its conclusion as to what was the "spirit of the agreement was based upon or warranted by the history of the transaction.

III. That its construction of the contract giving the surplus earnings to the respondents was justified by the reading of the contract in its entirety.

IV. And in its order, judgment and decree directing the District Court of the United States for the Southern District of Iowa to so modify its decree "that the surplus earnings belong to the railways, and to appoint a master under instructions to ascertain the part due each upon a wheelage basis."

The petitioners therefore pray that a writ of certiorari issue to said Circuit Court of Appeals to remove therefrom the Record in this cause for review here by this Court of the questions presented and the errors specified in this petition.

Respectfully submitted,

J. L. PARRISH and
F. W. LEHMANN,
Of Counsel for the Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Petitioners,
vs.
DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL and F. C. HUBBELL,
Respondents.
No. 278

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON,
Petitioners,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Respondents.
No. 279

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Statement, Brief and Argument for Respondents in No. 278

These cases present two controversies in one and the same suit brought by the petitioners in No. 278 as com-

plainants against the respondents in that case as defendants, in the District Court of the Southern District of Iowa, Central Division.

One controversy concerns what has been called the Main Issue, which is as to the ownership of certain terminal property at Des Moines, and the other is as to what are called Surplus Earnings, arising under a contract of 1889 for the operation of the terminal properties.

The District Court decided the main issue in favor of the defendants, with a qualification as to which the defendants appealed, and decided the surplus earnings question unqualifiedly in their favor.

The Circuit Court of Appeals decided the main issue unqualifiedly in favor of the defendants and that decision was brought here for review by the petitioners in No. 278. The question of surplus earnings was decided adversely to the defendants and that decision is the subject of review in No. 279.

We shall deal first with the *Main Issue.*

STATEMENT OF FACTS.

Prior to 1881 the Wabash, St. Louis & Pacific Railway Company (hereafter sometimes referred to as the "Wabash Company") was the owner of a line of railroad extending from St. Louis northwesterly to Albia, Iowa. The Des Moines Northwestern Railway Company was the owner of a line of narrow gauge railway extending from Waukee, Iowa, a town some ten miles west of Des Moines, northwesterly to Panora, in which railway J. S. Clarkson and others were interested.

These railway companies being desirous of extending their lines to Des Moines and interchanging traffic

therein, the Wabash Company on December 8, 1880, entered into a contract with J. S. Clarkson and others (vol. II, p. 396), providing for the organization of the Des Moines & St. Louis Railroad Company and the building of a line from Albia to Des Moines with funds to be furnished by the Wabash Company. On the same day the Wabash Company also entered into a contract with the Des Moines Northwestern Railway (vol. II, p. 400), looking to the extension of that line to Des Moines and also in a northwesterly direction, and also looking to the use by that company of a terminal in the City of Des Moines to be owned by the Des Moines & St. Louis Railroad Company.

In pursuance of these contracts, the Wabash Company, in the early part of 1881, commenced to acquire property in Des Moines for terminal purposes taking the title in James F. How, who was then Vice-President of the Wabash Company, and charging the money so expended to the Des Moines & St. Louis Railroad Company (vol. III, p. 989).

In April, 1881, there was organized under the laws of Iowa a corporation known as the St. Louis, Des Moines & Northern Railway Company, with power to construct a railroad from Des Moines northwesterly to Boone, Iowa, and thence to the northerly part of the state. This company proceeded to construct a narrow gauge line from Des Moines to Boone, with a branch line from Clive (a station about five miles west of Des Moines), to Waukee.

In January, 1882, it entered into a contract (vol. II, p. 600) with the Des Moines Northwestern Company, by which it sold to that company the line from Clive to Waukee, and a one-half interest in the line from Clive

to Des Moines thereby giving the latter company access to Des Moines.

In the meantime there had been changes in the plans of these companies with respect to the terminal in Des Moines which it was originally intended should be owned exclusively by the Des Moines & St. Louis Railroad Company. In April, 1881, the plan was changed from an ownership exclusively by the Des Moines & St. Louis Company to an ownership jointly by the Des Moines & St. Louis and the Des Moines Northwestern Company (vol. III, p. 989), and later this plan was changed to an ownership jointly by the three companies—the Des Moines & St. Louis, the Des Moines Northwestern, and the St. Louis, Des Moines & Northern. This ripened into the contract of January 2, 1882, (vol. II, p. 411), which set out the terms on which the terminal property should be owned and used by the three railroads.

In the meantime additional terminal property was acquired and improvements made thereon with money furnished principally by the Wabash Company, though some of the money was furnished by General Dodge who was the principal owner of the St. Louis, Des Moines & Northern Company. The title to the terminal property was taken principally in the name of James F. How, trustee, though a small amount was taken in the name of General Dodge, a small amount in the name of the Des Moines & St. Louis Company, and a still smaller amount in the St. Louis, Des Moines & Northern Company.

The Des Moines & St. Louis Company having constructed its line into Des Moines these three railroads or their lessees commenced to use and operate the terminal property jointly, as provided in the contract of

January 2, 1882. That contract provided that the terminal property should be owned jointly by the three railways in the proportions therein stated; that the title thereto should stand in the name of a trustee, who might or might not be a depot company; that it should be policed and maintained by the Des Moines & St. Louis Company, and that the expenses of maintenance and operation should be borne by the users on a wheelage basis.

Thus matters continued until December, 1884, when the representatives of the three railorad companies organized, under the laws of the State of Iowa relating to the organization of corporations for pecuniary profit, the defendant, the Des Moines Union Railway Company, with power to acquire, own and operate a terminal railway in the City of Des Moines, and especially authorized to issue its capital stock in purchasing the terminal property then owned by the three railway companies (see articles of incorporation of Des Moines Union Railway Company, vol. II, pp. 416-23).

Immediately upon the organization of the defendant, the Des Moines Union Railway Company, the three railways parties to the contract of January 2, 1882 at meetings of their stockholders passed resolutions authorizing their officers to transfer to the defendant company the ownership of the terminal property (vol. II, pp. 423-32). These resolutions did not authorize How and Dodge, the trustees, to transfer to the defendant company the legal title to the property, but simply authorized the beneficial owners to convey the ownership. The consideration for the transfer of the ownership was stated in the resolutions to be the bonds and stock of the defendant company.

On the same day the Board of Directors of the defendant company passed resolutions accepting the propositions of the three railroad companies (vol. II, p. 432). However, nothing was immediately done under these resolutions owing, no doubt, to the fact that at about this time the Wabash Company (which was the leading spirit behind all these transactions) became insolvent, its property placed in the hands of a receiver and sold to certain persons known in this record as the "Purchasing Committee." These resolutions were, however, never repealed and were finally acted upon.

Nothing further was done in the matter until in the fall of 1887, when these three railroad companies passed resolutions authorizing How and Dodge, trustees, to transfer the legal title to that portion of the terminal property which they held, to the defendant company (vol. II, pp. 435-43); these deeds to be delivered to the defendant company upon its giving to How and Dodge written agreements that it would deliver to the parties entitled thereto bonds of the defendant company equal in amount to the sums advanced by the Wabash Company and General Dodge in payment for the terminal property the improvements thereon, taxes and interest, and also its capital stock.

Following the passage of these resolutions, How and Dodge gave to the defendant company deeds to the property standing in their names; the Des Moines & St. Louis Railroad Company gave the defendant company a special warranty deed not only to that portion of the terminal property standing in its name, but also to all other property, including railways, embankments, buildings, improvements, franchises, etc., in which it had any interest, in the City of Des Moines,

Iowa; and the St. Louis, Des Moines & Northern Company gave to the defendant company a deed, which by its terms transferred an absolute title to that portion of the terminal property standing in its name (vol. II, pp. 446-59). No part of the terminal property stood in the name of the Des Moines Northwestern Company and no deed was given by that company to the defendant, but each of the three railway companies or their successors received the consideration provided for in the resolutions.

On May 1, 1888, the defendant railway company took possession of the terminal property and has ever since possessed and operated it.

Immediately upon the defendant's taking possession of the terminal property, it commenced to furnish terminal service to the three railroad companies or their successors, and negotiations were entered into to determine the terms on which such terminal service should be rendered. These negotiations resulted in the contract of May 10, 1889 (vol. II, p. 479). This contract provided that for a certain consideration the defendant company should furnish to the three railway companies terminal facilities and perform certain terminal services for a period of thirty years from and after May 1, 1888. Ever since the execution of this contract the defendant has furnished to the three railroads and their successors, terminal facilities and services as therein provided.

On April 8, 1890, for the purpose of making the title and ownership of the terminal property by the defendant company more clear and certain, a meeting of the stockholders (among whom were complainants' predecessors) was held, at which the articles of incorpora-

tion of the defendant company were amended and certain resolutions passed (vol. II, pp. 488-97).

During the whole period from May 1, 1888 (the date the defendant took possession of the property), to the commencement of this suit (in 1907), the defendant treated the terminal property as its own. It acquired additional property, made improvements and extensions, made contracts to furnish service to other companies, and made other contracts with complainant companies and their predecessors. Not only during this period did defendant company treat the property as its own, but it was so treated by complainants and their predecessors and all others who had any relation to the properties. The facts in the record sustaining this are so voluminous that it is impracticable to make specific reference to them here, but such reference will be made in our argument on the facts.

THE ISSUANCE AND OWNERSHIP OF THE STOCK IN THE DEFENDANT COMPANY.

Under the contract of January 8, 1882, the ownership of the then terminal property was as follows:

One-half in the Des Moines & St. Louis Company.

One-fourth in the Des Moines Northwestern Company.

One-fourth in the St. Louis, Des Moines & Northern Company.

This contract also contemplated that the parties advancing money to acquire and construct the terminal should receive first mortgage bonds for the money so advanced. The resolutions of the three railways passed January 1, 1885, authorizing a transfer of the

ownership of the terminal property to the defendant company, provided:

> "That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract, to convey, assign and transfer," etc. (Vol. II, p. 424).

Under these resolutions, presumably the bonds would go to the persons or companies advancing the money (which were the Wabash Company and General Dodge), and the stock distributed between the three railway companies parties to the contract of January 2, 1882, in the proportion heretofore mentioned, viz. ownership of the terminal property.

In the resolutions of November 5, 1887, authorizing a transfer to the defendant company by How and Dodge, trustees, it was provided that the transfer should be made upon the defendant company agreeing to give to the purchasing committee of the Wabash Company first mortgage bonds equal in amount to the money advanced by the Wabash Company in purchasing and improving the terminal property, paying taxes thereon with interest, together with three-fourths of the capital stock of the defendant company, and upon giving to General Dodge bonds equal in amount to the money advanced by him for the same purpose, with interest, and one-fourth of the capital stock of the defendant company.

The reason for authorizing the issuance of three-fourths of the stock to the Purchasing Committee and one-fourth of the stock to General Dodge was that the Purchasing Committee was in equity entitled to the

stock coming to the Des Moines & St. Louis Company as well as to the Des Moines Northwestern Company, while General Dodge represented the St. Louis, Des Moines & Northern Company.

After the transfer of the property to the defendant company, but before possession was taken, the amount of bonds to be issued for the property was ascertained and the issuance thereof was authorized and directed by the defendant company (vol. II, p. 478). No certificates of shares of stock were actually issued until April 8, 1890.

In the meantime, however, the firm of Polk & Hubbell, of Des Moines, had acquired through contracts with the Purchasing Committee the line of road formerly owned by the Des Moines Northwestern Company extending from Des Moines, through Panora, to Fonda, and a one-fourth interest in the terminal property in Des Moines; or in lieu of such one-fourth interest, one-fourth of the stock and bonds issued by the defendant company in payment for the terminal property (Exhibits 263, 264, 265, vol. IV, pp. 1573-6; ex. 60, vol. II, p. 613). This property Polk & Hubbell transferred to the Des Moines & Northwestern Railway Company on May 19, 1888 (vol. II, p. 619). From this time up to about April, 1890, the stock of the defendant company, though not issued, was owned as follows:

One-half by the Purchasing Committee, as representative of the Des Moines & St. Louis Company;

One-fourth by the St. Louis, Des Moines & Northern Company;

One-fourth by the Des Moines & Northwestern Company.

On April 8, 1890, a resolution passed at the meeting of the stockholders of the defendant company authorized the issuance of $400,000.00 of the capital stock of the defendant company in final payment for the terminal property, the same to be issued to the corporations and in the proportions above named (vol. II, pp. 494-6).

Just prior to this time the defendant F. M. Hubbell, and General Dodge, each bought of the Purchasing Committee certain bonds of the defendant company, and one-eighth of its capital stock (vol. IV, pp. 1599-1601). This sale was ratified by the directors of the Des Moines & St. Louis Company (vol. IV, p. 1434). The stock, therefore, when issued on April 8, 1890, was issued one share to each of the directors of the defendant company, and

To the Purchasing Committee	996 shares,
To the Des Moines & Northern Railway Company (successor to the St. Louis, Des Moines & Northern Railway Company)	998 shares,
To the Des Moines & Northwestern Railway Company (successor to the Des Moines Northwestern Railway Company	998 shares,
To F. M. Hubbell	500 shares,
To G. M. Dodge	500 shares.

(Vol. II, p. 711.)

Again, on June 5, 1890, F. M. Hubbell bought of the Purchasing Committee an additional 500 shares of stock in the defendant company (vol. IV, p. 1613), which shares were transferred on the books of the defendant company August 28, 1890 (vol. II, p. 711); the

transfer being ratified by action of the Des Moines & St. Louis Company on February 11, 1891 (vol. IV, pp. 1437-8).

On January 15, 1892, the shares of the Des Moines & Northwestern Company, the Des Moines & Northern Company, F. M. Hubbell and G. M. Dodge, amounting altogether to 3,500 shares (less the shares necessary to qualify directors), were transferred to the Des Moines, Northern & Western Railway Company, a consolidation of the Des Moines & Northern Company and the Des Moines & Northwestern Company (vol. II, p. 711).

On October 4, 1893, the Des Moines, Northern & Western Railway Company pledged 2,500 shares of this stock to F. M. Hubbell & Son, as collateral security on certain indebtedness (vol. IV, p. 1480). On January 29, 1894, the Des Moines, Northern & Western Railway Company sold these same shares to F. M. Hubbell & Son in satisfaction of certain indebtedness (vol. IV, pp. 1482-3). These 2,500 shares of stock were transferred on the books of the Des Moines Union Company to F. M. Hubbell & Son October 4, 1893, and have ever since stood in their name (vol. II, p. 711). The capital stock of the defendant company is now owned as follows:

Wabash Railway Company (the remote successor of the Des Moines & St. Louis Railroad Company)	500 shares,
Chicago, Milwaukee & St. Paul Railway Company (remote successors of the Des Moines Northern & Western Company)	1,000 shares,
F. M. Hubbell & Son	2,500 shares.
Making a total of	4,000 shares.

being all the outstanding stock. A few of the shares belonging to each of the above owners stand in the name of the directors of the defendant company, who represent the owners on the Board of Directors.

On this branch of the case the complainants allege that they are the real owners of the terminal property and that defendant company simply holds the title in trust for them, or that that ownership is subject to an easement in their favor which gives them the right to use the property in perpetuity for terminal purposes, upon payment of the actual cost of operation, maintenance and taxes, thus depriving the defendant company from having any beneficial ownership in the property. The real purpose of the suit is to obtain a decree which will render the 2,500 shares of stock owned by F. M. Hubbell & Son of no value.

The amended bill of complaint (Rec., Vol. I, p. 82 et seq.) made numerous charges of gross fraud against the respondents, accusing them of manipulating, falsifying and virtually forging the records of the Des Moines Union Railway Company and other companies involved, so as to sustain their claims, but there is not an iota of evidence in the record to support any of the charges, no evidence was offered with a view to support them and the records in question were received in evidence without objection and indeed were brought into the case by stipulation of the parties.

The amended bill of complaint also charges (Rec. Vol. I, p. 111) that the Hubbells, father and son, and their three other associates, at a meeting of the Directors of the Des Moines Union Railway Company held on March 12th, 1906, "voted to allow additional salaries as follows, namely: To the defendant Frederick C. Hubbell as President of the company, for the

years 1901, 1902, 1903, 1904 and 1905, $37,500, and to the defendant Frederick M. Hubbell, as Secretary of the company for the same years, the sum of $12,500."

The proceedings of the meeting mentioned are shown in the Record, Vol. II, pp. 333 to 336, and there is not a word of salary as to either father or son. On the other hand the evidence is undisputed that from the time the terminal company began operations down to the time of the trial, the father gave much of his time and care—and the son made it practically his exclusive occupation—to the conduct of the terminal's affairs and business. And this without a dollar of direct pay. It was done not altogether as a matter of public spirit; they had a large interest in the terminal company and hoped to profit by its welfare and prosperity. And so they labored unceasingly for its development and expansion. And the petitioners accepted these gratuitous services, well knowing that they were being rendered and why they were rendered.

The claim of the respondents is that a good and perfect title to the terminal property passed to the Des Moines Union Railway Company, and that petitioners are estopped from questioning such title by their conduct and laches.

To go into a detailed statement of facts at this point supporting these defenses would serve no useful purpose and would result in unnecessary repetition.

The decree of the Court of Appeals adjudged that the defendant company had a good and perfect title to the terminal property, and that complainants have no interest therein except that which is represented by the stock of the defendant company which they own. It is this portion of the decree which complainants bring up for review by their writ of certiorari.

POINTS AND AUTHORITIES.

I.

THE DEFENDANT, THE DES MOINES UNION RAILWAY COMPANY, ACQUIRED AND POSSESSES A PERFECT TITLE IN FEE SIMPLE TO THE TERMINAL PROPERTY.

The great object in the construction of all instruments is to ascertain the intention of the parties.

Mauran v. Bullus, 16 Pet. 527.
Calderon v. Atlas Steamship Co., 170 U. S., 280.
Insurance Co. v. Trefz, 104 U. S. 203.
United States v. Bethlehem Steel Co., 205 U. S. 119.
Lowber v. Bangs, 2 Wall, 736.
Van Ness v. City of Washington, 4 Pet. 232.
Potomac Steamboat Co. v. Upper Potomac Co., 109 U. S. 681.

II.

THE ARTICLES OF INCORPORATION OF THE DES MOINES UNION RAILWAY COMPANY AND AMENDMENTS THERETO ARE VALID.

Upon the organization of the Des Moines Union Railway Company those who by contract were entitled to shares of stock were actually stockholders, though no certificates evidencing such shares were issued. As between shareholders and the corporation, the issuance of certificates of stock is not necessary.

Thompson on Corporations, 2d ed., vol. 4, §§ 3455, 3507.
First Nat. Bank v. Gifford, 47 Iowa 583.

Morrow v. Gould, 145 Iowa 4.
Hawley v. Upton, 102 U. S. 316.
Penderey v. Carleton, 87 Fed. 41.

The amendments to the articles of incorporation adopted April 8, 1890 (V. II, 488-94), were valid and are binding upon the stockholders, because:

(a) It is a presumption of law that proper and valid notice of a corporate meeting has been duly given to each stockholder, and the meeting itself regularly and lawfully called.

Cook on Corporations, 6th ed., vol. 2, § 600.
Chase v. Tuttle, 12 Atl. (Conn.) 874.
Hill v. Ry. Co., 55 S. E. (N. C.) 854.
Porter v. Robinson, 30 Hun. 209.
Pitts v. Temple, 2 Mass. 538.
Benbow v. Cook, 20 S. E. (N. C.) 453.
Hardin & Sons v. Iowa Ry. & Const. Co., 78 Iowa 726.
Moore v. Church, 117 Iowa 33.

(b) The presumption is that the minutes of a stockholders' meeting or of a meeting of a Board of Directors are correctly and properly entered of record, and while it is allowable to contradict the records of a corporation or show that the records do not fully disclose all the proceedings, the rule is that the proof in such cases must be so convincing and satisfactory as to leave no doubt that the matter attempted to be interpolated into the record did actually occur.

Thompson on Corporations, 2d ed., vol. 2, §§ 1845-6.

Hawkshaw v. Supreme Lodge, 29 Fed. (C. C.), 770.

Thompson on Corporations, 2d ed., vol. 2, §§ 1850-1.

Cook on Corporations, 6th ed., vol. 2, §§ 600, 605, 610.

In the Matter of the Election of St. Lawrence Steamboat Co., 44 N. J. L. 534.

Dennis v. Joslin Mfg. Co., 36 Atl. (R. I.) 129.

Durbrow v. Hackensack M. Co., 71 Atl. 59.

Heintzelman v. Druids' Relief Assn., 36 N. W. (Minn.) 100.

Sanborn v. School District, 12 Minn. 1.

McDaniels v. Flower, 22 Vt. 274.

Lane v. Brainerd, 30 Conn. 565.

(c) The adoption of the amendments and the resolutions were acts of the stockholders (acts of complainants' predecessors as distinguished from the acts of the defendant corporation). The articles of incorporation constituted a contract between the stockholders, the terms of which they had the right to change in the manner therein pointed out, without the consent of the corporate entity.

Thompson on Corporations, 2d. ed., vol. 1, §§ 172, 312.

Jones v. Electric Co., 144 Fed. 765 (C. C. A.).

Heald v. Owen, 79 Iowa 25.

Tracr v. Prospecting Co., 124 Iowa 112.

(d) The amendments to the articles were properly signed, acknowledged and recorded, and notice thereof was given as required by the Iowa statute.

The statute law in force on April 8, 1890, was as follows:

> "That any of the provisions of the Articles of Incorporation may be changed at any annual meeting of the stockholders or special meeting called for that purpose; but said changes shall not be valid unless recorded and published as the original articles are required to be; and said changes in the Articles need only be signed and acknowledged by the officers of said Corporation." (Ch. 88, Acts 22d G. A. [1888].)
>
> "Previous to commencing any business, except that of their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators, and recorded in the office of the Recorder of Deeds of the county where the principal place of business is to be, in a book kept therefor; the Recorder must record such articles as aforesaid, within five days after the same are filed in his office, and certify thereon the time when the same was filed in his office, and the book and page where the record thereof will be found. The said articles and certificate of Recorder shall be then recorded in the office of Secretary of State, in a book kept for that purpose." (Ch. 23, Laws, 17th G. A. [1878].)
>
> "A notice must be published for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain: * * *" (Sec. 1613, Code of Iowa, 1897, in force on April 8, 1890.)

The purpose of these statutory provisions is to give to the world (which includes the stockholders), notice of the articles of incorporation and amendments thereto.

Dempster Mfg. Co. v. Downs, 126 Iowa 80.

It is a presumption of law that all stockholders assent to any change in the articles of incorporation.

Holmes v. Royal Loan Assn., 107 S. W. (Mo.) 1005.
Cook on Corporations, 6th ed., vol. 2, § 503.

A dissenting stockholder must act promptly.

Cook on Corporations, 6th ed., vol. 2, § 503.
Rabe v. Dunlap, 25 Atl. (N. J.) 959.
Synnott v. Cumberland Bldg. Loan Assn., 117 Fed. 379 (C. C. A.).
Big Creek Gap Coal & Iron Co. v. American L. & T. Co., 127 Fed. 625 (C. C. A.).
Thompson v. Lambert, 44 Iowa 239.
Foster v. Mansfield, etc., 146 U. S. 88.

The complainants cannot raise the question of the validity of these amendments, because they acquired their stock and all interest in the property subsequent to the adoption of such amendments.

Equity Rule No. 94.

III.

THE COMPLAINANTS ARE ESTOPPED FROM ASSERTING THAT THE TITLE TO THE TERMINAL PROPERTY IS NOT VESTED ABSOLUTELY IN THE DES MOINES UNION RAILWAY COMPANY, AND FROM CLAIMING THAT THE STOCK OF THE COMPANY HELD BY THE DEFENDANT, F. M. HUBBELL & SON, DOES NOT REPRESENT A VALUABLE INTEREST IN SUCH PROPERTY, BECAUSE ALL THE PARTIES HAVE ACTED UPON THAT THEORY SINCE 1888

(ALMOST TWENTY YEARS PRIOR TO THE COMMENCEMENT OF THIS SUIT), AND BECAUSE, RELYING UPON THE DEEDS, CONTRACTS, RESOLUTIONS, AND ACTS BY WHICH THE COMPLAINANTS' PREDECESSORS TRANSFERRED THE PROPERTY TO DEFENDANT, AND THE ACTS OF THE COMPLAINANTS IN RESPECT THERETO, THE HUBBELLS PURCHASED OF COMPLAINANTS' PREDECESSORS STOCK IN THE DEFENDANT COMPANY FOR A VALUABLE CONSIDERATION, AND DEVOTED MANY YEARS OF THEIR LIVES TO THE CONSERVATION AND BUILDING UP OF THE PROPERTY, WITHOUT OTHER COMPENSATION THAN THAT WHICH THEY WILL SECURE BY REASON OF THE INCREASE IN THE VALUE OF THEIR STOCK.

The doctrine of estoppel always applies where one relying upon the acts and representations, either active or passive, of another, changes his position in respect to the subject matter.

Encyc. U. S. Supreme Court Rep., Vol. 5, p. 939.
Morgan v. Railway Co., 96 U. S. 716.
Kirk v. Hamilton, 102 U. S. 68.
Linton v. Nat. Life Ins. Co., 104 Fed. 584.
Given v. Times Printing Co., 114 Fed. 92.
Wright v. Lieth, 146 Iowa 290.
Seberg v. Bank, 141 Iowa 99.
Anderson v. Buchanan, 139 Iowa 676.
Morgan v. Des Moines Union Ry. Co., 113 Ia. 561.

IV.

THE COMPLAINANTS ARE ESTOPPED FROM MAINTAINING THIS SUIT BECAUSE OF THEIR LACHES.

For nearly twenty years prior to the bringing of this suit complainants and their predecessors knew all the facts; knew that the Des Moines Union Railway Company claimed to be the absolute owner of this property, and for seventeen years prior to the bringing of the suit knew that the Hubbells were acting in the belief that the stock owned by them represented a valuable interest in the terminal property.

Under ordinary circumstances a suit in equity will not be stayed for laches before, and will be stayed after, the time fixed by the analogous limitation at law.

Wyman v. Bowman, 127 Fed. 257 (C. C. A.).
Williams v. Neely, 134 Fed. 1 (C. C. A.).
Railway Co. v. Stevenson, 135 Fed. 553 (C. C.).

Section 3447 of the code of Iowa, 1897, provides:

"Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

* * * * * * * * *

"* * * Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years."

Pomeroy, Eq. Jur. Vol. 5, Sec. 23 says:

"No doctrine is so wholesome when wisely administered as that of laches. It prevents the resurrection of stale titles, and forbids the spying out from the records of ancient and abandoned rights. It requires of every owner that he take care of his property, and of every claimant that he make known his claims. It gives to the actual and longer possessor security, and induces and justifies him in all efforts to improve and make valuable the property he holds. It is a doctrine received with favor, because its proper application works out justice and equity, and often bars the holder of a mere technical right, which he has abandoned for years, from enforcing it when its enforcement will work large injury to many."

Galliher v. Cadwell, 145 U. S. 368.

The title and ownership of property is to be determined by the law in force in the state in which the property is located.

Kerr v. Moon, 9 Wheat 565.
McCormick v. Sullivant, 10 Wheat. 192.

Section 2918 of the code of Iowa, 1897, provides:

"Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law."

The statute of limitations commences to run as to resulting trusts at the time of the creation of the trust.

Boone v. Chiles, 10 Pet. 177, 222.
Speidel v. Henrici, 120 U. S. 377, 386.

If there was ever an express trust in this case, it was expressly repudiated at the time of the amendments to the articles of incorporation of the Des Moines Union Railway Company on April 8, 1890, and the passage of the resolutions at that meeting.

Suits to establish implied trusts fall within the class of cases in which federal equity courts will follow the courts of law in applying the statute of limitations.

Beaubien v. Beaubien, 23 How. 190, 207.
Speidel v. Henrici, 120 U. S. 377, 386.
Riddle v. Whitehill, 135 U. S. 621.
Abraham v. Ordway, 158 U. S. 416, 420.
Penn. M. L. I. Co. v. Austin, 168 U. S. 685, 696.
Baker v. Cummings, 169 U. S. 189, 206.

V.

THE SALE AND TRANSFER OF THE TERMINAL PROPERTY TO THE TERMINAL COMPANY WERE NOT VOID AS AGAINST PUBLIC POLICY.

The organization of terminal companies and terminal systems is a natural and logical development in centers of population and is recognized as good public policy by the courts.

Morgan v. Des Moines Union, 113 Ia. 561.
United States v. Terminal R. R. Assn. of St. Louis, 224 U. S. 401.
Attorney General v. Terminal R. R. Assn., 182 Mo. 284.
People ex rel. v. Chessman, 7 Colo. 376.
State ex rel. v. Martin, 51 Kans. 462.

Mayor v. Norwich R. R. Co., 109 Mass. 103.
Union Depot Co. v. Morton, 83 Mich. 265.
Secs. 2099, 2130, Code of Iowa, 1897.

But, assuming that the original transaction was *ultra vires* as against public policy, the transaction was a completed one nearly twenty years prior to the commencement of this suit, and the courts will not now disturb it.

St. Louis, Etc., R. R. Co. v. Terre Haute, Etc., R. R. Co., 145 U. S. 393.

ARGUMENT.

I.

THE DEFENDANT, THE DES MOINES UNION RAILWAY COMPANY, ACQUIRED AND POSSESSES A PERFECT TITLE IN FEE SIMPLE TO THE TERMINAL PROPERTY.

The solution of this question does not, we think, involve any difficult or seriously disputed questions of law, but simply an examination of the origin and evolution of the terminal property. In its consideration it is well to start at the beginning and consider the origin and growth of the property, step by step, to determine the objects and intentions of the various corporations and persons who had to do with the transaction.

The first item for consideration is the contract of December 8, 1880, between the Wabash, St. Louis & Pacific Railway Company and J. S. Polk and others, which provided for the organization of the Des Moines & St. Louis Railroad Company (the remote predecessor and grantor of the Wabash Railway Company), and the construction by that company of a line from Albia to Des Moines with funds to be furnished by the Wabash, St. Louis & Pacific Railway Company, which line when constructed was to be leased in perpetuity to the last named company (Vol. II, p. 396).

This contract is of no great importance except that it furnishes a starting point for the consideration of this case and the origin of the scheme out of which the terminal proposition grew. The line from Albia to Des Moines was constructed as contemplated in the contract, and leased to the Wabash Company.

On the same date the Wabash, St. Louis & Pacific Railway Company entered into a written contract with the Des Moines Northwestern Railway Company and the Narrow Gauge Construction Company (Vol. II, p. 400), which recites the fact that the Des Moines Company owned a railroad from Waukee, a point on the Des Moines & Fort Dodge Railroad about fifteen miles west of Des Moines, to Panora; recites the making of the contract between the Wabash Company and J. S. Polk and others heretofore referred to, contemplating the construction and lease of the railroad of the Des Moines & St. Louis Company, and the desire of the Wabash Company to obtain the business originating on the road of the Des Moines Company, and provides for the extension of the road of the Des Moines Company in a northwesterly direction and also to Des Moines, and among the provisions are the following (p. 406):

> "It is further mutually agreed by and between the parties above named, that if certain pending negotiations between the Wabash Company and the Des Moines & Fort Dodge Company shall result in the Wabash Company's acquiring control, by lease or otherwise, of the Des Moines and Fort Dodge Road, then the Des Moines Company shall have the right (upon terms to be fixed by agreement of the parties, otherwise to be settled under the general provisions herein made for arbitration) to extend its line into Des Moines by laying a third rail upon the Des Moines & Fort Dodge Road.
>
> It is further mutually agreed by and between the parties above named, that if the pending negotiations between the Wabash Company and the Des Moines & Fort Dodge Company shall fail, then the railroad of the Des Moines Company shall be

extended to a connection with the railroad of the Des Moines & St. Louis Company, at or near Des Moines, substantially under the provisions of the foregoing agreement, but with such modifications as the greater cost of such extension may require. The Des Moines Company shall in that case have full right of entry into Des Moines, by laying a third rail on the Des Moines & St. Louis Roal, and full use of the terminal facilities of that road, upon terms to be settled by agreement between the Des Moines Company and the Wabash Company, or else under the arbitration elsewhere provided for herein.

It is further agreed on the part of the Wabash Company that if it shall acquire control of the Des Moines & Fort Dodge Road, then the Wabash Company will permit the Des Moines Company to lay down a third rail on the track of the Des Moines & St. Louis Road, from the terminus of the Fort Dodge Road, in the City of Des Moines, eastwardly far enough to reach such pork houses and other sources of freight as are on the east side of the City of Des Moines, and are reached by the tracks of the Des Moines & St. Louis Road."

On page 989 of volume III appears an entry on the books of the Wabash Company made in April, 1881, as follows:

"For the following payments for a/c of real estate in the City of Des Moines, Iowa, charged to Des Moines & St. Louis R. R. in the months of Feb'y, March and April, 1881, now transferred to real estate Des Moines, the property being held for joint account of the Des Moines & St. Louis and Des Moines & North Western Rys., as per letter of James S. Clarkson, Pt. filed herewith:"

And then follow various items of expenditure which had theretofore been made for a terminal property in the City of Des Moines and charged to the Des Moines & St. Louis Railroad Company.

The foregoing contracts and this entry show that it was originally contemplated that the terminal property in the City of Des Moines should be owned by the Des Moines & St. Louis Roailroad Company and not by a terminal company and not jointly by that road and the Des Moines Northwestern Railway Company.

The entry on the books of the Wabash above referred to shows that this plan as originally contemplated was changed in April, 1881, to a plan which contemplated that the terminal property should be owned jointly by the Des Moines & St. Louis and the Des Moines Northwestern companies, because at that time the charge upon the Wabash books was changed from a charge against the Des Moines & St. Louis to a charge against Real Estate Des Moines, to be held for the joint account of the two companies named.

In April, 1881, there were adopted under the laws of the State of Iowa articles of incorporation of the St. Louis, Des Moines & Northern Railway Company (Vol. II, p. 729), for the purpose of constructing a line of railway from the City of Des Moines through Boone, Iowa, toward the north line of the state.

This company proceeded toward the construction of this line of road, and also a branch from Clive, a station about five miles west of Des Moines, to Waukee, and on January 23, 1882, it made a contract with the Des Moines Northwestern Railway Company by which it sold to the latter company the branch from Clive to Waukee, and a one-half interest in the line from Waukee to Farnham street in Des Moines (the western

limit of the terminal property), giving the Des Moines Northwestern entrance into the City of Des Moines.

This shows that the plan of the Wabash Company to acquire a control of the Des Moines & Fort Dodge line failed, and the entrance of the Des Moines Northwestern Company into Des Moines was secured through this contract with the St. Louis, Des Moines & Northern Railway Company.

On January 2, 1882, a contract was entered into between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, trustee (Vol. II, p. 411), which shows that another change was made in the plan for a terminal in the City of Des Moines and by which it was contemplated that the terminal property should be owned and operated jointly by the three railway companies—the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines Northwestern Railway Company.

This contract recited the fact that the three companies desired to own and operate jointly terminal facilities in the City of Des Moines and use the same in common; that certain purchases had been made of real property in the said city in the name of James F. How, individually, and James F. How, trustee, and Grenville M. Dodge, and certain additional property had been appropriated by the Des Moines & St. Louis Railroad Company, and the construction of buildings and other improvements thereon had begun. It was agreed that the expense thereof should be borne one-half by the Des Moines & St. Louis Company and one-fourth each by the other companies, and that a depot

company might be organized to take permanent charge of the property upon the terms set forth in the contract. It specifically provided that the title to said property should be and remain in a trustee to be named by agreement of the said companies, and subject to the joint use and occupation of all the railway companies upon the terms therein contained; that the Des Moines & St. Louis Company should be charged with the police control and supervision and maintenance of the property, and that the expense thereof should be apportioned among the companies upon a wheelage basis. Other provisions were made in the contract not necessary to be here mentioned.

It will be seen from the foregoing that up to this time three different schemes had been adopted for this terminal property:

First. that it should be owned exclusively by the Des Moines & St. Louis Railroad Company.

Second. That it should be owned jointly by the Des Moines & St. Louis and the Des Moines Northwestern Railway Company.

Third. That it should be owned jointly by the three companies parties to the contract last above mentioned.

A short time prior to this date, on December 1, 1881, the Des Moines & St. Louis Railroad Company mortgaged its property to the Central Trust Company of New York (Vol. II, p. 509). This mortgage specifically excepted the terminal property in the City of Des Moines, the exception being in the following language (p. 511):

"except the real estate, buildings and improvements thereon lying and being within the corporate limits of the City of Des Moines."

thus showing that the terminal property was to be handled as a proposition separate from the main line of the Des Moines & St. Louis Road.

Counsel for petitioners devote much time and space to a discussion and an analysis of this contract and the rights of the railway companies thereunder. To our mind the rights acquired by the railway companies by this contract are simple and easily stated. By its terms the three railway companies became the beneficial owners of the property.

Here it is proper to note that the ownership of the three railway companies was not equal, but one-half by one and one-fourth by each of the others. The usual and ordinary rights and incidents of ownership were recognized by the parties. They contemplated use of the property by other railway companies, for which those other companies were to pay. And what was to be done with the money received from such sources? Was it to go to the three in equal measure? By no means. It was distributed among them in the ratio of ownership. Section 10 of the contract of January 2nd, 1882 expressly provides "the rental to enure to the companies hereto in the same proportion as the original outlay." Vol. II, p. 413.

Each Company owned an undivided interest in the property, with the right to use the whole property for railway purposes. Whether, as between the three railway companies, we term the right of one company to use the whole property for railway purposes an easement, or what not, is entirely immaterial. Considering the three railways together, they not only owned

the property, but had the right to direct the trustees, How and Dodge to transfer the legal title to them or to any one whom they might select. As a result, they had absolute dominion over the property, with the right to continue to use it in accordance with the strict terms of the contract, or to make any other disposition of it to which the three railway companies could agree. They might by agreement have placed the legal title in a trustee, reserving to themselves the beneficial ownership; they might have transferred the property to a third person, reserving in themselves an easement; or they might have made any other disposition of it upon which they could agree. In other words, their power of disposition of this property was unlimited because they were its owners. The question we have for solution is what disposition they in fact did make of it, and for this purpose we must examine their subsequent acts and from them and the surrounding circumstances ascertain the true intent of their acts.

In this connection, however, it must be noted that looking forward to possible changes in their terminal plans, as the future might develop the necessity therefor, the parties had carefully segregated the terminal property from their main lines, as see the provision in the Des Moines & St. Louis mortgage above noted, eliminating the terminal property therefrom, the deed and contract above noted between the St. Louis, Des Moines & Northern Company and the Des Moines Northwestern Company, which limited the transfer to property west of the terminal, and to the mortgage given by the St. Louis, Des Moines & Northern to the Mercantile Trust Company (Vol. II, p. 552), which only covered property extending "from the western

boundary line of the City of Des Moines," etc. (p. 554).

The significance of these changes in the plan for the terminal property, and its careful segregation from the main lines, lies in the fact that they indicate that the terminal plan was in a formative stage, and the parties wished to so manage it that any desired change might be made in the future. It is for us to determine if such changes were made.

Subsequent to the making of this contract of January 2, 1882, additional property was acquired, improvements made thereon, and the property for some years was used jointly by the St. Louis, Des Moines & Northern Railway Company and by the Wabash Company, lessee of the other two companies.

Among the things which were contemplated by these railway companies with respect to this terminal property, as shown by these contracts already referred to, was that other companies should be induced to use it to the end that the expense of operating it might be lessened. The impracticability of thus operating the terminal property and having two or more railway companies operating over it indiscriminately is apparent upon reflection, and it is apparent that its impracticability became impressed upon the persons engaged in operating it, for we find that in 1884 steps were taken to change the method of operation and to provide for its operation by a terminal company, and in this step we have the first evidence of a change of the plan as outlined in the contract of January 2, 1882.

At this point we are aided by a concession made by counsel for the Chicago, Milwaukee & St. Paul Railway Company on page 13 of their argument in the Court of Appeals, as follows:

> "It needs no railroad man to know that such use in common by three different companies, without any central head or management, would lead to confusion and to danger. It was quite natural, in fact necessary, that the control and management and in fact the operation of this property should be put in charge of some one individual, or some natural or artificial person."

In ascertaining the changes that were made in the terminal plans as outlined in the contract of January 2, 1882, we may therefore start with the concession that those plans had proved impracticable and the necessity for a change had become apparent.

At the instance of the three railway companies parties to the contract of 1882 a meeting of the incorporators of the defendant, the Des Moines Union Railway Company, was held in Des Moines, Iowa, at which were adopted the original articles of incorporation of the defendant company (Vol. II, pp. 416-23). The articles adopted set out by reciting the fact of the execution of the contract of January 2, 1882, and incorporate the contract as a preamble to the articles.

Counsel for petitioners have attempted to make much of the recitations contained in these articles of incorporation and in the minutes of the meeting at which they were adopted, but an examination of them will, we think, demonstrate that they support our view of this case. The first recitation is as follows (p. 416):

> "At a meeting held in Des Moines, Iowa, on the 10th day of December, 1884, for the purpose of organizing a Union Depot & Railroad Company to be run and operated in and around the City of Des Moines, Iowa, in pursuance of a contract heretofore, to wit: on the 2nd day of January, A. D. 1882, entered into * * *."

It will be noted that the purpose of this meeting is stated to be the organization of a *"Union Depot & Railroad Company to be run and operated in, around and about the City of Des Moines, Iowa."* The contract of January 2, 1882, did not by its terms provide for a railroad company which should operate a railroad in and around the City of Des Moines, but only for a depot company which would simply have permanent charge of the property, without the power of ownership or operation. This demonstrates a change in the plans of the parties.

After setting out the contract the articles provide:

> "Whereas each of said railway companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said company, and " (p. 419).

This recitation did not accurately state the facts. As a matter of fact, neither one of the three railway companies had contributed a dollar directly toward the purchase or construction of this terminal property. The money used for its purchase and construction had all been furnished by the Wabash Company and by General Dodge. No one else had put a dollar into it. The only way in which the three railway companies, parties to the contract of January 2, 1882, put any money into it was that the Wabash Company had charged the money advanced to these three companies.

The articles then recite:

> "Whereas it was provided in the contract aforesaid that a Depot Company might be organized to

take permanent charge of the property, *and it was the understanding of the parties that such company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto.*"

This recitation shows one of two things: either that the contract of 1882 did not correctly state the understanding of the parties, or that the plan for the terminal had changed since the execution of that contract. It recites that "*it was the understanding of the parties that such company might acquire, operate and maintain said property.*" No such understanding can be found in the language of the contract. The contract provides that the property should be acquired by the three railway companies, though the title might be taken in the name of a trustee; that it should be operated by them jointly, and that it should be maintained by the Des Moines & St. Louis Railroad Company, while this recitation evidenced the fact that it was the understanding that the property should be acquired, operated and maintained all by a separate company.

The articles then continue (p. 420):

> "Now, therefore, for the *purposes aforesaid*, as well as for *those hereinafter expressed*, the undersigned hereby associate themselves in a body corporate, and adopt the following:"

The object, then, of organizing the defendant company was not merely to provide a depot company referred to in the contract, but for other purposes. One of the "purposes aforesaid" was that "such company might acquire, operate and maintain said property,"

and the purposes "hereinafter expressed" must be those which are subsequently contained in the articles of incorporation.

Article 1 provides that the name of the corporation shall be the Des Moines Union Railway Company. This name is significant in fixing the intention of the parties. It wasn't a mere depot company or a company organized for the purpose of holding the legal title to the terminal property in trust, but it was a corporation organized for the purpose of performing the duties and functions of a railway terminal company.

As will appear later there is great difference under the laws of Iowa between a depot company and a railway company. The Des Moines Union is a railway and terminal company.

Article 2 provides:

> "The general nature of the business to be transacted shall be the *construction, ownership* and *operation* of a *railway* in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stockyards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter I of Title IX of the Code, and the amendments thereto."

This article provides that this railway company shall exercise the following powers and duties not contemplated by the contract of January 2, 1882:

(1) The construction of a railway;

(2) The ownership of a railway;

(3) The operation of a railway;

(4) The construction of depots, freight houses, railway shops, repair shops, stockyards, and whatever else may be useful and convenient for the operation of a railway at the terminal point in Des Moines, Iowa;

(5) The ownership of such depots, freight houses, etc.;

(6) The use of such depots, freight houses, etc.;

(7) The transfer of cars from the line or depot of one railway to another;

(8) The transfer of cars from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots now constructed or hereafter constructed in or around the City of Des Moines;

(9) The possession of all powers conferred upon corporations for pecuniary profit by Chapter I, Title IX of the Code, and the amendments thereto.

None of these nine functions was contemplated by the contract of January 2, 1882. It is evident from these provisions that the plan of ownership and operation of the terminal property had changed since the making of that contract.

It is then provided in article 2 in part as follows (p. 420):

> "* * * All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882."

Much time and space has been devoted to a discussion of this provision by counsel for petitioners. In its interpretation we must give force and effect to other provisions in the articles of incorporation and the acts and conduct of the parties in relation thereto. This provision is purely interpretative in its character and cannot serve to qualify any provision of the articles which is clear and express in its terms, nor can it nullify any grant of power to the Des Moines Union Company clearly made by the articles. Manifestly, it cannot be construed to nullify or modify the power of the terminal company to construct, own and operate a railway in, around or about the City of Des Moines, because these powers are expressly granted. Manifestly, also, it cannot mean that the terminal property is to be owned or operated according to the terms of the contract of January 2, 1882, because that contract provides for the ownership by the three railway companies; provides for its operation by the three railroad companies jointly, and provides for police control, supervision and maintenance by the Des Moines & St. Louis Railroad Company.

From the beginning these parties had in mind the construction of terminal facilities in the City of Des Moines separate from their main systems, as well in ownership as in operation, which might be used by all of them as well as others in connection with the oper-

ation of their roads. This primary object was never departed from. The departures which were made were with respect to the method by which this primary object should be attained.

Article 3 provides:

> "*The capital stock of this corporation* shall be one million ($1,000,000.00) dollars, which shall be divided into shares of one hundred ($100.00) dollars each, and shall be paid in at such times and in such manner as the board of directors may determine, *and the board are authorized to receive in payment therefor the property and franchises* in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, trustee, Jas. F. How and Grenville M. Dodge."

This article clearly contemplates two things not contemplated by the contract of January 2, 1882:

First. That the stock should be paid for when issued.

Second. That it might be paid for by a transfer of the terminal property and franchises.

It needs no argument to show that these purposes were not contemplated by that contract, and that it evidences a change in the plan.

Under the contract of January 2, 1882, the three railway companies owned this terminal property, although it was contemplated that the title thereto might stand in the name of the trustee. As such beneficial owners, and under that contract, they had power to control it because they owned it and because of the terms of the contract.

Counsel for the Wabash Company, speaking of what was intended to be represented by this stock, on page 209 of his Coprt of Appeals brief, frankly says:

> "* * * I think it axiomatic that a corporation takes absolutely that which is transferred to it in exchange for its shares of stock, and, accordingly, that the Depot Company does not hold the servient estate in trust, but absolutely."

The question here is, what was intended, by the article above quoted, should be received by the terminal company in exchange for "its shares of stock."

The article says, first, that it shall receive "the property and franchises in the City of Des Moines now held by the Des Moines & St. Louis Railroad Company."

Under the contract of January 2, 1882, the Des Moines & St. Louis Railroad Company owned a one-half interest in the terminal property, which included not only the real estate where absolute title had been acquired by deed, but also the easement or right of way over property acquired by condemnation proceedings or right of way deed; also the embankments, ties, rails, buildings, and other structures located upon the property and used in connection with the operation of the terminal; also the franchise or right to use the property for terminal purposes. All these were property and were the things that were contemplated should be transferred to the terminal company in exchange for its stock.

Likewise, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railroad Company owned and held each a one-fourth interest in the same property. James F. How and Grenville M. Dodge held the legal title to a por-

tion of the real estate. The whole property and every interest therein was owned and held by these three railroad companies and the trustees, and it was this property which it was contemplated should be transferred for the stock—therefore adopting the axiom stated by counsel for the Wabash; this article contemplated that the terminal company should take "absolutely" the whole terminal property "in exchange for its shares of stock."

It evidently was their desire to change the status of the property and turn it over to a separate corporation which should own and operate it, but in connection therewith they did not desire to lose their power of control and therefore it was in their opinion necessary to put something into the articles of incorporation by which a limitation should be placed upon the power of the terminal company to control the property, and in article 2 they provide:

> "• • • All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, trustee, and Grenville M. Dodge. The said company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other railway company—provided that the assent in writing of the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named."

And in article 4 it was provided:

"Four members of the board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the stockholders' meeting of this company by the secretary of one of the respective companies aforesaid and such certification shall be conclusive.

The provisions herein with respect to nomination for the board of directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the board unless the same shall have been first approvel by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the board of directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided."

Now, it wasn't necessary to put these provisions into the articles of incorporation if it was not intended to give the terminal company the title and ownership of the property. If the terminal company simply was to

hold the property as trustee, it would have no power to dispose of or encumber it without the consent of the beneficial owners. So these provisions, instead of showing that it was intended that the three railway companies should retain an interest in the property, show that it was intended that the terminal company should own the property, but these provisions were put in as a limitation upon the power of the corporation to alienate its property.

Now, of course, the adoption of these articles did not change the title or ownership of the terminal, but they clearly indicate the purpose of the parties instrumental in organizing it to transfer the ownership and title, just the same as the building of a house would indicate the purpose of the builder that some one should live in it.

These articles were adopted on the 10th day of December, 1884. On the 1st day of January, 1885, there were certain resolutions passed at meetings of the stockholders of the three corporations parties to the contract of January 2, 1882. To correctly understand what was intended by these resolutions it is well to consider first the resolutions adopted by the Des Moines Northwestern Railway Company. This company did not hold the legal title to any portion of the terminal property. The only interest it had in the property was that evidenced by the contract of January 2, 1882. under the terms of which it was the beneficial owner of a one-fourth interest.

The resolutions appear commencing at page 426 of volume II, and in them it is first

> "Resolved, that this company ratifies and approves the selection heretofore made of J. S. Polk and F. M. Hubbell to serve as directors of the Des Moines Union Railway Company in accordance with the provisions of article four (4) of the articles of incorporation of that company authorizing this company to nominate two members of the board of directors of said company."

In connection with this resolution it is important, for reasons which we will hereafter state, to note that from the organization of the Des Moines Union Railway Company down to the adoption of certain amendments to the articles of that company, the three railway companies parties to the contract of January 2, 1882, exercised the power given them in article 4 of the articles of incorporation, to nominate directors of the Des Moines Union Railway Company.

The resolution then continues:

> "Whereas, the Des Moines, St. Louis Roailroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How, and James F. How, trustee, on the 2nd day of January, 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines which had theretofore been held and used by certain of the individual parties hereto for certain purposes and upon certain conditions set out in said contract, and"

The only importance of this recitation is to indicate that the subject matter of the resolutions which follow.

The resolution then continues:

> "Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract, *to acquire, hold, use and enjoy* the real estate, property rights and franchises in the City of Des Moines east of Farnham street in said city of the aforesaid railway company and signatories of said contract acquired or held thereunder, and to carry out the purposes of the said contract of January 2nd, 1882."

Note the use of the word "*enjoy*" in connection with the above resolution. This corporation was organized not only to acquire, hold and use the real estate, but also to *enjoy* it. We take it that the word "acquire" used in this connection means to get the title to the property; the word "hold" means to be possessed of it; the word "use" means to operate it for the purpose of carrying on a railway business, and the word "enjoy" means to derive a profit or benefit from the acquiring, holding and using of the property. The things which it was contemplated this terminal commany was to "*acquire, hold, use, and enjoy*" were, *first*, the real estate; *second*, the property rights, and *third*, the franchises. These three words comprised all the interest which the three railroad companies or the trustees had in the terminal property.

The resolution then continues:

> "Now, Therefore, Resolved, That this company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company."

Note that this resolution accepts and ratifies the articles of incorporation of the defendant railway company, as in substantial accord and compliance with the terms of the contract. When they ratified the articles of the Des Moines Union Railway Company they ratified that portion which gave to that railway company the power to own, construct and operate a terminal property in the City of Des Moines, and the power to acquire the ownership of this particular property and pay therefor by an issuance of its stock, as well as any other portion of the articles of incorporation. And note, also, that by this resolution they undertook to make effective the purposes of the Des Moines Union Railway Company, which were to acquire the ownership, management and control of this terminal property, and to pay therefor by an issuance of its capital stock.

This resolution adopted by each of the three railway companies relative to the articles of incorporation, recites the execution of the contract of 1882, the adoption of the articles of incorporation, that it was such a corporation as contemplated in the contract, and that the corporation so contemplated was to acquire, hold,

use and enjoy all of the property in question; and then it is resolved that the railway company accepts and ratifies the articles of incorporation as in substantial accord and compliance with the terms and conditions of the contract of 1882, and the company "undertakes to discharge all the obligations imposed upon it by said contract, in order to make effective the *purposes of said Des Moines Union Railway Company.*"

The resolution then continues:

> "Resolved, That the proper officers of this company be authorized *upon the issuance to it of the share of the bonds and stock* of said Des Moines Union Railway Company to which it may be entitled under said contract to *convey, assign and transfer* to said company all its *right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property* in the City of Des Moines east of Farnham street in said city now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract."

Now, what was it, the transfer of which was intended by the stockholders to be authorized by this resolution? Was it something which it had, or something which it didn't have? The Des Moines Northwestern Railway Company did not have the *legal* title to a single shovelful of dirt, a single tie, a single rail or spike, or any other portion of the terminal property. What it had, and all it had was the beneficial interest in one-fourth of the property contemplated by the contract of January 2, 1882.

If it had been intended to authorize the transfer only of the legal title to the property, there would have been no occasion whatever for the passage of this resolution. What would have been necessary for such a purpose would have been a resolution authorizing the persons who held the legal title to make the transfer. The only purpose of this resolution was to authorize the transfer of something which it had, which as we have said, was the beneficial ownership of a one-fourth interest in the property, and this is exactly what the language of the resolution authorizes. It says:

> *"assign and transfer to said company all its right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines."*

which is covered by the contract of January 2, 1882.

What possible interest did or could the Des Moines Northwestern Railway Company have had in this property which was not authorized to be transferred by this resolution? What right, title or interest is reserved by the terms of this resolution? What more appropriate language could have been selected to express an intention to transfer the *ownership* of the property?

The resolutions speak of carrying out the purposes of the contract of January 2, 1882. That was precisely what they were doing, and doing it by transferring the terminal property to the terminal company and taking to themselves the stock of the terminal company. Through this stock ownership they could control the terminal company.

On pages 40 and 41 counsel for the Milwaukee Company in their Court of Appeals brief discuss the rights

of that company as the successor of the Des Moines Northwestern Railway Company (owner of the Fonda line), and assert that by the contract of January 2, 1882, the Des Moines Northwestern Company acquired a one-fourth interest in the terminal property, and then say:

> "Now, two questions arise. Could any conveyance or any act of the St. Louis Company and the Northern Company, or either of them, cut off or destroy this right of the Northwestern Company, which they had solemnly granted to it by the contract of January 2, 1882? Or has the Northwestern Company or its successors ever done anything that would destroy or convey away this right to the use of this property?"

The answer to the first query above quoted is, of course, no. The rights of the Northwestern Company could only be cut off by its own action or that of its successors. When we come to answer the second question as to what the Northwestern Company or its successors have done to convey its interest in this property, the anwer is easy.

In the Milwaukee's chain of title there appear the following owners of the property in the order named:

1. The Des Moines Northwestern Company.

2. Polk & Hubbell, who acquired the property in pursuance of a contract with the Wabash purchasing committee, and through a foreclosure of the original Des Moines Northwestern mortgage.

3. The Des Moines & Northwestern Railway Company, which acquired the property from Polk & Hubbell.

4. The Des Moines Northern & Western Railway Company, which acquired the property by the consolidation of the Boone and Fonda lines.

5. The Des Moines Northern & Western Railroad Company, which acquired the property through a foreclosure of a mortgage given by its immediate predecessor.

The act of the Des Moines Northwestern Railway Company by which a conveyance of the ownership of the property was authorized, consisted in the resolutions from which we have just quoted.

These resolutions are supplemented by the resolutions of 1887 hereafter referred to.

If the purchase price provided for in these resolutions had been paid to the Northwestern Company and the conveyance authorized by this resolution made, no question could arise.

The thing actually done was this: Polk & Hubbell made a contract with the purchasing committee of the Wabash Railroad Company, which owned the Des Moines Northwestern bonds, by which the purchasing committee agreed to sell to Polk & Hubbell the Des Moines Northwestern Road extending northwesterly from Farnham street, and a one-fourth interest in the terminal property; title to be secured by a foreclosure of the Des Moines Northwestern line mortgage. By this contract, however, the purchasing committee retained the option of delivering to Polk & Hubbell one-fourth of the stock and bonds which it might receive from the terminal company in payment for the one-fourth interest in the terminal property, in lieu of conveying such interest in the terminal property.

This mortgage was foreclosed and Polk & Hubbell acquired the title to the Des Moines Northwestern Line through the foreclosure proceedings, and received from the purchasing committee one-fourth of the stock and bonds of the terminal company in lieu of one-fourth interest in the terminal property.

Polk & Hubbell transferred to the Des Moines & Northwestern Railway Company the Des Moines Northwestern or Fonda line, commencing at Farnham street, and one-fourth of the stock and bonds of the terminal company which they had received in lieu of an interest in the terminal property.

In this way the grantee of the Des Moines Northwestern Company received the purchase price for the former's interest in the terminal property, in lieu of receiving an interest in the terminal property itself.

As heretofore noted, there appears in the Milwaukee's chain of title the decree of foreclosure of the mortgage given by the Des Moines Northern & Western Railway Company, and the deeds executed in pursuance thereof. The Milwaukee Company have no rights which were not included in this foreclosure and these deeds. The mortgage referred to covered only the railroad property extending northwesterly from Farnham street, and the only interest ever possessed by the Des Moines Northwestern Company in the terminal property at Des Moines covered by this mortgage under which the Milwaukee holds was the interest represented by the stock acquired by Polk & Hubbell pursuant to their agreement with the Wabash purchasing committee.

Very clearly every right of the Des Moines Northwestern had thus been transferred to Polk & Hubbell, and that transfer was in the form of a transfer of the

consideration which was to be paid for the interest in the terminal property. There was no occasion for any direct conveyance by any one, of the interest of the Des Moines Northwestern in the terminal property, because no interest in that company appeared of record.

After the adoption of this resolution another one was offered and adopted which reads as follows:

> "Resolved, That the proper officers of the company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the company to the Des Moines Union Railway Company on the 1st day of January, 1885, or as soon thereafter as practicable, leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein." Vol. II, p. 427.

Taking these resolutions as a whole, it will be noted that there were two subjects covered by them—first, a sale and transfer of this property to the Des Moines Union Railway Company and the payment by that company in bonds and stock, the amount of which, so far as the bonds were concerned, could only be ascertained by an accounting between the companies. This would necessarily take some time. It was desired that the management of the property should be turned over to the defendant company at once, the reason being, we assume, that the impracticability of operating it in the manner in which it had theretofore been operated was pressing upon the parties. The last resolution pro-

vided for an immediate transfer of the possession, control and operation of the property, leaving the settlement between the parties, as authorized in the prior resolution, for future adjustment. Thus, as we have said, two objects were intended:

First. The immediate surrender of the possession and operation of the property; and

Second. A transfer of the ownership thereof and a settlement of the purchase price.

The same identical resolutions were on the same day passed by the stockholders of the St. Louis, Des Moines & Northern Railway Company (Vol. IV, pp. 1473-4), and by the stockholders of the Des Moines & St. Louis Railroad Company (Vol. II, pp. 430-2).

The only difference between the situation of the Des Moines Northwestern Company and the situation of the St. Louis, Des Moines & Northern and the Des Moines & St. Louis companies was that the title to a small portion of the terminal property stood in the name of each of the latter two companies, so that they not only owned the beneficial interest in the terminal property, in accordance with the contract of January 2, 1882, but they also held the legal title to a small portion of it.

The resolutions passed by the two latter companies authorized the transfer of not only the property to which these companies had the legal title, but also all their right, title and interest of whatever kind and character in the whole terminal, whether it stood in their names or the names of others. The effect of this was to authorize the transfer of the *ownership* of the property.

Supposing these resolutions had been immediately carried out and these railway companies had executed the deeds authorized: the effect would necessarily have been to have given to the defendant company the beneficial ownership of the whole terminal, but the legal title to only that portion of it which stood in the name of the St. Louis, Des Moines & Northern and the Des Moines & St. Louis companies.

On the same day the board of directors of the defendant, Des Moines Union Railway Company, held a meeting, a record of which appears on pages 432 to 435 of volume II. At this meeting certain resolutions were passed with respect to the subject matter under consideration.

The first paragraph of the resolution is as follows:

> "Whereas, the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, the Des Moines Northwestern Railway Company, G. M. Dodge and James F. How, both in his individual right and as trustee under the contract mentioned and set out in the Articles of Incorporation of this company, have by their o officers and by themselves, personally notified this company that they have each for themselves approved of the organization of this company, and have directed their officers, agents and trustees to surrender and deliver to this company the railroad property and franchises mentioned in said contract, and requested it to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in said contract, and that said railway companies and individual signatories have indicated their desire and purpose to transfer said property to this company in accordance with the terms of said contract."

This is the only intimation in the evidence that the trustees, How and Dodge, were at this time authorized to transfer any of this property.

The resolution then continues:

> "Whereas, it is desirable that this company should at once take possession of said property and maintain, control and operate the same, and that it should procure all necessary conveyances and transfers of the same as soon as practicable, and make provisions for and pay for said property so proposed to be conveyed to it, Now, Therefore, be it Resolved,"

It will be noted that the recitation last above set out, like the resolutions of the three railway companies, includes two propositions:

First. The immediate possession, maintenance, control and operation of the property; and

Second. Procuring all conveyances and transfers of the same and making provision for the payment of said property.

The resolution then continues:

> "First.
>
> That this company accepts the transfer and management and operation of said property in the City of Des Moines, east of Farnham street in said city, heretofore owned and controlled by the Des Moines & St. Louis Railroad, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as

practicable, and it hereby instructs its president to make such order as may be necessary to render such control and management effective, as provided in said contract."

It will be noted that this portion of the resolution does not say anything about the purchase or conveyance of the property, but only treats of the question of the immediate possession, control and management.

The resolution then continues as follows:

"Second.

"That the President, Vice President, Secretary and Treasurer of this company be, and they are hereby appointed a committee to confer with the several parties to said contract and agree with them severally upon the *terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this company with the title, control and management of said properties provided for in said contract of January* 2, 1882."

This portion of the resolution treats exclusively of the purchase of the property. It authorizes this committee to agree upon the terms and price at which the property is to be transferred and conveyed, and to procure the necessary conveyances and transfers to *fully* invest the defendant company with the *title,* control and management of the property. This is apt language to express the intention of the defendant company to acquire the ownership of this property, and there is nothing in it to suggest that it was contemplated that

the three railway companies were to retain any interest in the property, or that defendant was to pay merely for the privilege of holding the naked legal title.

The resolution then continues:

"Third.

That to enable this company to pay for the property and to maintain, operate and improve the same, and *purchase* other property necessary to carry out *its* objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same, the President and Secretary of this company are hereby authorized and directed to issue full-paid capital stock of this company, not to exceed one million ($1,000,000.00) dollars and not to exceed five hundred (500) bonds of this company, of the denomination of one thousand dollars ($1,000.00); the form to be agreed upon hereafter by this board.

And to secure said bonds, the President and Secretary are authorized and directed to execute, in the name of this company, a first mortgage or deed of trust, conveying all of said property so to be conveyed to this company or thereafter to be acquired, to a trustee therein named, the form of which deed of trust shall be hereafter determined by this board.

And when said committee shall have agreed with the said several parties to said contract as to the amount of bonds and stocks of this company necessary to be delivered to them, and each of them, in *payment* for said railroad property and franchises, the President and Secretary of this company shall deliver the same to said several parties as each appear to be entitled, on receipt of the conveyances and assignments of said property so to be made to this company."

Thus we find the defendant company arranging on its own account to raise the funds necessary to pay for the property and to improve the same and acquire other property necessary to carry out the objects of the defendant company, and authorizing the payment for said property upon the execution of the necessary conveyances. The intention of these three railway companies, which, according to complainants' theory, owned this property, to transfer the same in fee simple to the defendant company, and the intention of the defendant company to acquire the ownership thereof, could not be more clearly expressed than by the language used in these various resolutions, and these resolutions simply carry out the thought expressed in the articles of incorporation of the Des Moines Union Railway Company.

No action was immediately taken under these resolutions, probably because about this time the affairs of the Wabash Company were placed in the hands of a receiver and its property transferred to what is known in this record as the Purchasing Committee.

These resolutions, however, remained unrepealed until they were carried out by certain deeds executed by them to the defendant company in the early part of the year 1888, to which we will hereafter call attention.

The subject of the sale and transfer of this property to the defendant company came up at meetings of the directors of the three railroad companies, held on November 5 and 8, 1887, but before considering the action of these various companies at that date, we think it is well to call the court's attention to the mortgage or trust deed which was subsequently given by the defendant company to the Central Trust Company of New York, to secure an issue of bonds, a portion of

which bonds was subsequently delivered to the persons and corporations who had furnished the money for the purpose of acquiring and improving the terminal property. This mortgage appears commencing on page 459 of volume II, and is dated November 1, 1887. It was drawn by Col. Wells H. Blodgett, general counsel for the Wabash Company, one of the most able and conscientious lawyers who ever practiced in this court, and who was apt, as this record again and again shows, in selecting language which accurately conveyed the intention of the parties.

This mortgage, as it will be noted, was prepared before the resolutions of November, 1887, to which we have just referred, and before any transfer of the property was made, and expresses the understanding of Colonel Blodgett, as he looked into the future, of what was intended to be done with this property.

After reciting the date and the parties to the contract, the mortgage provides (p. 460):

> 'Whereas: The Des Moines Union Railway Company is a corporation duly organized and existing under the laws of the State of Iowa, and as such is fully authorized to *locate, construct, own and operate* a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock yards and whatever may be useful and convenient for the operation of railways in said city, and the transfer of cars from the lines and depots of one railway to another, and from said depots to the various manufactories, warehouses, storehouses or elevators, and from one manufactory, warehouse, storehouse or elevator to another, as said depots, manufactories, warehouses, storehouses and elevators are

now constructed or may be hereafter constructed in or around the said City of Des Moines, Iowa, and for such purposes has full right to acquire by purchase and condemnation all such right of way, land and lots as are necessary and proper for the operation and construction of such line of railroad, and to provide itself with depot grounds, yards, shops and other terminal facilities adequate for handling of traffic to be transported upon such railroad, and"

If you will compare this recitation with the articles of incorporation of the Des Moines Union Railway Company, you will at once conclude that when Colonel Blodgett dictated this paragraph he had before him the articles of incorporation of the Des Moines Union Railway Company, and from them ascertained just the powers and purposes of that company.

Colonel Blodgett understood that this corporation was organized, not as a mere depot company for the mere purpose of holding the legal title to this property for the benefit of any one, but for the purpose of constructing, owning and operating a raiway in the City of Des Moines.

The mortgage then continues:

"Whereas, the Des Moines Union Railway Company has undertaken and partially completed the construction of a railroad in the City of Des Moines, Polk County, Iowa, extending from the main lines of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company to a connection with and across the line of various other railroads which center or terminate in the City of Des Moines, and to various manufactories and industries in said

city, and has purchased and owns various structures and buildings used for depots, railway shops, round houses and other structures suitable and useful for railway purposes, and has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said city, and valuable franchises from the City Council of said city, and"

Now the Des Moines Union Railway Company at this time hadn't undetaken and partially completed any railroad in the City of Des Moines or elsewhere. It hadn't purchased, acquired or owned, by condemnation or otherwise, any valuable real estate or franchises in the City of Des Moines or elsewhere. Up to this time it was simply a corporation which had been organized for the purpose of acquiring and owning these things, but Colonel Blodgett in drawing this particular paragraph was looking into the future and planning for doing the things which were afterward done and which gave to the Des Moines Union Railway Company the ownership of the very property to which reference is made in this mortgage. Nothing could more clearly show the intention of these parties than the language incorporated in this mortgage by the person who was furnishing the legal service necessary to carry out the objects of the persons and corporations engaged in this transaction. This wasn't a construction of what had been done, but an expression of what was intended to be done and what was in fact afterward done.

The mortgage then continues:

"Whereas, for the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and

desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds to the amount of eight hundred thousand ($800,000) dollars, to be dated on the 1st day of November, 1887, in accordance with the resolutions and orders of its Board of Directors at a duly called and authorized meeting thereof;"

The mortgage then proceeds by its terms to convey to the Central Trust Company the very property which was afterward transferred to the defendant company by appropriate deeds from the three railway companies.

Let us now examine the record and see whether or not the purposes so aptly expressed by Colonel Blodgett in this mortgage were carried out, and for that purpose we wish to call the court's attention to the resolutions of these railway companies passed in November, 1887—a few days after the date of the mortgage in question.

Before doing so, however, we wish again to remind the court that the resolutions already referred to and passed by these railway companies in 1885, authorized not the transfer of the legal title to this property by the trustees, but the transfer of the beneficial interests by the railway companies. In carrying out the plan which is evidenced by the mortgage above referred to, it no doubt came to the attention of the parties that the resolutions of 1884 were defective in that they did not authorize a transfer by the trustees, which was necessary to give to the defendant a perfect title to the property, and therefore the resolutions now referred to were passed by the railway companies.

The resolutions of the St. Louis, Des Moines & Northern Railway Company will be found on pages 435 and

436 of volume II. They recite the fact that James F. How had acquired the title to certain property in the City of Des Moines with money furnished by the Wabash Company; that by an agreement between this company and the Wabash Company and others, it was intended that the said property should be transferred to the Des Moines Union Railway Company; and they then authorize Mr. How to transfer said property to the Des Moines Union Railway Company upon receiving from said company a stipulation that as soon as practicable thereafter the defendant railway company shall deliver to him first mortgage bonds to the amount of money advanced for the paymentof said property and improvements, with interest and taxes paid thereon, and also three-fourths of the stock of the Des Moines Union Railway Company, the said bonds and stock when received to be transferred by How to the Purchasing Committee of the Wabash Company. They also recite the fact that Grenville M. Dodge had purchased certain property as trustee, and the fact that in accordance with the contract above mentioned it was intended that said property should be transferred to the Des Moines Union Railway Company; and they then direct General Dodge to transfer said property to the Des Moines Union Railway Company upon receiving from said company a stipulation that as soon as practicable the railway company should deliver him bonds for the amount of money he had advanced in payment for the terminal property and improvements, interest and taxes, and also one-fourth of the capital stock of the Des Moines Union Railway Company.

In explanation of the fact that the Purchasing Committee was to receive three-fourths of the capital stock of the Des Moines Union Railway Company, it may be

noted that at this time the Purchasing Committee were entitled, in equity at least, to whatever was coming to the Des Moines & St. Louis Railroad Company and the Des Moines Northwestern Railway Company; and General Dodge was entitled to whatever was coming to the St. Louis, Des Moines & Northern Railway Company.

Similar resolutions were passed by the directors of the Des Moines & St. Louis Railroad Company (vol. II, pp. 437-9). There were present at the meeting of the Des Moines & St. Louis Company, among others, James F. How, Vice-President of the Wabash Company, and Col. Wells H. Blodgett, general counsel for the Wabash Company and the Purchasing Committee.

In addition to the resolutions similar to those passed by the St. Louis, Des Moines & Northern, the Des Moines & St. Louis Company passed the following resolution, which was offered by James F. How (vol. II, p. 439):

> "Resolved, that the President and Secretary of this company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from City of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second, 1882, entered into by and between this company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and others."

Thus again authorizing a transefr by the Des Moines & St. Louis Railroad Company of its beneficial inter-

est in the property which stood in the name of the trustees.

The record does not show the resolutions themselves that were passed at the time by the Des Moines Northwestern Raiwlay Company, but the complainants offered in evidence a notice served by the Des Moines Northwestern Railway Company on the Des Moines Union Railway Company at this time, notifying the latter company that it had passed similar resolutions. This appears as plaintiffs' exhibit 15, page 442, volume II.

We therefore find in the record resolutions of the three railway companies, which, the complainants admit, were the real owners of this property, authorizing a transfer of the property both by these corporations and the trustees, in consideration of the defendants' captial stock and bonds, the latter representing the amount actually invested in the purchase and improvement of the property, with interest and taxes thereon.

In pursuance of these resolutions, James F. How executed and delivered to the Des Moines Union Railway Company three deeds, and G. M. Dodge and wife one deed, which appear in volume II, pages 446 to 454. The St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company each executed a deed to the Des Moines Union Railway Company, which deeds appear on pages 455 to 459 of volume II. These deeds were prepared or approved by Colonel Blodgett.

On January 31, 1888, James F. How, Vice-President of the Wabash, wrote to J. S. Polk, of Des Moines, Iowa, enclosing what he refers to as "deeds from General Dodge to the Des Moines Union Railway Com-

pany," which he says, "Colonel Blodgett has examined and pronounces all right" (vol. IV, p. 1587).

On the next day, Mr. Polk writes to Mr. How, saying:

> "Your letter of the 31st ult. enclosing two deeds, one from the St. Louis, Des Moines & Northern, and the other from G. M. Dodge, to the Des Moines Union Railway Company for certain property in Des Moines is received.
>
> We delivered to General Dodge the contract of the Des Moines Union Railway Company, to give him the bonds, and stock of the company when the same are issued, in payment for said terminals. If the deeds are satisfactory to you we will put them on record at once." (Vol. IV, pp. 1587-8.)

On February 13, 1888, Mr. How wrote to Mr. Polk as follows:

> "Encosed please find a deed from the Des Moines & St. Louis Ry. Co. to the Des Moines Union Ry. Co. for the property owned by the former Co. in Des. Moines. Please have same executed by Mr. Clarkson as President, and by Mr. Hubbell as Secretary and return same to me as Mr. Blodgett wishes to see that it is properly executed before it is put on record.
>
> *I understand that the Des Moines Northwestern Ry. make no deed as they have no property in Des Moines to transfer.* Am I correct about this? If not, I would like to see their deed before it is recorded." (Vol. IV, p. 1588.)

On February 21, 1888, Mr. Polk replied:

> "I herewith enclose deed from the Des Moines & St. Louis Railroad Company to the Des Moines Union Railway Company, which you forwarded to

us for execution. The same has been signed by Mr. Clarkson, and Mr. Hubbell, and propery acknowledged. Hope you will find it all satisfactory." (Vol. IV, pp. 1589-90.)

The deed from the St. Louis, Des Moines & Northern Railway Company appears on pages 455 and 456 of volume II, and after describing the particular pieces of property which stood on the record in the name of the St. Louis, Des Moines & Northern Railway Company, the deed continues:

"• • • Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possesison, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singuar the above mentioned and described premises together with the appurtenances, unto the said parties of the second part and assigns forever."

The property which was transferred by this deed was a part of the terminal property. It is the theory of petitioners that the St. Louis, Des Moines & Northern Railway Company retained some interest in the property itself. In view of this contention, we would like to inquire what possible interest, easement or equity the St. Louis, Des Moines & Northern Railway Company could have had in this property that was not transferred by the terms of this deed. We are unable

to formulate or conceive of more apt and complete language to transfer every possible interest in real estate. This deed not only transferred the legal title, but whatever equity, right or easement the grantor had in the property. It clearly shows the intention to give to the Des Moines Union Raiway Company a perfect title to the property.

When we come to examine the deed of the Des Moines & St. Louis Railroad Company to the Des Moines Union Railway Company, we think there can be no question about it. It will be remembered that while, under the contract of 1882, the Des Moines & St. Louis Company owned a half interest in the terminal property, the title to only a small portion of it stood in its name. This deed, after describing the property which stood in its name, continues as follows (p. 458):

> "* * * And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, sidetracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have acquired by grant, donation, purchase or otherwise, and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance 'granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south aley in said city be-

tween Court Avenue and Vine Streets.' And the said Des Moines and St. Louis Railroad Company hereby covenants to Warrant and Defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it. Signed this 21st day of February, A. D. 1888."

What more appropriate language could have been selected to transfer to the Des Moines Union Railway Company not only the property specifically described in said deed, but all the railroad property which the grantor had in the City of Des Moines, and which, according to the theory of petitioners was a half interest in the property which stood in the name of How and Dodge? Note, also, that the Des Moines & St. Louis Railroad Company covenants to warrant and defend the premises against the lawful claims of all persons whomsoever, claiming by, through or under it. The plaintiff, the Wabash Railway Company, claims under it (the Des Moines & St. Louis Company).

The Des Moines Northwestern Railway Company did not make a deed because there was no property standing in its name. It had, however, as we have shown, authorized a transfer of all its interest in this terminal property, and it or its successors received the purchase price agreed upon, as we will hereafter show. Also, the St. Louis, Des Moines & Northern Railway Company or its successors, as well as the Des Moines & St. Louis Company or its successors, received the consideration.

These deeds were put upon record soon after their execution, and on May 1, 1888, the Des Moines Union Railway Company took possession of the terminal property and has ever since possessed and operated it.

The mortgage of the terminal property, which was prepared in Novmeber, 1887, before the actual transfer of the property to the Terminal Company, was now, after the transfer had been completed, executed and placed of record. The bonds secured by it were negotiable in form and were designed to be sold in the open market. Had there ensued a default and foreclosure what estate would have passed to the purchaser at the foreclosure sale? Certainly nothing less than an absolute estate. But it could not have been more than passed to the Terminal Company. And if that Company got only the legal title in trust, if the entire beneficial interest remained in the three railway companies, and that interest was inalienable, then the bonds and mortgage were nothing more than counters in a scheme of fraud. The right, title and interest of the Des Moines Union in this property, from the time it got it until now was what it was, when it made this mortgage. True it could not, under its articles of incorporation, encumber this property without the approval of the three railway companies, its stockholders, but this restriction upon the mode of its corporate action did not qualify its estate in its property. The railway companies approved the mortgage as required, but they did not extend its scope to their own property. They simply did "ratify and approve the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company upon all *its* property and franchises to secure the issuance, etc." (R. 474.)

We claim that by reason of the facts hereinbefore referred to—the articles of incorporation of the terminal company, the resolutions of the three railway companies proposing to sell the property to the terminal company, the resolutions of the terminal company

accepting this proposition, the execution and delivery of the deeds to the property, the payment of the purchase price to the parties entitled thereto, the taking possession of the property by the terminal company—the terminal company became the absolute owners of the terminal property, and that the ownership of the three railway companies in the terminal property was changed to the ownership of the capital stock of the terminal company.

THE CONTRACT OF MAY 10, 1889, AS BEARING UPON THE INTENTION OF THE PARTIES.

If there can now be any doubt who owned this property after May 1, 1888, let us see what the parties themselves had to say about it after the consummation of the transaction, because if they thought that the Des Moines Union Railway Company then owned this property, there is no occasion for the court to inquire further into it. Fortunately we have in the record the undisputed agreements of these parties with reference to the title, in a contract which was introduced by the complainants.

For some reason or other, counsel for complainants have never seemed to understand just what we claim for the contract of May 10, 1889, as applied to this branch of our case. Counsel for the Milwaukee, on page 59 of the Court of Appeals brief, says:

> "it is the contention of the defendants that this contract of May 10, 1889, killed that of 1882, and terminated all rights of the Railway Companies to use the property after May 1, 1918, because the supplemental contract covers a period of time up to that date only."

And counsel for the Wabash Company, on page 131, Court of Appeals brief, says:

> "Defendants have contended that by the execution of the contract of 1889 the Railway Companies intended to rest their right to use the terminal property on the provisions of that contract, and are by that contract estopped from asserting a claim to the terminal property adverse to the depot company, and have argued that the Railway Companies thereby released any claim to an easement in the terminal property."

Neither of these statements correctly states our position with relation to this contract. Our position is, *first*, that it having been deliberately prepared, considered, and executed by the parties, and approved by the formal action of their boards of directors, is of the highest value—of the greatest probative force—because of its interpretation of the intention of the parties by their prior transactions.

Second: It is of importance when we come to consider the defense of estoppel and laches, which we will hereafter discuss.

The title and ownership of this property were not transferred to the terminal company by reason of the contract of May 10, 1889, but by reason of the things that had gone before and to which we have referred.

Upon taking possession of the property by the defendant company, the question of the terms upon which the defendant should furnish to these railway companies terminal services became a subject of negotiation, which resulted in a written contract, dated May 10, 1889, between the defendant company as party of the first part, and the Des Moines & St. Louis Railroad

Company, the Des Moines & Northwestern Railway Company (successor of the Des Moines Northwestern Railway Company), and the St. Louis, Des Moines & Northern Railway Company, parties of the second part, which contract appears commencing on page 479 of volume II. This contract was drawn by Colonel Blodgett, general counsel of The Wabash Railroad Company and the Des Moines & St. Louis Railroad Company, who had guided these transactions and who knew the situation and what was intended by the parties. We therefore not only have the written statement of the interested parties as to the title to this property, so far as it is contained in this contract, but we have such written statement in the language of one who knew how to select words apt for the purpose of expressing his understanding.

The contract, after reciting the date and the parties to it, says:

> "Whereas, the said party of the first part (Des Moines Union Railway Company) is the owner of valuable terminal facilities in the City of Des Moines, Iowa, as hereinafter described; and"

Now neither Colonel Blodgett nor the parties to this contract, who were the only ones interested in it, had any doubt at this time as to who the owner of the property was. They agree that it was the defendant, the Des Moines Union Railway Company.

Th contract then says:

> "Whereas, the respective parties of the second part have railroads in the State of Iowa which terminate at, or run into and through said City of Des Moines, and in order to prevent unnecessary

expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the *terminal facilities of said first party;* and"

Again we have the agreed statement of these parties that the ownership was in the defendant.

The contract continues:

"Whereas, said party of the first part has become incorporated and organized under the laws of the State of Iowa for the purpose of *owning and operating* a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham Street, in the western part thereof; and"

There is no pretense here that the defendant corporation was organized for the purpose of acting as trustee or holding the naked legal title to this property, but on the contrary these parties agree that it was organized for the specific purpose of owning and operating this terminal property—something never contemplated in the contract of January 2, 1882.

The contract then continues:

"Whereas, said party of the first part, in pursuance of said charter has *acquired* and now *owns* a railway in said city, as above set forth, and has *already acquired* or *constructed* a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and *intends to acquire and construct more;* and"

This is the language selected by Colonel Blodgett and adopted by all the parties interested, to state the result of the transactions which we have been heretofore considering.

The contract then continues:

> "Whereas, said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and"

Why, let us inquire, were each of the parties of the second part desirous of acquiring by contract the right to use these terminals if they already had that right, as is claimed by counsel for petitioners?

The contract then continues:

> "Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties, and liabilities of each in regard to the whole subject-matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined.
>
> Now, therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows."

The contract then provides what the defendant company shall do in respect to acquiring further terminal property, improvements thereon, and the amounts which the tenant companies are to pay for the use of the property, and then provides that in consideration thereof the defendant company grants to the said second parties the use of the terminal property.

The contract goes into considerable detail as to how the property is to be managed, etc., not necessary here to refer to; provides how the capital stock of the defendant company shall be distributed among the three railway companies, and then says (section 27, p. 487):

> "Whereas, the parties of the second part have herein and hereby obligated themselves to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used, or to be hereafter issued and used by said first party in purchasing, improving and equipping the terminal properties herein described;
>
> Now, therefore, in consideration of the premises, the said first party hereby contracts and agrees to and with each of the second parties hereto, that it will not at any time hereafter issue or dispose of any of said bonds, except for the purpose of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in said City of Des Moines."

Note that the reason given in the contract for limiting the right of the defendant company to issue its bonds is that the parties of the second part had agreed to pay the interest on the bonds. If the parties of the second part thought they were the real owners of this property, they would have been interested in the principal of these bonds rather than in the interest on them. They were not interested in the principal because they were not the owners of the property, and their only obligation with respect to the bonds was the contract obligation to pay the interest.

Another significant thing about this contract is the provisions therein contained with respect to the sale and transfer of the capital stock of the terminal com-

pany and the assignment of the rights of either of the three railway companies acquired by the terms of the contract.

It will be remembered that the articles of incorporation of the terminal company placed no restriction on the right of its stockholders to sell and transfer its capital stock, or any part thereof, the result being that any stockholder might freely sell and transfer any portion of his stock. The three railway companies having intended to control the management and operation of the terminal property, the reason for their desiring to in some way limit the right to transfer this stock is apparent. It was therefore provided in section 24 of the contract (p. 485) as follows:

> 'It is understood and agreed that the Des Moines & St. Louis Railroad Company, as the owner of one-half of the capital stock of the Des Moines Union Railway Company, may sell and transfer one-half of said stock, or one-quarter of the whole to such railway company as may be acceptable to a majority of the parties of the second part; in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of the second part."

It is now contended by petitioners that the terminal company was a "mere agency" for the railway companies, having no valuable interest in the terminal property, and therefore that the stock was "merely nominal and of nominal value." because it represented no valuable interest in the property. If this theory be true, what would any railway company have received

in consideration for the money paid for one-half of the terminal stock owned by the Des Moines & St. Louis Company? Merely the right to become a party of the second part to the contract of May 10, 1889, and the possession and ownership of some nicely lithographed pieces of paper. Its rights under the contract of May 10, 1889, would have expired at the end of thirty years from that date. As the owner of the stock, it would have had no rights because, as counsel claim, that didn't represent anything of value.

To illustrate: The record shows that negotiations were subsequenty entered into to sell this stock to the Chicago & North Western Railway Company and secure the entrance of that company on the terminal property. Supposing these negotiations had been successful and after the North Western Company had paid its money for this stock it had been told that this stock didn't represent anything of value and that the only right it gave was the right to become a party of the second part to this contract and the privilege of paying its share of the expenses during the existence of such contract; would the North Western Company have felt that it had been fairly dealt with?

We do not think the persons who were instrumental in these transactions and who conducted these negotiations had any such purpose in their mind, nor can we bring ourselves to think that the Purchasing Committee of the Wabash Company and the others who had relations with the subsequent sale of the stock of the terminal company to the Hubbells, which included Colonel Blodgett, James F. How, Charles M. Hays, and others, had in their minds any purpose of swindling Mr. Hubbell and General Dodge when they sold them stock in the terminal company.

It is apparent from these provisions in the contract, as well as the provisions of section 26 (p. 486), which related to a sale and transfer of stock, that the parties understood that this stock represented a valuable interest in the terminal property.

Again, by section 25 of the contract (p. 486), it was attempted to control the right of each of the three railway companies to assign and transfer the rights which they obtained under the terms of the contract. If we are to believe the present theory of counsel for petitioners the three railway companies didn't obtain any rights under this contract, notwithstanding the fact that the contract purports to grant them rights, because they say that the contract was merely a formality, that it was really an arrangement between the three railway companies to regulate, as between them, the use of the property. But it seems to us that this theory is too absurd to warrant further discussion.

That the present theory of petitioners with relation to their rights in the terminal property never occurred to anyone until the commencement of this suit is demonstrated by the fact that the three railway companies and their successors at all times thereafter, when transferring or mortgaging their interest or rights in the terminal property, described them as their rights acquired under the contract of May 10, 1889, and the contract of July 31, 1897 (the ratification contract), and the capital stock of the terminal company owned by them. And this is particularly true of the mortgage of The Wabash Company executed in 1889 under the guidance of Colonel Blodgett, to which more particular reference will hereafter be made.

What better evidence could we ask of ownership of this property than the contract or statement signed by

all the parties immediately or soon after the transaction by which the property was transferred to the defendant company, and a statement drawn by one who not only knew what the understanding was, because he had been a party to the transactions, but who had the capacity to accurately state it?

The contract of January 2, 1882, according to its language, contemplated that the terminal property should be owned by the three railway companies, though the title should stand in the name of a trustee, which might or might not be a corporation. Now what have we up to this point which evidences the fact that these three railway companies intended to and did change their plans from an ownership by the three railway companies, to an ownership by an independent corporation. Briefly stated, the facts are as follows:

1. The organization of a corporation at the instance of these three railway companies for the purpose of, and with the power to, own and operate a terminal railway in the City of Des Moines, Iowa, and with the express power of acquiring by purchase the ownership of the particular terminal in question. This corporation was the defendant, the Des Moines Union Railway Company.

2. The intention expressed prior to the transfer of the ownership of the property, that the Des Moines Union Railway Company should acquire the title to the property. This intention was expressed by the mortgage prepared by Colonel Blodgett on November 1, 1887, from the Des Moines Union Railway Company to the Central Trust Company, and afterward executed by the terminal company.

3. The resolutions of the three railway companies and of the terminal company passed in January, 1885, and November, 1887. These resolutions authorized the transfer of the ownership of the terminal property in consideration of its stock and bonds.

4. The deeds executed and delivered to the Des Moines Union Railway Company in 1888, by the terms of which every possible interest which the parties had in the property was transferred.

5. The payment of the agreed purchase price and delivery of the property.

6. The written statement prepared by Colonel Blodgett and executed by all the parties interested in the property, reciting the fact that the Des Moines Union Railway Company had by these transactions acquired the ownership of the property. This written statement was contained in the written contract of May 10, 1889.

This evidence is not the oral evidence of witnesses who attempt to state their recollections of transactions happening a quarter of a century prior to the time of the giving of their evidence, but consists of the solemn and formally executed instruments at the tme the transactions occurred and about which there is no controversy.

If there is, however, any lingering doubt in the mind of the court as to the effect of the transaction in which this property was transferred to the defendant company, let us examine a transaction which occurred in the early part of the year 1890—less than two years after the property was delivered to the defendant company, and in which the actors were the same persons who had been active in the management of not only

the terminal property, but of the interests of the other railroads therein from the very beginning, and who, if anybody, knew and appreciated the situation. This transaction was the amendment to the articles of incorporation of the defendant company which was consummated on April 8, 1890.

AMENDMENTS TO ARTICLES OF INCORPORATION OF DES MOINES UNION RAILWAY COMPANY.

The complainants challenge the validity and effect of these amendments—a subject which we will discuss in a subsequent division of our brief—but for the present we are only inquiring as to the intention of the parties to the transaction by which this property was transferred to the defendant company, and for the present we will only consider the record in respect to these amendments for that purpose.

These amendments were adopted at an adjourned meeting of the stockholders of the Des Moines Union Railway Company held on April 8, 1890. A record of that meeting appears in volume II, commencing on page 488. There were present, among others, James F. How, Vice-President of the Wabash Company, and who had been intimately connected with this terminal transaction as a representative of the Wabash Company since its inception; C. M. Hays, who was general manager of the Wabash Company and had been with that company since 1883; A. B. Cummins, who was local attorney for the Wabash Company in Des Moines and represented it on the board of directors of the defendant company, and who was also general counsel for the defendant company. G. M. Dodge and Wells

H. Blodgett were both present by proxy, the former being represented by L. M. Martin, and the latter by J. F. How. Both General Dodge and Colonel Blodgett signed and acknowledged the amendment to the articles after they were authorized. There were also present F. M. Hubbell, L. M. Martin and F. C. Hubbell, all of whom had been familiar with the terminal proposition either from the beginning or during its early stages. these parties knew what was intended by the transactions under consideration, and they were all honorable, able and upright men.

After the organization of the meeting, C. M. Hays moved that article 2 of the original articles be stricken out and that there be enacted in lieu thereof the following (p. 490):

"Article 2.

The object of the corporation and the general nature of the business to be transacted shall be the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines, and also to lease terminal facilities to and furnish and perform terminal services for all railways whose lines reach or pass through or near the said

City of Des Moines, and the corporation shall possess all the power conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use."

This motion was adopted and thereby there was stricken out of the article all reference to the contract of January 2, 1882, and thereby the thought that it was intended that the defendant company should acquire absolute title to the property is corroborated.

L. M. Martin moved that article 3 be stricken out and the following enacted in lieu thereof (p. 490):

"Article 3.

'The capital stock of the corporation shall be two million dollars ($2,000,000.00) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; *four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds theretofore issued for that purpose constituting the fair value of said property when so acquired;* and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught.

Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions:

Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des

Moines & St. Louis Railroad Company, and the present owner of the property known as the Des Moines & St. Louis Railroad.

One thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and

One thousand shares to the Des Moines & Northwestern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, *and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property.* The remaining capital stock, to-wit: sixteen thousand shares, or any part thereof, shall be issued ony by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered."

This resolution was unanimously adopted by all present and language could not be conceived more appropriate to express the thought that the defendant company had acquired an absolute title to this property in consideration of the bonds and stock issued.

In order to protect the companies in the control of the defendant company through their stockholding interest, article 4, as amended, provided that the affairs of the company should be managed by a board of eight directors, but that at all future elections of directors it shall require the vote of more than seven-eighths of all the stock theretofore issued, to elect any director. Thus no new directors can be elected without the unanimous consent of all stockholders holding five hundred or more shares of the capital stock. This article also provided that in all matters other than the ordinary

operation of the property, the board of directors can only act upon the unanimous vote of eight members thereof, and gives the power to each director to delegate by written authority some other person to vote for him. The other amendments to the articles are immaterial for the purposes for which we are now considering them, except article 15 (p. 494), which provides as follows:

> "The proceedings of a meeting held December 10, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as part of the Articles of Incorporation of this Company, *are hereby repealed, stricken out and expunged.*"

It is interesting to note that the only reference to the contract of January 2, 1882, to be found in the record, from May 1, 1888, up to the time of the commencement of this suit (almost twenty years) is the reference found in the record of this meeting of April 8, 1890, when it was formally revoked.

The contract of January 2, 1882, could not, of course, be changed or abrogated by third parties. It was in that sense inviolate, but it was not any more than any other contract immutable and irrevocable by the unanimous agreement and action of the parties themselves. And here we have in these amendments to the articles of the Des Moines Union, an absolute revocation of the contract and the action making the revocation—the amendment to the articles—is not the

action of the Des Moines Union itself, but of its stockholders, and they are the parties and all the parties (or successors in right and title), to the original contract.

In addition to adopting the amendment to the articles of incorporation and authorizing their filing and publication, the following resolution, offered by A. B. Cummins, was passed by a unanimous vote of all the directors present: (P. 494.)

> "Whereas, by inadvertence, there appears to be some uncertainty in the records of the Company respecting the purchase price of the terminal property originally acquired by the company, and
>
> *Whereas, it was the agreement between all the parties in interest that said property, including the franchise incident thereto, should be purchased at its fair value, payable partly in first mortgage bonds and partly in capital stock fully paid up,* and
>
> Whereas, it was and is agreed that said property was fairly worth the sum of eight hundred sixty-one thousand two hundred and fifty-seven and 21-100 dollars, of which purchase price the Des Moines & St. Louis Railroad Company, the Wabash, St. Louis & Pacific Railway Company or its representative, the purchasing committee, the said purchasing committee being now the real owner of the Des Moines & St. Louis Railroad, together were and are entitled to four hundred and seventy thousand one hundred and ten and 80-100 dollars ($470,110.80) of said purchase price, the Des Moines Northwestern Railway Company was entitled to two hundred and fifteen thousand and fifty-eight and 40-100 dollars ($215,058.40) of said purchase price, the St. Louis, Des Moines & Northern Railway Company was entitled to one hundred thousand dollars ($100,000.00) of said purchase price. G. M. Dodge to seventy-four thousand and eighty-eight and 01-100 dollars ($74,088,-

01) of said purchase price and Polk & Hubbell to two thousand dollars ($2,000.00) of said purchase price, and

Whereas, by a settlement heretofore had and now confirmed, it appeared that of such purchase price the purchasing committee of the Wabash, St. Louis & Pacific Railway Company, being the real owner of the railroad known as the Des Moines & St. Louis Railroad, has received two hundred and seventy (270) bonds of one thousand dollars each. G. M. Dodge seventy-four bonds; Polk & Hubbell two (2) bonds and the Des Moines & Northwestern Railway Company, successor of the Des Moines Northwestern Railway Company, one hundred and fifteen (115) bonds, making in all four hundred and sixty-one bonds, and as a further part of such purchase price the company has paid to the purchasing committee, G. M. Dodge and the Des Moines Northwestern Railway Company two hundred and fifty-seven and 21-100 dollars in cash, and

Whereas, there still remains four hundred thousand dollars ($400,000.00) of the purchase price of said property yet unpaid, which sum is to be paid in capital stock, and

Whereas, by agreement between the several persons and corporations owning the said property prior to the said transfer, so much of the purchase price as was to be paid in capital stock was to be divided among three corporations, to-wit: one-half to the Des Moines & St. Louis Railroad Company, one-quarter to the St. Louis, Des Moines & Northern Railway Company and one-quarter to the Des Moines Northwestern Railway Company, and

Whereas, the purchasing committee of the Wabash, St. Louis & Pacific Railway Company is now the owner of the property of the Des Moines & St. Louis Railroad Company, including its proportion of stock, and the Des Moines & Northern Railway Company is now the owner of the property of the

St. Louis, Des Moines & Northern Railway Company, including its proportion of said stock, and the Des Moines & Northwestern Railway Company is now the owner of the property of the Des Moines Northwestern Railway Company, including its proportion of said stock, and

Whereas, the articles of incorporation have been amended so as to conform to the true intent of the several parties,

First. That the *purchase price* of the property originally acquired by the company, as above stated, be fixed at said sum of eight hundred sixty-one thousand two hundred fifty-seven and 21-100 ($861,257.21) dollars as of the date of the conveyance thereof.

Second. That the payment of a portion of such *purchase price* in first mortgage bonds, as above set forth, be confirmed and approved.

Third. That to complete the *payment of such purchase price*, the President and Secretary are hereby authorized to issue certificates for thirty-nine hundred and ninety-two (3992) shares of stock, which shares, including eight already issued on behalf of said parties, aggregate four thousand (4,000) shares, as follows:

To the purchasing committee of the Wabash, St. Louis & Pacific Raiway Company, nineteen hundred and ninety-six (1996) shares.

To the Des Moines & Northern Railway Company nine hundred and ninety-eight (998) shares, and to the Des Moines & Northwestern Railway Company nine hundred and ninety-eight (998) shares.

Fourth. That the proceedings heretofore had respecting the issuance of capital stock, so far as such proceedings are inconsistent with said amendments to the articles of incorporation or with this resolution, are hereby modified to conform heretofore."

This resolution and preamble were unanimously adopted by all the stockholders present. We have therefore set out here in detail the understanding of all the persons who were active in the transactions under consideration and in whose mind there is apparently no question but that the defendant company purchased something with its more than $861,000.00 which it paid, and that something which it purchased was the terminal property.

Not only was this the expression of the persons who were present at this meeting, but this was the expression of the railway companies themselves, who, as successors of the original parties to the contract, were present, because this was a stockholders meeting and this was the act of the stockholders, among whom were numbered these railroads, and not the act of the Des Moines Union Railway Company as a separate identity. But upon this thought we will enlarge in another division of our argument.

These amendments were adopted with great deliberation after full notice and information to all in anywise concerned. They seem to have originated with Mr. Cummins, who at the time was counsel for the Wabash, for the Des Moines Union, and for General Dodge, who was virtually the owner of the Des Moines and Northern. He suggested the need of amendments at the meeting of stockholders of the Des Moines Union on January 3, 1890. On January 22d he wrote to Col. Blodgett concerning the matter and proposed a conference. He discussed the matter with Mr. Hays, who was general manager of the Wabash. On January 27th he wrote to General Dodge enclosing a copy of the proposed amendments and discussing them. He spoke to Mr. Hubbell, who at first was opposed to them. (Rec.,

Vol. III, pp. 1210 to 1214.) Mr. Cummins, who testifies to this, produces the letters written by him at the time. And the records of the Company show the facts in greater detail.

At the meeting of January 3d Mr. How, then Vice-President of the Wabash, and Mr. Hays, General Manager of the Wabash, were present as Wabash representatives. Mr. How moved and it was carried "that the question of amending the articles of incorporation of this Company, as well as the question concerning the issuing of stock for the purchase price of the terminal property, be referred to attorneys, W. H. Blodgett and A. B. Cummins for their investigation and recommendation." (Rec., Vol. IV, p. 1307.) General Dodge presided at this meeting. He represented the Des Moines and Northern. F. M. Hubbell was present representing the Des Moines and Northwestern. Thus the three railway companies were all represented. The meeting adjourned to February 18th.

At the adjourned meeting Dodge, How, Hays and Blodgett were represented by proxy. The Secretary reported that he had notified each stockholder of the meeting and that amendments to the articles of incorporation would be offered. Mr. Cummins presented the amendments. On motion of Mr. Hubbell the meeting was adjourned to April 8th to give further opportunity to examine the amendments. (Rec., Vol. IV, p. 1311.)

At the April meeting the Wabash representatives present were How and Hays. Col. Blodgett was represented by proxy as was General Dodge. Mr. How presided. The remaining railroad representatives were present in person. At this meeting one by one the amendments were adopted. (Rec., Vol. II, pp. 488 et seq.)

Thus it was not until more than three months after the matter was broached and after every stockholder had had months of notice that the final action was taken. It will not now serve to say that they knew not what they did.

And when these articles were amended everybody in interest knew that stock of the Des Moines Union had on February 5, 1890, been sold to individuals, five hundred shares to General Dodge and the same number to F. M. Hubbell. At the directors' meeting of the Des Moines Union held on the same day as the stockholders' meeting Mr. Hays moved and the Board adopted the following resolution:

> "Resolved, That the shares of the capital stock of this corporation of the par value of fifty thousand dollars sold by the Purchasing Committee of the Wabash St. Louis & Pacific Railway Company to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Railroaad Companay, be approved and the transfer thereof to said Hubbell upon the books of the company be and the same is hereby ordered." (Rec. vol. IV, p. 1312.)

A like resolution respecting the sale of shares to General Dodge was offered by Mr. Cummins and was adopted.

Thus the amendments in questions were made with full knowledge that shares of stock of the Des Moines Union were held by individuals as well as by railway companies. This was in harmony with the laws of Iowa and by all concerned was regarded as consonant with the purpose of the parties in respect of the terminal property.

THE ISSUE, SALE AND TRANSFER OF THE CAPITAL STOCK OF THE DES MOINES UNION RAILWAY COMPANY.

The disposition of the capital stock which was issued by the defendant company in part payment for the terminal is important not only as bearing upon the intention of the parties in relation to title to the property, but also on the issue of estoppel which is set up in the defendants' answer.

It will be remembered that by the terms of its original articles, the defendant's capital stock was fixed at $1,000,000.00, all of which it was contemplated should be issued in payment for the terminal property. Likewise, the resolutions of January 1, 1885, authorizing the transfer of the ownership of the terminal property to the defendant, contemplated that defendant would issue its capital stock in payment therefor to the persons or corporations entitled thereto, who were presumably the three railroads parties to the contract of January 2, 1882, and this would be in the following proportions:

One-half to the Des Moines & St. Louis;

One-fourth to the Des Moines Northwestern;

One-fourth to the St. Louis, Des Moines & Northern.

In considering this issue, it is well to keep in mind that the Wabash Company was the owner of all the stock and bonds of the Des Moines & St. Louis Company and of one-half of the stock and all the bonds of the Des Moines Northwestern Company. It was also the lessee in perpetuity of the roads of these two companies. The result was that these two roads were sub-

stantially Wabash properties and they were in fact so treated by the Wabash Company. It is also well to keep in mind that General Dodge advanced all the money to build the St. Louis, Des Moines & Northern line, and a considerable part of the money to acquire the terminal property. As we have heretofore stataed, the Wabash, St. Louis & Pacific Railway Company became insolvent and its property placed in the hands of a receiver about 1884, in a proceeding to foreclose a general mortgage given by that company. In the process of this foreclosure proceeding a purchasing committee composed of James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, and representing the bondholders of the Wabash Company, was organized, who acquired title by foreclosure sale to all of the property of the Wabash Company, including the interest of that company in the Des Moines & St. Louis and the Des Moines Northwestern companies in the early part of 1886. (See deed Mercantile Trust Company to Purchasing Committee, Vol. II, pp. 706-8, and deed Wabash, St. Louis & Pacific Railway Company to Purchasing Committee, Vol. II, pp. 536-42.)

This Purchasing Committee as alleged in the amended bill of complaint had power under the agreement creating it to purchase and hold all of the mortgaged property * * * "It being provided in said agreement that said Purchasing Committee might, after the foreclosure of said mortgaged properties, dispose of the same in such manner as they might deem to be for the best interests of the holders and owners of said bonds, or organize or cause to be organized new corporations to take title to and operate said railroad properties for the use and benefit of said bondholders." (Rec., Vol. I, pp. 63 and 64.)

On October 9, 1886, the firm of Polk & Hubbell of Des Moines entered into a written contract with the Purchasing Committee (Vol. IV, pp. 1573-4), by which the latter agreed to secure title to the railroad of the Des Moines Northwestern Railway Company by foreclosure of the trust deed thereon, and sell the same, including "a one-fourth interest in the terminal property at Des Moines," to Polk & Hubbell for $450,000.00, the same to be paid in first mortgage bonds secured by a mortgage on that part of the "railway lying between Farnham Street" (the western limits of the terminal property) "and the Town of Fonda." This agreement was ratified by the directors of the Wabash Company (Ex. 264, Vol. IV, pp. 1574-5).

On September 10, 1887, the Purchasing Committee and Polk & Hubbell entered into a supplemental agreement with respect to this (Vol. IV, pp. 1575-6). One of the purposes of this supplemental contract was to provide that Polk & Hubbell should further secure the $450,000.00 to be paid to the Purchasing Committee, by giving them a lien upon the one-fourth interest in the terminal property. This provision in the contract reads as follows (p. 1576):

> "Simultaneously with the conveyance above mentioned of one-fourth interest in the terminal property at Des Moines, the same shall be mortgaged back to the purchasing committee for the further security of the said $450,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, *the bonds and stock received from the Terminal Company in exchange for said one-fourth interest shall be transferred in lieu of the property* to Messrs. Polk & Hubbell, or their assignees."

By the terms of this contract the purchasing committee retained the option of doing either one of two things in carrying out the contract by which they agreed to transfer to Polk & Hubbell "a one-fourth interest in the terminal property at Des Moines;" either,

First. Transfer to Polk & Hubbell a one-fourth interest in the terminal property itself; or

Second. In the event "the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above," to transfer to Polk & Hubbell "the bonds and stock received from the Terminal Company in exchange for said one-fourth interest * * * *in lieu* of the property."

Now it is perfectly clear that a transfer of the stock and bonds of the Terminal Company could not be "in lieu of the property" unless the Terminal Company acquired a good title to the property. This contract was made September 10, 1887, less than two months prior to the time we find Colonel Blodgett in St. Louis preparing the mortgage of the Terminal Company reciting the fact that the Terminal Company has acquired and owns the terminal property. It shows clearly what was in the minds of the parties as to the disposition of the title and ownership of the terminal property. They were looking forward to transferring the title and ownership to the Terminal Company.

In carrying out this contract there was a delivery of one-fourth of the stock and bonds of the defendant company "in lieu of" one-fourth of the terminal property (testimony of F. M. Hubbell, Vol. III, pp. 1007-9).

On February 5, 1890, F. M. Hubbell contracted to purchase of the "purchasing committee" certain bonds and a one-fourth interest in the capital stock of the Des

Moines Union Railway Company (Ex. 297, Vol. IV, p. 1599). Immediately following the making of this contract it was agreed between Mr. Hubbell and General Dodge that the latter should participate in the purchase of the stock and bonds (testimony of F. M. Hubbell, Vol. III, pp. 1009-10). This was followed by making separate contracts with the purchasing committee (testimony of F. M. Hubbell last above referred to, and Exs. 298-300, Vol. IV, pp. 1600-2). This sale of stock was ratified at a meeting of the board of directors of the Des Moines & St. Louis Railroad Company, held April 8, 1890 (Ex. 185, Vol. IV, p. 1434). The purchasing committee accounted to the complainant, the Wabash Railroad Company, for the money paid by Hubbell and Dodge for this stock (Vol. IV, p. 1543, at top of page, and Ex. 244, Vol. IV, p. 1558). Now, what did the purchasing committee, the Wabash Company and the Des Moines & St. Louis Company intend to sell Messrs. Hubbel and Dodge when they took and retained their money for stock in the defendant company? Did they intend thereby to transfer to them a valuable interest in the terminal property, or were they simply intending to transfer some nicely lithographed paper which didn't represent anything? The natural inference is that they intended to transfer something of value, and if they had any other intention they did not advise Hubbell or Dodge of it. Did they act intelligently? The purchasing committee owned and had for years owned and managed the Wabash property. The persons present at the meeting of the directors of the Des Moines & St. Louis Company which ratified the sale of this stock were James F. How, vice-president of the Wabash Company; C. M. Hays, general manager of the Wabash Company;

A. B. Cummins, local attorney for the Wabash Company; F. M. Hubbell, H. S. Priest, general attorney for the Wabash Company, and George S. Grover, assistant general attorney for the Wabash Company (Vol. III, pp. 1011-12). Certainly these people knew what was intended by the transaction which culminated in the transfer of the terminal property to the defendant company.

Again on June 5, 1890, Mr. Hubbell made a contract with the purchasing committee by which he bought $50,000.00 of the Des Moines Union bonds and 500 shares of Des Moines Union stock for $57,736.00 (Vol. IV, p. 1613). The bonds at this time were worth about ninety cents on the dollar (Ex. 248, Vol. IV, p. 1561). This sale of stock was ratified by a resolution of the board of directors of the Des Moines & St. Louis Company on February 11, 1891 (Ex. 187, Vol. IV, p. 1437). The money paid for these bonds and this stock came into the hands of the purchaing committee (Vol. IV, p. 1560), and the committee accounted to the complainant, the Wabash Company, for the same (Vol. IV, p. 1543).

Does it now lie in the mouth of the Wabash Company to say that this stock was not intended to represent any valuable interest in the terminal property, when its predecessor, the purchasing committee, sold it to Hubbell for a valuable consideration, which consideration passed to the Wabash Company which now retains it? It can only represent a valuable interest in the terminal property if the Terminay Company acquired a good title to the property.

In this connection see the letter of O. D. Ashley, president of the Wabash Company, and one of the purchasing committee, to Mr. Hubbell, of April 5, 1890

(Vol. IV, pp. 1602-3), in which, speaking of the proposed sale of this second 500 shares of stock in the defendant company, which it will be remembered left in the hands of the purchasing committee one-eighth of such capital stock, Mr. Ashley says:

> "It must be understood, of course, that a one-eighth interest in the capital stock shall be sufficient to represent a proprietorship in the company according to the understanding we had when you were here."

The capital stock could not represent a proprietorship unless the corporation owned the property.

On January 15, 1892, all the capital stock of the defendant company held by the Des Moines & Northwestern, the Des Moines & Northern, F. M. Hubbell, and General Dodge, aggregating 3,500 shares (except a few shares standing in the name of the directors), was transferred to the Des Moines, Northern & Western Railway Company (Vol. II, p. 711), a consolidation of the Des Moines & Northern and the Des Moines & Northwestern companies.

On October 4, 1893, the Des Moines, Northern & Western Railway Company pledged 2,500 of these shares of stock in the Des Moines Union Company to F. M. Hubbell & Son to secure certain indebtedness to that firm (Vol. IV, pp. 1480-1), and on January 29, 1894, it sold this same stock to F. M. Hubbell & Son in satisfaction of certain indebtedness (Vol. IV, pp. 1482-3). At this last meeting there were present the following stockholders of the Des Moines, Northern & Western Railway Company: F. M. Hubbell, L. M. Martin, A. B. Cummins, A. N. Denman and H. D. Thompson, who constituted all the stockholders of that

company except General Dodge, who held 5,000 shares; W. R. Warfield, who held 50 shares, and F. C. Hubbell, who held one share. F. C. Hubbell is a defendant in this suit and is not complaining; W. R. Warfield has never complained, and General Dodge was told of this sale within a few days thereafter and ratified it (Vol. III, pp. 1017-8). This stock was transferred on the books of the defendant company to F. M. Hubbell & Son on October 4, 1893, and has ever since stood in that name.

The first interest, either direct or indirect, which the complainant, the Chicago, Milwaukee & St. Paul Railway Company, acquired in the Des Moines, Northern & Western Railway Company was by virtue of the two contracts of March 15, 1894 (Ex. 80, Vol. II, p. 838; Vol. IV, p. 1618), which were not, however, executed until several months after that date and to which we will make more extended reference in another division of our argument. Prior to this the Chicago, Milwaukee & St. Paul was advised in writing that the Des Moines, Northern & Western Company owned only 1,000 shares of stock in the defendant company and that five-eighths of the stock was owned by individuals (Vol. IV, p. 1617).

The letter is as follows:

"February 22, '94.

Mr. Roswell Miller, President,
Chicago, Milwaukee & St. Paul Railway Company, Chicago, Ill.

Dear Sir:—

Your favor of the 20th is received and noted. Enclosed I send you a copy of the Articles of Consolidation and Incorporation and Trust Mortgage of the Des Moines, Northern & Western Railway

Company. There has been bonds issued on this property to the amount of $2,770,000. I have no printed copy of the articles of incorporation of the Des Moines Union Railway Company, but will say they were drawn by our attorney, Mr. A. B. Cummins, and I think are all right, and if important to you, can have a copy made and sent you. The amount of bonds authorized by that corporation is $800,000, bearing 5 per cent interest, of which amount $612,000 have been issued. I enclose plat of Des Moines Union. We have about five miles of right of way occupied by about twenty miles of track. *The Des Moines, Northern & Western Railway Company own one-fourth of the capital stock of the Des Moines Union Railway Company. The Wabash owns one-eighth and five-eighths is owned by individuals.*

If you desire any further information I shall be glad to furnish it.

Yours truly,
(Signed) F. M. Hubbell,
President."

It therefore appears without controversy that the defendant company issued in payment for this property $400,000.00 of its fully paid capital stock, all of which went to the predecessors of the complainants; that their predecessors sold five-eighths of this stock for money, upon the theory that it represented a valuable interest in the property, and that this money is still retained by complainants. So far as the predecessors of the Wabash were concerned, they were either honest or dishonest. If they were honest, they intended that Hubbell and Dodge, when they bought this stock, should get something for their money, which intention necessarily involves the thought that the Terminal Company held a good title to the property. If they

were dishonest, their successors have received the money and have no standing in this Court. We prefer to think they were honest, and there is nothing in the record to lead us to think otherwise.

So far as the Chicago, Milwaukee & St. Paul Company is concerned, their predecessors thought they were parting with something of value when they disposed of this stock, and that company acquired its interest with full understanding of the situation.

At the end of this argument will be found two diagrams—one showing the various changes in the ownership of the capital stock, and one showing the transfers of the capital stock.

It will no doubt be said, as it has been, that there was a great disparity between the value of this stock and the price paid for it. Nothing could be further from the fact at the time. The three railway enterprises had culminated in disaster, as indicated by the multiplicity of foreclosure shown by the record. They could none of them pay the interest on their bonded debt. Take, for example, the Des Moines Northwestern. It had a narrow gauge line from Des Moines to Fonda, a distance of about 113 miles, and it had a one-fourth interest in the Des Moines terminal property. The line of railroad, not the terminal interest, was mortgaged to secure $800,000.00 of general Wabash bonds. So early as 1887 it was in arrears for interest upon this debt in the sum of $300,000.00, showing that it had never paid a penny of return on the investment. The Wabash virtually owned this property, but it was a burden and not a benefit. The purchasing committee made an agreement with Polk and Hubbell which came to this: the railroad was to be cleared by foreclosure proceedings of all its old bur-

dens and turned over to them, together with one-fourth interest in the terminal property, or the equivalent in stocks and bonds of the Terminal Company if one was formed. Polk and Hubbell were to pay for this by bonding the railroad for $450,000.00 and turning over the bonds to the purchasing committee. They were not to incur any personal liability. In other words, the bonded debt and interest was scaled down more than 54 per cent, and then with the terminal interest given to Polk and Hubbell. Nor was this all. A little later the bonded debt was scaled down to $400,000.00, which F. M. Hubbell agreed personally to pay, as follows: $112,000.00 in terminal bonds, which he had gotten in the purchase, and the remainder in his individual notes, so that he got the railroad and one-fourth of the stock of the Terminal Company for $288,000.00.

A Terminal Company serving three railroads of this kind as its principal business, and bound to render that service at cost was not a very promising institution. The only chance for value in its stock in view of the contract of 1880 was in what are called "surplus earnings," as to which we will speak presently.

General Dodge was identified with railroad construction and operation all his life, and so was optimistic with respect to such enterprises and capable of appreciating their value. And he was interested in these Des Moines roads from the beginning. What did he think of this terminal stock? In 1894, after the Hubbells had acquired the stock, they now hold from the Des Moines, Northern & Western Railroad Company, a large block of whose shares the General held, Mr. Hubbell met him and showed him the record of the transaction and told him "that Hubbell & Son had bought this (terminal) stock of the company, and he expressed

himself satisfied." And Mr. Hubbell offered to let him have an interest in the stock with him, but he said he did not want it. "He said he thought it would be valuable at some time, but he did not want to invest in it." (Rec., Vol. III, p. 1018.)

The "surplus earnings" were revenues derived from the rent of property not immediately required for railroad uses, and payments for switching services rendered, not under contract, for other outside railroad companies and for transportation over the terminal lines. At the beginning they were insignificant and negligible.

There was no issue as to these which called for a full and detailed showing, but there is enough in the record to show substantially what they were. We submit what is shown, omitting cents.

December, 1889	$151.	Rec., Vol. II, p. 273.
January, 1890	160.	" " " " 273.
February, 1890	168.	" " " " 274

During this month Hubbell made his first purchase of stock.

May, 1890 $218. Rec., Vol. II, p. 276.

Hubbell now made his second purchase.

December, 1890 $200. Rec., Vol. II, p. 278.

For the eleven months from January 1, 1891, to December 1st of that year, $3,763 (Rec., p. 281), or on the principle of average $4,116 for the entire year, or at the rate of about 1 per cent on the issued stock.

There is no showing for the period from December 1, 1891, to January 1, 1898. For the years following,

until controversy arose between the parties, the figures are as follows:

1898	$10,825.	Rec.,	Vol.	IV,	p.	1371.
1899	17,211.	"	"	"	"	1371.
1900	21,333.	"	"	"	"	1384.
1901	25,643.	"	"	"	"	1385.
1902	29,922.	"	"	"	"	1386.
1903	35,570.	"	"	"	"	1387.
1904	46,752.	"	"	"	"	1388.
1905	54,763.	"	"	"	"	1389.
1906	61,081.	"	"	"	"	1397.
1907	75,513.	"	"	"	"	1406.

Not one dollar of these earnings was distributed as dividends. The money, $200,000.00, explicitly shown, and the revenues for eight years not so shown, was applied to improvements of and additions to the property, the remainder $176,715.00 appearing and being carried as "surplus earnings" at the time the evidence closes.

The evidence shows conclusively that these surplus earnings, insignificant at first, increased after the Hubbells acquired their stock, slowly at the beginning and more rapidly later as the terminal properties were improved and expanded, and as the City of Des Moines grew and the volume of its business increased, and during this period of eighteen years, covered by the evidence, the enterprise was in the charge of the Hubbells, the father as secretary and the son as president, the father giving much of his time, and the son most of his to their official duties, and this without salaries, and with no other compensation than would in the future come to them as to the other stockholders from the increased welfare and prosperity of the enterprise in which they were embarked.

When the Wabash purchasing committee sold this stock its value was problematical and entirely speculative. If the future was as the past it was worth nothing. They preferred the price for which they sold at the time. Now that the future has justified the faith of the Hubbells, they want to regain the property they sold and to retain the price for which they sold it.

Ever since May 1, 1888, the terminal property has been treated by everybody as the absolute property of the defendant company.

The defendant company took possession of the property on May 1, 1888, and has ever since possessed and operated it.

The corporate action of the defendant company from the time of its organization to January 8, 1909, in so far as it does not appear in complainants' testimony, appears in defendants' exhibits, volume IV, pages 1297 to 1413. We do not intend at this time to refer to it in detail. Its examination will disclose the undisputed fact that at all times the defendant treated this property as its own. It bought the original terminal property and paid for it. It acquired other property, took the title in its own name in fee simple; improved the property on its own motion and according to its own ideas, and paid for it with its own money. It elected its own directors and its own officers, made its own contracts, and in every way conducted its own business. At no time did the defendant do a single act recognizing any rights of the complainants or their predecessors in the property, except the rights which they possessed by reason of their stock interest. In examining this record, bear in mind that at all times there was on the board of directors of the defendant

company one or more persons representing the stock of the complainant, the Wabash Company or its predecessors, and two or more directors representing the stock interests of the complainant, the Chicago, Milwaukee & St. Paul Railway Company, or its predecessors.

But the interesting question is, how has this property been treated by the complainants and their predecessors since May 1, 1888?

First, as to the Wabash Company (and in considering this it is interesting to note how this property was treated by the Wabash Company before and after May 1, 1888, and to note what, if any, change is apparent in its relation to the property at that date):

At a meeting of the executive committee of the Wabash Company, held December 26, 1882 (Ex. 227, Vol. IV, p. 1529), a resolution was passed authorizing the transfer to the Mercantile Trust Company of New York of certain property to secure certain indebtedness, and among the property scheduled is "Real Estate in Des Moines, $300,000."

At a meeting of the purchasing committee, held August 6, 1886 (Ex. 240, Vol. IV, p. 1555), the terminal property in Des Moines is referred to as follows:

> "And the sale to include only one-quarter of the terminal property formerly owned by the Wabash Railway Company and General Dodge; this sale leaving the purchasing committee or the new Wabash Company in possession and ownership of one-half of said terminal property."

We have already shown how Polk & Hubbell in October, 1886, made a contract with the purchasing commit-

tee to purchase the property of the Des Moines Northwestern Company and "a one-fourth interest in the terminal property at Des Moines" (Ex. 263, Vol. IV, p. 1573), and how in a supplemental contract the purchasing committee had secured the option of delivering "in lieu of" the property, one-fourth of the stock and bonds of the terminal company.

Under date of February 25, 1888, Mr. Charles M. Hays, general manager of the Wabash Western Railway Company, made his annual report, whcih was embodied in the annual report presented to the stockholders on March 13, 1888, as follows (Ex. 229, Vol. IV, p. 1532):

> "There has also been erected during the year an addition of fifteen stalls to roundhouse at Moberly at a cost of.....$15,625.79
> Fifteen-stall roundhouse at Des Moines, Iowa (which will be conveyed, with other property at that point, to the Des Moines Union Railway Co.).....$12,472.96"

Thus it appears that prior to the execution and delivery of the deeds to the Terminal Company, the terminal property is referred to and treated by the parties as property of the Wabash Company, although the title to most of it stood in the name of trustees.

A very different attitude is shown on the part of this complainant and its predecessors in relation to this property after May 1, 1888.

On March 5, 1889, Mr. How writes to F. M. Hubbell (Ex. 290, Vol. IV, p. 1595) as follows:

> "I am in receipt of your letter of Mar. 2nd. As the property referred to in your letter *now be-*

longs to the Des Moines Union Ry. Co., I think that Co. should pay the interest on the mortgage and will also arrange to take care of the principal. The last payment of interest was made in the month of Jan'y, 1886."

Again on April 1, 1889, he writes (Ex. 292, Vol. IV, p. 1596):

"I have just returned from the East and am in receipt of your letter of the 23d ult. I think that the interest due on the deed of trust on the lot *owned* by the Terminal Co. referred to in your letter should be paid and an arrangement made to continue the deed of trust on the property at a lower rate of interest. Of course the interest now due and to become due should be paid by the Terminal Co."

Again he writes to Polk & Hubbell under date June 28, 1889 (Ex. 294, Vol. IV, p. 1597):

"I am in receipt of yours of June 26th calling attention to certain bills for delinquent taxes on railroad property in Des Moines. Any such bills that are a lien on the property transferred to the Des Moines Union Ry. Co. should be paid by that Co., *all the property having been bought for that Co. and since been transferred to it.*

I am also in receipt of a letter from Mr. Hubbell of same date referring to your letter and speaking of a similar tax certificate held by him on the same property. Will you please show this letter to him."

These letters were written very shortly after the transfer of the property, and were written by James F. How, who had been the moving spirit in this matter during all the years since 1881, who knew the in-

tent of the transaction, and he seems to have no doubt as to who owned this property.

We have already shown the facts in relation to the amendments to the articles of incorporation of the defendant company of April 8, 1890, and the resolutions passed that day with respect to the title to this property and the payment of the purchase price therefor by the defendant company, and the part which was taken in the same by James F. How, vice-president; Charles M. Hays, general manager ,and Wells H. Blodgett, general counsel of the Wabash Company, all of whom were familiar with the transaction, were active in promoting the terminal organization, and knew what was intended.

Again on May 20, 1890, Mr. How wrote Mr. Hubbell as follows (Ex. 304, Vol. IV, p. 1612):

> "I am just in receipt of yours of the 17th, giving list of certain property that you have purchased in Des Moines, which you offer to sell to the Des Moines Union Raiway Company at the price you paid for same, with interest from the date of purchase, said offer to be accepted at any time within thirty days of the date of your letter. *As I understand it, this question will have to be acted upon by the board of directors of the Des Moines Union Railway Company, and I suppose your letter is written with the idea of ascertaining how Mr. Hays and myself would vote on the question at such a meeting. It is our opinion that your offer should be accepted, provided the Des Moines Union Railway Company can pay for the property in their bonds at par, with accrued interest.*"

This doesn't sound as though Mr. How had in mind that the ownership of this property was in the complainants or their predecessors.

On June 6, 1890, General Dodge wrote Mr. Hubbell as follows (Ex. 305a, Vol. IV, p. 1614):

> "I duly received yours of May 17th in re. property you have bought at Des Moines. I would like to have you send me a map showing this property. I think the Des Moines Union Railway Co. should take it as soon as they can raise the money to do so on their bonds."

Note the letters of Charles M. Hays to Mr. Hubbell, dated April 28, 1892, and April 22, 1893 (Exs. 306-7, Vol. IV, pp. 1616-7), in the latter of which he says:

> "While it seems to me that it is desirable that the lot should be owned by the Des Moines Union Company, we are not in such position that we feel we can conveniently advance the amount that would be chargeable to us on usual basis for distributing the expense of such purchase. *I think since you are now the largest holder in Des Moines Union bonds and stock,* you should sell the lot to the company and take bonds at par for same. As a director of the Des Moines Union Company I am willing to approve getting lot in this way, but I am not willing to approve of it on basis of each company contributing its proportion of the purchase price and taking bonds therefor."

If the Hubbell stock-holding interest was intended to be of no value to him, why should he sell the lot to the company and take its bonds therefor?

There will be found among defendants' exhibits voluminous correspondence passing between the defend-

ant company and the Wabash Company and its predecessors, covering the period from May 1, 1888, to the time of the commencement of this suit. It would unnecessarily extend this argument to refer to this correspondence in detail. With respect to it we desire to say that there isn't a single letter passing between the parties in this period of twenty-three years which does not either tacitly or expressly recognize the absolute ownership of the defendant company, and no intimation at any time that the Wabash Railroad Company or its predecessors claimed any interest in the property whatever, except that to which it was entitled by reason of its being the owner of some of the defendant's shares of stock. We will content ourselves with here calling attention to a few of the more solemn and formal acts of the Wabash Company and its predecessors, which show conclusively that no claim was made to any interest in this property other than the stock-holding interest.

CORPORATE ACTS OF WABASH COMPANY.

At a meeting of the board of directors of the Des Moines & St. Louis Railroad Company held in New York on March 16, 1899, there were present the following persons: O. D. Ashley, Edgar T. Welles, Cyrus J. Lawrence, Thomas H. Hubbard and J. C. Otteson. Ashley, it will be remembered, was president of the Wabash Company, and he with Edgar T. Welles and Thomas H. Hubbard had been three of the members of the purchasing committee. Otteson was secretary of the Wabash Company. These persons were familiar with the history of the terminal property and the intention of the parties with respect thereto. At this

meeting (see Ex. 192, Vol. IV, pp. 1446-9), a resolution was passed authorizing the execution of a deed from the Des Moines & St. Louis Railroad Company to the complainant, the Wabash Company, of the property of the former company, which was described in the resolution and in the deed so authorized as follows (pp. 1448-9):

> "commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the counties of Polk, Marion and Monroe to the town or City of Albia, in Monroe County, a distance of about sixty-seven miles, * * * and especially including all the rights and leasehold and other interests of the first party under a contract dated May 10, 1889, between the Des Moines Union Railway Company of the first part and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, of the second part."

According to the complainants' theory, the Des Moines & St. Louis Railroad Company owned a one-half interest in the terminal property, but it will be noted that this deed does not purport nor attempt to convey any interest in the terminal property whatever, except the interest it had under the lease of May 10, 1889, and in describing its railroad property it describes it as commencing at the point where its tracks connect with the tracks of the Des Moines Union Railway Company.

On January 1, 1899, the Wabash Railroad Company gave a mortgage to the Central Trust Company of

New York (Ex. 530, Vol. IV, p. 1928). This mortgage was prepared by Colonel Blodgett (testimony of Colonel Blodgett, Vol. II, p. 379), who had been the guiding spirit in the terminal transaction and was fully familiar with the situation. This mortgage covered what is known as the Des Moines division, the northerly terminus of which is at Des Moines. Among the recitations in the mortgage is the following:

> "And, whereas, the company owns the entire capital stock of the Des Moines & St. Louis Railroad Company, consisting of twenty thousand (20,000) shares of the par value of one hundred ($100) dollars each, *and five hundred (500) shares of the capital stock of the Des Moines Union Railway Company* of the par value of one hundred ($100) dollars each."

The property is described in the mortgage as follows (p. 1929):

> "commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the counties of Polk, Marion and Monroe to the town or City of Albia, in said County of Monroe, a distance of about sixty-seven miles; * * * *also five hundred (500) shares of the capital stock of the Des Moines Union Railway Company, of the par value of one hundred (100) dollars each;* * * * *and also all the leasehold rights and privileges of the company to use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in or near said City of Des Moines, including also the rights and interests of the company in and to a certain terminal contract, dated the 31st day of July, 1897, and made by* and between the Des

Moines Union Railway Company, the company and the Des Moines Northern & Western Railroad Company, and in and to another contract, dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines & St. Louis Railway Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company."

The mortgage further provides:

"The company agrees at the time of the execution of these presents to deliver to and deposit with the trustee the above-mentioned terminal contract, dated the 31st day of July, 1897, * * * and also the other above-mentioned contract, dated the 10th day of May, 1889, * * * together with an assignment or assignments by the company to the trustee of all its rights and interest in and to said contracts, and the consents to such assignment or assignments of the remaining above-mentioned parties to said contracts or of their successors or assigns.

* * * * * * * *

And the company further agrees at the time of the execution of these presents to deliver to, and deposit with, or cause to be delivered to, and deposited with the trustee, duly endorsed in blank, the above-mentioned shares of stock of the * * * Des Moines Union Railway Company, * * * and also a consent to the assignment or mortgage by these presents to the trustee of the above-mentioned shares of stock of the Des Moines Union Railway Company, which consent is to be given by the above-mentioned Des Moines Northern & Western Railroad Company, party to the above-mentioned terminal contract of the 31st day of July, 1897, or its successors or assigns."

It will be noted that this mortgage does not purport to cover any interest in the terminal property itself. It describes the complainants' property as commencing at a point at or near the eastern limits of the City of Des Moines, where it connects with the tracks of the Des Moines Union Railway Company, and then for the purpose of transferring to the mortgagee whatever rights it has with respect to the Des Moines Union Company or its property, it specifically and with great care provides for a transfer of the 500 shares of the capital stock in that company and the contracts by which it is entitled to be furnished terminal service by the defendant company for the period of thirty years from and after May 1, 1888. The man who drew this mortgage, and the parties who executed it, never suspected that the complainant had any interest in this terminal property except the interest represented by its share of the capital stock and its interest as a lessee or tenant under the terms of the operating contract.

The things we have called attention to are only a very few of the very many things appearing in this record which show that at no time between May 1, 1888, and the commencement of this suit did the Wabash Company, or any of its predecessors, or any of its officers, have the least suspicion that that company had any interest in the property in controversy other than its interest as a stockholder, or that the shares of stock held by the defendant, F. M. Hubbell & Son, were "merely nominal and of nominal value."

THE RELATION OF THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND ITS PREDECESSORS TO THE TERMINAL PROPERTY.

Going now to the history of the relations sustained by the complainant, the Chicago, Milwaukee & St. Paul Railway Company, and its predecessors, to the terminal property since May 1, 1888.

It will be remembered that the Des Moines Northwestern Railway Company in February, 1881, gave a mortgage to the Central Trust Company (Vol. II, p. 605) to secure certain general mortgage bonds of the Wabash Company.

It will also be remembered that in 1886 Polk & Hubbell made a contract and supplement thereto with the purchasing committee by which the committee undertook to foreclose the Des Moines Northwestern mortgage, acquire title to the property of that company, and sell the same, together with a one-fourth interest in the terminal property, or "in lieu thereof," one-fourth of the stock and bonds of the terminal company.

In pursuance of that contract, the purchasing committee caused the Central Trust Company to bring a suit in the District Court of the United States for the southern district of Iowa to foreclose that mortgage. The decree in the case appears in complainants' testimoney (Vol. II, pp. 609-13). The decree describes the property as "being a line of railway extending from Farnham street, Des Moines, Iowa, through the counties of Polk, Dallas," etc. (p. 610). The deed to Polk & Hubbell executed in pursuance of the sale under that decree (Vol. II, pp. 613-5) describes the property (p. 614) as "being a line of railway extending from Farn-

ham street, Des Moines, Iowa, through the counties of Polk, Dallas," etc.

Farnham street was the western terminus of the terminal property, and this line of road extended westerly from that street. It will be seen that the Des Moines & Northwestern Railway Company, by virtue of this decree and these deeds, acquired title simply to the railway property commencing at Farnham street, the westerly limit of the terminal property.

On April 8, 1890, when the capital stock of the defendant company was issued, one-fourth thereof (1,000 shares, less two shares standing in the name of the two directors representing that company) was issued to the Des Moines & Northwestern Railway Company (Vol. II, p. 711), and thereby the Des Moines & Northwestern Railway Company acquired the only interest it had in the terminal property outside of the interest which it had as a tenant under the contract of May 10, 1889.

It will be remembered that the St. Louis, Des Moines & Northern Railway Company, which owned the line from Des Moines to Boone, on August 1, 1881, gave a mortgage to the Mercantile Trust Company (Vol. II, p. 552), which described the property (p. 554) as

> "all its railroad extending as aforesaid, from the western boundary line of the City of Des Moines, in Polk County, Iowa, by way of Clive in said county, through the counties of Polk, Dallas and Boone," etc.

The western boundary line of the City of Des Moines was almost a mile west of Farnham street, the western boundary line being what is now known as Twenty-eighth street, and Farnham street being now known

as Sixteenth street. This left a piece of road extending from Farnham street to West Twenty-eighth street which was not covered by this mortgage, nor did the mortgage purport to cover any interest which the St. Louis, Des Moines & Northern Company had in the terminal property. For the purpose of extending the lien of this mortgage to cover the omitted property, the St. Louis, Des Moines & Northern Railway Company executed a supplemental mortgage to the Mercantile Trust Company (Vol. II, pp. 561-3), which after reciting the execution of the original mortgage says:

> "Whereas, there was omitted from the description of the property conveyed by said mortgage a part of the road of the party of the first part which should have been included, and
>
> Whereas, the board of directors of the party of the first part has this day authorized its president, and assistant secretary, to execute and deliver a supplement to said mortgage so that said omitted property shall be included in said mortgage.
>
> Now, therefore, the St. Louis, Des Moines & Northern Railway Company, by this indenture doth grant, bargain, sell and convey unto the Mercantile Trust Company, as trustee, and to its successor or successors in trust, all that portion of its line of railroad lying between Farnham street, in the City of Des Moines, and the western corporate limits of said city, being situated in the County of Polk and State of Iowa, together with all the appurtenances thereto belonging or therein included, and *also all its interest of whatever kind in the obligation or stock of the Des Moines Union Railway Company*, and all its property of whatever name or nature not included and covered by said original mortgage."

It will be noted that by this supplemental mortgage the only interest which is attempted to be transferred in the terminal property is the obligation or stock of the defendant company.

This mortgage was foreclosed by an action in the District Court of the United States for the southern district of Iowa, the bill of complaint therein appearing in complainants' testimony (commencing on page 563, Vol. II), and which bill of complaint, referring to this supplemental mortgage, describes the interest in the terminal property thereby conveyed as being the obligations or stock of the terminal company (p. 565). The decree in the case, which appears in complainants' testimony (commencing at page 578, volume II), describes the property in the same way. The deed executed to Solon Humphreys and J. T. Granger in pursuance of the decree describes the property in the same way (Vol. II, pp. 584, 590).

In November, 1889, articles of incorporation of the Des Moines & Northern Railway Company were adopted (Vol. II, pp. 592-6). On November 23, 1889, Solon Humphreys and others, who had purchased this property at the foreclosure sale, deeded it to the Des Moines & Northern Railway Company (Vol. II, pp. 596-7), the deed describing the property as follows:

> "* * * The line of railway and franchises (except the franchise to be a corporation) formerly belonging to the St. Louis, Des Moines & Northern Railway Company, extending from Farnham street in the City of Des Moines, County of Polk and State of Iowa, through the Town of Clive and the counties of Polk, Dallas and Boone to the City of Boone * * * *and all its interest in the stock of the Des Moines Union Railway Company.*"

On April 8, 1890, when the defendant company's certificate of shares were issued, 1,000 shares (less two shares issued to the directors of the defendant company) were issued to the Des Moines & Northern Railway Company.

At a meeting of the stockholders of the Des Moines & Northwestern Railway Company, held October 12, 1891 (Ex. 199, Vol. IV, p. 1456), a lengthy resolution was adopted looking to the consolidation of the properties of the Des Moines & Northwestern and the Des Moines & Northern companies. In examining this resolution it is interesting to note that wherever the properties of these two companies are referred to they are described as commencing at Farnham street, in the City of Des Moines, and extending in a westerly and northwesterly direction, and wherever their interest in the terminal property is concerned it is referred to as "shares of stock" of the defendant company. References are made to these matters in the following paragraphs of the resolution and the contract which is made a part of it: third (p. 1459), fourth and fifth (p. 1460), ninth, tenth and eleventh (p. 1461), fifteenth (p. 1463), and fourth paragraph of contract (pp. 1468-9). Nowhere in this resolution is any reference made to any claim on the part of these companies that they owned any interest in the terminal property itself.

Carrying out this resolution, articles of consolidation and incorporation of the Des Moines, Northern & Western Railway Company were adopted on the 14th of December, 1891 (Ex. 64, Vol. II, p. 624). By the terms of the second article (pp. 625-6) the property of the two constituent companies, the Des Moines & Northern Company and the Des Moines & Northwestern Company, became the property of the Des Moines, North-

ern & Western Railway Company, the consolidated corporation.

The objects of the new corporation were stated in part as follows (pp. 626-7):

> "(1) To own, complete, extend, improve, maintain, and operate the line of railway heretofore owned and operated by the Des Moines & Northwestern Railway Company, extending from Farnham street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas to Fonda, in said last-named county.
>
> (2) To own, complete, extend, improve, maintain and operate the line of railway heretofore owned and operated by the Des Moines & Northern Railway Company, extending from Farnham street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas and Boone, to the City of Boone, in said last-named county.
>
> • • • • • • • • •
>
> (10) *To purchase, own and sell capital stock of the Des Moines Union Railway Company, or any other company owning or operating terminal grounds, tracks or stations.*"

As we have already shown, upon the organization of this company, all the capital stock of the defendant company theretofore owned by the Des Moines & Northwestern Company, the Des Moines & Northern Company, by G. M. Dodge and by F. M. Hubbell, aggregating 3,500 shares, were transferred to and became the property of the Des Moines Northern & Western Railway Company.

On December 14, 1891, at a meeting of the stockholders of the Des Moines, Northern & Western Railway Company (Ex. 208, Vol. IV, p. 1476), a resolution was passed authorizing the giving of a mortgage to the Metropolitan Trust Company of New York. A part of that resolution is as follows (pp. 1477-8):

> "Be it therefore resolved; that the Des Moines, Northern & Western Railway Company, the consolidated corporation hereinbefore referred to, shall duly execute and acknowledge a trust mortgage to the Metropolitan Trust Company of the City of New York, as trustee, which mortgage shall convey, under the usual terms and conditions, all its railroad extending from Farnham street, in the City of Des Moines, County of Polk, and State of Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, Iowa, to Fonda, in said last-named county, and also extending from Farnham street aforesaid over the same line to Clive, in the County of Polk, and thence through the counties of Polk, Dallas and Boone, Iowa, to the City of Boone * * * *also a one-fourth interest in the capital stock of the Des Moines Union Railway Company; but it is expressly understood and agreed that said mortgage shall not convey an additional five-eighths interest in the capital stock of the said Des Moines Union Railway Company, of which the said company is the owner.*"

In pursuance of this resolution, the Des Moines, Northern & Western Railway Company on the 15th day of December, 1891, executed a mortgage to the Metropolitan Trust Company of New York, which appears as exhibit 65, on page 633 of volume II. This mortgage described the property covered by it in the terms of the resolution above quoted (p. 637).

It will be remembered, as we have heretofore shown, that this five-eighths of the capital stock of the Des Moines Union Railway Company (2,500 shares) was transferred to F. M. Hubbell & Son on the 4th day of October, 1893, and has ever since stood upon the books of the defendant company in that name.

The first interest, either direct or indirect, which the Chicago, Milwaukee & St. Paul Railway Company had in the transactions under consideration, or in any of the companies interested in said transactions, grew out of two contracts dated March 15, 1894, one of which is a contract between that company and Frederick M. Hubbell and Frederick M. Hubbell & Son, and appears as complainants' exhibit 80 (commencing at page 838 of volume II), and the other of which appears as defendants' exhibit 309 (p. 1618, Vol. IV), and which was between the Des Moines, Northern & Western Railway Company and the Chicago, Milwaukee & St. Paul Railway Company. These contracts, however, were not actually executed until the 17th of July, 1894 (see testimony of F. M. Hubbell near bottom of page 1018, volume III).

The negotiations leading up to the making of these contracts were conducted by Mr. Hubbell, representing himself and the Des Moines Northern & Western Railway Company, and Roswell Miller, president of and representing the Milwaukee Company (testimony of F. M. Hubbell near top of page 1019, volume III).

By the terms of the contract between the Des Moines, Northern & Western Company and the Chicago, Milwaukee & St. Paul Company (Ex. 309, Vol. IV, p. 1618), the former company was to receive a division of the through rate on joint business, at percentages fixed in the contract and depending upon the origin and desti-

nation of the freight. In consideration of the execution of this contract, F. M. Hubbell and F. M. Hubbell & Son entered into the contract with the Chicago, Milwaukee & St. Paul Railway Company heretofore referred to (Vol. II, p. 838), by which the Hubbells made a present to the Chicago, Milwaukee & St. Paul Railway Company of 16,800 shares of the capital stock of the Des Moines, Northern & Western Railway Company and agreed to sell it an additional 6,468 shares at any time between January 1, 1897, and the first Monday in April, 1899, for $46,200.00. The thing which induced the making of these contracts on the part of the Hubbells is detailed by Mr. F. M. Hubbell (near the top of page 1020, volume III) as follows:

> "Some time during the summer of 1893, the Milwaukee Company notified the Des Moines, Northern & Western Railway Company that the divisions in freight interchanged between the two companies would be reduced from 50 per cent to 25 per cent. This great reduction in the division would prevent the Des Moines, Northern & Western Railway Company from earning its interest and operating expenses; and rather than submit to bankruptcy and a foreclosure, we made this arrangement in order to obtain an increase in the division in favor of our company to 40 per cent. hoping thereby that we could earn sufficient revenue to pay operating expenses and interest on the bonds."

As we have heretofore shown, before the making of this contract and during the negotiations which led up to it, Roswell Miller, president of the Milwaukee Company, was advised that the Des Moines, Northern & Western Railway Company only owned 1,000 shares of stock in the defendant company, and that five-eighths

of the defendant's capital stock was owned by individuals (see letter of F. M. Hubbell to Roswell Miller, Ex. 308, Vol. IV, p. 1617).

It was further provided in sections 4 and 5 of the contract last above referred to (pp. 839-40) that under certain conditions the mortgage heretofore referred to and given by the Des Moines, Northern & Western Railway Company to the Metropolitan Trust Company, should be foreclosed and the property transferred to the new corporation, in which event the interest of the Milwaukee Company in the capital stock of the new corporation should be the same as its interest in the capital stock of the present corporation.

Afterward a suit was brought in the Circuit Court of the United States for the southern district of Iowa to foreclose the mortgage given by the Des Moines, Northern & Western Railway Company to the Metropolitan Trust Company, and in this suit a decree was entered which appears, commencing on page 645 of volume II, in which decree the property upon which a lien was established was described as

> "a certain line of railroad extending from Farnham street, in the City of Des Moines, in Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to the Town of Fonda, in said last-named county, and also of a line of railroad extending from Clive to the County of Polk, through the said county to the City of Boone, in the County of Boone, and State of Iowa, * * * *Also a one-fourth interest in the capital stock of the Des Moines Union Railway Company, it being by the said mortgage expressly understood and agreed that the said mortgage did not embrace or convey an additional five-eighths interest in the capital stock of said Des*

Moines Union Railway Company of which the said Des Moines Northern & Western Railway Company was the owner."

In pursuance of this decree a sale was had at which the property was purchased by G. M. Dodge, F. M. Hubbell and F. C. Hubbell. A report of this sale appears as Complainants' Exhibit 67 (commencing on page 651, volume II), in which report the property sold is described in the terms used in the decree. This sale was approved, and on the 8th of February, 189[illegible], the Commissioner made a Commissioner's deed to G. M. Dodge and others constituting the purchasing committee, in which the property transferred was described as in the decree (Ex. 69, Vol. II, p. 654).

On the 1st day of January, 1895, the articles of incorporation of the Des Moines, Northern & Western Railroad Company were adopted (Ex. 70, Vol. II, p. 657), in which the objects and purposes of the corporation were described in part as follows:

"First. To own, complete, extend, improve, maintain and operate the line of railway heretobefore owned and operated by the Des Moines Northern & Western Railway Company, extending from Farnham street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to Fonda, in said last-named county; also extending from Clive, in the County of Polk, through the counties of Polk, Dallas, and Boone, to the City of Boone, in said last-named county.

* * * * * * * *

Twelfth. *To purchase, own and sell capital stock of the Des Moines Union Railway Company, or any other company owning or operating terminal grounds, tracks or stations."*

To this corporation G. M. Dodge and the other members of the purchasing committee transferred this property by deed appearing as Complainants' Exhibit 71 (Vol. II, p. 663), in which the property was described as in the deed from the Commissioner to them. In none of these records or documents is any reference whatever made to any possible interest (except through the stock) in the terminal property.

About the time of the execution of this deed there was held a meeting of the board of directors of the Des Moines, Northern & Western Railroad Company (Ex. 215, Vol. IV, p. 1487) in which it was resolved to purchase of G. M. Dodge and others constituting the purchasing committee this railway property, which was described as follows:

> "A certain line of railroad extending from Farnham street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to Fonda, in the said last-named county; and also extending from Clive, in the County of Polk, through the counties of Polk, Dallas and Boone to Boone, in the County of Boone, and State of Iowa, * * * also a one-fourth interest in the capital stock of the Des Moines Union Railway Company."

At the same meeting it was resolved (p. 1490) to execute a mortgage to the Metropolitan Trust Company of New York as trustee, upon the property which was described as heretofore set out.

At a meeting of the stockholders of the Des Moines, Northern & Western Railroad Company, on March 5, 1895, certain resolutions were passed on this same subject, in which the property was described as in the deed and former resolution (Ex. 216, Vol. IV, p. 1492).

The Des Moines, Northern & Western Railroad Company after it acquired the property gave a mortgage to the Metropolitan Trust Company of New York (Vol. IV, p. 1518) in which the property was described:

> "All its railroad, extending from Farnham street, in the City of Des Moines, County of Polk, and State of Iowa, through the counties of Polk, Dallas, * * * *also a one-fourth interest in the capital stock of the Des Moines Union Railway Company.*"

By the seventh section of the contract of March 15, 1894, between Hubbell & Son and the Chicago, Milwaukee & St. Paul Railway Company, it was provided (Vol. II, p. 841) that the board of directors of the Des Moines, Northern & Western Railway Company should consist of three persons who should be nominated by the St. Paul Company, and four persons to be nominated by Hubbell & Son.

At the annual meeting of the stockholders of the Des Moines, Northern & Western Railway Company, held on January 3, 1895 (ex. 214, vol. IV, p. 1486), this portion of the agreement was carried out and E. P. Ripley, A. J. Earling and P. M. Myers, representing the St. Paul Company, were elected upon the board of directors of the Des Moines, Northern & Western Railway Company, and thereafter three or more representatives of the Milwaukee were upon the board of directors of that company or its successor, the Des Moines, Northern & Western Railroad Company, and during these years the representatives of the St. Paul Company, and particularly Mr. Roswell Miller, president of that company, were active in the management of the affairs of the former company. In this way they

not only became familiar with the affairs of the Des Moines, Northern & Western Railway and Railroad Company, but also with the relations between that company and the defendant, the Des Moines Union Railway Company. They knew that the only interest which the Des Moines, Northern & Western Company had in the Des Moines Union Company was the interest represented by the 1,000 shares of stock which the former had in the latter (ex. 308, vol. IV, p. 1617). They were familiar with the foreclosure of the mortgage upon the property of the Des Moines, Northern & Western Railway Company, the organization of the Des Moines, Northern & Western Railroad Company, and the steps by which the property of the former was transferred to the latter, and had certified copies of all the records in respect thereto. They were furnished with copies of the articles of incorporation of the defendant, the Des Moines Union Railway Company, advised as to what property it owned, and furnished with copies of the contract of May 10, 1889, and the ratification thereof of July 31, 1897. (See the following exhibits of defendants, vol. IV: 317 and 318 (p. 1628); 319 and 320 (p. 1630); 321 (p. 1631); 322 (p. 1632); 323 (p. 1634); 324 and 325 (p. 1636); 326 (p. 1637); 339 (p. 1650); 340 (p. 1651); 341 (p. 1652); 342 (p. 1654); 343 and 344 (p. 1655); 345 (p. 1657); 415 (p. 1763); 416 (p. 1764); 417 and 418 (p. 1765); 419 and 420 (p. 1766); 421 (p. 1767); 425 (p. 1770).)

In the year 1898 the Chicago, Milwaukee & St. Paul Railway Company acquired all the outstanding capital stock and bonds of the Des Moines, Northern & Western Railroad Company for the purpose of consolidating the line of the latter company with its own line of railroad.

At the annual meeting of the stockholders of the Des Moines, Northern & Western Railroad Company held January 5, 1899 (ex. 219, vol. IV, p. 1498), the board of directors elected consisted of W. G. Collins, A. J. Earling, C. A. Goodnow, Burton Hanson, F. M. Hubbell, F. C. Hubbell and P. M. Myers, all of whom, except the two Hubbells, were officers of the Chicago, Milwaukee & St. Paul Railway Company.

At a meeting of the board of directors of the Des Moines, Northern & Western Railroad Company held in Chicago on April 24, 1899, at which were present the members of the board of directors above named, except the two Hubbells (ex. 220, vol. IV, p. 1499), there was laid before the board of directors a proposition made by the Chicago, Milwaukee & St. Paul Railway Company looking toward the consolidation of the property of the two companies, a part of such resolution being as follows (p. 1503):

> "Resolved, that the Des Moines, Northern & Western Railroad Company be, and is hereby requested to sell and convey to this Company all its railroad and property and for this purpose to make, execute and deliver, through its proper officers, a good and sufficient deed of conveyance, conveying and transferring to this Company all its railroad and property of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges and immunities of every kind, howsoever derived, in consideration of the sum of One Dollar and of the cancellation and surrender by this Company of all the above mentioned mortgage bonds of the Des Moines, Northern & Western Railroad Company, amounting in the aggregate to the sum of $2,933,000, with the interest due thereon, and of the payment of all other lawful debts of said Company; and this Company

hereby agrees that, upon the delivery to it of such deed, it will cancel and surrender the said mortgage bonds and will assume and pay all other lawful debts of said Des Moines, Northern & Western Railroad Company, and hold said Company free and clear and harmless therefrom."

Upon consideration of this proposition, the directors of the Des Moines, Northern & Western Railroad Company passed a resolution accepting this offer and calling a meeting of the stockholders for the purpose of considering it (p. 1504). It will be noted that this proposition of the Milwaukee was to acquire all the property of the Des Moines, Northern & Western Railroad Company of whatever character. This stockholders' meeting was held on May 8, 1899 (ex. 222, vol. IV, p. 1508). At this meeting the stockholders authorized the transfer of the property of the Des Moines, Northern & Western Railroad Company to the Milwaukee Company, and authorized the execution of a deed transferring the same, a part of which reads as follows (p. 1512):

"Whereas, the Des Moines, Northern & Western Railroad Company now owns and operates a certain line of railroad, commencing at the east line of Section Seven (7), Township Seventy-eight (78) North, Range Twenty-four (24) West, in the City of Des Moines, Polk County, Iowa, and thence extending in a general northwesterly direction, via Clive in said County, through the Counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, to Fonda in said last named County; and also a line of railroad extending from Clive, in said County of Polk, through said County of Boone, in the County of Boone; said lines of railroad hav-

ing an aggregate length of about one hundred and fifty miles, all in the State of Iowa;

* * * * * * * * *

and also one-fourth interest in the capital stock of the Des Moines Union Railway Company."

The east line of section 7 referred to in this deed was coincident with the west city limits of the City of Des Moines at that time and what is now known as Twenty-eighth Street, which is approximately a mile west of what was formerly known as Farnham Street and now known as Sixteenth Street. This was the form of the deed approved by the stockholders of the Des Moines, Northern & Western Railroad Company in carrying out the proposition to transfer to the Milwaukee Company all its property, and shows clearly that at this time no claim was made that that company owned any interest in the terminal property other than that represented by its stock. This deed was executed as authorized, delivered to the Chicago, Milwaukee & St. Paul Railway Company, and filed for record (ex. 74, vol. II, p. 673).

As above noted, this deed from the Des Moines, Northern & Western Railroad Company to the complainant, the Milwaukee Company, described the line of road as commencing at the east line of section 7, whereas, all former transfers and mortgages of the property had described it as commencing at Farnham Street. To correct this error in the description, a special meeting of the stockholders of the Des Moines, Northern & Western Railroad Company was held on June 12, 1907 (ex. 75, vol. II, p. 678). This was more than eight years after the execution of the deed last above referred to, during which eight years the Chi-

cago, Milwaukee & St. Paul Railway Company had had two representatives on the board of directors of the defendant company.

At this meeting a resolution was passed reciting the fact that by the transactions of 1899 heretofore referred to, it was the intention to transfer to the Milwaukee Company all the railroad and property of the Des Moines, Northern & Western Railroad Company "of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges and immunities of every kind, howsoever derived," and reciting the fact that through some error or oversight the deed described the property as commencing at a point on the east line of section 7, instead of "Sixteenth Street (formerly called Farnham Street), in the said City of Des Moines," and then states:

> "Now, Therefore, Be It Resolved, that for the purpose of correcting such error and carrying out the purpose and intent of this Company to convey to the said Chicago, Milwaukee & St. Paul Railway Company its *entire* property as aforesaid, the President and Secretary of this Company be required and directed to execute and deliver to the Chicago, Milwaukee & St. Paul Railway Company, a deed in due form of law, of that part of the said tracks and right of way omitted as aforesaid, to-wit: That part of said tracks, right of way and fixtures between the said Sixteenth Street (formerly called Farnham Street) and the said Western Avenue or Twenty-eighth Street, inclusive, in the said City of Des Moines."

In pursuance of this resolution a correction deed was executed, delivered and recorded (ex. 76, vol. II, p. 680).

If the complainants, as successors of the three railroads parties to the contract of January 2, 1882, are the real owners of the terminal property, and the title thereto is simply held by the defendant company in trust, or if they have an easement in the property which entitles them to the use and occupation thereof in perpetuity for railway purposes, or any other interest therein except as represented by the capital stock in the defendant company owned by them, it is singular that no such thought is contained in the deeds by which the property was transferred to the terminal company, and it is singular that in the various transfers and mortgages of these properties through which complainants trace their title, no reference is made to such an interest in the terminal property, and it is singular that wherever in these transfers or mortgages any reference is made to their interest in the terminal property, it is always referred to as that of owners of the capital stock in the defendant company.

The necessary and legitimate inference is that from May 1, 1888, up to the time of the commencement of this suit, none of the parties suspected that the defendant company did not have an absolute title to this property. The various parties to these transactions were the ablest lawyers and shredwest business men among those who for many years had carried on the largest enterprises in the Middle West, and this record shows that during all these years in these various instruments thev have with the greatest care particularly described the properties in which these various companies have been interested, and all of them have been drawn upon the theory that the terminal property was the absolute property of the defendant company.

THE NEGOTIATIONS WITH RESPECT TO A RENEWAL OR EXTENSION OF THE TERMINAL CONTRACT OF MAY 10, 1889.

By the year 1896 there had come a change in the situation. The railroad companies, original parties to the contract of May 10th, 1889, were no longer operating the railways and were either dead or in a dying condition. Their successors, the Wabash Company and the Des Moines, Northern and Western, had come into the contract arrangement apparently as a matter of course, but some of the parties interested doubted that these companies were bound by the contract. This doubt somewhat discredited the bonds of the Des Moines Union Company on the market and as the Wabash was a holder of these bonds and wanted to dispose of them, it wanted that doubt removed.

So, on December 26, 1896, Mr. Ashley, as President of the Wabash, wrote to Mr. Hubbell, as Secretary of the Des Moines Union, as follows (Rec., vol. IV, p. 1673):

> "Permit me to remind you of our understanding to the effect that you would have prepared at once a new agreement for the tenant companies of the Des Moines Union Railway Co. to sign; this new agreement being considered necessary on account of the foreclosure of the Des Moines & Northwestern. I understand that the agreement will be exactly as before, except that the time must be made to correspond with the life of the bonds, or to be made for a period to extend beyond their maturity.
>
> I write now for the purpose of urging the immediate preparation of this agreement, as without it we cannot well dispose of our bonds. When it is ready pleace forward it to Colonel Blodgett, asking him to examine the same and to send it to me

as soon as possible. I should not suppose it would take long to have the agreement prepared and as time in this case is of importance I hope you will see that the paper is gotten under way at once. Perhaps you have already taken the matter in hand and if so, so much the better."

Mr. Hubbell took up the matter at once with Mr. Cummins, who in turn entered into corrsepondence with Colonel Blodgett. Various changes were proposed and discussed upon the one side and the other, and the outcome was the contract of July 31st, 1897, called the Ratification Agreement (Rec., vol. II, p. 506).

This, it will be seen, followed substantially the suggestion of Mr. Ashey that "the agreement will be exactly as before."

The agreement recites the contract of 1889 and annexes a copy. It notes the passing from the scene of the old railroad companies and that the successor companies had both been using the terminal property and had recognized the contract of 1889 as binding upon them and then proceeds:

"Whereas, it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines, Northern & Western Company;

"Now, Therefore, in consideration of the premises and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named, that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Wabash Company and the Des Moines, Northern & Western Company."

There follow stipulations, first by the Wabash and then by the Des Moines, Northern and Western, that the Company will make the payments provided with respect to its railroad, and that when it ceases to operate its road, its obligation under the contract shall cease and pass to its successor company.

It was aso provided that so much of the contract of 1889 "as relates to the issuance and distribution of the capital stock of the said Des Moines Company (the terminal) is no longer binding, and that the capital stock of the said Des Moines Company is as follows:

The Purchasing Committee of the Wabash, St. Louis and Pacific Railway Company	500 shares,
The Des Moines, Northern and Western Railroad Company	1,000 shares,
F. M. Hubbell & Sons	2,500 shares."

There follows a statement of a few qualifying shares for directors which we need not consider.

This agreement was made at the instance of the Wabash Company and it was a party thereto, and the Des Moines, Northern and Western, predecessor of the Milwaukee, and on whose Board of Directors the Milwaukee then had three members, was also a party, and as we shall show, the Milwaukee must have known and did know all about the Ratification Agreement and hence of the agreement of 1889.

And here again the ownership of the terminal property of the Des Moines Union and the relation of the other companies to it as tenants were fully recognized.

It will be remembered that in 1898 the Milwaukee Company acquired all the outstanding stock and bonds of the Des Moines, Northern & Western Railroad

Company. A portion of this stock and bonds was purchased of the defendant, F. M. Hubbell & Son (exs. 413, 414, vol. IV. pp. 1759-90). According to these letters, the sale of these bonds and stock was to be closed up on the 6th of December, 1898. On December 2, 1898, Mr. Miller, President of the Chicago, Milwaukee & St. Paul Railway Company, wrote to Mr. Hubbell the following letter (ex. 418, vol. IV, p. 1765):

> "I observe that the contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company is only for 20 years. I think it should be for 50 years. Have you any objection to extending it for so long?"

In carrying out the agreement to sell to the Milwaukee these bonds and stocks, Mr. Miller met Mr. Hubbell in New York, December, 1898, and there requested Mr. Hubbell to agree that the defendant company would extend to the Des Moines, Northern & Western the operating contract of May 10, 1889, for 100 years (testimony of F. M. Hubbell, vol. III, pp. 1023-4). With respect to it, Mr. Hubbell testified (near the top of page 1024):

> "He was ready to buy our bonds and stock if I would write him a letter that the Des Moines, Northern & Western Railroad Co. should give him a contract with the Des Moines Union the same as the present contract for one hundred years. He pressed me hard to sign such a letter, I refused and told him that I would come back to Iowa and see if we could get him a contract extending the contract of July 31st, 1897."

This testimony of Mr. Hubbell's is corroborated by a letter which Mr. Hubbell on that day wrote to his brother-in-law, H. D. Thompson, and to his son, which appears as defendants' exhibit 421 (vol. IV, p. 1767).

As a result of this request on the part of Mr. Miller, a contract was prepared by Mr. Cummins, which appears as defendants' exhibit 430 (vol. IV, p. 1772). In this contract it was recited that the defendant company owned and operated the terminal company. This contract was submitted to Mr. Miller and to the general counsel of the Milwaukee Company, George R. Peck, but the same was never consummated because there were some provisions in the contract upon which they could not agree, but no question was ever raised as to the correctness of the recitations in the contract to the effect that the terminal property was owned by the defendant company.

From time to time thereafter attempts were made by the defendant company on the one hand, and the complainants on the other, to agree upon a new terminal contract, but they were unsuccessful, not because any question was ever raised about the absolute ownership of the terminal property by the defendant company, but because they were unable to agree upon the compensation which was to be paid by the complainants for the use of the terminal. (See vol. IV, exs. 454 (p. 1800); 455 (p. 1801); 456 and 457 (p. 1802); 458 and 459 (p. 1803); 460 (p. 1804); 466 and 467 (p. 1807); 468 (p. 1808); 471 (p. 1810); 479 (p. 1818); 480 (p. 1819); 481 (p. 1820); 484 (p. 1822); 485 (p. 1823); 486 and 487 (p. 1825); 488 (p. 1826); 492 (p. 1828); 493 (p. 1829); 494 (p. 1830); and 495 (p. 1832).)

In addition to this, the defendant company from time to time entered into contracts with other railway

companies, by which it agreed to furnish such other railway companies terminal services. These agreements are, one with the Chicago, St. Paul & Kansas City Railway Company (ex. 524, vol. IV, p. 1871), one with the Chicago Great Western Railway Company (ex. 526, vol. IV, p. 1879), one with the Iowa Central Railway Company (ex. 526a, vol. IV, p. 1894), one with the Chicago, Burlington & Quincy Railroad Company (ex. 527, vol. IV, p. 1901), one with the Des Moines, Iowa Falls & Northern Railway Company (ex. 528, vol. IV, p. 1911), and one with the Des Moines & Fort Dodge Railroad Company (ex. 529, vol. IV, p. 1920).

In each one of these contracts the terminal property is described as being owned by the defendant company, in almost the identical language that is used for that purpose in the contract of May 10, 1889, with the complainants' predecessors. Each one of these contracts was approved by directors of the defendant company who represented complainants and their predecessors upon the board of that company, because the articles of incorporation of the defendant company provide that no such contracts can be made unless they are approved by the unanimous vote of the board of directors. In fact, no question was ever raised after May 1, 1888, up to the time of the commencement of this suit in 1907, with respect to the ownership of this property by the defendant. It is impossible to find a single word in this record to show that complainants or their predecessors at any time between those two dates ever claimed to have any interest in the terminal property of any kind or character, except the interest which is represented by the stock which they hold, and the record is full of contracts, deeds, resolutions, letters and other transactions recognizing the ownership

of the defendant by the plaintiffs and their predecessors.

So far we have discussed this case for the purpose of ascertaining the intent of the parties by the transactions which resulted in the transfer of the title, ownership and possession of the terminal property to the defendant company in the year 1888. We will now go to another phase of the case, but in doing so we do not wish to be understood as thinking we have at all exhausted the subject of intent. To exhaust this subject we would have to refer to every item of evidence contained in this long record, because there isn't a thing in the record from the time of the original inception of the terminal company down to the bringing of this suit, which does not evidence the intent to give to the defendant company a perfect title to the property. The things to which we will call attention in subsequent divisions of our argument will all bear upon the question of intent, as well as upon other phases of the case which we will discuss.

II.

THE AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE DES MOINES UNION RAILWAY COMPANY ENACTED APRIL 8, 1890, AND THE RESOLUTION PASSED BY THE STOCKHOLDERS AT THAT MEETING.

Brief reference has heretofore been made to these amendments and resolutions, and the court no doubt understands in a general way their nature. It will be remembered that of those who were present at this meeting, James F. How, Vice-President of the Wabash Company, Charles M. Hays, General Manager of the

Wabash Company, and F. M. Hubbell, Secretary of the defendant company, were active in the transactions of 1884, 1887 and 1888, in which the title and ownership of the terminal property were transferred to the defendant, and knew what was thereby intended; and these amendments and the resolutions clearly show that it was understood by these persons and the others who were present at the meeting, that it was intended by the transactions heretofore referred to, to vest in the defendant company an absolute title to the property. But upon this phase of the situation we need not enlarge at this time.

If the court, in view of the facts to which we have heretofore called its attention, believes that the result of the transactions which culminated in the surrender of the property to the defendant company on May 1, 1888, was to vest in the terminal company a good title to the property, the amendments to the articles of incorporation above referred to are not of great importance, but if there is any lingering doubt in the mind of the court as to the nature of defendant's title, then a consideration of these articles and resolutions becomes important for the reasons which we will hereafter point out.

It is the claim of complainants, as we understand it, that notwithstanding the fact that the defendant company was organized as a corporation for pecuniary profit for the purpose of acquiring, owning and operating the terminal property, and notwithstanding the fact that by the resolutions of 1884 the three railway companies who, plaintiffs claim, were the beneficial owners of the property, authorized the transfer of the ownership thereof to the defendant company, and notwithstanding the fact that the resolutions of 1887 author-

ized the trustees to transfer the property to defendant without any reservations, upon being paid the agreed purchase price therefor, and notwithstanding the fact that the Des Moines & St. Louis Railroad Company executed and delivered to the defendant company a warranty deed to the property, and notwithstanding the fact that the St. Louis, Des Moines & Northern Railway Company executed and delivered to the defendant company an absolute deed to the property without reservations, and notwithstanding the fact that How and Dodge executed deeds to that portion of the property standing in their names, without any reservations, and notwithstanding the fact that the defendant paid to the parties entitled thereto the purchase price agreed upon, and notwithstanding the fact that from May 1, 1888, down to the commencement of this suit, every person and corporation connected with the transaction treated the property as the absolute property of the defendant company; yet by reason of the fact that there was incorporated as a recitation in the original articles of incorporation of the defendant company a copy of the contract of January 2, 1882, and an attempt made in articles 2 and 4 of defendants' articles of incorporation to limit the power of the defendant to alienate the property, and by reason of certain references to the contract of January 2, 1882, in the resolutions of 1887, the defendant company acquired the title to the property in trust only and for the benefit of complainants' predecessors, or acquired the title subject to an easement in favor of complainants' predecessors to use the property in perpetuity for terminal purposes.

Our answer to this contention is, if there is any question about the effect of the transactions resulting in the transfer of the property to the defendant company in

1888, that question was forever set at rest by the action of the stockholders of April 8, 1890. In other words, the effect of this action was to quiet the title to the property in the defendant company, if theretofore there was any question about the title.

For the convenience of the court, we here set out in parallel columns the sections of the original articles of incorporation upon which complainants base their claim, and the corresponding articles as amended on April 8, 1890 (vol. II, p. 489), also sections ratifying the purchase of the terminal property, and the section striking from the original articles of incorporation the contract of January 2, 1882:

ORIGINAL.	AMENDED.
"Article 2.	"Article 2.
The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight-houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Ia., as well as the transfer of cars from the line or depot of one railway to an-	The object of the corporation and the general nature of the business to be transacted shall be the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of

other, or from the various manufactories, warehouses, store-houses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter I, of Title IX, of the Code, and the amendments thereto. All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, Trustee, and Grenville M. Dodge. The said Company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company—provided that the railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators or other source of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines, and also to lease terminal facilities to and furnish and perform terminal services for all railways whose lines reach or pass through or near the said City of Des Moines, and the corporation shall possess all the power conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

assent in writing of the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

Article 3.

The capital stock of this corporation shall be One Million ($1,000,000.00) Dollars, which shall be divided into shares of one hundred ($100.00) Dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge.

Article 3.

The capital stock of the corporation shall be two million dollars ($2,000,000.00) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds theretofore issued for that purpose constituting the fair value of said property when so acquired; and all resolutions and proceedings of

the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught.

Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions:

Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company, and the present owner of the property known as the Des Moines & St. Louis Railroad.

One thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and

One thousand shares to the Des Moines & Northern Railway Company succesor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the

aforesaid property. The remaining capital stock, to-wit; sixteen thousand shares, or any part thereof, shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued and shall be fully paid either in money or property at its fair market value, before certificates thereof shall be executed and delivered.

The stock shall be transferable only on the books of the Company by and with the consent of three-fourths of all the Directors except in case the transferee of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

Article 4.

The affairs of the Company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of

Article 4.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons, who shall be elected by the stockhold-

each year. The provisional Board of Directors, who shall hold office until the first Thursday in January, A. D. 1886, shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the Stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive.

The provision herein with respect to nomination for the Board of Directors shall apply to and be enjoyed by any ers at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday of January of each year, and they shall hold their offices for one year and until their successors are elected and qualified, but at all future elections of Directors, it shall require the votes of more than seven-eighths of all the stock theretofore issued to elect any director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contract, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings and to do all such other things as may be proper or necessary for the corporation to do, but with respect to the matters above mentioned and all other matters except the ordinary operation of the property, the Board of Directors can act only upon the unanimous vote of the eight members thereof, and in order to facilitate the transaction of business,

grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided.

The Directors shall elect, from their number, a President, Vice President, Secretary and power is expressly conferred upon each of the Directors to delegate by written authority, some other person to act or vote for him, and in his stead.

Provided that such authority shall be filed with the Secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an Executive Committee, but such selection must be made by the vote of at least seven members. The duties and powers of such Committee shall be defined in the By-Laws.

The Board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must be elected and such by-laws enacted by the unanimous vote of the eight members of the Board. All vacancies occurring in the Board shall be filled by the stockholders at a special meeting in the manner heretofore provided for the election of Directors.

Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

Article 14, as adopted April 8, 1890, is as follows:

"Article 14.

The purchase of the property heretofore conveyed to the corporation, the conveyance made in pursuance thereof, the execution of Trust Mortgage to the Central Trust Company of New York, dated February 28th, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 196 at page 525 and the issuance of bonds secured by the same are hereby approved, ratified and confirmed."

Article 15, as adopted April 8, 1890, is as follows:

"Article 15.

The proceedings of a meeting held December 10, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged."

As we understand it, it is the claim of complainants that these amendments were invalid and ineffective, for the following reasons:

1. Because at this time (April 8, 1890), no certificates of shares of stock had been actually issued by the defendant company, and therefore there were no stockholders who could amend the articles.

2. Because the persons who were present at the meeting and purported to represent the complainants' predecessors, had no authority to act for them.

3. That the amendment to the articles of incorporation and the passage of the resolutions referred to were the acts of the defendant company, and that such action by the defendant company could not affect any interest which complainants' predecessors had in the property.

4. That the published notice of the amendment of the articles is insufficient as to Article II. This objection is made for the first time in this Court.

Our contention is as follows:

(a) The stockholders were the persons and corporations who were entitled to the stock of the defendant company under the articles of incorporation and contracts by which the defendant acquired title to the terminal property and the persons who were representing them. The issue of the actual certificates of shares of stock was not necessary in order to constitute them stockholders.

(b) The stockholders had both actual and constructive notice of the meeting and the purpose thereof. The presumption is that the stockholders were lawfully represented at the meeting, and the evidence fails to overcome this presumption.

(c) That the adoption of the amendments and the resolutions were acts of the stockholders (acts of complainants' predecessors) as distinguished from the acts of the defendant corporation, and the plaintiffs and their predecessors were bound thereby.

(d) These amendments to the articles were properly signed, acknowledged and recorded and notice thereof was given as required by the Iowa statute. The complainants and their predecessors had both actual and constructive notice thereof. They carried on the business of the defendant corporation under these amendments for the period of seventeen years before the commencement of this suit, and are now estopped by their laches to raise the question of the validity of these amendments.

(e) The complainants acquired the stock which they hold in the defendant company long after the adoption of these amendments and the resoution referred to, and cannot now raise any question as to their validity.

(f) The adoption of these amendments and this resolution, and the acquiescence of the plaintiffs and their predecessors therein and the continuous conduct by them of the business of the corporation in accordance therewith for the period of seventeen years, is one of the strong grounds of estoppel urged by the defendants, the Hubbels, as against the complainants' right to a decree which would destroy the value of the 2,500 shares of stock which they own in the defendant company.

(g.) The published notice of the amendments was sufficient in every respect and in any event the amendments made are good as between the parties.

We will consider these grounds in their order:

(a) AS BETWEEN THE STOCKHOLDERS AND THE CORPORATION, THE ISSUANCE OF A CERTIFICATE OF STOCK IS NOT NECESSARY.

The general rule laid down by

Thompson on Corporations, 2d Ed., Vol. 4, § 3455,

is as follows:

"Sec. 3455. *Certificate merely a muniment of title*—Broadly speaking, a share certificate is merely the paper representative of an incorporeal right of a stockholder. It is nothing more than the symbol or paper evidence of a proprietary right. It stands on a footing similar to other muniments of title. In other words, the act of subscribing for the shares gives title to the subscriber, and the certificate neither constitutes nor is necessary to it; it is only evidence of title. The certificate transfers nothing from the corporation to the stockholder, but only affords him the evidence of his rights. • • • An original proprietor and subscriber for shares, having paid his installments thereon, has a complete title, though there has been no formal entry in the books of the corporation passing the stock to his credit. • • •"

"Sec. 3507. *Issuance of certificate not necessary to constitute relation of stockholder*—While a contract and an intention to assume the relation is necessary to make one a stockholder, the rule is that a certificate is not required to constitute this relation. It has been expressly held that, 'it is not essential that a certificate should have issued in order to create the relation of stockholder, provided a contract to take stock has been duly made, or provided the rights, privileges and emol-

uments of a stockholder had been enjoyed, with the consent of the corporation.' The certificate is not in itself property, but is merely the symbol or paper evidence of property, and the proprietary right may exist without the certificate. A person may acquire the rights and incur the liabilities of a shareholder, both to the corporation and to its creditors, although no certificate has in fact been issued. In other words, one who has subscribed for stock and fulfilled the annexed conditions, or one to whom stock has been apportioned, has all the rights of a stockholder, though no certificate has been issued to him. It follows that a subscription cannot be rescinded on the ground that certificates had not been isued to the subscriber. Among other things he may vote at corporate elections, and hold corporate offices. He has the power to transfer his stock, and to receive dividends, and is liable to assessment on his shares, and to creditors for the debts of the corporation to the same extent as though certificates had been issued to him. * * * The isuance of a certificate to a person and his receipe of the same raises the presumption that he owns the share."

This is the rule in Iowa.

First Nat. Bank v. Gifford, 47 Iowa 583.

"The former owner of the stock, Mr. Oehe, delivered the certificate held by him to Porter, and the stock was assigned by the former to the latter by means of what is termed a transfer ticket, and an entry thereof was made in the transfer book of the bank. No certificate was ever issued to Porter, and the Oehs certificate was cancelled, or at least the defendant does not claim that it was ever assigned to him.

It is useless to consider what would be the rights of the defendant if a certificate had been executed

to Porter, and by him assigned to the defendant, and no transfer entered on the books of the bank, for no such state of facts is presented by the finding.

As between Porter and the corporation, he was the undoubted owned of the stock. No certificate was required to perfect his title. It mattered not whether one ever was issued. He being the owner, and the bank not chargeable with notice of defendant's rights, Porter had the right to sell and transfer said stock, and the bank was bound to recognize his transferee as owner. Whatever title Porter had was obtained by Smith and Whitaker.

It seems to us that the transfer on the books of the bank was sufficient to make Porter's title full and complete. A stock certificate would be only additional evidence of his title, but it was by no means essential."

Morrow v. Gould, 145 Iowa, 4.

"It follows from the foregoing definitions that shares of stock represent an interest in the earnings and property of the corporation and that a certificate is not stock itself but only a convenient representation of it for one may be a stockholder without having a certificate issued to him."

In *Pendery v. Carleton*, 87 Fed. 41,

the rule is laid down by Thayer, Circuit Judge, as stated in the syllabus, as follows:

"A mining company contracted with complainant for the purchase of his interest in certain mining property, in consideration of a certain proportion of its capital stock, which stock, however, was never issued to him. Later, the board of directors, in good faith, order a sale of all the company's stock to pay the expenses of development, and pur-

chased it themselves, but without taking undue advantage of any other interested parties. Finally, the property, proving of little or no value for mining purposes, was sold—the sale being an advantageous one—and the proceeds divided among themselves by the directors, who believed themselves to be the only shareholders. On suit against the directors for an accounting, held, that complainant was the equitable owner of the agreed amount of stock, and was entitled to such proportion of the net proceeds of the sale as his stock bore to the total capital of the company, and no more, with interest from the date of filing the amended bill asking for such accounting."

This Court, in *Hawley v. Upton*, 102 U. S. 316, said:

"It cannot be doubted that one who has become bound as a subscriber to the capital stock of a corporation must pay his subscription if required to meet the obligations of the corporation. A certificate in his favor for the stock is not necessary to make him a subscriber. All that need be done, so far as creditors are concerned, is that the subscriber shall have bound himself to become a contributor to the fund which the capital stock of the corporation represents. If such an obligation exists, the courts can enforce the contribution when required. After having bound himself to contribute, he cannot be discharged from the obligation he has assumed until the contribution has actually been made, or the obligation in some lawful way extinguished. These are elementary principles."

And in *Jellenik v. Huron Copper Mining Co.*, 177 U. S, the Court said, l. c. 13:

"The certificates are only evidence of the ownership of the shares, and the interest represented by the owner."

Applying the rule to this case, the St. Louis Des Moines & Northern Railway Company, the Des Moines & St. Louis Railroad Company and the Des Moines Northwestern Railway Company, by virtue of certain resolutions passed by the boards of directors of those companies and certain notices served on the Des Moines Union Railway Company in November, 1887 (exs. 11, 12, 13, 14 and 15, vol. II, pp. 435-443 incl.), became subscribers to the capital stock of the Des Moines Union Railway Company. The Des Moines Union Railway Company accepted these subscriptions by virtue of the action of its board of directors on November 8, 1887 (ex. 102, vol. II, p. 259). The three subscribers for this capital stock caused the same to be paid for by the execution of deeds (exs. 17, 18, 19, 20, 21 and 22, vol. II, pp. 446-59 incl.) and thereafter they, or their successors, were stockholders in the Des Moines Union Railway Company, although no certificates were actually issued until April 8, 1890.

It will be noted that the resolution of the Des Moines & St. Louis Railroad Company (ex. 12, vol. II, p. 437) authorized its proportion of the stock to be issued to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company.

While this resolution of the Des Moines & St. Louis Railroad Company may not of itself have bound the Purchasing Committee as stockholders, yet this action was ratified by the Purchasing Committee by selling and transferring a portion of the stock and accepting the issuance of the stock at the time it was issued in April, 1890.

And from the day of the incorporation of the company down to the last day to which this record recites

they and their successors acted consistently as the stockholders of the company.

(B) **THE STOCKHOLDERS HAD BOTH ACTUAL AND CONSTRUCTIVE NOTICE OF THE MEETING AND THE PURPOSES THEREOF. THE PRESUMPTION IS THAT THE STOCKHOLDERS WERE LAWFULLY REPRESENTED AT THE MEETING, AND THE EVIDENCE FAILS TO OVERCOME THIS PRESUMPTION.**

It was provided in the original artices of incorporation of the defendant company as follows (vol. II, p. 422):

"Article 9.

> These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation—published in the City of Des Moines, Iowa."

By the provisions of article 4 (p. 421), the annual meeting of the stockholders was fixed on the first Thurday of January of each year. At the annual meeting of the stockholders, held on January 3, 1890 (ex. 107, vol. IV, p. 1305), The Wabash Railroad Company and the Des Moines & St. Louis Railroad Company were present in the manner pointed out by the articles of incorporation, and nominated directors to represent those companies as provided by said articles.

Likewise, the Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company were present and nominated directors representing those companies (p. 1306). At this meeting the following resolution was adopted (p. 1307):

> "James F. How moved that the question of amending the Articles of Incorporation of this Company as well as the question concerning the issuing of stock for the *purchase price* of the terminal property be referred to Attorneys W. H. Blodgett & A. B. Cummins for their investigation and recommendation."

The meeting then adjourned to the 18th day of February, 1890. At this adjourned meeting on February 18, 1890, there were present in person F. M. Hubbell, L. M. Martin, F. C. Hubbell and A. B. Cummins, and by proxy G. M. Dodge, J. F. How, C. M. Hays and W. H. Blodgett. At this meeting the following record was made (ex. 109, vol. IV, p. 1311):

> "The secretary reported that notice of the meeting had been duly published and also reported that he had, pursuant to the articles of incorporation, notified each stockholder of the time, place and object of this meeting, which notice contained the amendments proposed to be offered to the articles of incorporation.
>
> Upon motion of A. B. Cummins the report of the Secretary was adopted and this meeting declared to be duly and legally called, for the purpose of considering and adopting or rejecting amendments to the Articles of Incorporation.
>
> Thereupon A. B. Cummins presented certain amendments to the Articles of Incorporation.
>
> Thereupon F. M. Hubbell moved that the meeting of stockholders do now adjourn for the pur-

pose of having further opportunity to examine said amendments, to meet on Tuesday, the 8th day of April, 1890, at ten o'clock a. m., which motion being seconded, was unanimously carried and thereupon the meeting of stockholders adjourned to meet as aforesaid."

The record of the second adjourned meeting of the stockholders of the defendant company, held on April 8, 1890, appears as plaintiff's exhibit 28 (commencing on p. 488, vol. II). A portion of said record is as follows (p. 489):

"There were present in person:

J. F. How,	representing One Share
C. M. Hays,	representing One Share
F. M. Hubbell,	representing One Share
L. M. Martin,	representing One Share
F. C. Hubbell,	representing One Share
A. B. Cummins,	representing One Share

There were present by proxy:

G. M. Dodge, by L. M. Martin, representing One Share.

W. H. Blodgett, by J. F. How, representing One Share.

There were also present the Des Moines & Northwestern Railway Company, successors to the Des Moines Northwestern Railway Company, by F. M. Hubbell, President.

The Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, by A. B. Cummins, Vice-President.

The Des Moines & St. Louis Railroad Company by J. F. How, President.

J. F. How, President, presiding.

Thereupon, by an examination of the records and the books of the Company, it was determined that all the stockholders of said Company were

present either in person or by proxy duly filed with the Secretary of the Company."

The rule of law with reference to the presumptions indulged in favor of the recitations contained in a corporate record is so well settled that we do not need here to do more than call to the attention of the court the authorities cited in that portion of our brief devoted to this subject. Applying that rule to this record, it appears:

1. That this meeting was duly and legally called.

2. That due and legal notice of the proposal to amend the articles of incorporation of the defendant company, as the same appear to have been amended at this meeting, was given to all the stockholders of the company.

3. That all of the stockholders of the defendant company were present or represented at this meeting.

4. That the articles were amended as provided by the resolution passed at that meeting, and the officers and directors of the corporation were duly authorized to execute said amendments and give notice thereof as provided by the statutes of Iowa.

Other facts bearing upon the regularity of this meeting and the notice and knowledge of the stockholders with respect thereto, and the carrying out of the resolutions by the proper execution and filing of said amendments, will be referred to in the division of our brief relating to the acts of the parties under said amendments.

THE ADOPTION OF THE AMENDMENTS AND RESOLUTIONS WERE ACTS OF THE STOCKHOLDERS (ACTS OF COMPLAINANTS' PREDECESSORS), AS DISTINGUISHED FROM THE ACTS OF THE DEFENDANT CORPORATION, AND THE COMPLAINANTS AND THEIR PREDECESSORS WERE BOUND THEREBY.

It is the claim of petitioners, as we understand it, that even assuming the meeting of April 8, 1890, was properly called and organized, and that all the stockholders were present and represented, yet the act of amending the articles of incorporation was the act of the defendant corporation, and that the defendant could not thereby change the relations they claim theretofore existed between their predecessors and the defendant company with respect to the property in question; that is, they say that by reason of the transactions which resulted in transferring the property in question to the defendant, the title of the defendant was merely that of a trustee for the benefit of their predecessors, who were the beneficial owners, and the defendant could not by this action affect the interest of *cestuis que trustent*.

The error in complainants' theory grows out of a misconception of the function and effect of the adoption of the amendments to the articles of incorporation and the failure to distinguish between the effect of the action of a corporation and the action of its stockholders. It is true, of course, that a corporation cannot by its own action affect its relations or contracts with third parties without the consent of such third parties, except in so far as such action may be urged by way of estoppel. But the acts of the stockholders of April 8,

1890, were not the corporate acts of the defendant company within the meaning of this rule. They were rather the acts of complainants' predecessors, who were the stockholders in defendant company and who, the complainants claim, owned the beneficial interest in the property. This thought must be perfectly clear when we come to consider the nature of articles of incorporation and the transactions of stockholders of a corporation.

When two or more persons get together to organize a corporation under the laws of Iowa, the act of such persons is their individual act and not at all the act of the corporation about to be organized. By adopting their articles they make a contract between themselves and between the corporation and themselves, and between the corporation and the state. In making this contract they reserve the power to amend these articles of incorporation; that is, they reserve the power to change the terms of this contract at their own volition and without consulting the corporate entity, and when they meet, as provided by the terms of their contract, and change the contract by amending the articles, such act is of their own volition and without consulting the corporate entity.

The rule with relation to the nature of articles of incorporation is laid down in

Thompson on Corporations (2d Ed.), Vol. 1, sec. 172,

as follows:

"Articles of association on the one hand may be said to constitute the contract of association between the stockholders, at the same time defining

the character and extent of the business in which the corporation shall engage, while on the other hand the general laws constitute the grant from the state, to those organizing the corporation, of the franchise or right of organizing the corporation and accomplishing the purposes agreed upon."

Again, the same authority, in section 312, lays down the rule:

"It is now universally conceded that the charter of a corporation is a contract. It is also very generally conceded that the charter is a contract in different aspects: (a) it is a contract between the state and the corporation; (b) between the state and the stockholders; (c) between the corporation and the stockholders; (d) between the state and third persons who have dealt with the corporation on the faith of the terms of the grant; (e) between the stockholders themselves."

In the case of

Jones v. Electric Co., 144 Fed. 756 (C. C. A.),

Judge Sanborn lays down the rule as follows (p. 770):

"The relation of a stockholder to his corporation, to its officers and to his co-stockholders is one of contract and of confidence. By the acceptance of his shares of stock, he agrees to assume the liability and to discharge the duties imposed upon a stockholder by the law. The statutes, charter and the by-laws of the corporation, as well as the settled law of the land at the time he takes his stock are read into and become a part of his agreement. The provision of the statutes of Missouri that a manufacturing corporation might be consolidated with another corporation whose objects and business were of the same nature upon the consent of

three-fifths of the owners of its stock was a part of the agreement of the complainant and a consolidation made by the officers and owners of the requisite amount of the stock of his corporation by the faithful exercise of the powers thus granted was neither void in itself nor voidable at his option because it was but the performance of the agreement which he made with them."

The Supreme Court of Iowa, in the case of

Heald v. Owen, 79 Iowa 25,

lays down the rule:

"The articles of incorporation were adopted long before the indebtedness to the bank was contracted and the rights of the parties, as between themselves, were fixed by the articles of incorporation, at least from the time they were adopted by the association. The articles of incorporation were not recorded as required by section 1060 of the code and it is claimed that for this reason the stockholders are liable for the debts of the association. It is averred by the appellants that the articles of incorporation are of no validity whatever, but it is to be remembered that this is an action between stockholders. Their contractual relations as between themselves are to be found in what they adopted as their agreement. It was in writing and denominated 'articles of incorporation' and either signed or adopted by the stockholders."

Again the same court, in the case of

Traer v. Lucas Prospecting Co., 124 Iowa 112,

said:

"When a person becomes a shareholder in a corporation he assents to the transaction of the business expressly or impliedly authorized by its char-

ter and, therefore, if the charter authorizes the sale or other disposition of all of its property, he cannot complain."

Applying this rule to the case at bar, when the plaintiffs' predecessors organized the defendant, the Des Moines Union Railway Company, they entered into a contract between themselves, as well as with the corporation and with the state. By the terms of this contract the stockholders reserved the power to change the contract by means of changing the articles of incorporation in the manner pointed out in the articles themselves. By the act of the stockholders' meeting of April 8, 1890, the stockholders exercised this power to change the terms of this contract. They had the right to change the contract as between the stockholders themselves, as well as between the stockholders and the corporation, so long as such action did not conflict with any statutory provision of the state, and they had the right to do this without consulting the corporate entity, because such was the right obtained by the provisions of the original articles. The stockholders were bound by whatever changes they made in this contract, and by these changes in the contract they changed their existing relations with the corporation. It seems to us that the soundness of this proposition cannot be questioned.

Therefore, when they struck out article 2 of the original articles and adopted a new article 2, as shown by the record, they abandoned all that part of the original article 2 that was not contained in the substituted article, and therefore abandoned any claim with respect to the contract of January 2, 1882, which might have been made under the article as originally adopted; and by the adoption of articles 3 and 4 in place of the orig-

inal articles numbered the same, they abandoned any right to control the alienation of the property in controversy as provided in the original articles, and adopted a method of controlling the defendant corporation which consisted in requiring the election of directors to be made by a more than seven-eighths vote of the outstanding stock, and requiring that all major action of the board should be by unanimous vote; and by the adoption of articles 14 and 15 they ratified the purchase by the defendant of the property in controversy and abandoned any and all claims which could be made under the contract of January 2, 1882.

By the adoption of the resolutions appearing on pages 494 to 496 of volume II, these stockholders (complainants' predecessors) declared:

1. That the original agreement between them and the defendant corporation was that the defendant purchased the property in controversy "including the franchises incident thereto," at its fair value, payable partly in first mortgage bonds and partly in capital stock of the company.

2. That these bonds had been issued and received by the persons entitled thereto.

3. That there still remained to be paid the sum of $400,000.00 upon said purchase price, which sum was to be paid in the capital stock of the defendant company.

4. They determined who was entitled to receive such capital stock.

5. That the articles of incorporation had been amended to conform to the true intent of the several parties.

6. They authorized the issuance of the capital stock which was to be issued as a part of the purchase price.

7. They modified and amended all prior proceedings so as to comply with the action at that time taken by the stockholders.

This action, as we have stated, was the action of the stockholders, the plaintiffs' predecessors. They had the right to make this contract changing the terms of the prior contract, and they had the right to do it without the assent of the defendant corporation, because they had reserved that right in the original contract. There was an adequate consideration for it and as we will hereafter show, they have ever since acted in pursuance of the amended contract (the amended articles of incorporation).

THESE AMENDMENTS TO THE ARTICLES WERE PROPERLY SIGNED, ACKNOWLEDGED, RECORDED, AND NOTICE THEREOF WAS GIVEN AS REQUIRED BY THE IOWA STATUTE. THE COMPLAINANTS AND THEIR PREDECESSORS HAD BOTH ACTUAL AND CONSTRUCTIVE NOTICE THEREOF. THEY CARRIED ON THE BUSINESS OF THE DEFENDANT CORPORATION UNDER THESE AMENDMENTS FOR THE PERIOD OF SEVENTEEN YEARS BEFORE THE COMMENCEMENT OF THIS SUIT, AND ARE NOW ESTOPPED BY THEIR LACHES TO RAISE THE QUESTION OF THE VALIDITY OF THESE AMENDMENTS.

We have already called to the attention of the court the corporate record in relation to these amendments,

and we will here content ourselves with referring to some of the evidence there is in the record showing both actual and constructive knowledge with respect to these amendments outside of the corporate record itself.

It will be remembered that at the annual meeting of the defendant company in January, 1890, the subject of the amendments was referred to Colonel Blodgett and to Mr. A. B. Cummins. The testimony of Mr. Cummins will be found commencing on page 1203 of volume III. The substance of his testimony on this subject is as follows (commencing p. 1206):

> "I never heard any suggestion from anybody connected with the property or the proceedings, that the Des Moines Union Railway Company was not the owner of the property referred to. This, however, does not cover the suggestions that I myself made to persons who were interested in these companies concerning the title to the property at the time I was engaged in preparing certain amendments to the articles of incorporation, and before that time. My answer is intended only to relate to suggestions made by other persons with whom I was connected, than myself.
>
> The suggestions I made began very soon after I became the counsel for the Des Moines Union Railway Company, and while I cannot recall the dates or places, I know that I made them at the meetings of the directors, meetings of the stockholders, and individually to everybody who was connected with the Des Moines Union Railway Company, or those companies which were then called the tenant companies. In order to answer the question intelligently, it seems to me it would be necessary for me to state the situation as I recall it, because that situation was the subject of repeated conferences and conversations with these

various representatives of these several companies.

In the first part of the year 1890, and before that but after I had become thoroughly familiar with the affairs of the Des Moines Union Railway Company, this is the way in which it was presented to me: First, as to the tenant companies, the Des Moines & St. Louis Railroad Company had practically passed out of existence. It was the owner of one-half of the capital stock of the Des Moines Union Railway Company at that time.

I am not pretending to repeat what I told the stockholders. I am stating the situation as it appeared then to me, and that situation I discussed with all the people connected with this company at various times, and it was that situation which led up to the proposition on my part to amend the articles of incorporation. I made that proposition, and the title to the property was one of the phases of the proposition. I have already said the Des Moines & St. Louis Railroad Company was practically out of existence. It was the nominal owner of one-half the capital stock in the Des Moines Union Railway Company, except as that title had passed to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company; and the original articles of incorporation specifically provided that certain interests were to nominate a certain number each of directors. The Des Moines & Northwestern Railway Company had purchased of the Purchasing Committee a one-fourth interest in the stock of the Des Moines Union Railway Company. It was in trouble, that is to say, it was finding great difficulty in making its revenue meet its expenses. Nobody knew what was ahead for that company. The St. Louis, Des Moines & Northern Railway Company was also the owner, from the beginning, as I remember it, of one-fourth interest in the stock of

the Des Moines Union Company; it likewise was on the verge of bankruptcy. It was impossible to predict with any certainty what would become of it or its interest in the Des Moines Union Company, and this situation presented, as I thought, a very serious question.

I knew at that time that negotiations were pending between Mr. Hubbell and the Purchasing Committee for the purchase of a part of the one-half of the capital stock then held by the Purchasing Committee. The Purchasing Committee seemed to be anxious to dispose of a portion of this stock, and looking forward to the conduct of the Company in the future, it seemed to me that readjustment of that phase of the articles of incorporation I have referred to was absolutely necessary. More than that, it was discussed among all these people, that, inasmuch as the project of the union depot had been brought into existence, it was hoped that all the railroads in Des Moines could be brought into these terminals; that it would be very wise to have it so arranged that each railroad that might come into the depot in the future might become the owner of one-eighth of the capital stock. I thought that hope or expectation could never be realized without an amendment to the articles of incorporation, as it is evident that it could not be. Moreover, the original articles provided for a capital stock of one million dollars, and as I understood these articles, that stock was to be issued as a part of the purchase price of the property. The articles had been subsequently amended so as to increase the capital stock to two million dollars, and in that amendment it was specifically provided that the board of directors might receive in payment for this stock the property which had theretofore been conveyed—speaking of theretofore, at the time I made these suggestions to the Des Moines Union Railway Company.

I was always somewhat opposed to issuing capital stock without consideration and I did not believe that the property was worth any such amount and that to issue it in that way would impose, if disaster should come, a liability upon its owners, and would frustrate in a measure the hope of getting into this Des Moines Union Railway Company as stockholders as many of the railroads entering Des Moines as could be brought in. This was the standpoint as viewed, I thought, by the stockholders; but from the standpoint of the Des Moines Union Railway Company the situation was even more complicated and unsatisfactory.

And now I come to the specific answer to the question that was put to me. The Des Moines Union Railway Company was ignoring entirely, as it seemed to me, both as to ownership and as to management, the contract out of which the Des Moines Union Railway Company grew, namely, the contract of 1882. It had abandoned the terms of the contract as to the title of the property and as to the method of operation and management.

I am testifying to the substance of what I told these people and told all of them. The Des Moines Union was ignoring the articles of incorporation which in themselves, as I thought then and said then, were inconsistent with the contract of January, 1882. I told them that the contract provided for a title of the property in trust for the three companies which had signed it and for the joint use and occupation limited by Farnham Street in the west part of the city, and the company was claiming to own and operate a property extending to the west border of the city, and in the contract the Des Moines & St. Louis Railway Company, the company that had really no active functions, was charged with certain management and control of the property, and the other companies were required to pay to it whatever sums they were

obliged to pay for the use of the property. And furthermore, the contract and the articles seemed to contemplate in certain very important matters that there should be a formal preliminary approval by three independent companies before it could take action.

The substance of it was that I said that in view of the original articles, in view of the conveyances that had been made to the Des Moines Union Railway Company of the property which was originally in the names of Gen. Dodge and Mr. How, both individually and as trustee, and possibly some in the name of one of these other companies, or both of them, and that the Des Moines Union Railway Company had paid in its bonds for the original outlay for this property and had provided in its articles for the issuance of capital stock for the remainder of the purchase price, if any, that it was imperative to clear up the title and get rid of any question of doubt respecting the ownership of the Des Moines Union Railway Company and its right to manage its own property. These were the reasons which led up to my suggestion that there ought to be an amendment to the articles of incorporation that would put this company beyond any question in the ownership and control of its property just as any other corporation would be, leaving the interests which had been created in favor of the Des Moines & St. Louis Railroad Company and the Des Moines Northern Railway Company and the St. Louis, Des Moines & Northern Railway Company to be represented by the stock as in the case of other corporations, and the only suggestion that I ever heard from anybody in all my connection with any of these companies regarding the title to the property was the suggestion that I made myself arising out of the circumstances that I have stated.

I prepared a draft of the amended articles of incorporation that were finally adopted April 8, 1890, and I wrote Col. Blodgett the letter of date January 22, 1890. (This is the letter in which Col. Blodgett is advised that the stockholders of the terminal company had referred the question of amendments to Col. Blodgett and Mr. Cummins. See volume III, p. 1210.)

Prior to April 8, 1890, the draft of the amended articles of incorporation as it was afterwards adopted, was submitted to Col. Blodgett as the representative of the legal department of the Wabash interests, and I had a conference with him about it, and possibly more than one. I also discussed the matter with Mr. Hays (p. 311). I also wrote to Gen. Dodge about it in a letter dated January 27, 1890. (This is a letter in which Gen. Dodge was sent a copy of the proposed amendments, and in which it is stated that Mr. Hubbell was at first disposed to oppose the amendments. See p. 1211.)

These amendments were not suggested by Mr. Hubbell. They were entirely my own suggestion and came about in the way that I have already related. With regard to Mr. Hubbell's opposition, my recollection is that Mr. Hubbell—conservative then as now, never disposed to move very rapidly into the future—was opposed to my proposition, as I thought, without any good reason (p. 1212).

So far as I know, every interest in the terminal property concurred in and was in favor of the adoption of the amended articles before the meeting was held at which they were adopted. I was not aware of any opposition at all at that time. In fact, I know that they had all consented to it. In connection with the proposed amendments I had prepared a resolution, or series of resolutions, carrying out my general proposition, which had been submitted to all, I believe, who were interested in

the matter and was understood to be a part of the thing to be done at the meeting just as we understood the amendments were to be adopted. I do not remember who suggested the exact amount of four hundred thousand dollars. I only know that I had suggested that it ought to be a great deal less amount than two million dollars and ought to be an amount that could fairly be said to represent, together with the bonds, the value of the Des Moines Union Railway Company property at the time the company was organized in 1884.

During the discussion that preceded this meeting and at this meeting there was no suggestion by anybody that the Des Moines Union Railway Company was not to acquire the absolute title for this property for which it was issuing this stock and these bonds. On the contrary, everybody there knew the very purpose, or one of the purposes, for adopting the amended articles of incorporation was to remove all doubt or any doubt on that subject and to abrogate the contract of 1882.

I prepared the preambles and resolutions at my own suggestion. I did it because it was the next step to be taken to clear up the matters that I was endeavoring to clear up in the amendment to the articles of incorporation. I recited that these people were present because they were present, and my understanding was that the eight directors and the three companies owned all of the capital stock of the Des Moines Union Railway Company. Neither of the Hubbells had anything to do with the preparation of the resolution, nor the incorporation of any part of it, unless it were to furnish me with the information that was necessary in order to draft it. I recall in this connection that between the time the resolution was passed for the preparation of amendments to the articles and this meeting to which you have just referred, the Purchasing Committee had sold a portion of the stock of the Des Moines Union Railway Company

to Mr. Hubbell and, as I remember it, a portion of it to General Dodge.

All of the persons who are recited to have been present upon that occasion had information from me with regard to the articles of incorporation, the amendments to the articles of incorporation and the resolution to which reference has been made, and in addition to those who were present, Col. Blodgett had information of these things from me, and General Dodge had information of these things from me, and my recollection is that Mr. Ashley also had information from me.

There was no attempt to conceal the transaction. On the other hand, as far as I was concerned, I made every possible effort that everybody connected with the whole matter should be fully and completely informed, and I drew the resolutions as specific as they are and as long as they are in order that there could be no possible controversy about it."

On cross examination Mr. Cummins testified on this subject (p. 1237):

> "I suggested that the articles of incorporation should be amended months before I knew that Mr. Hubbell was negotiating for any stock or that he had any idea of buying any part of the stock, as I now recall it."

There is no testimony to contradict that of Senator Cummins as to the manner in which the subject of the articles arose and the publicity of the matter, or as to the fact that everybody was consulted and thoroughly informed with respect thereto, but on the contrary all the evidence corroborates his testimony.

There are a few other significant facts shown by the record to corroborate the theory that the stockholders

and parties interested in the corporate affairs of the terminal company had proper notice of the proposed amendments to the articles of incorporation and consented thereto and acquiesced therein.

It will be noted that article 4 of the original articles of incorporation of the terminal company (exs. 5½ and 6, vol. II, p. 421), which provides for the election of directors, contained the following provisions:

> "Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.
>
> The fact that a candidate has been duly nominated shall be certified to the Stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive."

This is a very peculiar and unusual provision in relation to the election of directors. It appears that the first meeting of the stockholders of the terminal company for the purpose of electing directors, so far as is shown by the record, was on March 31, 1888 (ex. 26, vol. II, p. 476). At this meeting James F. How nominated four directors on behalf of the Wabash Company and the Des Moines & St. Louis Railroad Company and the Wabash Western Railway Company; F. M. Hubbell nominated directors on behalf of the Des Moines Northwestern Railway Company, and G. M. Dodge nominated directors on behalf of the St. Louis, Des Moines & Northern Railway Company. These directors so nominated were elected.

The next annual meeting of the stockholders of the terminal company was held on January 8, 1889, and a like proceeding was had; A. B. Cummins nominated four directors on behalf of the Wabash Company and the Wabash Western Railway Company; Mr. Hubbell nominated two directors on behalf of the Des Moines & Northwestern Railway Company, and L. M. Martin nominated two directors on behalf of the St. Louis, Des Moines & Northern Railway Company (ex. 106, vol. IV, p. 1304).

At the next annual meeting of the stockholders of the terminal company, held January 3, 1890 (ex. 107, vol. IV, p. 1305), a like proceeding was had.

We quote from the record as follows:

> "• • • J. F. How on behalf of the Wabash Railroad Company operating the Des Moines & St. Louis Railroad Company, nominated Jas. F. How, C. M. Hays, W. H. Blodgett and A. B. Cummins to be voted for as directors of the Des Moines Union Railway Company to represent the said Wabash Railroad Company, it having been certified to this meeting by the Secretary of the Wabash Railroad Company and Des Moines & St. Louis Railroad Company that the above named gentlemen had been duly nominated as candidates for directors in this Company on behalf of the Wabash Railroad Company, and the Des Moines & St. Louis Railroad Company."

A like record was made with respect to nominations by G. M. Dodge on behalf of the Des Moines & Northern Railway Company and by F. M. Hubbell on behalf of the Des Moines & Northwestern Railway Company.

It will, therefore, be noted that down to this time this peculiar method of nominating directors was followed.

The amendments to the articles of incorporation of the terminal company adopted April 8, 1890, changed the method of nominating directors and provided the usual method in that respect. (See article 4 of the amendments to the articles of incorporation, ex. 303, vol. IV, p. 1604.)

At the next annual meeting of the stockholders of the terminal company, held February 11, 1891 (ex. 115, vol. IV, p. 1318), no certificates of these various railroads were presented certifying the nomination for directors as was required by the original articles, but the various stockholders appeared in person or by proxy and the directors were elected as they are ordinarily elected at corporate meetings. At no time after the annual meeting, held on January 3, 1890, were any certificates of the secretaries of these railway companies presented certifying the nomination of directors as provided for in the original articles, but on the contrary at all meetings after that the ordinary and usual method was followed as provided in the amendments. The necessary conclusion from this is that all the railroads and all the stockholders knew of and acquiesced in and ratified the amendments to the articles of incorporation.

Again, as we have already shown, the Des Moines & St. Louis Railroad Company had authorized that portion of the stock that was coming to that company to be issued to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, which, upon acceptance of the stock, or acquiescence there in by the Purchasing Committee, constituted such Purchasing Committee stockholders in this company. It will be remem-

bered that prior to the adoption of these amendments to the articles, Mr. Hubbell and General Dodge had bought of the Purchasing Committee each one-eighth of the capital stock of the terminal company. One of the agreements in connection with this purchase (ex. 300, vol. IV, p. 1601), was that the articles of incorporation should be so amended as to permit one director of the terminal company to be nominated by any person or corporation holding one-eighth of the stock. At this time Colonel Blodgett was one of the directors nominated by the Wabash interests as representing it (ex. 107, vol. IV, p. 1306). At the conclusion of the meeting of April 8, 1890, at which the articles of incorporation were amended (ex. 28, vol. II, p. 496), the resignation of Colonel Blodgett as director was accepted and Mr. H. D. Thompson, a brother-in-law of Mr. Hubbell, was elected to fill his place. Undoubtedly this was done in pursuance of the agreement entered into with the Purchasing Committee, as heretofore stated, at the time it sold this stock to Mr. Hubbell and to General Dodge, and the necessary inference is that the Purchasing Committee was advised of this meeting, its purpose, and that the resignation of Colonel Blodgett was presented at the suggestion of such committee.

Again it is shown by complainants' testimony that Mr. How and Mr. Hays, both of whom were present at the meeting and voted for the adoption of these amendments, represented the Wabash interests, whatever they were (vol. II, p. 242).

Again it will be remembered that the authorized capital stock of the terminal company was $1,000,000.00, which was raised to $2,000,000.00 by an amendment adopted November 1, 1887 (vol. IV, p. 1298).

By the resolutions of January, 1885, and November, 1887, by which the transfer of the property to the terminal company was authorized, it was provided that as a part of the purchase price there should be issued all of the defendant's capital stock.

At a meeting of the board of directors of the Des Moines & St. Louis Railroad Company, held on April 8, 1890 (the same day on which the articles of the defendant company were amended), and at which were present James F. How, C. M. Hays, A. B. Cummins, F. M. Hubbell, H. S. Priest and George S. Grover, all of whom, except Mr. Hubbel, were either officers or attorneys of the Wabash Company, the following proceedings were had (ex. 185, vol. IV, p. 1434):

> 'C. M. Hays offered the following resolution and moved its adoption:
>
> Whereas, the purchasing committee of the Wabash, St. Louis & Pacific Railway Company has sold to F. M. Hubbell one-eighth and to G. M. Dodge one-eighth of the stock of the Des Moines Union Railway Company, and
>
> Whereas, the entire capital stock of said company owned by the company, issued as a part of the purchase price thereof, has been fixed at Four Hundred Thousand Dollars,
>
> It is therefore now
>
> Resolved, that the said sale by the said Purchasing Committee be and the same is hereby ratified, confirmed and approved by the Des Moines & St. Louis Railroad Company."

How did the Des Moines & St. Louis Railroad Company ascertain that that portion of the purchase price of the terminal property which was to be paid in defendant's capital stock had been fixed at $400,000.00? All of the proceedings prior to April 8, 1890, had pro-

vided that the capital stock to be issued in part payment of the purchase price was the full capital stock authorized by the defendant to be issued, which was originally $1,000,000.00, and subsequently $2,000,000.00. The only place where it was fixed at $400,000.00 was at the meeting of the stockholders of the defendant company, held on April 8, 1890, and it must have been from this record that the Des Moines & St. Louis Company ascertained this fact. It therefore necessarily follows that the Des Moines & St. Louis Railroad Company had knowledge of the proceedings of the stockholders of the defendant company on April 8, 1890, by which the articles of the defendant company were amended, and the amount of the capital stock to be issued in part payment for the property was fixed at $400,000.00.

On the same day there was issued to the Purchasing Committee of the Wabash Company, 1,000 shares of stock of the defendant company (less two shares of stock, standing in the name of directors), (ex. 79, vol. II, p. 711).

Bearing in mind that the resolutions of November, 1887, authorized the issuance to the Purchasing Committee of 15,000 shares of stock of the defendant company as a part of the purchase price, of what was the Purchasing Committee put upon its inquiry when it received this 1,000 shares of stock? This was adequate notice to the Purchasing Committee that some change had been made in the plan and it was up to the Purchasing Committee to make inquiry, and if it had done so it would have discovered the action of April 8, 1890, if it didn't already know about it.

At the annual meeting of the stockholders of the Des Moines Union Railway Company held February 11,

1891, which was the first annual meeting after the adoption of the amendments of April 8, 1890, there were present G. M. Dodge, James F. How, C. M. Hays, F. M. Hubbel, L. M. Martin, F. C. Hubbell and A. B. Cummins, all in person, and the Purchasing Committee of the Wabash Company by James F. How, proxy, the Des Moines & Northwesteri Railway Company by F. C. Hubbell, vice-president, and the Des Moines & Northern Railway Company by G. M. Dodge, president (ex. 115, vol. IV, pp. 1318-9). At this meeting the following proceedings were had:

> "The President stated the first business of the meeting to be the reading of the minutes of the previous meeting of the stockholders held during the year 1890, and the minutes of the directors' meetings and of the Executive Committee, and thereupon called upon the Secretary to read the same, which was done.
>
> Mr. A. B. Cummins moved that the proceedings of the stockholders' meeting and the meetings of the board of directors and of the Executive Committee be approved. The motion was seconded and carried."

It will be remembered that certificates of stock had been issued prior to this meeting.

There was no controversy but that plaintiffs' predecessors were present at this meeting by their proper representatives, so at this time they were all advised of the amendments to the articles of incorporation of April 8, 1890, and the action was formally approved. An examination of the corporate records of the defendant company will disclose that from April 8, 1890, down to the time of the commencement of this suit the business of the defendant company was carried on under

the amendments of April 8, 1890, and no question was ever raised about their validity. (See vol. IV, commencing p. 1314.)

The amendments to the articles of incorporation as adopted April 8, 1890, appear as defendants' exhibit 303 (vol. IV, pp. 1604-10). They were signed and acknowledged by F. M. Hubbell, F. C. Hubbell, A. B. Cummins, Horace Seeley, L. M. Martin, Charles M. Hays, James F. How, Wells H. Blodgett, G. M. Dodge and H. D. Thompson (p. 1604), and were filed for record in the office of the county recorded of Polk County, Iowa, on April 23, 1890, and in the office of the secretary of state on May 12, 1890 (p. 1610), as required by the statute of Iowa.

Notice of these amendments was properly published as required by the statutes of Iowa (exs. 614-5, vol. IV, pp. 2010-1).

By chapter 88 of the acts of the twenty-second General Assembly (1888), in force on April 8, 1890, it was provided:

> "That any of the provisions of the Articles of Incorporation may be changed at any annual meeting of the stockholders or special meeting called for that purpose; but said changes shall not be valid unless recorded and published as the original articles are required to be; and said changes in the Articles need only be signed and acknowledged by the officers of said Corporation."

By chapter 23 of the laws of the seventeenth General Assembly (1878), in force on April 8, 1890, it was provided:

> "Previous to commencing any business, except that of their own organization, they must adopt articles of incorporation, which must be signed and

acknowledged by the incorporators, and recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept therefor; the recorder must record such articles as aforesaid, within five days after the same are filed in his office, and certify thereon the time when the same was filed in his office, and the book and page where the record thereof will be found. The said articles and certificate of recorder shall be then recorded in the office of secretary of state, in a book kept for that purpose."

Section 1613 of the code of 1897 was in force on April 8, 1890, and provided for the publication of notice of the adoption of the articles of incorporation.

The purpose of this statute is to give to the world (which includes the stockholders), notice of the articles of incorporation and amendments thereto.

In the case of

Dempster v. Downs, 126 Iowa, 80,

the Court said:

"Every one who acquires certificates of stock must be assumed to know that they were issued by virtue of articles of incorporation, and that these may be found in the office of the Secretary of State. Indeed, the very object of requiring the filing and recording of the articles is to give them the same publicity, as nearly as may be, as statutory charters, and render them easily accesisble to all who may be interested in ascertaining their contents. These articles are expressive of the relative obligations of the company and stockholders, and inhere in the certificates of stock, in whosesoever hands they may come."

If the provisions of the articles of incorporation and amendments stand upon the same basis and must be taken notice of by all the world, including the transferees of the stock, certainly the filing, recording and giving notice of the amendments is constructive notice of the provisions thereof to all stockholders.

In passing, we may call the court's attention to the fact that petitioners acquired their stock and whatever interest they have in this property long after the adoption of these amendments, and, therefore, come squarely within the doctrine of the above case, but of this we will have more to say at a later time.

Not only does the record show that complainants and their predecessors had actual and constructive notice of these amendments to the articles, but it is a presumption of law that all stockholders assent to any change in the articles of incorporation.

Holmes v. Loan Assn., 107 S. W. (Mo.) 1005.
Cook on Corporations, (6th Ed.) Vol. 2, sec. 503.

THE PUBLICATION OF THE AMENDMENTS.

The objection made by counsel to the sufficiency of the published notice of the Amendments is without validity. The Statute of Iowa, Code of 1897, Sec. 1613, requires the published notice of incorporation to show,

1. The name of the corporation and its principal place of business.

2. The general nature of the business to be transacted.

3. The amount of capital stock authorized and the times and conditions on which it is to be paid in.

4. The time of the commencement and termination of the corporation.

5. By what officers or persons its affairs are to be conducted, and the time when and manner in which they will be elected.

6. The highest amount of indebtedness to which it is at any time to subject itself.

7. Whether private property is to be exempt from corporate debts.

Sec. 1615 requires amendments to be published "as the original articles are required to be."

Article two of the Articles of Incorporation of the Des Moines Union, both original and as amended comes under the second head of Section 1613, "the general nature of the business to be transacted." As to this there was no change. It was and continued to be that of a terminal railway. The allusion to the contract of 1882 did not affect this. And this was expressly decided by the Supreme Court of Iowa in Morgan vs. Des Moines Union Ry. Co., 113 Iowa 561. The Court, l. c. 565, said:

> "That defendant was incorporated under the general law is made apparent by the terms of its articles of which the following is a part: Art. II. The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of the depots, freight houses railway shops, repair shops, stock yards, and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars

from the line or depot of one railway to another, or from the various manufactories, warehouses, storehouses, or elevators to each other, or to any of the railways or depots thereof now constructed or to be hereafter constructed in or around the City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter 1 of title IX of the Code and the amendments thereto.' These articles were afterward amended, *but in no way was the language set out qualified in the amendment.*"

Counsel cite this case as if it held that the attempted amendment failed because of insufficient publication. But the Court decided nothing of the kind. It decided that the Amendment which was made, one by elimination of a mere solecism, did not qualify "the general nature of the business to be transacted," so that it was, not less than it had been, "a railway corporation" with all the powers of such a corporation. So under paragraph 2 of Section 1613 of the Code there was nothing to be published. The reference to the agreement was an incongruity, an obsolete thing recognized as such by the parties and as such removed from the articles.

In Thornton vs. Balcom, 85 Ia. 198, the articles provided as to the total of indebtedness of the corporation that it "shall not at any time exceed three hundred dollars, except by a majority vote of the stockholders present at a called or annual meeting." The published notice declared simply that "the indebtedness of the company shall not exceed three hundred dollars at any one time." The Court, l. c. 201, said:

"It is claimed that this is not a true statement of the amount of the authorized indebtedness. It appears to us that it is just such a statement as the law required. It was the amount of indebtedness then authorized, and it was wholly unnecessary to publish the manner in which the limit of indebtedness might thereafter be increased or diminished."

The statutes of Iowa do not requre publication of the articles in full, nor even of a summary of them, but only the seven enumerated points, or the substance of them. And so as to amendments. Everything enumerated in them and affected by the amendments was contained in the notice. There was much in the amendments which had no place in the notice. And so it was as to the reference to the 1882 agreement. It would be a veracious bull to say that as to this silence was the only statement required.

As between the stockholders, it was not necessary that any publication should be made. They had notice. They knew what had been done, for they participatedi in making the amendments and acted under them for years.

Heald v. Owen, 79 Iowa 95.

A DISSENTING STOCKHOLDER MUST ACT PROMPTLY.

If the complainants have any standing in this court to question the validity of the amendments of April 8, 1890, it must be in their capacity as stockholders of the defendant company. The question of the validity of a corporate action of this kind cannot be raised by one having merely contractual relations with it, but can only be raised by a stockholder or the state.

The general rule is laid down by

Cook on Corporations (6th Ed.), Vol. 2, sec. 503, as follows:

> "A stockholder may be estopped from objecting to an amendment by his express or implied acquiescence therein. Any acts indicating an acceptance by him of the amendment bind him and bar his suit. Acquiescence may sometimes grow out of his silence or delay under circumstances that called on him to dissent if he so intended. A court of equity will go far to aid a dissenting stockholder where he applies promptly and before large investments and many changes are made on the faith of the acts complained of. But laches will not be tolerated by the court, especially where important interests are involved."

In the case of

Rabé v. Dunlap, 25 Atl. (N. J.) 959, the suit was to invalidate a consolidation of two companies because beyond their corporate powers. The Court said (p. 961):

> "The stockholders of a corporation have an indisputable right to have the property of the corporation applied and used exclusively for the purpose specified in its charter, and any attempt by its managers to appropriate it to any other purpose is a ursupation of power and a violation of the rights of the stockholders. * * * But stockholders, to be entitled to the summary interference of the court in cases where they seek protection against acts which are merely in excess of the power of the corporation, and are not prohibited by law, must be diligent. They must apply so recently after the doing of the act of which they complain

that the court may stop or undo the wrong to them without doing equal or greater wrong to some other person. The principle which must control the action of a court of equity in cases where the defense is laches was laid down by Lord Camden, many years ago in these words: 'Nothing can call forth the activity of a court of equity but conscience, good faith and reasonable diligence. Where these are wanting the court is passive, and does nothing. Laches and neglect are always discountenanced, and therefore, from the beginning of his jurisdiction, there was always a limitation to suits in equity.' * * *

Or, stated with greater brevity, and in its simple essence, the rule is this: If he wants protection against the consequences of an *ultra vires* act, he must act for it with sufficient propmtness to enable the court to do justice to him without doing injustice to others."

The general rule is laid down by Circuit Court Judge Lurton, in an opinion in the Circuit Court of Appeals, Sixth Circuit, in the case of

Synnott v. Cumberland Bldg. Assn., 117 Fed. 379 (C. C. A.),

in which case it was claimed that the action complained of was invalid, so far as complainant was concerned, because complainant's proxy in voting at the stockholders' meeting exceeded his power as expressed in the proxy.

Referring to the question under consideration, Justice Lurton said (p. 385):

"We deem it unnecessary to express any opinion as to the conclusive effect upon Mrs. Synnott of the action of Hayward in participating in the

doing of business not included in the notice for the adjourned meeting, because we are of the opinion that whether her agent could waive the sufficiency of the notice of the business undertaking at that meeting or not, nothing but the most active diligence in repudiating what was there done in her name and by her apparent consent can void the consequences of her agent's action. That action was held on January 17, 1898. This bill was filed May 1, 1899. For more than a year no protest was made to the action of her agent, and, indeed, the bill filed contains no word of complaint that he had exceeded his authority or that the meeting had exceeded the notice or call made for it.

An effort has been made to excuse Mrs. Synnott for her inaction by the claim that she did not know of the action taken at the January meeting until shortly before her bill was filed. Mrs. Synnott does not testify at all. Her husband says he acted for her in looking after her stock. He states that he cannot say definitely when he got the information as to what had been done, but thinks it was several months afterward. Mr. Synnott was an old and expert building and loan man, and though he lived in another state, it is hardly credible to suppose that he long remained in ignorance of so important and public an action as that affecting this common stock.

* * * * * * * * *
* * * * * * * * *

It will not do to say that no change occurred in the attitude of the company between that action and the filing of the bill. We may take notice that the shares in such companies are constantly changing hands, and new shares being issued at short periods, constituting new series of stock. It may well be presumed that the elimination of the special powers of this common stock by the apparent consent of the stockholders would be an important

factor in all the future issues of new stocks and sales of old. Mrs. Synnott should have actively repudiated what was apparently done for her. Until she did so every one had a right to suppose that she had agreed to permit her shares to stand upon a plane of equality with other prepaid shares of what is called installment stock and to act upon that theory."

The rule is laid down in the case of

Big Creek Gap Coal & Iron Co. v. American Loan & Trust Co., 127 Fed. 625 (C. C. A.)

as follows (p. 629):

"• • • The stockholders must be charged with such knowledge as would have come to them in the exercise of due diligence and attention to their business interests, and in this case to business interests of very large magnitude."

In the case of

Thompson v. Lambert, 44 Iowa 239,

complaint was made of the act of an agricultural association in making a donation to a railroad company. Complainants Thompson and Cressler were not present at the meeting at which the donation was authorized, but knew that such was being discussed.

With respect to the promptness with which they should have acted, the court said (p. 247):

"Under these circumstances we are of the opinion that Thompson and Cressler had sufficient knowledge to put them on an inquiry. They knew it was proposed in some way to have the Agricultural Society aid in building the railway, and in-

quiry prosecuted with diligence and a fair degree of earnestness to obtain information, would have developed the fact as to the proposal to guarantee the notes and execute the mortgage. There is nothing tending to show there was any secrecy intended, nor was the proposition in any manner concealed. But knowing the matter was talked about and canvassed, Thompson and Cressler did nothing to prevent the consummation of the claimed illegal act, and to which they were opposed until the commencement of this action in December, 1872. They had sufficient knowledge of what was proposed to be done to warrant them in applying for an injunction as early as March, 1871, and had they done so before the loan was effected, their standing and the question for determination would have been very different.

The stockholder of a corporation who seeks to prevent the consummation of an illegal corporate act, or to avoid it, should be swift to make known his desires and assert his rights through the tribunals appointed for that purpose."

The Supreme Court of the United States in one case (*Foster v. Mansfield, etc., R. Co.*, 146 U. S. 88), has laid down the rule as follows (p. 96):

"The bill in this case was dismissed in the court below upon the ground of laches, and also for want of equity. • • •

As the alleged fraudulent sale of this road, which constitutes the gravamen of the bill, took place August 28, 1877, and the bill was not filed until August 30, 1887, ten years thereafter, there is certainly a presumption of laches, which it is incumbent upon the plaintiff to rebut. His reply is that he did not discover the fraud until a few months before the filing of the bill. • • •

The defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands, not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts. Especially is this the case where the party complaining is a resident of the neighborhood in which the fraud is alleged to have taken place, and the subject of such fraud is a railroad with whose ownership and management the public, and certainly the stockholders, may be presumed to have some familiarity."

It appears, therefore,

First. That the presumption is that all the stockholders had notice of this meeting at which the articles of incorporation were amended and had a copy of the proposed amendments.

Second. That the recitals contained in the minutes of the meeting are presumptively correct, and, therefore, that the stockholders had notice of the meeting and the proposed amendments and that they were all represented in person or by proxy.

Third. It is presumed that all stockholders consented to the enactment of the amendments and acquiesced therein.

Fourth. The filing, recording and giving notice of the amendments as provided by statute, is notice to the world of such amendments.

Fifth. That the stockholders are charged with notice of everything which they might have learned by the

exercise of reasonable diligence, and that in order to challenge the validity of these amendments it was necessary for them to act promptly, or, as the Supreme Court of Iowa put it, "*swiftly.*"

For more than seventeen years the defendant company, its officers, directors and stockholders (including complainants and their predecessors) acted under these amendments and acquiesced therein and no question was ever raised about their validity until the commencement of this suit. Certainly the complainants are far from having acted "swiftly" as they were required to by the rules of law above set out.

COMPLAINANTS ARE NOT IN A POSITION TO COMPLAIN OF THESE AMENDMENTS, BECAUSE THEY ACQUIRED THEIR STOCK AND WHATEVER INTEREST THEY HAVE IN THE TERMINAL COMPANY, SUBSEQUENT TO THE ENACTMENT OF THE SAME AND AFTER THE SAME WERE FILED, RECORDED AND PUBLISHED, AS REQUIRED BY STATUTE.

So far as the Wabash is concerned, the interest which it now claims to have in the property in controversy belonged originally either to the Des Moines & St. Louis Railroad Company or to the Wabash, St. Louis & Pacific Railway Company, and for the purposes of this proposition it doesn't matter which.

On the 25th day of April, 1888, the Wabash, St. Louis & Pacific Railway Company transferred to James F. Joy, Ossian D. Ashley, Edgar T. Welles and Thomas H. Hubbard, known as the Purchasing Committee, all its property (ex. 45, vol. II, p. 536). After describing the specific property, this deed by its terms (p. 540) in-

cludes "also all the property, rights, interests and choses in action acquired by said Wabash Railroad Company after June 1st, 1880, whether hereinbefore described or not." This would be sufficient to transfer to the Purchasing Committee whatever rights the Wabash, St. Louis & Pacific Railway Company had in the property in controversy.

As we have heretofore shown, the Des Moines & St. Louis Railroad Company authorized the issuance of its share of the stock to the Purchasing Committee and all the parties recognized the title of the Purchasing Committee to the stock.

On June 1, 1899, about nine years after the amendments to the articles of incorporation, the Des Moines & St. Louis Railroad Company transferred to the complainant, The Wabash Company, all the property of the first named company (ex. 44, vol. II, p. 533), and included in the deed is the following:

> "does grant, bargain, sell, assign and set over unto the Wabash Railroad Company, its successors and assigns forever, all of its said line of railroad and right of way as the same now is, or may be hereafter constructed, or acquired in said State of Iowa, commencing at a point in or near the City of Des Moines, *where said road connects with the tracks of the Des Moines Union Railway Company*, and extending from thence * * * to the town or city of Albia in Monroe County, * * * and all its rights, privileges and franchises and all other things, real and personal, now owned, or used, or that may be hereafter owned or used by the party of the first part in connection with the line of railroad above described and herein and hereby granted, *and especially including all the rights and leasehold and other interests of the first party under a contract dated May 10th, 1889, between the*

Des Moines Union Railway Company of the first part and the Des Moines and St. Louis Railroad Company, the Des Moines and Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, of the second part."

Whatever interest in the property in controversy was acquired by the complainant, The Wabash Company, from the Des Moines & St. Louis Railroad Company was acquired by virtue of this deed. On August 18, 1898, the Purchasing Committee transferred to The Wabash Company, all the property acquired and then owned by the Purchasing Committee. Whatever interest the complainant, The Wabash Company, acquired from the Purchasing Committee in the property in controversy was acquired by virtue of this deed and by the transfer of the stock of the terminal company to the Continental Trust Company on March 23, 1899, which latter company held the same as security for the indebtedness of the Wabash Company.

On the 1st day of May, 1899, Chicago, Milwaukee & St. Paul Railway Company acquired from the Des Moines, Northern & Western Railroad Company (ex. 74, vol. II, p. 673), its interest in the property in controversy, which is described (p. 675) "*and also a one-fourth interest in the capital stock of the Des Moines Union Railway Company.*"

It appears, therefore, that for a period of about nine years complainants' predecessors acted under the articles of incorporation of the terminal company, as amended on April 8, 1890, and that complainants for another period of eight years after acquiring their interest in the stock, themselves acted under said articles before they brought this suit.

The ninety-fourth equity rule provides as follows:

> "Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action."

This rule is carried forward in substantially the same language as equity rule number twenty-seven, taking effect February 1, 1913.

This proceeding, so far as it relates to the validity of the amendments to the articles of incorporation of April 8, 1890, is a proceeding by the stockholders of the terminal company founded on alleged rights which may properly be asserted by the corporation, that is, the stockholders in the terminal company having the power to amend the articles of incorporation, have the power to repeal such amendments or to declare them invalid and of no effect, if such is true. The proper forum to which the complainants should make their first appeal is the annual meeting of the stockholders. This has never been done, although seventeen such annual meetings were held subsequent to the adoption of the amendments and before the commencement of this suit. During all these years the subject of the validity of

these amendments never seems to have been mentioned by any one to any one, or to have been thought of by any one until the value of this property became so great as to excite the cupidity of complainants.

The purpose of the enactment of the rule was twofold: *first,* to prevent collusive suits being brought in the United States courts, and, *second,* to establish the equitable rule of law that one who has bought into a corporation may not complain of the acts of the corporation prior thereto, because he bought with actual or constructive knowledge of the situation, and because any other rule might permit a holder of stock to challenge the act of the corporation even though his stock had been voted in favor of such act.

The second reason for the rule above indicated applies with twofold force when we come to consider the validity of the amendments to the articles of incorporation enacted prior to the acquisition of the stock by complainants. In the first place, the amendments having been executed, acknowledged, recorded, and notice having been given as provided by law, subsequent stockholders have constructive notice of the amendments; and in the second place, complainants do not claim to have been deceived with respect to these amendments or to have been ignorant of them. Under these circumstances, it seems to us that with respect to this particular issue complainants come squarely within the terms of equity rule XCIV, for both of the reasons suggested, and for this reason if for no other they are not entitled to relief with respect to these amendments.

III.

THE COMPLAINANTS ARE ESTOPPED FROM ASSERTING THAT THE OWNERSHIP OF THE TERMINAL PROPERTY IS NOT VESTED ABSOLUTELY IN THE DES MOINES UNION RAILWAY COMPANY, AND FROM CLAIMING THAT THE STOCK OF THE COMPANY HELD BY THE DEFENDANT, F. M. HUBBELL & SON, DOES NOT REPRESENT A VALUABLE INTEREST THEREIN.

As we have heretofore indicated, the real purpose of this suit is to secure a decree which will make the capital stock held by the defendant, F. M. Hubbell & Son, of no value. If the complainants owned all the stock in the defendant company, then the question of whether it had a perfect title to the terminal property would be of no importance, because in either event the complainants would own the beneficial interest. Therefore, they seek a decree which will give them a direct interest in the property and which would destroy the value of the stock.

The doctrine of equitable estoppel is well settled in the courts of the United States and in the State of Iowa, as well as in other courts of last resort. In order to meet the rule, the following facts must appear:

1. Representations, either active or passive, on the part of the persons against whom the rule is sought to be enforced.

2. A reliance upon such representations by the person or persons in whose favor the doctrine is invoked.

3. Acts of such persons resulting in changing their position.

In the

Encyclopedia of the U. S. Supreme Court Rep., Vol. 5, p. 939,

the editor of that work refers to the principle as follows:

> "The principle of estoppel *in pais* or by the act of the party is an important one in the administration of the law. It is founded in reason and justice and in a wise and salutary policy. It is a means of repose. It promotes fair dealing. It accomplishes that which ought to be done between man and man, and is not permitted to go beyond this limit. It is available only for protection, and cannot be used as a weapon of assault. It cannot be made an instrument of wrong or oppression, and it often gives triumph to right and justice where nothing else known to our jurisprudence can, by its operation, save them from defeat or secure those ends. It is akin to the principle involved in the limitation of actions, and does its work of justice and repose where the statute cannot be invoked."

In the case of

Morgan v. Railway Co., 96 U. S. 716,

the court lays down the rule as follows (p. 720):

> "The appellee insists that the record discloses a case of estoppel *in pais*, and that the appellant is thereby barred from maintaining the claim which he seeks to enforce in this litigation. The principle is an important one in the administration of the law. It not infrequently gives triumph to right and justice where nothing else could save

them from defeat. It proceeds upon the ground that he who has been silent as to his alleged rights, when he ought in good faith to have spoken, shall not be heard to speak when he ought to be silent. *The Bank of the United States vs. Lee,* 13 Pet. 107.

He is not permitted to deny a state of things which by his culpable silence or misrepresentations he had led another to believe existed, and who has acted accordingly upon that belief. The doctrine always presupposes error on one side and fault or fraud upon the other, and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage. *Merchants' Bank vs. State Bank,* 10 Wall. 604."

In the case of

Kirk v. Hamilton, 102 U. S. 68,

the court says (p. 75):

"In the view we take of the case, it is unnecessary to pass upon these several objections. If it be assumed that the record of the suit of *Moore & Co. vs. Kirk, etc.,* was, of itself, insufficient in law to divest Kirk of title to the premises in dispute, or to invest Hamilton with title, the question still remains, whether the facts disclosed by the first bill of exceptions do not constitute a defense to the present action.

After the confirmation of the sale of April 19, 1864, before any deed had been made, and while the cause was upon reference for a statement, as well of the trustee's account as for distribution of the fund realized by the sales, Kirk it seems, appeared before the auditor, by an attorney, and made objection to the allowance of the simple-contract debts which had been proven against him in his absence. So far as the record discloses, no other objection to the proceedings was interposed

by him. Undoubtedly, he then knew, he must be conclusively presumed to have known, after he appeared before the auditor, all that had taken place in that suit during his absence from the District, including the sale of the premises in dispute, which took place only a few months prior to his appearance before the auditor. If that sale was a nullity, the court, upon application by Kirk, after his appearance before the auditor, could have disregarded all that had been done subsequently to the first sale, discharged Hamilton's bond, returned the money he had paid, and, in addition, placed Kirk in the actual possession of the property. No such application was made. No such claim was asserted. No effort was made by him to prevent the execution of a deed to the purchaser at the second sale. So far as the record shows, he seemed to have acquiesced in what had been done in his absence. In 1868, three years after his return to the city, and two years after Hamilton had secured a deed in pursuance of his purchase he became aware that Hamilton was in actual possession of the premises, claiming and improving them as his property. He personally knew of Hamilton's expenditures of money in their improvement, and remained silent as to any claim of his own. Indeed, his assertion while the improvements were being made, of claim to only three feet of ground next to the adjoining lot upon which he resided, was in effect, a disclaimer that he had, or would assert, a claim to the remainder of the lots 7 and 9 which Hamilton had purchased at the sale in April, 1864. and his subsequent declaration that he was in error in claiming even that three feet of ground, only added force to his former disclaimer of title in the premises. Hamilton was in possession under an apparent title acquired, as we must assume from the record, in entire good faith, by what he supposed to be a valid judicial sale, under the sanction of a court of general jurisdiction.

The only serious question upon this branch of the case is whether, consistently with the authorities, the defense is available to Hamilton in this action of ejectment to recover the possession of the property. We are of opinion that the present case comes within the reasons upon which rest the established exceptions to the general rule that title to land cannot be extinguished or transferred by acts *in pais* or by oral declarations. 'What I induce my neighbor to regard as true is the truth as between us, if he has been misled by my asservation,' became a settled rule of property at a very early period in courts of equity. The same principle is thus stated by Chancellor Kent in *Wendell vs. Van Ransselaer*, 1 Johns (N. Y.) Ch. 344: 'There is no principle better established, in this court, nor one founded on more solid considerations of equity and public utility, than that which declares, that if one man, knowingly, though he does it passively, by looking on, suffiers another to purchase and expend money on land, under an erroneous opinion of title, without making known his own claim, shall not afterwards be permitted to exercise his legal right against such person. It would be an act of fraud and injustice, and his conscience is bound by this equitable estoppel.' p. 354."

In

Linton v. Nat. Life Ins. Co., 104 Fed. 584,

Judge Sanborn states the rule as follows (p. 589):

"* * * One who by his acts or representations or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist, and the latter rightfully acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts, is thereby conclusiveley estopped from interposing such denial."

In the case of

Given v. Times Printing Co., 114 Fed. 92,

the same authority states the rule as follows (p. 95):

> "No principle is more universal in the jurisprudence of civilized nations, no principle is more equitable in itself or more salutary in its effects, than that one who, by his acts or representations, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist, and the latter rightfully acts on such a belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts, is thereby conclusively estopped to interpose such denial. This principle is equitable, because it forbids the untruthful or culpably negligent deceiver from profiting by his own wrong at the expense of the innocent purchaser or contractor who believed him. It is salutary because it represses falsehood and fraud. It rests on the solid foundation of our common sense of justice, which revolts at the idea of rewarding the intentional or culpably negligent deceiver at the expense of the innocent purchaser who believed him."

In this latter case this rule was applied to a sole stockholder in a corporation who had sold his stock without disclosing the fact of the existence of an indebtedness of the corporation to him.

The rule in Iowa is laid down as follows:

> "Where a party by his conduct induces another to act to his own disadvantage he will not afterwards be permitted to change his position."

Wright v. Leith, 146 Iowa 290.
Seberg v. Bank, 141 Iowa 99.
Anderson v. Buchanan, 139 Iowa 676.

It will be remembered that in February, 1890, the defendant, F. M. Hubbell, and G. M. Dodge each purchased of the Purchasing Committee one-eighth (or 500 shares) of the capital stock of the defendant company, for which they paid a valuable consideration, which consideration was finally received by The Wabash Company; that in June of the same year, the defendant, F. M. Hubbell, purchased an additional 500 shares from the Purchasing Committee; that this stock became the property of the Des Moines, Northern & Western Railway Company, and that in 1892 the defendant, F. M. Hubbell & Son, acquired from the Des Moines, Northern & Western Railway Company 2,500 shares of the stock of the defendant company, which ever since said date has stood upon the books of said company as owned by F. M. Hubbell & Son; that during all the years since 1890, up to the commencement of this suit, the defendant, F. C. Hubbell, devoted substantially all his time to the growth, management and development of the terminal property, and the defendant, F. M. Hubbell, a large share of his time to such purpose, without any compensation whatever, except as might accrue to them by reason of the increase in the value of the property and the resulting increase in the value of their stock.

Upon this branch of the case, what we have for consideration is, what acts were done or representations made, either active or passive, by complainants and their predecessors, leading the defendants to believe, and authorizing them to believe that the defendant company had a good title to the property in controversy, and therefore that their stock represented a beneficial interest therein and induced them to part with

their money and devote years to the development of the terminal property.

As we have already said, the contract of January 2, 1882, did not contemplate the organization of a terminal railway, but rather a terminal property which might be used jointly by the parties to that contract and such others as might thereafter join. What is there in the record to show a change in this plan and upon which defendants had a right to rely?

The articles of incorporation of the defendant company adopted in 1884 were, as we have already shown, adopted at the instance of, and specifically ratified by the three railroad companies parties to the contract of January 8, 1882.

After setting out this contract as a part of the preamble, those articles provide (vol. II, p. 419):

> "Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was *the understanding of the parties* that such Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto."

Were the defendants required to understand from this that the beneficial interest in this property was still to remain in the three railroads parties to the contract of 1882, and that the terminal company was to only acquire a naked legal title to the property, or were they justified in believing that this evidenced a change in the plan? Note that this recital states the fact that the contract provises *"that a Depot Company might be organized to take permanent charge of the property,"* but that it was the *"understanding"* (not the contract

of the parties), that such company might "*acquire*," etc. This latter was something outside of the contract and an understanding which the parties were proceeding to carry out.

Likewise the next recital:

> "Now, Therefore, for the purposes aforesaid, *as well as for those hereinafter expressed*, the undersigned hereby associate themselves in a body corporate, and adopt the following:"

Were they required by this to understand that this corporation was being born simply for the purpose of carrying out literally the contract of 1882, or were they justified in believing that there were some other purposes, to-wit, "those hereinafter expressed"?

Note the provisions of article 2, which provide that the general nature of the business to be transacted shall be the "*construction, ownership and operation of a railway*, in, around and about the City of Des Moines, Iowa," including the ownership of depots, freight houses, etc., and the business of transferring cars, none of which was contemplated by the contract of January 2, 1882. By these articles the terminal company assumed the powers and incurred the obligations of a common carrier—something which was not contemplated by that contract. Were not the defendants authorized from this to believe that a change was contemplated in the terminal plans, as indicated by that contract?

Again, examine article 3 of the original articles of incorporation (vol. II, p. 420), which fixes the capital stock at $1,000,000.00 and authorizes its issuance and authorizes the board

"to receive in *payment* therefor the *property* and *franchise* in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge."

Now the contract of January 2, 1882, did not contemplate that the terminal property should be acquired by an independent corporation, or that the franchise incident to the terminal property should be acquired by a terminal corporation, but this article indicates that at this time it was contemplated that both the terminal properties and the franchises incident thereto should be acquired by the defendant company in consideration of the issuance of its capital stock. Ought the defendants to have understood from this that no change had been made in the plan as evidenced by the contract of January 2, 1882?

These were acts of the three railroads parties to the contract of January 2, 1882, and complainants' predecessors, which were specifically authorized and afterward specifically ratified by action of their boards of directors. By the adoption of these articles there was created a corporation for pecuniary profit under the laws of the state of Iowa, for the specific purpose of acquiring the terminal property and the "*franchises*" connected therewith.

A mere depot company organized in strict accord with the 1882 contract or in strict accord with the statutes of Iowa, Section 2099, Code of 1897, authorizing the formation of depot companies is something very different from the terminal company which the parties did in fact create by their articles of incorporation.

The Company in fact formed was organized under the general incorporation laws of the State and was vested with all the powers of a railroad company and this none the less so, that its lines were all within the limits of the City of Des Moines, and that it possessed among its powers, the distinctive powers of a depot company.

A depot company under the laws of Iowa is restricted as to the manner and extent of acquiring property and also as to the functions it may perform. In the case of Morgan against this very company, 113 Iowa 561, the crucial question was as to the character of it, whether a mere depot company or a railway company. Of a depot company, the Court said:

> "It is not intended that it shall operate locomotives or cars. Its purpose is to construct buildings and tracks for use by railway companies."

As to railway companies the Court said:

> "There is no reason for assuming that a railway company could not also, irrespective of this act (Depot Act) construct a union depot, or that in so doing it would lose any of the powers it possessed under the general incorporation Act."

It was contended that because this railway was confined within the city limits and its business was principally a terminal business, it was therefore not a railway, but a depot company. As to this the Court said:

> "We hardly think it is meant that a railway's rights are to be measured by its length. Nor do we believe that length of line alone fixes the character of such a corporation. This (the Des Moines Union) is solely a commercial railway, and as such it is invested with the rights given by statute alike to all incorporations of that character. The num-

ber of tracks which they may lay is not limited by statute, and it would seem contrary to public policy that such limitation should be made. They are and should be allowed to provide facilities for doing the business required by public demand."

What were the defendants authorized to believe and understand from the resolutions passed by the three railroad companies parties to the contract of January 2, 1882, on the 1st day of January, 1885? The resolutions were exactly alike and we need consider only one set of them.

One of the resolutions passed by the stockholders of the St. Louis, Des Moines & Northern Railway Company at this time was as follows (vol. II, p. 423):

> "Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated, and provided in the aforesaid contract to *acquire, hold, use and enjoy the real estate property, rights and franchises in the* City of Des Moines, east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882."

What did the defendants have a right to believe from this action? The right to use the terminal property for the purpose of carrying on a terminal business was a *franchise* which was possessed by the three railway companies in the City of Des Moines by reason of their having devoted the terminal property to terminal purposes; and it was this franchise, as well as the property itself, which the complainants' predecessors say in

this resoluiton it was contemplated should be acquired by the terminal company.

The resolution then, after having specifically ratified the articles of incorporation of the terminal company, proceeds as follows:

> "Resolved: That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City, now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract."

Let us inquire what possible interest complainants' predecessor, the St. Louis, Des Moines & Northern Railway Company, could have possessed in the terminal property which was not authorized by this resolution to be transferred to the defendant company. This resolution covered all the property held by any of the signatories to the contract of January 2, 1882, and authorized the transfer of all the *"right, title and interest of whatever name and character"* the St. Louis, Des Moines & Northern Railway Company had in said property or franchises.

As we have said, identical resolutions were passed by the two other railroads parties to the contract.

Again, note the resolutions which were passed by the defendant company on the same day (vol. II, p. 432-5), a part of which is as follows:

> "That the President, Vice President, Secretary and Treasurer of this Company be, and they are hereby, appointed a Committee to confer with the several parties to said contract and agree with them severally upon the *terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company,* and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the *title, control and management* of said properties provided for in said contract of January 2nd, 1882."

Were the defendants authorized to believe that it was the understanding of the defendant company that it was to get transfers which would *"fully invest"* the defendant company with the *"title"* to the terminal property, or should they have understood that this language contemplated that the three railroads parties to the contract of January 2, 1882, would still continue to be the beneficial owners of the property?

These resolutions were known to Mr. Hubbell, because he was a director in, and secretary of each of these companies, and they stood unrepealed on the record and were acted upon by the execution of the deeds of 1888.

Again, take the resolutions of November, 1887, by which the trustees, How and Dodge, were authorized to transfer the legal title to the defendant company upon payment of the purchase price therefor. These resolutions were passed and notice thereof was given to the defendant company, whereupon that company, acting

through its board of directors, after reciting the giving of said notice, resolved as follows (vol. IV, p. 1300):

> "Therefore, It Is Resolved, That on receipt from the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railway Company and from James F. How, Trustee, and G. M. Dodge, of deeds to this Company of the property standing in their name in the City of Des Moines, that the officers of this Company be authorized to issue to said James F. How and G. M. Dodge, respectively, an agreement to deliver to them, as soon as prepared, bonds for the amount of money with interest and taxes added, which will be shown by them, at that time, to have been expended by or through them for or on the property referred to."

By this resolution and an additional resolution passed at the same time, which we have not taken the space to quote, the defendant company accepted the proposition made to it by the three railroad companies and agreed, in consideration of a transfer of the property, to pay therefor the full amount which the three railroad companies, or others in interest, had invested in the terminal property, together with interest and taxes, and in addition thereto issue to them defendant's capital stock. There was in this resolution no reservation to the three railroad companies of any interest in the terminal property.

So we see that not only was a corporation organized for the specific purpose of acquiring the title to this property and the franchises incident thereto, but that a transfer of such property and the franchises incident thereto was properly authorized by all of the cor-

porations interested therein, and this without any reservations of any kind. Let us now see what was actually done to carry out these resolutions.

Deeds were duly executed and delivered to the defendant company by How and Dodge. Of course, How and Dodge being merely trustees, could not on their own motion have transferred to the defendant company a good title, but their deeds taken in connection with these resolutions and the actual payment of the purchase price, would and did of themselves transfer a perfect title. However, we are not required to rely upon these deeds. Fortunately, both the Des Moines & St. Louis Railroad Company and the St. Louis, Des Moines & Northern Railway Company executed deeds to this property, the former covering all the property, and the latter a portion thereof.

The deed of the Des Moines & St. Louis Railroad Company, after describing the particular property which stood in its name, continued as follows (vol. II, p. 458):

> "And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor."

Now what was the purpose of putting in the deed this clause, and to what property did it refer? The deed had already contained a description of the specific property which stood on the record in the name of the Des Moines & St. Louis Railroad Company, and therefore this clause must have referred to some other property. Under the contract of January 2, 1882, the Des Moines & St. Louis Railroad Company was the beneficial owner of one-half of all the terminal property, no matter in whose name it stood, and it was the

only party who could authorize or transfer such beneficial interest. Therefore, this clause in the deed must have reference to that portion of the terminal property in which the Des Moines & St. Louis Railroad Company owned a beneficial interest of one-half which did not stand in its name, and this thought is emphasized by the following language of the deed (p. 458):

> "together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchise and rights it may have acquired by grant, donation, purchase or otherwise, and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance 'granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said City between Court Avenue and Vine Street.'"

Upon this terminal property had been constructed embankments, bridges, turnouts, sidetracks, buildings and other structures, and of one-half of this the Des Moines & St. Louis Railroad Company was the beneficial owner under the contract of January 2, 1882, and this deed was for the purpose of transferring to the defendant company this beneficial ownership.

The deed then continues (p. 458):

> 'And the said Des Moines and St. Louis Railroad Company hereby covenants, *to warrant and defend* the said premises against all the *lawful claims of all persons whomsoever, claiming by, through or under it.*"

When the defendants examined this deed and noted that it not only described the property which stood in the name of the Des Moines & St. Louis Railroad Company, but also included all the property of every kind and character owned by that company in the City of Des Moines, or in which it had any interest, and that it warranted the title to said property against all persons claiming by, through or under it, what reason did they have to believe that there was reserved to that company any possible interest in this property?

The deed of the St. Louis, Des Moines & Nothern Railway Company (ex. 21, vol. II, p. 455) is no less significant. After describing the specific property which stood in its name, this deed continues:

> "* * * Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singular the above mentioned and described premises together with the appurtenances, unto the said parties of the second part and assigns forever."

Upon reading this deed, ought the defendants to have believed that by the terms thereof the St. Louis, Des Moines & Northern Railway Company retained any interest of any kind in this property? If this language does not convey all and every possible interest which that company had in the real estate described, what language could be conceived which would effect that purpose?

The next act of the parties was the making of the contract of May 10, 1889, the parties to which were the defendant company on the one hand, and the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & Northwestern Railway Company (successor to the Des Moines Northwestern Railway Company) on the other (vol. II, p. 479).

This contract, in so far as it relates to the title and ownership of the property, is as follows:

> "Whereas, the said party of the first part (the Des Moines Union Railway Company) is the owner of valuable terminal facilities in the City of Des Moines, Iowa, as hereinafter described; and
>
> Whereas, the respective parties of the second part have railroads in the State of Iowa which terminate at, or run into and through said City of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party; and
>
> Whereas, said party of the first part has become incorporated and organized under the laws of the State of Iowa *for the purpose of owning and op-*

erating a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham Street, in the western part thereof; and

Whereas, said party of the first part, in pursuance of said charter has *acquired* and now *owns* a railway in said city, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, said second parties are each desirous of having the right to use said terminals in connections with their respective railroads; and

Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject-matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance and repairs, shall be stated and defined.

Now, therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows:

Section One. The party of the first part agrees to proceed with reasonable dispatch, and whenever its board of directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said City of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots, round houses, shops, water tanks, and yard appurtenances, as the board of directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase or otherwise such additional real estate as may be necessary.

Section Two. The amount of such additional grounds and the form, character and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement and repairs thereof, shall in all matters not otherwise specifically provided for herein, be determined by the board of directors of said first party."

Here is the language of the parties themselves (the predecessors of complainants) put in writing a little more than a year after the transfer of the property to the defendant, by their own counsel.

Now, if the second parties to this contract (complainants' predecessors) were the beneficial owners of this property, why did they state in this contract that the Des Moines Union Railway Company was the owner of it, and why, if they were the beneficial owners of this property or entitled to use the same for railway purposes in perpetuity, were they contracting with the Des Moines Union Railway Company for such use or anything more than the mode of operating the property? And why, if the defendant company was organized merely for the purpose of holding the naked legal title to this property, do they recite the fact that it was organized for the purpose of owning and operating a line of railway in the City of Des Moines? And why do they state that in pursuance of its charter it has already acquired and owns a railway and intends to acquire and construct more? And why do they recite the fact that the parties of the second part (complainants' predecessors) are desirous of having the right to use said terminals in connection with their respective railroads, if they already had that right? And why, if the

Des Moines Union Railway Company was a mere agency for these three railroad companies, do they provide that the question of the extent of property to be acquired and constructed shall be vested in the board of directors of the Des Moines Union Railway Company?

If the court has any lingering doubt in its mind on the subject under consideration, examine now the proceedings of April 8, 1890, by which the articles of incorporation of the defendant company were amended, and the proceedings leading up thereto.

Upon a little reflection, the causes leading up to this action, and the purposes thereof, become perfectly apparent. The items to which we have called the court's attention demonstrate an intention on the part of all parties to give to the defendant company a perfect title to the property in controversy, notwithstanding the fact that as originally contemplated by the contract of January 2, 1882, the beneficial ownership of the property was to be in the three railroad companies parties thereto. An ambiguity had crept into the record by reason of the fact that the contract of January 2, 1882, had been included in the articles of incorporation as a preliminary recital thereto. We are not here going to set out the proceedings of April 8, 1890, as they have heretofore been quite extensively referred to in two different places in our brief. They concededly show an intention to forever put at rest any question about the title to the terminal property. The persons who took part in the meeting were the persons who knew what had been intended, because they had been the actors from the beginning. Complainants and their predecessors conducted the affairs of the defendant corporation under these amended articles of incorpor-

ation for more than seventeen years prior to the commencement of this suit. Read them and then answer the question of whether or not the defendants were authorized to believe that the defendant had a good title to the property in controversy, and that the capital stock of the defendant company represented a beneficial interest therein.

Let us now turn to the sale and transfer of the stock in the defendant company. The first transaction to which we will call attention is the contracts by which Polk & Hubbell acquired for the Des Moines & Northwestern Railway Company the line of road extending from Des Moines to Fonda and formerly owned by the Des Moines Northwestern Railway Company, and a one-fourth of the capital stock of the terminay company.

It will be remembered that by the terms of the contract of October 9, 1886 (ex. 263, vol. IV, p. 1573), Polk & Hubbell agreed to purchase of the Purchasing Committee the line of railway formerly owned by the Des Moines Northwestern Railway Company, and a one-fourth interest in the terminal property. By a supplemental agreement made the 10th day of September, 1887 (ex. 265, vol. IV, p. 1575), it was agreed in part as follows (p. 1576):

> "Simultaneously with the conveyance above mentioned of one-fourth interest in the terminal property at Des Moines, the same shall be mortgaged back to the Purchasing Committee for the further security of the said $145,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, the *bonds and stock received from the Terminal Company in exchange for said one-fourth*

interest shal be transferred *in lieu of* the property of Messrs. Polk & Hubbell, or their assignees, or transferred by them to the Committee, to be held by the Committee as a further security for the payment of the $450,000 above mentioned."

Now, by the terms of this contract the Purchasing Committee agreed to transfer to Polk & Hubbell a one-fourth interest in the terminal property, without any reservation whatever, on *"in lieu thereof,"* the stock and bonds received from the terminal company in exchange for said one-fourth interest. It is apparent that one-fourth of the stock and bonds couldn't be equivalent to one-fourth of the property unless the corporation issuing the stock and bonds had a perfect title to the property.

It will be remembered that in February, 1890, Mr. Hubbell and General Dodge each purchased of the Purchasing Committee certain bonds of the Des Moines Union Company and one-eighth of its capital stock, and this purchase was formally ratified at a meeting of the directors of the Des Moines & St. Louis Railroad Company held April 8, 1890, at which were present James F. How, C. M. Hays, F. M. Hubbell, A. B. Cummins, H. S. Priest and George C. Grover, all of whom, except Mr. Hubbelel, were officers or attorneys for the complainant, The Wabash Company. We have already shown that the purchase price for this stock was paid to the Purchasing Committee and by them paid to the complainant, The Wabash Company, and that the latter still retains this purchase price. We have also shown that the contract covering this purchase was prepared or revised by Colonel Blodgett. Now what were the members of the Purchasing Committee and

Colonel Blodgett, Mr. Hays, Mr. How, and the attorneys of The Wabash Railroad Company trying to do when they sold this stock to Hubbell and Dodge? There is no room for question here. On the one side they were selling, and on the other were buying, what on both sides was believed to be of substantial value.

In this connection, it is important to note that the action of the Purchasing Committee was specifically ratified by the board of directors of the complainant, The Wabash Company, after the same had been reported to it by the Purchasing Committee and investigated by E. B. Pryor, then assistant auditor of the railroad company. Commencing on page 1540 of volume IV will be found a report made by the Purchasing Committee to the board of directors of the Wabash Company on August 16, 1898, in which it makes an accounting to the railroad company of all its doings. The Purchasing Committee reports the sale of the stock and bonds of the Des Moines Union Railway Company and accounts for the proceeds thereof (see top of p. 1543), and again reports the amount received as interest on bonds and stock of the Des Moines Union Railway Company (see p. 1544, near bottom of page). Upon presentation of this report to The Wabash Company, Mr. E. B. Pryor, assistant auditor, makes an affidavit that he has examined in detail the books and accounts of the Purchasing Committee, as well as the attached report, and he believes the same to be correct (near bottom of p. 1551).

Passing upon this report, the board of directors of The Wabash Company state in part as follows (p. 1552):

"Whereas, Said report, and the form of said conveyance and assignment are satisfactory to the Board of Directors; Now, Therefore, Be It

Resolved, That said final report and statement of the accounts and doings of said Committee under said agreements, be, and the same hereby are approved."

How can The Wabash Railroad Company, which received and retains this money, now claim that the stock didn't represent anything of value?

The same remarks apply to the subsequent transaction of June, 1890, by which Mr. Hubbel purchased of the Purchasing Committee an additional 500 shares of stock in the defendant company, as to the details of which we do not here need to go.

It will be remembered that all the stock acquired by Mr. Hubbell and General Dodge from the Purchasing Committee afterward became the property of the Des Moines, Northern & Western Railroad Company, and that about October, 1893, F. M. Hubbell purchased of this Company 2,500 shares of this stock, which was immediately transferred to F. M. Hubbell & Son on the books of the defendant company and has ever since so remained. F. M. Hubbell & Son paid a valuable consideration for this 2,500 shares of stock and paid it to the predecessor of the Chicago, Milwaukee & St. Paul Railway Company, and that Company acquired its first interest in its predecessor with full knowledge that these 2,500 shares of stock had been transferred to F. M. Hubbell & Son, and that the only interest which its predecessor had in the terminal property or the terminal company was the interest represented by the 1,000 shares of stock which its predecessor then had and which is now owned by the complainant, the Mil-

waukee Company. Subsequently the Milwaukee Company acquired the property of its predecessor by purchase, and never suspected that it thereby acquired any interest in the terminal property except that represented by this 1,000 shares of stock.

Among the things upon which the Hubbells were justified in relying, as indicating that the complainants and their predecessors claimed only a stock interest in the property, is the fact that from the very beginning (May 1, 1888), the affairs of the defendant company were managed by its own stockholders, its board of directors and its officers. It acquired additional real estate, it constructed depots, buildings, tracks and other terminal facilities, made contracts with the complainants, their predecessors and other parties and performed all its obligations to the public as a common carrier.

In every way, for a period of nearly twenty years prior to the bringing of this suit, the defendant treated this property as its own, and all this with the knowledge of the complainants and their predecessors, because at every annual stockholders' meeting the complainants or their predecessors were present, as shown by the record, and at each of these meetings there was read for the information of the stockholders the minutes of all the meetings of the directors and the executive committee since the last preceding annual stockholders' meeting, and the action of such directors and executive committee was formally approved.

Not only this, but the record shows that from the time F. M. Hubbell & Son acquired this stock in 1893, it was voted by them at each stockholders' meeting for the purpose of managing the affairs of the defendant company, and no question was ever raised with respect

to their right so to do. In other words, the defendants, with the knowledge and acquiescence of complainants and their predecessors, treated this stock as though it represented a valuable interest in this property, and because thereof they gave their time for the best part of their lives to the development and improvement of this property without any compensation whatever except that which will accrue to them by reason of the increase in the value thereof. Not only this, but the question of the ownership of this stock by F. M. Hubbell & Son was specifically brought to the attention of the complainants and their predecessors.

It will be remembered that the twenty-sixth section of the contract of May 10, 1889 (vol. II, p. 486), which was executed before any certificates of stock were issued, provided that the stock of the defendant company should be issued one-half to the Des Moines & St. Louis Company, and one-fourth each to the Des Moines & Northwestern Company and the St. Louis, Des Moines & Northern Company.

Subsequent to the date the defendant, F. M. Hubbell & Son, acquired the 2,500 shares of stock in the defendant company and the same were transferred upon the books of the defendant company to F. M. Hubbell & Son, negotiations were had for the renewal or extension of the operating contract of May 10, 1889.

Several drafts of such a contract were prepared and considered by the defendant and by the complainant, The Wabash Company.

These proposed agreements appear in volume IV as defendants' exhibits 382 (p. 1694), 383 (p. 1703), 384 (p. 1712) and 385 (p. 1713). In each one of these drafts appears the following as a part of the last section (pp. 1702, 1711, 1722 and 1733):

"It is further understood and agreed that this contract is entered into in lieu of and as a substitute for a certain agreement entered into on the 10th day of May, 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern, and the St. Louis, Des, Moines & Northern Railway Company, * * * and that the capital stock of the said Des Moines Union Railway Company therein mentioned is now rightfully held as follows, to-wit:

The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company	500 Shares
The Des Moines, Northern & Western Railroad Company	1,000 Shares
F. M. Hubbell & Son	2,500 Shares

Of the above shares belonging to said Purchasing Committee, two shares stand upon the books of the Company as follows: Joseph Ramsey, Jr., One Share, and H. L. Magee, One Share.

Of the shares belonging to the Des Moines, Northern & Western Railroad Company two shares stand upon the books of the Company as follows: A. B. Cummins One Share, F. M. Hubbell One Share.

Of the shares belonging to the said F. M. Hubbell & Son five shares stand upon the books of the Company as follows:

F. M. Hubbell, One Share.
F. C. Hubbell, One Share.
H. D. Thompson, One Share.
A. N. Denman, One Share.
C. Huttenlocher, One Share."

These proposed contracts were discussed and criticized by the officers and attorneys of the complainant,

the Wabash Company, and the defendant, the Des Moines Union Company, and various changes were from time to time proposed, but at no time was any question raised about the correctness of this portion of the proposed contracts reciting the ownership of the capital stock.

The making of this new contract took the shape of what is known as the ratification contract of July 31, 1897.

This contract had the following provision in it referring to the issuance of stock provided for in the contract of May 10, 1889 (vol. II, p. 508):

> "*But it is expressly provided that so much of the said contract (contract of May 10, 1889), a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:*
>
> The purchasing committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.
>
> The Des Moines, Northern & Western Railroad Company, 1,000 shares.
>
> F. M. Hubbell & Son, 2,500 shares.
>
> Of the above shares belonging to said purchasing committee, two shares stand upon the books of the company as follows: Joseph Ramsey, Jr., 1 share; and H. L. Magee, 1 share.
>
> Of the shares belonging to the Des Moines, Northwestern Railroad Company, two shares stand upon the books of the company as follows: A. B. Cummins, 1 share; and F. M. Hubbell, 1 share.
>
> Of the shares belonging to said F. M. Hubbell & Son, five shares stand upon the books of the company as follows: F. M. Hubbell, 1 share; F. C.

Hubbell, 1 share; C. Huttenlocher, 1 share; H. D. Thompson, 1 share; A. N. Denman, 1 share."

This contract was signed by the plaintiff, The Wabash Company, by O. D. Ashley, president, as well as by the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company.

Its execution was authorized and ratified at a meeting of the directors of The Wabash Company held October 5, 1897, and a copy of it spread upon the records of that company (ex. 237, vol. IV, p. 1540). Its execution was also ratified at a meeting of the board of directors of the Des Moines, Northern & Western Railway Company, predecessor of the Chicago, Milwaukee & St. Paul Railway Company, on September 7, 1897 ex. 145, vol. IV, p. 1357).

The things to which we have called attention are only a portion of the things sustaining the proposition that the defendants were at all times authorized to understand that the ownership of the terminal property by the defendant company was conceded and recognized at all times by the complainants and their predecessors.

The court can open this record at any place and find evidence to sustain this theory.

It seems hardly worth while to discuss the question of whether or not the defendants relied upon these acts and representations of the complainants and their predecessors, and whether they changed their position relying thereon. Mr. Hubbell testified as to their reliance and there is no evidence to dispute it, and it is undisputed that the defendants, F. M. Hubbell and F. C. Hubbell, parted with their money for this stock, and that they have devoted a great share of their lives to the conservation and building up of the terminal prop-

erty without hope of reward except such as may grow out of the increase in the value of the stock.

The time and effort spent by the Hubbells in conserving, extending and transacting the business of the terminal company is no small or insignificant item. The testimony of Mr. F. M. Hubbell as to the services performed by him appears in volume III, commencing at the bottom of page 1036 and continuing to about the middle of page 1039. According to his testimony, he has been active in financing the defendant company, in extending and building up its property, in negotiating contracts for tenant companies other than complainants and their predecessors, and in many other ways has helped to develop the property. The testimony of defendant F. C. Hubbell on this subject appears commencing near the bottom of page 1195 and extending to about the middle of page 1197 of volume III. An examination of this testimony and the voluminous correspondence and other documents contained in defendants' book of exhibits will disclose the fact that Mr. F. C. Hubbell, who became president of the defendant company in January, 1892, has ever since said date devoted substantially all his time to the prosecution of its business. While his title has been that of president, he has in fact been performing the duties of general manager and purchasing agent. Not only this, but the devotion of the Hubbells to the interests of the Des Moines Union, the satisfactory character of their services, the success that has attended their efforts to develop the property and promote its interests, or the time and effort devoted by them thereto, is not, and cannot be questioned by the complainants.

IV.

THE COMPLAINANTS ARE ESTOPPED BY THEIR LACHES FROM THE BRINGING AND MAINTAINING OF THIS SUIT.

For the purpose of this question it is necessary to refer to the statute of limitations of the State of Iowa. Section 3447 of the Code of Iowa, 1897, provides:

> "Actions may be brought within the times herein limited, respectively, after their causes accrue and not afterwards, except when otherwise specially declared. * * *
>
> Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years."

As we understand the doctrine of laches, the cause of action contained in this bill would be barred at the end of five years from the time it accrued, unless complainants should allege and prove facts which would make it inequitable to follow the rule of law on that subject.

The subject of laches as applied to this case, and the facts bearing thereon, have necessarily been inferentially discussed in our entire argument, and specific reference to the doctrine as applied to the amendments to the articles of incorporation of April 8, 1890, has been made in our discussion of those amendments. We may, therefore, include a more general discussion of the subject here.

As we understand complainants' theory, one of their claims is that the property in controversy is charged

with a trust in their favor. It is necessary, then to consider the character of the alleged trust, because if the trust is an express one then the statute of limitations does not commence to run until there is a disclaimer of the trust, but if the trust is an implied one the statute of limitations commences to run and therefore the doctrine of laches applies at the time the trust relation attached.

In order to determine the character of this alleged trust, it is necessary to consider the title to the property in controversy, and the law of the State of Iowa, in which the property is situated, with respect thereto.

The rule on this latter subpect is stated by this court in

Kerr v. Moon, 9 Wheat. 565,

in the following language (p. 569):

> "It is an unquestionable principle of the general law that the title to and disposition of real property must be exclusively subject to the laws of the country where it is situated."

Again, in the case of

McCormick v. Sullivant, 10 Wheat. 192,

the court, speaking of the title to certain lands in the State of Ohio, said (p. 201):

> "By the law of the State of Ohio, lands lying in that state may be devised by last will and testament in writing, but before such will can be considered as valid in law it must be presented to the court of common pleas of the county where the land lies for probate and be proved by at least two of the subscribing witnesses. If the will be

proved and recorded in another state according to the laws of that state, an authenticated copy of the will may be offered for probate in the court of the county where the land lies, without proof by the witnesses, but it is liable to be contested by the heirs at law as the original might have been.

It is an asknowledged principle of law that the title and disposition of real property is exclusively subject to the laws of the country where it is situated, which can alone prescribe the mode by which the title to it can pass from one person to another."

Having determined that the title to this property depends upon the law of the State of Iowa, and therefore the question of whether or not it is subject to a trust, and if so, the character of the trust, must be determined by such law, let us examine the statutes and decisions of Iowa.

Section 2918 of the Code of 1897, which has been in force since long before the conception of the terminal scheme, provides as follows:

"Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law."

Under this section, clearly the property in controversy is not charged with an express trust in the hands of the defendant company, because no declaration of trust was ever executed by it as provided by this statute.

But what we understand complainants to claim is that by reason of certain provisions in article 2 of the

original articles of incorporation of the defendant company, and by reason of incorporating therein as a preamble thereto the contract of January 2, 1882, the property in controversy in the hands of the defendant company is charged with a resulting trust.

As we understand the rule with respect to resulting trusts, the statute of limitations commences to run at the time of the creation of the trust, or, to apply the doctrine of laches in determining the time within which the trustee will be protected, the time commences to run at the time of the creation of the trust.

In the case of

Boone v. Chiles, 10 Pet. 177, 222,

the court said:

> "Though time does not bar a direct trust as between trustee and *cestui que trust*, till it is disavowed; yet where a constructive trust is made out in equity, time protects the trustee, though his conduct was originally fraudulent and his purchase would have been repudiated for fraud. * * * So where a party takes possession in his own right and was *prima facie* the owner and is turned into a trustee by matter of evidence merely."

And in the case of

Speidel v. Henrici, 120 U. S. 377, 386,

the court said:

> "In the case of an implied or constructive trust, unless there has been a fraudulent concealment of the cause of action, lapse of time is as complete a bar in equity as at law."

But whatever the rule may be with respect to the character of the alleged trust in question, or when the statute commences to run, as applied to implied or resulting trusts, the rule is established by all the authorities, that the time commences to run at least as soon as there has been a repudiation of the trust. As to this proposition, we will not take the time here to quote from the authorities, but a few of them will be found in our brief.

It is clear from the record in this case that if the property in controversy was ever charged with a trust in the hands of the defendant company, that trust was expressly repudiated on April 8, 1890. We have already called the court's attention to what occurred on that date, and we may here content ourselves with summarizing it as follows:

1. On that date the defendant company, at a meeting of its stockholders, eliminated from its articles of incorporation the contract of January 2, 1882.

2. It amended its articles of incorporation by eliminating therefrom all those provisions by which it had been attempted to restrict the power of the defendant company with respect to the alienation of its property, or which in any way qualified the defendant's title.

3. It amended its articles of incorporation so as to deprive complainants' predecessors of the power to nominate the members of the defendant's board of directors.

4. It passed resolutions expressly declaring that the defendant company was the absolute owner of the property in controversy.

5. The amendments to its articles of incorporation were properly executed, filed and recorded, and notice thereof was published as required by statute.

6. Not only did complainants and their predecessors have the notice of these transactions with which they were charged by reason of the execution, filing and recording of these amendments, and giving notice thereof, but at the next annual meeting of the stockholders of the defendant company at which complainants' predecessors were present as stockholders, the proceedings of April 8, 1890, were read, so that their special attention was called thereto.

7. The affairs of the defendant company were carried on under these amendments to the articles of incorporation for more than seventeen years after the adoption of these amendments and these resolutions, before any complaint was made thereof.

It appears, therefore, that seventeen years prior to the commencement of this suit the defendant expressly repudiated any trust in relation to this property, if one existed, and therefore, under the rule as established by the courts, the complainants must fail on account of their laches.

But the doctrine of laches, as applied to this case, may be considered in even a broader aspect. The doctrine as laid down in

Pomeroy's Equity Jurisprudence, Vol. 5, Sec. 23,

is as follows:

"No doctrine is so wholesome when wisely administered as that of laches. It prevents the res-

urrection of stale titles, and forbids the spying out from the records of ancient and abandoned rights. It requires of every owner that he take care of his property and of every claimant that he make known his claims. It gives to the actual and longer possessor security, and induces and justifies him in all efforts to improve and make valuable the property he holds. It is a doctrine received with favor, because its proper application works out justice and equity, and often bars the holder of a mere technical right, which he has abandoned for years, from enforcing it when its enforcement will work large injury to many. The equitable rule that one who is negligent shall not have relief, and the barring of proceedings after the lapse of stated periods of time by statutory enactments, are alike based upon public policy, as well as upon considerations affecting only individual rights. It is to the public interest that stability in the title to property should exist, and that all uncertainties and disputes as to the ownership of the land should be speedily put at rest. Hence, there lies at the foundation of the principle that the lapse of time will become a defense to the title of one in possession of property not only consideration for his personal rights and equities, but also a recognition of the higher public interests which can only be subserved by putting at rest, as speedily as possible, all doubts and uncertainties touching the title to realty to which end it is the duty of courts to discourage delays in the assertion of conflicting claims thereto."

The rule was laid down and applied by this court in the leading case of

Galliher v. Cadwell, 145 U. S. 368,

which involved the title to some real estate in the City of Tacoma in the following language:

* * * The laches of the appellant is such as to defeat any rights which she might have had, even if these prior questions were determined in her favor, and in this respect it is worthy of notice that there has been in a few years a rapid and vast change in the value of the property in question. It is now an addition to the City of Tacoma. The census of 1880 showed that to be a mere village, the population being only 1,098. The census of 1890 discloses a city, the population being 36,006. Of course, such a rapid increase during this decade implies an equally rapid and enormous increase in the value of property so situated as to be an addition to the city, and the question of laches turns not simply upon the number of years which have elapsed between the accruing of her rights, whatever they were, and her assertion of them, but also upon the nature and evidence of those rights, the changes in value, and other circumstances occurring during that lapse of years. The cases are many in which this defense has been invoked and considered. It is true that by reason of their differences of fact no one case becomes an exact precedent for another, yet a uniform principle pervades them all. They proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that because of the change in condition or relations during this period of delay it would be an injustice to the latter to permit him to now assert them. * * *

But it is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitation, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some

change in the condition or relations of the property or the parties."

Applying the principle announced in this case to the case at bar, we are unable to conceive how counsel for complainants are going to avoid its application. It will be noted that the three principal elements which form the basis of the doctrine are:

First. The party to whom laches is imputed has knowledge of his rights and an ample opportunity to establish them in the proper forum.

Second. That by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned.

Third. That because of the change in condition during the period of delay it would be an injustice to the latter to permit him to now assert them.

The rights of complainants and their predecessors with respect to the matters set up in the bill, if any they ever had, have been known to them since their inception. The contract of 1882; the fact that the Wabash Company and General Dodge advanced the money to originally acquire the terminals; the incorporation of the terminal company; the resolutions and deeds of 1885, 1887 and 1888; the contract of May 10, 1889, and the ratification thereof July 31, 1897; the amendments to the articles of incorporation of April 8, 1890, and the resolutions passed at that time; have all been known by complainants and their predecessors from the time of such transactions, because they were all parties thereto and had both actual and constructive notice thereof. During all these years the terminal

company has treated this property as its own, and with such knowledge on the part of the complainants and their predecessors, the management of the affairs of the terminal company has been controlled by its stockholders. There has been no reason why complainants or their predecessors could not at any time have brought their suit in the proper forum, to establish the rights set up in the bill, if the same existed. So that the first element supporting the doctrine conclusively appears.

For nearly twenty years prior to the bringing of this suit, the terminal company had possession of this property under contracts and deeds which purported to give it an absolute title. For nearly twenty years, with the knowledge and acquiescence of the complainants and their predecessors, the terminal company has treated this property as its own. For nearly twenty years the affairs of the terminal company have been managed and controlled by its stockholders in the ordinary and usual way. For more than sixteen years prior to the bringing of this suit, the terminal company, with the knowledge and acquiescence of complainants and their predecessors, have been acting under the articles of incorporation as amended April 8, 1890, at which time the contract of 1882 was formally repudiated.

Under these circumstances, the respondents in this case had good reason for believing that the rights which are set up in the bill, if they ever existed, were worthless and had been abandoned, not only because of the failure of the complainants and their predecessors to bring their suit in the proper forum to establish their rights, but also because they treated this property during this period as the absolute property of the ter-

minal company. The second elementary basis of the doctrine, therefore conclusively appears.

Both the condition of this property and the relations of the parties thereto have been changed during this time. Commencing with May 1, 1888, the date when the terminal company took possession of the property, that company has from time to time acquired additional property as a part of the terminal, paid for it with its own funds, improved the same, and the property, because of the fostering care of the terminal company and its officers, especially the respondents, the Hubbels, has increased very largely in value, as shown by the increased and increasing "surplus earnings" (see p. ..... of this brief). The relation of the stockholders to the property has changed. The Hubbells have bought stock of the predecessors of both complainants; and the complainants and their predecessors have had the benefit of the money and still retain it. The Hubbells have sold their interest in the northern lines to the complainant, the Chicago, Milwaukee & St. Paul, upon the theory that such northern lines owned one-fourth of the stock of the terminal company, and that five-eighths of it was owned by F. M. Hubbell & Son. For twenty years the two Hubbells have devoted a very large portion of their time in caring for and developing the property of the terminal company, without any compensation, except what they receive by reason of the increase in the value of their stock. To enter a decree such as is prayed for in the bill would not only be inequitable and an injustice to the respondents in that it would deprive the terminal company of property which it has bought under a contract with the complainants and their predecessors and for which it has paid the full market value, and deprive

the Hubbells of what they have contracted and paid for, and the fruits of their labor for more than twenty years, but would give to the Chicago, Milwaukee & St. Paul Railway Company a large and valuable property for which it has never paid a cent and which it never suspected it was purchasing, and which it was plainly told it was not purchasing, and would give to the complainant, The Wabash Company, property which it and its predecessors have sold and for which it has received and retained the price. The third element of the doctrine is, therefore, established.

The case of

Abraham v. Ordway, 158 U. S. 416, 420,

involved the title to some real estate in the City of Washington. The court discussed the doctrine of laches quite fully, and in holding that under this doctrine complainant's suit was barred, says, in part, as follows:

> "The relief sought cannot be given consistently with the principles of justice, or without encouraging such delay in the assertion of rights as ought not to be tolerated by courts of equity. Whether equity will interfere in cases of this character must depend upon the special circumstances of each case. Sometimes the courts act in obedience to statutes of limitations; sometimes in analogy to them. But it is now well settled that, independently of any limitation prescribed for the guidance of courts of law, equity may, in the exercise of its inherent powers, refuse relief where it is sought after undue and unexplained delay, and when injustice would be done in the particular case, by granting the relief asked. It will in such case decline to extricate the plaintiff from the po-

sition in which he has inexcusably placed himself, and leave him to such remedies as he may have in a court of law."

It will be noted that in the case at bar there is no attempt, either in the bill or in the testimony, to furnish any excuse for the delay in bringing this suit.

Suits to establish implied trusts fall within the class of cases in which the federal equity courts follow the courts of law in applying the statute of limitations.

Beaubein v. Beaubein, 23 How. 190, 207.
Speidel v. Henrici, 120 U. S. 377, 386.
Riddle v. Whitehill, 135 U. S. 621.

The case of

Speidel v. Henrici, supra,

was one in which was involved an accounting for a trust fund. Upon the doctrine of laches, we quote from the opinion of the court (p. 386) as follows:

"In the case of an implied or constructive trust, unless there has been a fraudulent concealment of the cause of action, lapse of time is as complete a bar in equity as at law. *Hovenden v. Annesley*, 2 Sch. & Lef., 607, 634; *Beckford v. Wade*, 17 Ves. 87. In such a case, Chief Justice Marshall repeated and approved the statement of Sir Thomas Plummer, M. R., in a most important case in which his decision was affirmed by the House of Lords, that 'both on principle and authority, the laches and non-claim of the rightful owner of an equitable estate, for a period of twenty years (supposing it the case of one who must within that period have made his claim in a court of law, had it been a legal estate), under no dis-

ability, and where there has been no fraud, will constitute a bar to equitable relief, by analogy to the statute of limitations, if, during all that period, the possession has been under a claim unequivocally adverse, and without anything having been done or said, directly or indirectly, to recognize the title of such rightful owner by the adverse possessor.' *Elmendorf v. Taylor*, 10 Wheat. 152, 174; *Cholmondeley v. Clinton*, 2 Jac. & Walk. 1, 175, and 4 Bligh, 1.

Independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them. 'A court of equity,' said Lord Camden, 'has always refused its aid to stale demands, where the party slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith and reasonable diligence; where these are wanting, the court is passive, and does nothing. Laches and neglect are always discountenanced, and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court.' *Smith v. Clay*, 3 Bro. Ch. 640, note. This doctrine has been repeatedly recognized and acted on here."

For a full discussion of the principle as applied by this court, see

Penn M. L. I. Co. v. Austin, 168 U. S. 685, 696.
Baker v. Cummings, 169 U. S. 189, 206.

To sum up the doctrine of laches as applied to this case:

A cause of action of this character is barred by the statutes of the State of Iowa five years fro[illegible] accrues.

The rule in the federal equity court is that a cause of action arising under the laws of the State of Iowa will be barred by laches at the expiration of five years, unless the complainants show some good excuse for not bringing their suit within that time. No such excuse is offered in this case.

So far as the Wabash Railway Company is concerned, no trust ever existed in favor of that company, unless it was because of the fact that that company furnished a large proportion of the money with which to purchase the original properties. This would be a constructive trust against which the statute ran a long while ago.

If it be claimed that an express trust was created in favor of the three railroads parties to the contract of 1882, that trust was terminated by the organization of the terminal company, followed by the passage of the resolutions of 1887, and the execution and delivery of the deeds to the terminal company in pursuance thereof, the payment of the purchase price, and the execution of the contract of 1889 and the ratification contract of 1897.

Any possible claim for an express trust was expressly repudiated by the amendments to the articles of incorporation of April 8, 1890, which were placed upon record and published as required by law, and of which complainants and their predecessors had both actual and constructive notice. In any view of this case the doctrine of laches applies.

V.

THE SALE AND TRANSFER OF THE TERMINAL PROPERTY TO THE TERMINAL COMPANY WERE NOT VOID AS AGAINST PUBLIC POLICY.

Counsel for petitioners assert the principle which we accept as sound that a railroad company may not disable itself from the performance of its public functions and hence they conclude it may not divest itself of any property which it has acquired for public purposes. The conclusion does not follow.

Public policy requires nothing of the kind and general usage is to the contrary.

There is scarcely a railroad company in the country that has not from time to time parted with some of its property, and has performed its public functions all the better for so doing. Tracks have been taken up and the land has been sold or abandoned, in order to get a new line with lower grades, with less curvature or to diminish the length of the line between two places.

For a proper terminal system in a large city, which means a unitary system, it is absolutely necessary that the lines entering it part with some of their urban property. Union terminals were not and could not well be built in the beginning of railroad construction. It was in Des Moines as in other cities. The different lines of railroad reaching it or passing through it, were not all built at the same time, but at intervals of years. Each line as it came in acquired its own terminals, which proved upon many accounts to be a bad plan. It was expensive in construction and in operation. It was inconvenient to the traveler.

sightly and dangerous to the inhabitants. And so Union Terminals suggested themselves and everywhere were countenanced and encouraged by statutory enactment.

The City of Washington has its Union Terminals and this involved withdrawing from railroad use large tracts of land in the city. When the new station building was erected, the old stations were abandoned. And this was done under sanction of Acts of Congress.

The respondent, the Des Moines Union Railway Company, has for itself and for what it has done and is doing, the sanction of the statutes of Iowa as expressly declared by the Supreme Court of the State in the case of Morgan against the Company, 113 Ia. 561.

Union Terminals being desired by the railroad companies and by the public whoever will may participate in creating them. A corporation for the purpose is practically indispensable. And it must be a distinct institution. The railroad companies contribute money or property. Individuals may do the same. But this will not be in equal proportion. Bonds or stocks or both are issued in consideration of the money or the property contributed and appropriately in the measure of the contribution. The contributors are entitled to a return upon their investments. They are property in this respect as is any other form of investment, subject only to the restriction, which is not applied to property, not charged with a public use, that the return is not all they can get, if left entirely to themselves, but that the return may be only a reasonable one upon the value of the property.

So here the railroad companies did not disable themselves from the performance of their public duties. They simply contributed, as it was to their interest

and the public interest to do, to the construction of Union Terminals in the City of Des Moines.

U. S. v. Terminal Ass'n, 224 U. S. 401.

The cases cited by counsel, Thomas vs. Railroad Co., 101 U. S. 71, and Central Transportation Co. vs. Pullman Co., 139 U. S. 26, are not in point, because of the radical difference in the facts.

And here are transactions completed many years ago and the courts will not disturb them upon the suggestion of want of power in the parties at the time.

In St. Louis R. R. Co. vs. Terre Haute R. R. Co., 145 U. S. 393, the contract by which one of the companies transferred its railroad and equipment, as well as its franchise to maintain and operate the road, to the other, was assailed for want of power to make it. Assuming that the contract was *ultra vires*, the Court said, p. 406:

> "It does not, however, follow that this suit to set aside and cancel the contract can be maintained. If it can, it is somewhat remarkable that, in the repeated and full discussions which the doctrine of *ultra vires* has undergone in the English courts within the last fifty years, no attempt has been made to bring a suit like this. The only cases cited in the elaborate briefs for the plaintiff, or which have come to our notice, approaching this in their circumstances, are in American courts not of last resort, and present no sufficient reasons for maintaining this suit. • • •
>
> The general rule, in equity, as at law, is *In pari delicto potior est conditio defendentis;* and therefore neither party to an illegal contract will be aided by the court, whether to enforce it or to set it aside. If the contract is illegal, affirmative relief against it will not be granted, at law or in

equity, unless the contract remains executory, or unless the parties are considered not in equal fault, as where the law violated is intended for the coercion of the one party and the protection of the other, or where there has been fraud or oppression on the part of the defendant. *Thomas v. Richmond*, 12 Wall, 349, 355; *Spring Co. v. Knowlton*, 103 U. S. 49; Story Eq. Jur., sec. 298.

While an unlawful contract, the parties to which are *in pari delicto*, remains executory, its invalidity is a defense in a court of law; and a court of equity will order its cancellation only as an equitable mode of making that defense effectual, and when necessary for that purpose. Adams on Eq., 175. Consequently, it is well settled, at the present day, that a court of equity will not entertain jurisdiction to order an instrument to be delivered up and cancelled, upon the ground of illegality appearing on its face, and when, therefore, there is no danger that the lapse of time may deprive the party to be charged upon it of his means of defense. • • •

When the parties are *in pari delicto*, and the contract has been fully executed on the part of the plaintiff, by the conveyance of property, or by the payment of money, and has not been repudiated by the defendant, it is now equally well settled that neither a court of law nor a court of equity will assist the plaintiff to recover back the property conveyed or money paid under the contract. *Thomas v. Richmond*, above cited; *Ayerst v. Jenkins*, L. R. 16 Eq. 275, 284. For instance, property conveyed pursuant to a contract made in consideration of the compounding of a crime, and the stifling of a criminal prosecution, and therefore clearly illegal, cannot be recovered back at law, nor the conveyance set aside in equity, unless obtained by such fraud or oppression on the part of the grantee, that the conveyance cannot be con-

sidered the voluntary act of the grantor. • • •

In the case at bar, the contract by which the plaintiff conveyed its railroad and franchise to the defendant for a term of nine hundred and ninety-nine years was beyond the defendant's corporate powers, and therefore unlawful and void, of which the plaintiff was bound to take notice. The plaintiff stood in the position of alienating the powers which it had received from the State, and the duties which it owed to the public, to another corporation, which it knew had no lawful capacity to exercise those powers or to perform those duties. If, as the plaintiff contends, the contract was also beyond its own corporate powers, it is certainly in no better position. In either aspect of the case, the plaintiff was in *pari delicto* with the defendant. The invalidity of the contract, in view of the laws of which both parties were bound to take notice, was apparent on its face. The contract has been fully executed on the part of the plaintiff by the actual transfer of its railroad and franchise to the defendant; and the defendant has held the property, and paid the stipulated consideration from time to time, for seventeen years, and has taken no steps to rescind or repudiate the contract.

Upon this state of facts, for the reasons above stated, the plaintiff, considered as a party to the unlawful contract, has no right to invoke the assistance of a court of equity to set it aside. *And so far as the plaintiff corporation can be considered as representing the stockholders, and seeking to protect their interests, it and they are barred by laches.* *Harwood v. Railroad Co.*, 17 Wall. 78; *Graham v. Birkenhead &c. Railway*, 2 Hall & Twells 450, S. C. 2 Macn. & Gord. 146; *Ffooks v. Southwestern Railway*, 1 Sm. & Gif. 142, 164; *Gregory v. Patchett*, 11 Law Times (N. S.) 357.

This case is not like those in which the defendant, having abandoned or refused to perform the unlawful contract, has been held liable to the plaintiff, as upon an implied contract, for the value of what it had received from him and had no right to retain. *Spring Co. v. Knowlton,* 103 U. S. 49; *Logan County Bank v. Townsend,* 139 U. S. 67, and vases there cited.

But the case is one in which, in the words of Mr. Justice Miller in a case often cited in this opinion, the court will not disturb the possession of the property that has passed under the contract, but will refuse to interfere as the matter stands. *Pennsylvania Railroad v. St. Louis, Alton & Terre Haute Railroad,* 118 U. S. 290, 316, 317. See also *Union Trust Co. v. Illinois Midland Co.,* 117 U. S. 434, 468, 469; *Central Transportation Co. v. Pullman's Car Co.,* 139 U. S. 24, 56, 57, 61."

The rule established in the cited case has never been repudiated or departed from or modified by any subsequent opinion of the Supreme Court of the United States or any other court of last resort, and is the established law in this forum.

THE ORAL TESTIMONY.

The court will observe that we have made little use of the oral testimony in arguing this case. The transactions from the very beginning down to the time of the trial of this suit are fully shown by contemporaneous documentary evidence, and about this documentary evidence there is no dispute, as it was all agreed to by counsel. It has been our thought that oral testimony of transactions taking place anywhere from fifteen to thirty years prior to the time of taking the oral testimony was of very little value as compared with docu-

mentary evidence of the same transactions about which there is no dispute. And this is especially true when the testimony is with respect to ordinary transactions of very busy men, such as was the case in the case at bar.

The unreliability of the testimony of Mr. Hays, Colonel Blodgett, and Mr. Pryor is demonstrated by an examination of their evidence. In the first place, the questions propounded to them are ingeniously stated in order to permit them to testify to their conclusions. Their cross examination discloses the fact that when it comes to any fact they have no reliable recollection about it. For instance, take the testimony of Colonel Blodgett: He testified that he didn't know of the sale of stocks and bonds by the Purchasing Committee to Mr. Hubbell for a good many months after the sale had taken place (vol. II, p. 371), and yet he drew the contract providing for the sale (ex. 298, vol. II, p. 1600). Now Colonel Blodgett was honest in this matter, but he had simply forgotten it.

Take the testimony of Mr. Hays (vol. II, p. 229). An examination of it will disclose that he attempted in his direct examination to testify to certain facts, but his cross examination shows that he had no accurate recollection about them.

The same is true with respect to the testimony of Mr. Pryor, who attempted to testify to things which happened in Des Moines many years before he was ever in Des Moines.

With reference to the testimony of Mr. F. M. Hubbell, his testimony would be of some value if it were necessary to use it, because it was based upon entries which he made in a diary at the time the transactions occurred and with which he refreshed his recollection,

but we have scarcely referred to his testimony because the same facts are so much more satisfactorily shown in the documentary evidence.

Counsel for the Wabash lay great stress upon the oral testimony of the parties that they didn't intend by the amendment to the articles of April 8, 1890, to affect the title to the terminal property. The fact is that none of them at the time thought there was any question about the title to the terminal property. They all understood that the title was in the terminal company and they simply were amending these articles and the record for the purpose of having them conform to the facts as they all understood them.

TITLE OF HUBBELL AND SONS TO THE SHARES OF STOCK.

Counsel for petitioners challenge the title of Hubbell and Son to the stock they hold in the Des Moines Union, and charge that the shares were obtained by fraud from the Des Moines, northern and Western Railway Co. (Brief, p. 171 *et seq.*)

Nobody interested in the last named Company as creditor or shareholder complains and why should the Milwaukee which acquired its interest long after and with full knowledge of the facts?

The consideration paid may seem small at this time, but that was in January, 1894, when the prospects for all these properties were very unpromising. But if it was not a fair price, that was the grievance of shareholders or creditors. General Dodge was next to the Hubbels the principal shareholder and was advised of the facts at the time and invited to share in the purchase, but declined to do so (Rec. Vol. III, p. 1018).

Other shareholders were all satisfied and in the twenty-six years that have passed, no note of discontent has been heard from any of them.

The creditors have all been paid. The Metropolitan Trust Company has no complaint to make. It never had a lien upon this stock for it was in express terms excluded from its mortgage (Rec., Vol. II, p. 637). Moreover, the mortgage debt of the Metropolitan Trust Company has long since been paid.

All the grievances complained of by counsel are the concern of people who feel no grievance and who do not complain.

The Wabash of course had no right to complain; it had no interest in this stock at that time. Indeed, fifteen hundred shares of it had once been held by the Wabash and had been sold by it. And in the ratifying contract of 1897 this shareholding of the Hubbells in the Des Moines Union was explicitly set forth, recognized and affirmed.

This argument was in principal part in type when the brief for petitioners was received and in the main we must rely upon what we have set out in anticipation of its argument. Some matters of omission and of commission, however, we call attention to.

REPORTS TO THE EXECUTIVE COUNCIL.

There is an attempt to make much of the reports made by the Des Moines Union to the Executive Council for purposes of taxation.

These reports will be found on pages 719 to 724, volume II, of the record.

These reports were made upon blanks prescribed by the state. Schedule 5 calls for a statement of "gross

earnings for the year," and is followed by a form divided into columns headed:

Name of line	a
From passengers	b
From freight	c
From express service	d
From mail service	e
From telegraph service	f
From track rent	g
From car rent	h
Miscellaneous	i

Now, the Des Moines Union, while incorporated in name as a railway company and being an operating company, had no earnings from any of these sources because it did not at that time do an independent business in any of these respects, but was rendering a terminal service for which it received compensation in the manner provided in the contract subsisting between it and the railway companies, and in explanation of the fact that it had no earnings to report of the kind called for, it made the statement that it was simply "a representative company," acting as an agency at Des Moines for the three railway companies. We conceive this characterization to be an entirely appropriate one for any terminal company, as it certainly is an agency through which the railway companies perform a part of the functions which they have undertaken to perform, and in respect of these operations performed by a terminal company, the terminal company is responsible as a principal to the shipping or traveling public. And as to each one of the railway companies using a terminal railway, that terminal is a part of its line in respect of each and all of the transactions in which it employs that terminal. So the terminal company may

well be called a representative and an agent, and some explanation was required to show why it had no specific earnings of the kind called for by the report, and there is nothing in this recital which could possibly operate by way of estoppel in behalf of any one. Its effect as evidence can be of no force whatever, because in the same report the Des Moines Union Railway Company states itself to be the owner of all of the terminal property which is here in question. The case is parallel with that, for example, of the Pullman Company, which, as to the public, is an agency of the railroad companies over which its cars are operated, employed by the railroad company as a convenient means of furnishing certain falicities to the traveling public; and the railroad company is responsible to its passengers in like manner and to the same extent as if the railroad company itself owned and operated the cars. It is a matter of general knowledge that these cars are owned by the Pullman Company, and also that the operation of the car itself, as distinguished from the operation of the train, is by the Pullman Company and not by the railroad company; but the fact that the Pullman Company is the agent of the railway company and that the railway company is responsible for its acts, does not at all impair the ownership of the cars by the Pullman Company, and neither does the fact of ownership of these cars by the Pullman Company and the operation of them by that company, relieve in any sense the railroad company from responsibility to the passenger.

Counsel say, p. 149, that:

> "It is significant that the report signed and verified on February 16th, 1894, immediately succeeding the transaction of January 29, 1894, by which

> Hubbell acquired his five-eighths interest in the Des Moines Company, states that the Des Moines Company "is the owner of the property hereinbefore described" (Rec., p. 724).

This is a plain intimation that the prior reports contained no such statement, else it could not be significant.

The record, page 719, contains a stipulation for the purpose of abbreviation that all the reports from 1888 to 1894 are in substantially the same form and "that each contains * * * a description of its real and personal property." The stipulation is further to the effect that the "real property so described includes by specific description each of the lots and parcels of ground described in the following deeds," being the deeds by which How, Dodge, and the St. Louis, Des Moines and Northern Railway Company and the Des Moines & St. Louis Railroad Company had made the conveyance of the terminal properties to the Des Moines Union Company, and including all the land the Des Moines Union had acquired up to that time.

Of course, if there was significance in the fact that the reports first included a statement that the Des Moines Union owned this terminal property, after Hubbells acquired these shares, then too there was significance in the stipulated fact that the reports made by the Des Moines Union from the very first, that made for 1888, and for each and every year thereafter, contained the same statement. But the significance is of another kind.

The change made in the reports was simply that made under the head of general remarks. As to this Mr. Cummins says:

"A. I had nothing whatever to do with the operation of the Des Moines Union Railway Company; knew nothing about the details of its operation. At the time of the first report to which my attention was called, was presented to me, Mr. Hubbell, F. C. Hubbell, who I think then was President of the Company, was away from Des Moines, and I signed that report without even reading it. I think I ought to apologize to everybody for having done it; but I was a busy man, and it came up to me in a perfunctory sort of a way, and I did it. When the other came on, in some way or other, I don't remember how it was, my attention was called to that subject, and I myself prepared and put on it, my recollection is, the slip pasted over; anyhow, it was put in as a substitute for the remarks that were in the report as it came to me, and which were probably identical with those contained in the previous report that I had signed."

The case of the Chicago, Milwaukee & St. Paul Company vs. Des Moines Company, 165 Ia. 35, is cited on a question of estoppel but with suggestions of bad faith on the part of the Hubbels. The issues in that case are in no sense involved here and we have only to say that the claim of the Des Moines Union was based upon the facts that it had purchased and paid for the portion of the Railway in question, had expended large sums in maintaining and improving it and that when the Milwaukee bought the Northern lines, it was advised that the Des Moines Union claimed ownership of the tract between Farnam and Twenty-eighth Streets. The good faith of the Hubbells in attempting to sustain the ownership of the Des Moines Union in that litigation is evidenced by the fact that the decree of the trial court adjudged the title to be in the Des Moines Union and

there was a dissenting opinion in the Supreme Court approving that title.

There are a number of matters as to which it seems to us, counsel should have stated their views. Among these are the following:

(1) If the organization of the defendant Company was for the *sole* purpose of providing the corporate trustee referred to in the contract of 1882, as claimed on pages 99-100 of their argument, why did they organize a corporation having the power and assuming the obligation of a Railway Company and why did they organize a corporation for pecuniary profit?

(2) If it was the purpose to transfer to the defendant Company simply the legal title to the Terminal property then why the following:

(a) Why did the Des Moines Northwestern Railway Company, in whose name the title to no part of the Terminal stood, in January, 1895, pass a resolution authorizing its officers to transfer to the Terminal Company all of its interests in the Terminal Company of whatever kind and character?

(b) Why did the Northwestern Company, the Northern Company and the St. Louis Company, each, in their resolutions of January, 1885, authorizing their officers to convey this property, use this language:

> "convey, assign and transfer to said company all its right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the sig-

natories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract." (Rec., Vol. II, p. 427.)

(c) Why did Col. Blodgett, whose integrity and ability are unchallenged, who had lived these transactions and who knew the intention better than can counsel or the Court, in preparing the deed of the St. Louis Company in carrying out these resolutions, prepare a warranty deed, and why did he formulate it so as to convey not only the property which stood in the name of that Company but also "all of the real estate within the City of Des Moines • • • also all its embankments, bridges, side tracks, • • • all its railroad property acquired or to be acquired and everything appurtenant to said railroad" (p. 458).

(d) Why did the Northern Company in its deed after describing the property which stood in his name use the following language:

"Together with all and singular the tenements, herditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, etc." (p. 456).

(e) Why was it provided in the original articles of incorporation of the defendant Company that its capital stock should be issued in payment for the Terminal property?

(f) Why was it recited in the contract of May 10th, 1889, that the defendant Company owned this property?

(3) If the contract of May 10th, 1889, was supplemental to the contract of January 2, 1882, why does it not recite this fact?

INACCURATE STATEMENTS AS TO WHAT THE RECORD CONTAINS.

On page 35 of the brief, counsel say the resolutions of November 5th and 8th, 1887, were addressed to the same object as the resolution of January 1, 1885, namely: the transfer of the trust properties to the Des Moines Company as corporate trustee. Substantially the same assertion is made at numerous other places in the brief. This is not true. The resolutions of January, 1885, do not purport to authorize Howe and Dodge as trustees or otherwise to convey any property but are restricted to the authorization of the three Railway Companies to a transfer of the ownership of the properties. The resolutions of 1887 are directed solely to Howe and Dodge as trustees except that the St. Louis Company is again authorized to transfer the ownership.

On pages 44 and 45 and at several other places in the brief it is asserted that at a meeting of the directors of the Des Moines Union Railway Company, held March 31st, 1888, a resolution was passed directing Col. Blodgett to prepare a thirty-year contract supplemental to the contract of January 2, 1882, and that the contract of May 10th, 1889, was prepared and executed in pursuance of that resolution and therefore counsel denominate the contract of 1889 as the "sup-

plemental contract." The facts are not as asserted by counsel. The resolutions are as follows:

"Resolved, That the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company, or their successors or assigns, shall pay the operating expenses, taxes and interest on bonds that are or may be issued, after deducting any amount received from other sources for *rental*, pro-rated on a wheelage basis, and that said payments, including interest charges, shall be made monthly, and when for any reason, said Companies, or either of them, shall be or become in default in the making of any such payment, or any part thereof, on the day when the same shall be or become due and payable as aforesaid, interest shall be collected upon amount so in default to the time same shall be fully paid and satisfied.

Resolved, That Col. W. H. Blodgett be requested to prepare an agreement for *three* years from May 1st, 1888, based on the above resolution and covering in detail the conduct and operation of the Des Moines Union Railway Company. Said agreement to be approved and executed by all the lines now holding an interest in the property.

Said agreement shall provide that if at the end of six months from date of same, either party to the contract shall feel that the terms of same are unjust to them, and give notice to that effect, it shall be a matter for readjustment.

Resolved, That the terms and conditions on which the several lines now interested, or which may hereafter become interested, shall enjoy the use of these terminals, be fully set forth in a supplemental agreement to be made and executed between the Des Moins Union Railway Company and each of the lines using the said terminals."

The first contract mentioned is not to be for *thirty* years, but for *three* years. And the second contract which is referred to as supplemental is manifestly to be supplemental to the three years' agreement. The agreement of 1882 is not mentioned from beginning to end of the proceedings. The actual conclusion of the matter was that the parties determined to make one bite of the cherry and so they drew up the contract of May 10th, 1889, to be effective from May 1st, 1888, and to run for thirty years. And this contract was comprehensive and complete in itself and not supplemental to anything else. And in no document and in no letter or record entry is it referred to as supplemental. That designation came in with this litigation and is the contribution of counsel.

On pages 26 and 27 counsel state the provisions contained in the Articles of Incorporation of the defendant company. They call the defendant always the "Depot Company." They put the name in quotation marks and italicize it as if it were quoted from the articles.

The fact is that the defendant Company is not referred to as the "*Depot Company,*" in the Articles of Incorporation, the amendments thereto, or in any resolution, contract, deed, or other document found in the Record.

Referring to the Stockholders' Meeting of April 8th, 1890, at which the Articles of the defendant Company were amended, counsel, on page 55, say it is conceded that no one held a proxy representing the persons and interests whom the Record showed were represented at that meeting and in support thereof refer to Mr. Hubbell's testimony on pages 1165-9. What Mr. Hubbell testified to was that at the time of taking his deposi-

tion in May, 1911, more than twenty-one years after the Meeting of April 8th, 1890, he was unable to find these proxies. Again referring to this same Meeting of the Stockholders, counsel on page 126, say, "no conference, however, took place between Blodgett and Cummins; Cummins alone redrafted the proposed amendments to the Articles." With respect to this Senator Cummins testified "it (the draft of amended articles of incorporation) was submitted to Col. Blodgett and I had a conference with him; possibly more than one" (p. 1201).

On page 90 counsel say, "after the concentration of the trust properties in the Des Moines Company no equitable tenant in common in such trust properties ever conveyed, released or otherwise relinquished to the Des Moines Company its equitable estate therein." This statment is substantially repeated on pages 108 and 153. While it would not be correct to say that so far as these statements assert that the three railway companies did not after once transferring this property to the defendant Company, again transfer it, they are not true, these statements are misleading in that they tend to induce the belief that the three Railway Companies did not at any time transfer the ownership to the defendant Company.

Company.

The transfer of the ownership was the result of the resolutions of 1885 and 1887 and the deeds executed in pursuance thereof and the payment therefor by the Terminal Company. All these transactions were at or prior to the concentration of the ownership in the Des Moines Company.

Speaking of "surplus earnings," counsel say, on page 186, "although the Record does not show the

amount of these accumulations at the present time, the testimony having been taken a number of years ago, it seems proper to state to the Court that these accumulations now amount to approximately Two Million Dollars ($2,000,000.00)." There is nothing in the Record to sustain this statement and it is not true as a matter of fact. The Record does show that a substantial sum is involved in this issue.

DEFECTIVE STATEMENT OF AGREEMENT OF 1882.

In their many refereneces to and statements concerning the agreement of 1882, counsel for petitioners never quote, never mention and never refer to a significant clause in the tenth paragraph. This paragraph provides for the use of the terminal railroad by companies whose roads do not extend to Des Moines and that this may be had by any such company upon payment of a fair sum for rental and its proportion of the maintenance account." Up to this point counsel are free in quotation and comment. But the paragraph proceeds, "the rental to enure to the Companies hereto in the same proportion as the original outlay." Here is a distinct assertion of proprietary right and interest. The Company that owns a one-half interest in the property is to receive one-half the rental, and the company that owns but one-fourth is to receive but one-fourth of the rental. The rental is not to go to the reduction of operating expenses, but is in the nature of what the parties later called surplus earnings. And so if they had organized a depot company on the plan of this agreement, the stock representing the property would have had the benefit of these rentals. True the

parties did not organize such a company and being all agreed they were not bound to do so, and so too they might subsequently agree as they did to a different disposition of this particular rental, but the clause goes to show that the contributions to the enterprise as invested capital, and as well the stock afterward issued on account of such capital investment, as such stock was to have a value as property. So all consideration of this provision of the agreement was studiously avoided by counsel.

So, too, counsel avoid all mention of the letter of Hubbell to Miller, February 22nd, 1894. They argue and assert by implication that the Milwaukee Company was not informed as to the shareholding in the Des Moines Union Company. This letter was written at the very beginning of the negotiations that resulted in the Milwaukee finally acquiring the Northern lines, and before it had invested a dollar or done anything in the premises. In this letter Mr. Hubbell says:

> "The Des Moines Northern and Western Railway Company own one-fourth of the capital stock of the Des Moines Union Railway Company. The Wabash own one-eighth, and five-eighths is owned by individuals."

To bring this letter into the discussion would make absurd any suggestion that the Mliwaukee Company was not fully advised of the rights of Hubbell and Son and that it did not buy subject to those rights. So the letter was left out of consideration as the easiest way of dealing with it.

Counsel say that our position results in a disregard of the terms on which local aid was voted to the Northern line by some of the townships through which it

passed. It is not for the Milwaukee to make such a defense. If such an issue had any place here, the Milwaukee Company would have no standing, for it would have no right to the line. One of the conditions on which aid was voted was that "said railroad shall never pass under the control of any of the lines constituting what is known as the Chicago pool or of the Chicago, Milwaukee and St. Paul R. R. Company" (Rec., Vol. II, p. 789). As the people who voted the aid are not complaining of what has been done here, no one else has any warrant for assuming to speak in their behalf.

RELATION OF MR. CUMMINS TO THE TRANSACTION.

It is repeated over and over again in the brief of counsel that Mr. Cummins was the personal counsel of F. M. Hubbell and Son and in such way as to suggest that he acted in their behalf rather than in behalf of the Wabash and the Des Moines Union, whose counsel he also was, in the transactions in which he had part. But the evidence is conclusive that everything done or advised by him was done in the open, after long notice and full knowledge by all concerned. He did not come into the situation until in 1888. He had nothing to do with the contract of 1882 nor with the organization of the Des Moines Union, nor yet with the sale and transfer to it of the terminal properties. He did not draft the contract of 1889. Nor had he aught to do with the sale of the Des Moines Unon stock to Hubbell and General Dodge. Col. Blodgett drew up the papers covering that transaction. The rough draft of the memorandum of sale of the stock is in evidence. (Rec., Vol. IV, p. 1600.) It is admittedly in part in

the handwriting of Hubbell and in part in the handwriting of Col. Blodgett (p. 1601). Mr. Cummins was not so much as present.

The important transaction in which Mr. Cummins had considerable part was the amendment of the Articles of Incorporation. This matter was months under way. It was under consideration at various meetings of the Company, stated and adjourned. It was the subject of correspondence and of discussion in personal conferences. The amendments were adopted only after grave consideration and the fullest deliberation and when the strong men of the interests other than Hubbell's were present, Col. How, for many years Vice President of the Wabash, and Hays, one of the ablest and most progressive railroad men in the country. General Dodge was not present in person, but he had been fully informed and he approved and was present by proxy. And when it came to the execution of the Articles in form for recording, General Dodge, Col. Blodgett, Col. How and Charles M. Hays signed and acknowledged the articles as officers and directors of the Des Moines Union. To say that these men were in any way misled or that they knew not what they did is the sheerest nonsense. They none of them ever said so. These men were all of them save Col. How, living while this suit was pending. The testimony of Col. Blodgett and Mr. Hays was taken. Neither of these men said that they did not understand the amendments at the time of their adoption or that any misrepresentations were made to them by anybody. Their recollection of matters is dim as is natural after so many years, but there is no impeachment of the integrity of anything that was done. And, indeed, the status of the Des Moines Union Company and the character of its

title to the property it held and the nature of its rights and interests therein were all fixed before Mr. Cummins came upon the scene.

The subtle suggestion of anything inviting criticism or distrust of his conduct is as baseless as the gross charges of the forgery of records made in the amended bill of complaint and abandoned without attempt at proof.

We pass now to a consideration of the question of "surplus earnings," the subject of the cross petition.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON,
Petitioners,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY,
Respondents.
No. 279

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

STATEMENT, BRIEF AND ARGUMENT FOR PETITIONERS

STATEMENT.

In discussing the questions involved in this cross-petition for certiorari we will continue to designate the parties as we have done in the case involving the main issue, believing that this will avoid confusion, the Milwaukee and the Wabash Companies as petitioners or

complainants and the Des Moines Union Railway Company and the individual parties as respondents or defendants.

The issue here is as to what are known in the record as

SURPLUS EARNINGS,

being moneys received by the defendant company as compensation for switching services rendered companies other than the complainants or their predecessors, rentals from property owned by the defendant company and not at the time needed for terminal purposes, rental for station privileges, etc.

A very considerable portion of this fund was used to acquire additions to and make improvements on the terminal property, done by consent of all parties at the time. The unexpended balance of the fund, in the treasury of the defendant company on January 1st, 1907, the last date as to which we have testimony, was $125,276.78 (Vol. IV, p. 1397). The record does not show the subsequent accumulations.

The question is who is entitled to this fund, the Des Moines Union Railway Company or the Milwaukee and the Wabash Companies?

This controversy involves the construction of the contract of May 10, 1889 (vol. II, p. 479). By the terms of this contract the defendant agreed, for the period of thirty years from May 1, 1888, to furnish to complainants' predecessors terminal facilities and certain terminal services. In consideration of this it was agreed:

> "Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay

to said party of the first part a sum of money to be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round houses, transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be *deducted* therefrom the amount, if any, which *other* railway companies may be under obligation to pay by *virtue of contracts for the use of said property*, or parts thereof, for the preceding month, and the *remainder* shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage

of all said second parties during such preceding month."

The question is, whether the complainants are entitled to credit for the items making up this fund, such items not being items "which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof."

The Circuit Court of Appeals held that this fund belonged to complainants and it is this provision of the decree which defendants bring up for review by their petition for certiorari.

ASSIGNMENTS OF ERROR.

The Circuit Court of Appeals erred in holding:

"I That the contention of petitioners that the only character of credit items to which the respondents were entitled under the contract "were such as were paid by some other railway by virtue of a contract for the use of the property" while a strict construction of the exact wording of the contract is not "a fair construction of the spirit of the agreement."

II. That its conclusion as to what was the "spirit of the agreement was based upon or warranted by the history of the transaction.

III. That its construction of the contract giving the surplus earnings to the respondents was justified by the reading of the contract in its entirety.

IV. And in its order, judgment and decree directing the District Court of the United States for the Southern District of Iowa to so modify its decree "that the surplus earnings belong to the railways, and to appoint a master under instructions to ascertain the part due each upon a wheelage basis."

POINTS AND AUTHORITIES.

I.

THE CONTRACT OF MAY 10, 1889, WAS CLEAR AND UNAMBIGUOUS, AND ITS INTERPRETATION DOES NOT REQUIRE A CONSIDERATION OF THE ACTS OF THE PARTIES THEREUNDER.

Where the meaning of a contract is clear in the eye of the law, the courts will not resort to the acts of the parties for its construction.

Railroad Co. v. Trimble, 10 Wall. 367.
Russell v. Young, 94 Fed. 45 (C. C. A.).
Ralya v. Atkins, 61 N. E. (Ind.) 726.
Comptograph Co. v. Buroughs Co., 179 Ia. 83, l. c. 108.

A written instrument is ambiguous only when found to be of uncertain meaning by persons of competent skill and information.

Comptograph Co. v. Burroughs Co., supra.

II.

THE CONTRACT OF 1889 WAS RATIFIED IN ALL ITS TERMS BY THE CONTRACT OF 1897.

III.

IF RESORT IS HAD TO THE CONDUCT OF THE PARTIES AS A CONSTRUCTION OF THE CONTRACT, IT WILL BE FOUND THAT THE FUND WAS DEALT WITH ALWAYS AS BELONGING TO THE DEFENDANT COMPANY AND DISPOSED OF AS IT DIRECTED UNTIL JUST BEFORE THIS SUIT WAS BROUGHT.

ARGUMENT.

I.

THE CONTRACT OF MAY 10, 1889, WAS CLEAR AND UNAMBIGUOUS AND ITS INTERPRETATION DOES NOT REQUIRE A CONSIDERATION OF THE ACTS OF THE PARTIES THEREUNDER.

In the conduct of its business as a terminal company, the Des Moines Union Railway Company from time to time moves cars from and to industries located on its lines, for carriers other than complainants, for which it makes and collects a charge. It also leases certain pieces of its property not needed at present, for railway purposes, for which it collects rentals. It also leases certain portions of its union depot, for which it collects rentals. The funds received from these sources are what have been known in this record and in the books of the terminal company as "surplus earnings."

The Des Moines Union Company took possession of the terminal property May 1, 1888, as already shown, and began the operation thereof.

On May 10, 1889, the defendant company entered into a written contract with the predecessors of complainants, by which it granted to them a certain qualified use of the terminal property and agreed to furnish to them certain terminal services (vol. II, p. 479). In section 3 of the contract (p. 481) it was agreed that plaintiffs' predecessors should pay for such terminal services a monthly sum to be ascertained in a particular manner, and then section 4 of the contract provides:

"Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which *other railway companies* may be under obligation to pay by *virtue of contracts* for the *use* of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month."

The Circuit Court of Appeals said with respect to our position in this argument that "this latter contention is a strict construction of the exact wording of the contract" (Rec., vol. V, p. 2115). There is nothing in any other provision of the contract to qualify or impair the force of "the exact wording of the contract."

Where a contract itself is clear and unambiguous, extraneous facts cannot be resorted to for the purpose of construction. This is the accepted rule.

In the case of

Railroad Co. v. Trimble, 10 Wall 367,

this Court, in discussing the effect to be given to the acts of the parties in construing a contract, l. c. 377, said:

"• • • Where there is doubt as to the proper construction of an instrument, this feature of the case is entitled to great consideration; but where its meaning is clear in the eye of the law, the error of the parties cannot control its effect. In this view of the subject, conceding that Trimble took this conveyance, not out of abundant caution and to solve in his favor a doubt which might otherwise possibly arise against him, but because he deemed

it necessary to give him a title which he did not already possess, his legal rights in this controversy are just what they would have been if that instrument had not been executed."

The case of

Russell v. Young, 94 Fed. 45 (C. C. A.),

involved the construction of a contract between an attorney and his client with respect to compensation for legal services. One of the claims made by the plaintiff in the case was that the contract had been construed by the act of the parties. The opinion was written by Circuit Judge Lurton, and referring to the question under consideration, he says (p. 47):

"Plaintiff offered to prove that he had deducted 7½% of every cash collection made by him and remitted the remainder to Mr. Carlisle with a statement showing that he had retained 7½% as compensation for the collection of the particular remittance, and that no exception had ever been taken by Mr. Carlisle to this construction of the contract. This evidence was offered for the purpose of showing that the parties had construed the contract according to the present contention of plaintiff in error. The evidence was rejected upon the ground that the contract was not doubtful and needed no such sidelight in its interpretation. Evidence as to the particular construction by the parties of a doubtful or ambiguous instrument is often of great importance, but such evidence can never control the effect unles the legal meaning is doubtful. *Railroad Co. vs. Trimble,* 10 Wall 367,377; *Lang Co. vs. Doll,* 35 Md. 89; *Fogg vs. Insurance Co.,* 10 Cush. 337. To give effect to a written agreement according to an erroneous construction placed upon it by the parties would not be to con-

strue, interpret and enforce the written agreement upon which the action is brought, but to enforce a new and different contract."

The case of

Ralya v. Atkins, 61 N. E. (Ind.) 726,

was a suit upon a contract which, it was claimed, had been construed by the acts of the parties. Referring to this subject the court says (p. 728):

"* * * This action is founded on the contract in writing, executed by the parties, and it is sought to enforce the same as executed, not modified by any oral agreement or otherwise. It is true that when the terms of a contract are of doubtful or ambiguous meaning, the construction placed on the same by the parties by their conduct and acts may be shown for the purpose of arriving at their true intention. The construction placed on such contract by the parties is entitled to great weight and may be controlling. * * * When, however, the contract is free from ambiguity and its meaning is clear, such rule is not applicable. * * * In *Morris vs. Thomas,* 57 Ind. 322, this court said: 'If there is any obscurity, uncertainty or ambiguity in the terms of a contract, then the acts of the parties in connection therewith, as suggested by appellant's counsel, would furnish valuable aid in the construction of the contract; but where, as in this case, the terms of the contract are plain, intelligible and free from doubt and uncertainty, rules of construction are unnecessary and of no possible service. In such a case it is certainly not the province of the courts by any rules of construction to make another and entirely different contract for the parties from the one they made for themselves."

In the recent case of

Comptograph Co. v. Burroughs Co., 179 Ia., l. c. 108,

the Supreme Court of Iowa had to say upon this subject the following (p. 473):

> "we understand the law to be that where the parties to an agreement have acted upon a certain interpretation of it, this interpretation will not be followed by the courts where the contract is not ambiguous, since a construction contrary to the plain meaning of the instrument is necessarily erroneous, and the parties are not bound by their erroneous construction of it. Spencer v. Millisack, 52 Iowa, 31, 2 N. W. 606; also Railroad Company v. Trimble, 10 Wall. (77 U. S.) 367, 19 L. Ed. 948. But where there is doubt as to the proper construction of an instrument, the construction put upon it by the parties is entitled to consideration. Railroad Company v. Trimble, supra.
>
> A written instrument is ambiguous only when found to be of uncertain meaning by persons of competent skill and information. 1 Greenleaf on Ev. (Lewis Ed.) § 298."

Turning now to an examination of the contract of May 10, 1889, for the purpose of determining whether or not it is ambiguous with respect to the subject matter of this inquiry. Two things must be kept in mind, because, in the language of the Supreme Court of Iowa, "a written instrument is ambiguous only when found to be of uncertain meaning by persons of competent skill and information." *(Comtograph Co. v. Burroughs, supra.)*

One of these facts is that the charter of the Des Moines Union Railway Company contained, among other things, the following (vol. II, p. 420):

> "The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including * * * the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, store-houses or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines."

When the Des Moines Union Railway Company accepted this charter it not only acquired the powers, but assumed the obligations of a common carrier, and included in this was the power and obligation to perform switching services not only for complainants and their predecessors, but for any other railroad or shipper who desired transportation over its line. In other words, the duties and obligations of the Des Moines Union Railway Company were not confined to serving the railways parties to the contract of May 10, 1889, but it owed the duty of performing the services of a common carrier for any other railway company with which it might connect, or any shipper who desired to use its line for transportation. For these services the Des Moines Union Railway Company was entitled to compensation. Not only this, but it had long been the custom of railway companies to lease privileges in their depots, to charge storage for baggage, etc. It was therefore certain that from these sources the defendant company would receive an income, whether great or small.

The other fact is that this contract of May 10, 1889, was drawn by Col. Wells H. Blodgett, then general solicitor for The Wabash Company, who, as the record shows, had been exclusively employed in the railroad service for years prior to the drawing of this contract and therefore knew the sources of revenue upon which the defendant company might depend.

Knowing by whom this contract was drawn, we would naturally expect to find it clear and unambiguous and its provisions stated in no uncertain terms, and in this expectation we are not disappointed. The language selected by Colonel Blodgett to evidence the agreement is as follows (vol. II, p. 481):

> "Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which *other railway companies* may be under obligations to pay by virtue of *contracts* for the *use* of said property, or parts thereof, for the preceding month."

Now there are three things which must appear before the complainants are entitled to have a credit upon their accounts, and these three things are the following:

(a) The sums must be paid by other railway companies.

(b) They must be paid by virtue of a contract.

(c) They must be paid for the use of the property.

The idea that the complainants are entitled to credit for any items which do not come within the above clas-

sification is excluded by the very language of the contract following that above quoted, which is as follows:

> "and the *remainder* shall be paid by the parties of the second part."

The word "remainder" means the aggregate of the sums ascertained as provided in section 3 of the contract, after deducting the items specifically authorized in section 4.

It is undisputed that almost from the beginning the terminal company did receive payments from other railway companies by virtue of the contracts for the use of this property, and that these sums have been consistently credited upon the bills of the complainants and their predecessors.

For instance, the record shows that the Chicago Great Western Railway Company has for many years paid large sums annually for the use of the terminal property, and that likewise other railroad companies are paying such items, but all these sums, as we have said, have been credited to the complainants and their predecessors.

Upon this subject Mr. E. B. Pryor, a witness for the complainants, and vice president of The Wabash Company, and who had examined the books of the terminal company for the purpose of qualifying himself as a witness, testified in substance:

The Wabash, and the Chicago, Milwaukee & St. Paul Railroad Company, are the only present users of the terminals who are successors to the original parties of the second part to the contract of May 10, 1889. The other railroads which are now using the terminals, or parts of them, are the Chicago, Great Western, the

Chicago, Burlington & Quincy, the Minneapolis & St. Louis Railroad Company, and the St. Paul & Des Moines Railroad Company. The amounts which these companies are under obligation to pay by virtue of their contracts for the use of the property for the preceding month, using the language of the contract, 'are deducted from the bills rendered to your Company and the Chicago, Milwaukee & St. Paul Railway Company.' Among these amounts the Chicago Great Western Railroad Company, and its predecessor, the Chicago Great Western Railway Company, has been paying one-third of all the taxes as a part of the rent, which it pays, and an amount equal to one-third of the maintenance and other amounts which are specifically set out in the contract. (Vol. II, p. 353.)

We have, therefore, the situation that it was perfectly apparent that the terminal company would have earnings of the character which make up the fund in controversy, and we have a contract drawn which specifically confines the credits to which the complainants are entitled, to items other than those under consideration, and the contract excludes the items under consideration by specifically providing that the remainder should be paid by the tenant companies. Language more appropriate to carry out what was in the mind of the parties could scarcely be selected.

Even if we resort to the conduct of the parties as an aid to construction, the result is the same.

As we understand counsel for petitioners they do not really contend that the contract is ambiguous, but ignoring the rule of law which we have cited they contend that the conduct of the parties under the contract put a construction upon it which gives to them these surplus earnings.

What was that conduct? We concede that at the beginning the Des Moines Union credited these earnings, then very small, to the railway companies. Why it did this the record does not show. There is no testimony indicating that there was any discussion of the subject. These earnings belonged to the Des Moines Union and it could do with them what it pleased. The ultimate beneficiaries of these revenues at that time were very much the same whether they went to the Des Moines Union or to the tenant companies.

The first record action taken with respect to them was the resolution of the Des Moines Union of February 11th, 1891 (Rec., Vol. II, p. 497), as follows:

> "It is ordered that the rents collected for the use of the Company's real estate and the switching charges paid in be credited on bills of *the different tenant companies occupying this company's terminals*, giving to each company its share ascertained by wheelage."

Now this had been done for a few months previously. This resolution was the action of the Des Moines Union, disposing in the way indicated of its own revenues. The credit, it is to be observed, was to be allowed to all the tenant companies, including the Chicago, St. Paul & Kansas City Company, which was neither a shareholder in the Des Moines Union nor a party to the contract of 1889. If by that contract these revenues belonged to the petitioners' predecessors, the Des Moines Union had no right to give them in part to the C., St. P. & K. C. Company, for it was not a party to the contract. What that Company paid under its own contract with the Des Moines Union was under the contract of 1889 to be deducted from the expense

charges against the other railway companies, and it was entitled to nothing on the score of receipts by the Des Moines Union on switching and rental accounts. But the Des Moines Union had the right to make concessions from its own revenues to any or all of its tenant companies. That the C., St. P. & K. C. Company shared in the credits to the tenant companies, so long as they were allowed is shown by Rec., Vol. II, p. 279 to 313.

This concession for whatever reason made ceased January 7th, 1892, less than three years after the contract of May, 1889, when the directors of the Des Moines Union passed the following resolution (Rec., Vol. II, p. 499):

> "Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills, which come in before it receives its monthly revenue from the tenant companies:
>
> Therefore, be it resolved that until the further action of the Board, the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purposes."

In other words, the Des Moines Union wanted a working capital fund and got it by its own action in withdrawing from the tenant companies, all of them, what before it had allowed them.

And this new order was to continue until further action of the Des Moines Union. Strange that the disposition of these revenues whatever that might be, should from the beginning be determined by the sole action of the Des Moines Union if it was not the owner of them.

No action was ever had respecting these revenues by any other company until many years after, in 1906, when this suit was in the brew.

And after January, 1892, these revenues were never again credited to any of the tenant companies, but they were used entirely in the acquisition of additional property, in improvements and in the accumulation of surplus.

The first reference to surplus earnings in the record after the passage of the resolution of January 1, 1892, is contained in the record of a meeting of the board of directors of the terminal company held May 26, 1894, (ex. 130, vol. IV, p. 1338), where it was resolved to pay what is known as the Hill mortgage of $4,000 out of this fund. At this meeting the only Wabash representative present was its local attorney, Mr. A. B. Cummins.

At the meeting of the board of directors held June 7, 1894, at which Charles M. Hays, general manager of the Wabash Company, was present, the following appears in the record:

> "The records of the meeting held May 26th, 1894, were read and the proceedings therein set forth were, on motion, unanimously approved and agreed to with the exception of the Resolution to pay the mortgage upon lot seven (7) in block fifteen (15) of the Original Town of Fort Des Moines amounting to $4,000.00, out of the funds on hand realized from rents of real estate and from switching cars. On motion to approve this part of the record, Mr. Hays wanted further time." (Ex. 132, vol. IV, p. 1340.)

At a meeting of the board, held July 10, 1894, the following appears of record (ex. 133, vol. IV, p. 1341):

> "On motion of F. M. Hubbell, the treasurer was directed to pay the Abbie Bechtel mortgage of two thousand dollars ($2,000) with accrued interest thereon, upon the south forty-four (44) feet of lot ten (10) in block thirty-five (35) Fort Des Moines, Iowa, upon which is situated in part, the Freight House of this Company; and upon payment of same to have the mortgage cancelled of record, provided, however, that the written consent of Chas. M. Hays could be procured."

On June 19, 1894, Mr. Hays wrote Mr. Hubbell as follows (see cross examination of Hays, vol. II, p. 256):

> "Referring to the M. L. P. Hill note of $4,000 which you reported at a meeting of directors of the Des Moines Union Railway Company, held June 7th, as having been paid by you, which you suggested should be taken out of the surplus earnings of the Des Moines Union Railway, and upon which I withheld my vote until I could consult with President Ashley, of the Purchasing Committee, *after discussion of the matter with Mr. Ashley and General Solicitor Blodgett, they concur in the opinion that a proper disposition of the payment will be to charge it to the surplus earnings as proposed*, and you may therefore be governed accordingly. Please ascertain from treasurer and advise me what balance this still leaves in the hands of the treasurer to the credit of 'surplus earnings.'"

And again on August 9, 1894, Mr. Hays wrote Mr. Hubbell (see vol. II, p. 256) as follows:

> "I have yours of the 7th showing surplus earnings of Des Moines Union Railway on hand July 1st of $15,312.89, and after paying note of L. P. Hill of $4,000 interest, $180, $11,132.89 on hand, I approve of your application of $2,000 of this amount to the payment of the Abbie-Bechtel mortgage."

Defendants' exhibits 312 to 316 inclusive (vol. IV, pp. 1623-7), are letters passing between Mr. Hubbell and Mr. Hays in October and November, 1894, in reference to the application of surplus earnings to the payment of the indebtedness on the Heath property, which application Mr. Hays approved.

In pursuance of this correspondence the board of directors of the terminal company, at a meeting held November 14, 1894 (ex. 135, vol. IV, p. 1343), at which Mr. Hays was present by proxy to A. B. Cummins, a resolution was passed appropriating out of the surplus earnings $10,775.00 to apply upon said indebtedness and to pay the balance of said indebtedness, amounting to $40,000.00, and evidenced by unmatured notes out of the surplus earnings as the notes became due, and the following was also enacted:

> "The words 'Surplus Earnings' as herein used, mean that fund arising from the rentals of such real estate and from switching charges."

On November 19, 1894, the same subject was considered by a meeting of the board of directors of the terminal company (ex. 136, vol. IV, p. 1344).

At the annual meeting of the stockholders held February 14, 1895 (ex. 138, vol. IV, p. 1347), there were present, among others, C. M. Hays, general manager of the Wabash Railroad, Mr. H. L. Magee, a representative of the Wabash, the Purchasing Committee of the Wabash by Charles M. Hays, proxy, and the Des Moines Northern & Western Railroad Company by F. M. Hubbell, president. The following appears in the record:

> "On motion, the minutes and proceedings of all meetings of the Board of Directors and Stockholders held during the year 1894, were read and approved and all of the acts of the Board of Directors and Officers done during year 1894, were confirmed and ratified."

In August, 1896, Mr. J. Ramsey, Jr., then vice president and general manager of The Wabash Railroad Company, wrote to F. C. Hubbell, president of the Des Moines Union Railway Company (ex. 357, vol. IV, p. 1666), as follows:

> "This will be handeed you by Mr. Pryor, our assistant auditor, whom I have requested, in company with Mr. Garrett to go to Des Moines, and look over the methods and cost of operating the joint terminals.
>
> I do not do this because I have any doubt or apprehensions as to the property being handled in the best way possible for the interests of all, but only in order to fully post myself on the whole situation at that point.
>
> I find our company has not been in the habit of receiving any statement from the Des Moines Union, other than the one showing the cost of operation, and we have no information, whatever, as to the revenues of the company, their general dis-

position, etc., nor any of the detailed information which I think we should have in order to keep properly informed.

Will you kindly have the officers of the Des Moines Union furnish Messrs. Pryor and Garrett every opportunity necessary for them to become properly posted in the premises."

From this it appears that at this time the new vice-president and general manager of the Wabash learned all the facts as to the way in which the business of the Terminal Company was conducted, what its revenues were and how its accounts were kept.

II.

THE RATIFICATION CONTRACT OF 1897.

Of greatest significance here is the history of the proceedings which ended in the contract of July 31st, 1897.

The original railway companies parties to the contract of 1889 were no longer operating their respective properties and question seems to have arisen as to whether the contract was binding upon their successors. This doubt affected the market value of the Des Moines Union bonds, which in large part were held by the Wabash Company. Mr. Ashley, President of the Wabash, wanted that doubt removed. On December 28th, 1896, he wrote to Mr. Hubbell as Secretary of the Des Moines Union as follows (Rec., vol. IV, p. 1673):

"Permit me to remind you of our understanding to the effect that you would have prepared at once a new agreement for the tenant companies of the Des Moines Union Railway Co. to sign, this new agreement being considered necessary on ac-

count of the foreclosure of the Des Moines & Norwestern. I understand that the agreement will be exactly as before, except that the time must be made to correspond with the life of the bonds, or to be made for a period to extend beyond their maturity.

I write now for the purpose of urging the immediate preparation of this agreement, as without it we cannot well dispose of our bonds. When it is ready please forward it to Colonel Blodgett, asking him to examine the same and to send it to me as soon as possible. I should not suppose it would take long to have the agreement prepared and as time in this case is of importance I hope you will see that the paper is gotten under way at once. Perhaps you have already taken the matter in hand and if so, so much the better."

On February 3, 1897, Mr. Hubbell wrote to Colonel Blodgett (ex. 367, vol. IV, p. 1679), enclosing the proposed new contract prepared by Mr. Cummins. This proposed contract is defendants' exhibit 383 (vol. IV, p. 1703).

It is significant to note that so far as the passages in the proposed contract under which the subject of surplus earnings arises are concerned, the proposed contract which Mr. Cummins prepared and which was forwarded to Colonel Blodgett was identical with the contract of May 10, 1889, the provision being contained in section 3 as follows:

"Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, which shall embrace every item of expense or liability of whatsoever name or character, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligations to pay by virtue of con-

tracts for the use of said property or parts thereof, for the preceding month, and the *remainder* shall be paid by the Des Moines & St. Louis Company," etc.

Immediately upon this proposed contract coming into the hands of Colonel Blodgett, the question of what was to be done with the surplus earnings was raised. The form of the question, however, was not as to who was entitled to the surplus earnings under the contract of May 10, 1889, but what change could be made in the contract so as to entitle the tenant companies to such surplus earnings, or a portion thereof. It seemed to be conceded that under the contract of May 10, 1889, the surplus earnings belonged to the terminal company, and it was Colonel Blodgett's idea that this feature of the contract should be changed.

In a letter of Colonel Blodgett to Mr. Hubbell dated March 26, 1897 (ex. 377, vol. IV, p. 1687), Colonel Blodgett encloses two forms of section 3 which he proposes to be inserted in place of section 3 as prepared by Mr. Cummins. These forms are exhibits 378 and 379 (vol. IV, pp. 1688-91), and provide for crediting the surplus earnings upon the accounts of the tenant companies. If these tenant companies were entitled to credit for these surplus earnings under the provisions of section 3 of the contract as prepared by Mr. Cummins, which we have shown are the same provisions as are contained in the contract of 1889, then, of course, it was unnecessary for Colonel Blodgett to insist upon any change in this section. The clear inference is that in the opinion of the parties neither the proposed contract as drawn by Mr. Cummins, nor the contract of 1889, entitled the tenant companies to these credits.

The subject of the surplus earnings was threshed out by the parties, as will be ascertained by the follow-in gexhibits (vol. IV): 367-a, 368 (p. 1680), 375-6 (pp. 1684-7), 382 (p. 1694), 377 (p. 1687), 378 (p. 1688), 379 (p. 1689), 380 (p. 1691), 381 (p. 1692), 384 (p. 1712), and 385 (p. 1723).

It will be noted from an examination of these exhibits, that nowhere do the Wabash officials take the position that they were entitled to a credit for these surplus earnings, either under the contract of 1889, or because of any alleged construction put thereon by the acts of the parties, but their contention is that in this new contract a change shall be made with respect to the surplus earnings, which would give to the tenant companies such earnings, or a portion thereof.

The result of the conferences and negotiations was what is known as the ratification contract of July 31, 1897 (vol. 11, p. 506), which was a ratification and adoption of the contract of May 10, 1889, except as therein changed, and no change was made in the language of the latter contract under which the question of surplus earnings arises.

This ratification contract was executed by the Des Moines Union Railway Company on the one hand, and by the complainant, The Wabash Railroad Company, and by the Des Moines Northern & Western Railroad Company (predecessor of the Chicago, Milwaukee & St. Paul Railway Company) on the other.

This contract, referring to the contract of May 10, 1889, provides among other things as follows:

> "And the Wabash Company for itself agrees to make the *payments therein provided for at the times and in the manner prescribed for the said*

Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company."

The Complainant, the Wabash Company, agreed therefore, to make payments to the Des Moines Company, not according to any modification of the contract of May 10, 1889, or any subsequent construction thereof, but strictly, as *"therein provided."* It was provided in the contract of May 10, 1889, that the Des Moines & St. Louis Company would pay its share of all the expenses of the Des Moines Company ascertained on a wheelage basis, except there should

> "be deducted therefrom the amount, if any, *which other railway companies* may be under obligation to pay by virtue of *contracts* for the *use* of said property or parts thereof, for the preceding month."

It therefore appears that the attempt to change the contract with respect to the disposition of the surplus earnings was abandoned, and it was agreed that the Wabash Company should pay in accordance with the terms of the original contract.

With respect to the predecessor of the Chicago, Milwalkee & St. Paul Railway Company, the contract provided (p. 508):

> "And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein, and as though it had been named in and was a party to the said contract when originally made, and to pay to the said Des Moines

Company *at the times and in the manner therein prescribed* the sums of money which may become due, *computed according to the terms and provisions of the said contract with respect to a tenant company.*"

Here is the Des Moines, Northern and Western bound like the Wabash to pay at the times and in the manner prescribed by the contract of 1889 the sums of money which might become due, computed according to the terms and provisions of that contract.

What Mr. Ashley wanted in the new contract was placed there. The obligation imposed upon the tenant companies by the contract of 1889 were expressly assumed by their successors.

III.

SUBSEQUENT CONDUCT OF THE PARTIES.

The primary purpose of this contract of July, 1897, was, as we have said, to help the salability of the bonds of the Des Moines Union Company on the general market. The Wabash Company held the largest block of these bonds and evidently wished to dispose of them. So far as concerned the Des Moines Union Company and the tenant railway companies and their relations *inter sese* the contract of 1889 needed no amendment because there was the tacit agreement between all of them that the railway companies had succeeded to the rights of their predecessors in this contract. But a prospective purchaser of bonds would desire something more than this and that would be a binding obligation upon the railway companies to perform the terms of the contract and to make the payments therein prescribed, and so the contract of 1897 was made and this purpose of improving the credit of the bonds was

accomplished. But there was another thing that might be done to help to this same end of making bonds salable and that was to list them upon the New York Stock Exchange, where merchants in such wares most do congregate, and Mr. Hubbell, on behalf of the Des Moines Union with the approvel and aid of Mr. Ashley as President of the Wabash Company, made application in due form to the Stock Exchange for the listing of these bonds. The rules of the Exchange seemed to require that the resources available for payment of the bonds, principal and interest, shall be disclosed, so that dealers in them, buyers and sellers, may be able to form some opinion as to their intrinsic value.

The Record, Vol. 4, pages 1734 and following, contain a full history of this listing of the bonds. The Stock Exchange required a "complete financial statement of said corporation for a period covering at least one year before its reorganization: i. e., a detailed statement of its earnings and receipts from every source, a detailed account of all expenditures and the amount of its outstanding indebtedness in detail of every description and a balance sheet of its books, etc., etc." (p. 1736).

Responding to this requirement, the Des Moines Union Railway Company on September 28, 1897, in its application to the Committee on Stock List of the New York Stock Exchange, set forth its ownership of the terminal properties and the various functions which it performed and then said (p. 1744):

> "The terminal facilities offered by this Company are at present shared by the Des Moines & St. Louis R. R. (owned by the Wabash R. R. Co.), the Chicago Great Western Railway, and the Des Moines, Northern & Western Railroad. Each of

these companies for itself has agreed to pay monthly, as rental for the facilities used, a sum equal to one month's interest on the outstanding bonds, besides they pay for their proportion of the expense of operation. *In addition, the Company derives considerable revenue for switching cars for other railroads (not tenants) and in rents for the use of various portions of the property.*"

In this same application it made a statement of receipts and expenditures for the year ending July 30, 1897, as follows:

"RECEIPTS AND EXPENDITURES
For the year ending June 30, 1897.

RECEIPTS.

Amount Rec'd from The Wabash R. R. Co. on wheelage basis	$31,251.14
Amount Rec'd from Des Moines N. & W. Ry. Co. on wheelage basis	58,447.66
Amount Rec'd from Chicago G. W. Ry. Co. on a wheelage basis	47,190.71
Amount Rec'd for outside switching and rent of real estate	10,282.42
	$147,172.00

EXPENDITURES.

Interest paid on First Mtge. Bonds	$28,450.00
Taxes for year ending June 30th, 1897	6,260.25
Conducting Transportation	66,147.27
Maintenance of Way Structures	15,935.55
Maintenance of Equipment	13,679.33
General Expenses	6,390.11
	$136,889.51
Surplus	$10,282.49"

This application was forwarded by Mr. F. M. Hubbell as Secretary of the Des Moines Union Railway Company to Mr. Ashley as President of the Wabash Company and by Mr. Ashley was presented to the proper Committee of the Stock Exchange and by that Comittee it was approved and bonds were listed as desired.

Here is a statement made for the use of the investing public and we have here the direct statement in the text of the application that in addition to the sums which the Railway Companies have agreed to pay monthly "the Company (the Des Moines Union) derives considerable revenue for switching cars for other railroads not tenants and in rents for the use of various portions of the property." And in the statement of receipts and expenditures for the preceding year we have set forth in detail what the Des Moines Union received from each of the tenant companies and the additional item of revenue "for outside switching and rent of real estate, $10,282.42." Deducting the various charges to which the revenues of the Des Moines Union were subject there was left the surplus of $10,282.49, the amount received for outside switching and rent of real estate. This puts the matter absolutely beyond controversy. These surplus earnings belong to the Company which owned the property from which they were derived and they were morally pledged to every purchaser of one of these bonds as resources out of which the bonds, interest and principal, might be paid.

The contract of 1897 ratified the terms of the contract of 1889 in every respect. It made two changes of any kind and only two. The first was a change as to parties. It substituted living and active parties for

those who had become defunct or moribund. And it set out in full and in detail the shareholding in the Des Moines Union Railway Company. This second change showed the ownership of the stock to the extent of 2,500 shares, a majority of all, in private hands, owned by F. M. Hubbell and Son. The contract in its entirety was one of value to the Des Moines Union as such, and to its shareholders ratably, for it recognized in the property of the Des Moines Union the ordinary and usual incidents of property, that is the right of the owner to the rents, issues and profits thereof. The contract was one of value during its term, to the Des Moines Union because it reserved to that company the earnings that it derived from switching done by it for outside parties and the rentals received from property not in railroad use. And so it was of value to the shareholders, and equally so, whether these earnings were distributed as dividends or reinvested in the property. And this contract was made, ratifying that of 1889 according to its very terms, with the Hubbells asserting their ownership, which indeed was undisputed, of the 2,500 shares of the capital stock of the Terminal Company, and asserting, what was agreed to, the ordinary and usual rights incident to such ownership. Nothing here was furtively done, but everything desired upon the one side or the other was openly proclaimed. Nor was anything done in haste. Beginning the matter in December, 1896, it was not concluded until July 31st, 1897. Here was a case where counsel was perhaps little needed, for the representatives of the parties interested were men capable and experienced in such affairs. But counsel attended at every stage. And when it was concluded so far as adjustment between the parties was concerned on July 31st, 1897, they pro-

ceeded to deal with the public, consistently with the arrangement between themselves, in their listing of the securities upon the Stock Exchange of New York. And between themselves they did the same.

The execution of this contract was ratified by the directors of the Des Moines Northern & Western Railroad Company on September 7, 1897 (ex. 218, vol. IV, p. 1497), and by the directors of the Wabash Company October 5, 1897 (ex. 237, vol. IV, p. 1540).

At no time, either before or after the execution of the ratification contract, did The Wabash Company make any claim to these surplus earnings until just prior to the commencement of this suit, and as a step preliminary thereto.

Turning now to the attitude of the Chicago, Milwaukee & St. Paul Railway Company with respect to these surplus earnings, it will be noted that its predecessors never at any time made any claim to them. The first interest, either direct or indirect, which the Milwaukee Company acquired in the property of its predecessors was by virtue of a contract with F. M. Hubbell & Son, made in 1894, and which was negotiated between Mr. Roswell Miller, president of and representing the Chicago, Milwaukee & St. Paul Railway Company, and Mr. F. M. Hubbell, representing F. M. Hubbell & Son and the Des Moines Northern & Western Railroad Company. During the negotiations leading up to this contract, Mr. Miller was advised by Mr. Hubbell that the only interest which the Des Moines Northern & Western Railway Company had in the terminal property was the interest represented by its 1,000 shares of stock, and that 2,500 shares of stock in the terminal company was owned by the defendant, F. M. Hubbell & Son.

The Milwaukee Company in 1899, having acquired all the outstanding stock and bonds in the Des Moines Northern & Western Railway Company, took the title to the property of the latter company and consolidated such property with its own, and thereafter the Milwaukee Company had such interest in the terminal company as it acquired from the Des Moines Northern & Western Company.

On November 22, 1898, Roswell Miller, president of the Milwaukee Company, wrote Mr. Hubbell (ex. 411, vol. IV, p. 1758), in reference to the terminal contract, evidencing the fact that he had examined and understood the contents thereof.

On January 16, 1899, Mr. Myers, who was then secretary of the Des Moines Northern & Western Railroad Company, and also secretary of the Milwaukee Company, wrote asking for additional copies of this contract.

On March 7, 1904, one H. G. Haugan, who seems to have been a new comptroller of the Milwaukee, writes to Mr. J. A. Wagner, defendant's superintendent, the following (ex. 504, vol. IV, p. 1843):

> "I understand that at the Des Moines Union station there are a number of offices rented, also news stand, lunch room and other privileges which are not accounted for in your monthly statements and bills. I believe you are also collecting rents on certain property on which we have to pay our proportion of taxes.
>
> I do not remember having seen any statement or account of rents collected by your company.
>
> It seems to me that these rents, etc., should be applied towards paying part of the operating expenses similar to the manner in which the business is conducted at the Union Depots at Chicago, Omaha, St. Paul and Kansas City."

On March 22, 1904, Mr. Wagner replies to Mr. Haugan as follows (ex. 505, vol. IV, p. 1843):

> "Replying to your letter of March 7th, our auditor sends your Mr. Winne each month a statement of all rentals of the character to which you refer. These rentals have nothing whatever to do with the proportion of the expense to be paid by your company. Our monthly bills against you for such expenses are made out in strict accord with our terminal contract. We have frequently in the past few years, explained the matter to the various officials of your company in response to their inquiry."

Of course the letter of Mr. Haugan to Mr. Wagner above quoted cannot be considered as a protest on the part of the Milwaukee to the terminal company's retaining these earnings, nor a claim that the tenant companies were entitled to them under any contract. His thought that they should be credited with these earnings is based, not upon the contract, but upon the fact that the Milwaukee had some different sort of an arrangement with respect to terminal property at other places. This correspondence, however, shows two things:

First. That the Milwaukee Company knew of these earnings, because the terminal company was furnishing to the auditor of the Milwaukee Company a statement of them each month; and

Second. That the Milwaukee Company knew they were not being credited with these earnings, and the reason therefor was that the Des Moines Union Company was claiming the right to them under the contract.

Further, it appears that the question of the surplus earnings was threshed out between the Des Moines Union Company and the Milwaukee Compnay some four or five years prior to the correspondence above quoted.

On December 2, 1898, Mr. Roswell Miller, president of the Milwaukee Company, wrote to Mr. Hubbell the following letter (ex. 418, vol. IV, p. 1765):

> "I observe that the contract between the Des Moines Union Railway Company and the Des Moines, Northern & Western Railroad Company is only for 20 years. I think it should be for 50 years. Have you any objections to extending it for so long?"

This was during the negotiations between the Milwaukee and Mr. Hubbell, the result of which was that the Milwaukee acquired all the stock and bonds of the Des Moines Northern & Western Railroad Company preparatory to consolidating the property of the latter company with that of the Milwaukee, and shows that the president of the Milwaukee was familiar with the contract of May 10, 1889, and the ratification contract of July 31, 1897. An examination of defendants' exhibits 420 (vol. IV, p. 1766), 321 (p. 1767), 425, p. 170), 430 (p. 1772), 456 and 457 (p. 1802), 458 and 459 (p. 1803), and 460 (p. 1804) will demonstrate, as we have said, that this whole question of surplus earnings was threshed out in an attempt on the part of the officers of the Chicago, Milwaukee & St. Paul Railway Company to have the contract of May 10, 1889, extended for a period of thirty years. In these negotiations the complainant, the Milwaukee Company, became

thoroughly familiar with the situation with respect to these surplus earnings; with the contract of May 10, 1889, and July 31, 1897, and with the attitude of the respective parties with relation to surplus earnings. These negotiations were abandoned in the latter part of 1899 by reason of the parties being unable to agree upon the terms of the proposed extension. No claim was made in any of these negotiations that the complainants or their predecessors were entitled to these surplus earnings under the existing contracts, but the attitude of the defendant company with respect thereto was acquiesced in.

At a meeting o fthe stockholders of the Des Moines Union Railway Company held January 4, 1900, at which there were present, among others, C. A. Goodnow and A. J. Earling, officers of the Chicago, Milwaukee & St. Paul Railway Company, each holding one share of stock, and the Chicago, Milwaukee & St. Paul Railway Company by A. J. Earling, president, holding 998 shares of stock, and the Continental Trust Company of New York by F. M. Hubbell, proxy, holding 498 shares of stock (ex. 156, vol. IV, p. 1370), there was presented the report of J. A. Wagner, superintendent, showing the use of the surplus earnings by the Des Moines Union Railway Company in acquiring additional real estate and improvements, and this report was approved upon motion of Mr. Earling.

Again, at a meeting of the stockholders of the Des Moines Union Railway Company held January 5, 1906, at which were present the Chicago, Milwaukee & St. Paul Railway Company holding 998 shares of stock, and E. W. McKenna and W. J. Underwood, officers of the Chicago, Milwaukee & St. Paul Railway Company, each holding one share of stock, and F. A. Delano and

E. B. Pryor, officers of The Wabash Railroad Company, each holding one share of stock (ex. 164, vol. IV, p. 1383), there was presented the report of the superintendent of the Des Moines Union Railway Company for the years 1900, 1901, 1902, 1903, 1904 and 1905, which showed the use of the surplus earnings by the Des Moines Union Railway Company for the purpose of acquiring additional property and improvements, and no objection was made to the appropriation of this fund by the defendant company.

It is interesting to note that when objection was made to the use made of the surplus earnings by the Des Moines Union Railway Company, it was not made by one who had aught to do with any of the contracts, articles of incorporation or amendments thereto, or of any of the dealings of any of the companies with any of these, from 1882 down to 1906, and not until "there arose a new king over Egypt, who knew not Joseph." The first demand for the surplus earnings of petitioners was at a meeting of the directors of the Des Moines Union Company on March 12th, 1906, and the names of those noted as present on behalf of the tenant companies are new names. Dodge, Ashley, How, Hays, Blodgett, Ramsey, Priest and Grover are none of them there (Rec., Vol. II, p. 333 *et seq.* Counsel were present, Vrooman for the Milwaukee and Travons for the Wabash Company and made demand for the earnings in identical terms and this may be said to be the inception of the suit. The demand, presented in writing recites that "the repeated requests heretofore made upon you for the distribution and crediting to the tenant companies of the receipts from real estate rentals, switching charges, etc., having been ignored, etc.," an assertion utterly barren of support in fact.

The original bill was filed February 5th, 1907, and the testimony was closed on the last day of 1912. Here was no haste, but ample time for bringing forward any and all existing testimony. And a record was made during this period of nearly six years which extends to five printed volumes and twenty-one hundred printed pages, and we challenge the production from that record of anything savoring of a demand by the tenant companies of these surplus earnings or of an assertion of a right to them by those companies or any of their predecessors prior to March 12th, 1906. Neither in the oral testimony, nor in the correspondence of the officials of the various companies, nor in the records of the directorate or company meetings is evidence of any such demand to be found.

From 1892 to 1906 these surplus earnings were appropriated as of right by the Des Moines Union Company to its own uses, and the other companies concerned acquiesced in and assented thereto. Specific acts of such appropriation have been cited by us, but no protest appears against any of them. More than fourteen years of accord between the conduct of the parties and the literal terms of the contract of 1889 conclusively shows that the interpretation of the contract according to its very terms is the right one.

We respectfully submit that upon both branches of the case the merits are with the defendants to the original suit, and we pray for a decree accordingly.

JAMES L. PARRISH and
FREDERICK W. LEHMANN,
Counsel for the Des Moines Union Railway Company, F. M. Hubbell, F. C. Hubbell and F. M. Hubbell & Son.

CAPITAL STOCK
DES MOINES UNION RAILWAY COMPANY

TOTAL ISSUED $400,000 **1-8=$50,000**

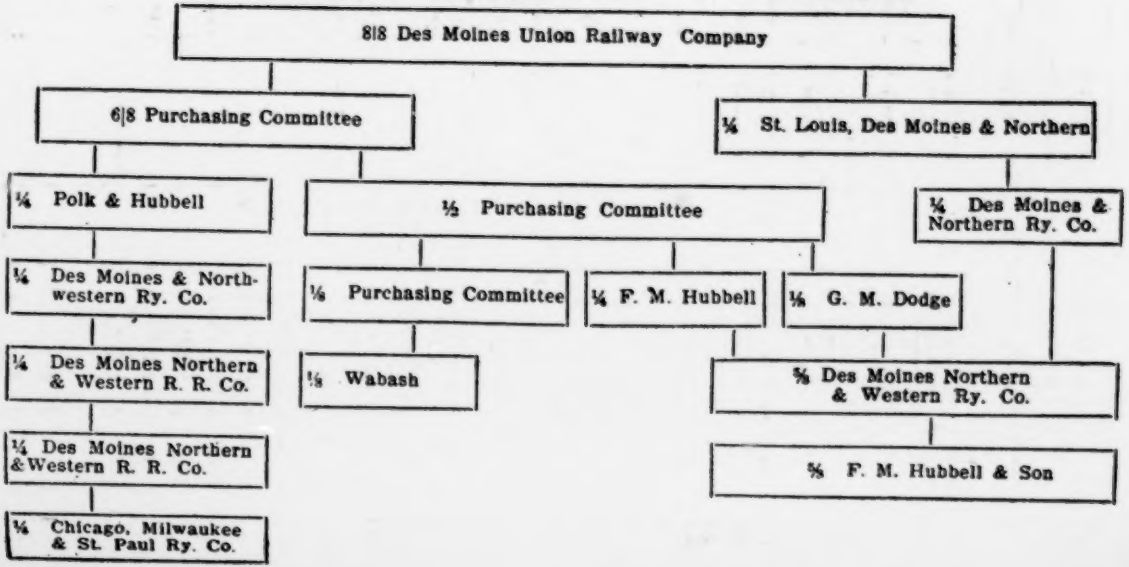
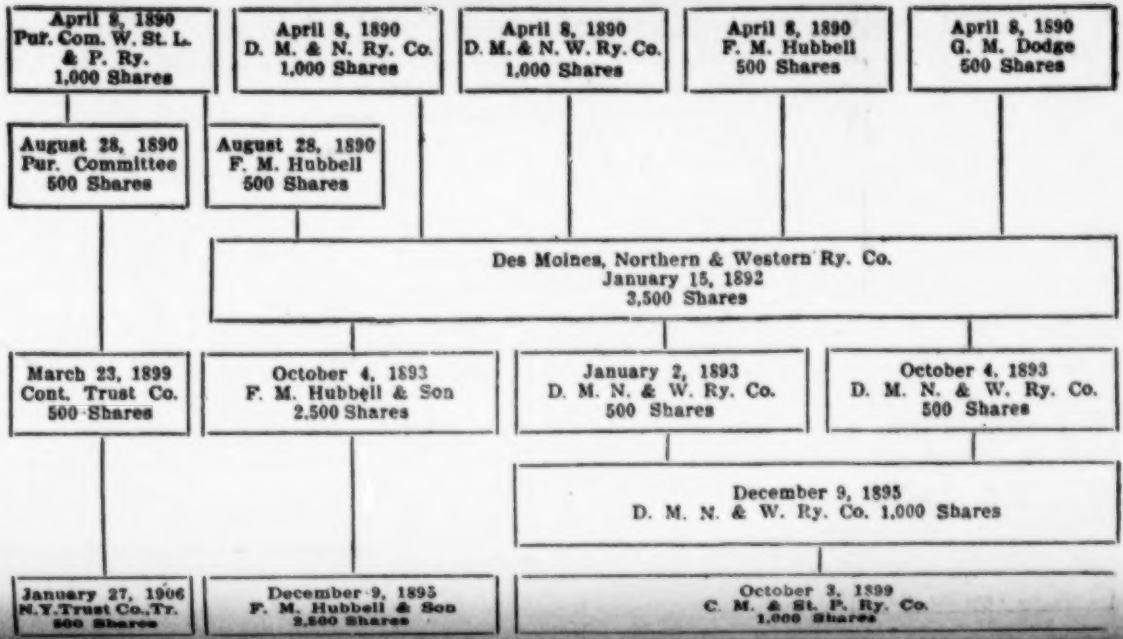


DIAGRAM SHOWING TRANSFER OF STOCK OF DES MOINES UNION RAILWAY COMPANY



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1918.

No. .....

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, FREDERICK C. HUBBELL and F. M. HUBBELL & SON,

Petitioners,

vs.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE WABASH RAILROAD COMPANY,

Respondents.

REPLY TO CROSS-PETITION FOR WRIT OF CERTIORARI.

Supplementing the reply of respondent, the Chicago, Milwaukee and St. Paul Railway Company, to the cross-petition for writ of *certiorari*, attention is called to the following additional matters:

I.

The contract of May 10, 1869, on which petitioners rely (Record, p. 150), after describing the terminal property, including the proposed union passenger depot and additional facilities to be constructed, obligated the predecessors of respondents to pay the maintenance and operating cost, interest and taxes, etc., and then by section 6 (Record, p. 152) "the party of the first part in consideration of the payments to be made to it by said parties of the second part hereby **grants** to said second parties the use of its terminal properties as aforesaid"—a grant not merely of a right to use, but of the "use of", *i. e.*, entire usefulness or **usufruct** of "its terminal properties", and, of course, includes the income derived from switching, station privileges, etc.

That the language of the grant expressed the intentions of the parties is obvious from the fact that all parties understood at the time that the grantees owned the terminal properties as shown by the evidence of Colonel Blodgett in regard to the purposes of the contract (Record, p. 366) by the resolution of the Des Moines Union Railway Company (hereinafter called the Des Moines Company), requesting him to prepare it "to be approved and executed by all lines now holding an **interest in the property**", and by its resolution that "the terms and conditions on which

the several lines now interested or which may hereafter become interested shall enjoy the use of these terminals be fully set forth in a **supplemental** agreement to be made and executed between the Des Moines Union Railway Company and each of the lines using the said terminals" (Record, p. 478). The contract could have been **supplemental** only to the contract of January 2nd, 1882 (Record, p. 120) and according to the resolution its purpose was to define the terms and conditions on which the **grantees** should enjoy the use of the terminals, not to define or recognize any right in the Des Moines Company, and accordingly no rent or compensation for the use of the terminals was reserved and all the covenants were by or for the benefit of the grantees—the Des Moines Company not having the slightest interest in their performance—it being merely an umpire or agency employed to unify the operations and bookkeeping and enforce the covenants as between the grantees for whose sole benefit they were made.

II.

(a) The parties at the outset committed themselves to a construction of the contract which entitled the grantees to the income produced by switching, station privileges, etc., by crediting it on their bills, first, under the direction of the joint superintendent (Record, p. 271), and after February 11, 1911, pursuant to

resolution of the Des Moines Company (Record, p. 497), and they were so credited until December, 1891 (Record, p. 333), when the Des Moines Company passed a further resolution that "the sum received as rent of real estate and all switching charges" should be used "to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies" (Record, p. 499), which was equivalent to crediting the sum on the grantees' bills because cash purchases of supplies and payment of current bills would to that extent lessen the grantees' bills. This method of applying such income was to be temporary "to accumulate a small fund for working capital", and it was intended the practice of directly crediting the bills should be resumed January, 1893 (see Supt.'s letter, Record, p. 338).

(b) After the Des Moines Company had thus committed itself to a construction of the contract which entitled the grantees to the income from the switching, etc., the grantees paid for the coal, labor and material necessary for the operation and maintenance of the engines, tracks, passenger station and real estate which produced the income in controversy. The petition states, on page 12, "at the time of the trial in the District Court these earnings aggregated about half a million dollars, and they have accumulated since at the rate of about one hundred thousand

dollars a year." The outlays by the grantees for fuel, labor, material, etc., in producing those earnings must have been very considerable, which, together with the protest made by the grantees when first advised, shortly before the bringing of this suit, by F. M. Hubbell, that he claimed the grantees were not entitled to such earnings (Record, p. 329), justifies the inference that the grantees made such outlays on the faith of the uniform construction of the contract by all the parties. Having stood by and knowingly permitted the grantees and their assigns to pay the cost of producing the income in controversy on the assurance of said resolutions that they were entitled to it, the Hubbells are now estopped from causing the Des Moines Company to claim, and it is estopped from claiming, the contrary.

III.

The income from switching, etc., belongs to the respondents because it was derived from the **use and occupation** of the terminal property which the predecessors of ~~petitioners~~ respondents secured to themselves and their successors by the contract of January 2nd, 1882 (Record, p. 120); articles of association of the depot company (Record, p. 123) and the resolutions pursuant to which the terminal property was transferred to (Record, pp. 131-7) and received by the Des Moines Company (Record, pp. 130-1).

The right to the "use and occupation" of railroad property by a railroad company under the laws of Iowa embraces the entire usefulness of the property (Cummins v. Des Moines, St. Louis Railroad Company, 63 Iowa 397, *l. c.* 405; Smith v. Hall, 103 Iowa 95, *l. c.* 96-97).

The contract of May 10th, 1889, was merely an operating agreement defining the operations of the interested railway companies for a period. The Des Moines Company under its articles of incorporation (Record, p. 123) is the agency of these companies who nominated its directors, it having undertaken by article II to exercise all of its powers "in accordance with the terms and spirit of the aforesaid contract entered into on the second day of January, 1882".

IV.

The petition states on page 24 that "the Hubbells, father and son, gave liberally and freely, the son for many years entirely, their time and service to this enterprise. They fostered it during all the thirty years of the contract of 1889, which certainly they would not have done if this contract had been a barren one and their stockholdings barren also", but no reference is made to the record to justify this statement. The record shows that the Hubbells agreed when they purchased the stock from Ashley that "the stock should be held by a railway com-

pany entitled to use the terminal property" and that "it would be prejudicial to sell any of this stock to outsiders" (Record, pp. 1059-1060), and contrary to this understanding they acquired the stock from the companies they dominated at a nominal value (Record, pp. 1096-1097). The stock, therefore, was "barren" and they knew it was barren, and are not entitled to derive contrary to their agreement any profit from it. Hubbell testified, "I stated very clearly that I am in charge of that property (meaning the terminal property); I know all about it, manage it, buy all the material. I decide on the location of every track, side tracks and main line, changing of the tracks, everything in reference to the details of the business" (Record, pp. 1200-1201).

The son testified:

> "Q. Did you or your father, or together as a firm, own and deal in real estate located near the lines of the Des Moines Union?
>
> "A. Yes, sir; F. M. Hubbell has bought considerable lands along the Des Moines Union, and I have, also. I am a trustee in his estate.
>
> "Q. Well, didn't you and your father make a large sum of money in those real estate transactions?
>
> "A. The real estate which we have bought and held I think has gone up in value very considerably.
>
> "Q. You have made plenty of money out of that that you have sold, haven't you?
>
> "A. I do not recall ever having sold any at

a loss, because property has always advanced in Des Moines; I mean, as a general rule (Record, pp. 1198-1199)."

The Hubbells own the Des Moines Terminal Company and the Des Moines Western Terminal Company, which also own terminal railroad properties in Des Moines, and the Hubbells operate them for their own profit in connection with the operation of the Des Moines Company (Record, pp. 1200-1201).

It is respectfully submitted the question sought to be reviewed by petitioners is not an open one and that the petition should be denied.

Respectfully submitted,

JAMES L. MINNIS,

Counsel for Respondent Wabash Railway Company.

(NOTE—This index does not purport to be a complete index to the record, but is simply a chronological index of the important exhibits, an examination of which will give the court a connected story of the transactions under consideration.)

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1880, Dec.	8—Contract for organization of D. M. & St. L. R. R.	II	396
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1884, Dec.	10—First meeting of incorporators of D. M. Union, including articles of incorporation adopted	II	416
1885, Jan.	1—Resolutions of D. M. & St. L., authorizing the transfer of the ownership of the property to the D. M. Union	II	430
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1887, Nov. 8	Notice served on D. M. Union by D. M., N. W. Ry. Co., authorizing transfer by trustee	II	442
1887, Nov. 8	Resolution of D. M. U. accepting transfer of property and authorizing delivery of stock and bonds	IV	1299
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1887, Nov. 7	Deed from G. M. Dodge and wife to D. M. Union	II	453
1887, Nov. 7	Deed from St. L., D. M. & N. to D. M. Union	II	455
1887, Dec. 10	Deed from James F. How and wife to D. M. Union	II	448
1888, Feb. 21	Deed from D. M. & St. L. to D. M. Union	II	457
1888, Apr. 28	Deed from James F. How, trustee, to D. M. Union	II	451
1888, Apr. 26	D. M. Union executive committee appoint J. B. Van Dyne superintendent, effective May 1, 1888	IV	1302
1888, Mar. 31	Meeting of stockholders of D. M. Union at which Col. Blodgett was requested to prepare a contract for a period of three years, and also a contract supplemental thereto	II	476

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1888, Sept. 10	Meeting of board of directors of D. M. Union Railway Company, directing W. H. Blodgett to change the terms of a contract presented to the directors and directing steps to be taken for amendment to articles of incorporation	IV	1303
1889, May 10	Contract between D. M. Union and D. M. & St. L., St. L., D. M. & N., and D. M. & N. W., under which the latter companies become tenants	II	479
1889, May 25	Meeting of D. M. & St. L., at which contract of May 10, 1889, approved	IV	1432
1889, May 18	Meeting of directors of D. M. N. W. Ry. Co., at which contract of May 10, 1889, was approved	IV	1454
1890, Jan. 3	Meeting of stockholders of D. M. Union Co., at which contract of May 10, 1889, is approved	IV	1305
1890, Jan. 3	Annual meeting of stockholders of D. M. Union at which subject of amendment to articles of incorporation was referred to Attorneys Blodgett and Cummins	IV	1305
1890, Jan. 2	Letter of Cummins to Blodgett in relation to amendment of articles	II	360
1890, Jan. 27	Letter Cummins to Dodge enclosing proposed amendments	IV	1598

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1890, Feb. 18	Meeting of stockholders of D. M. Union to consider amendment to articles	IV	1310
1890, Apr. 8	Meeting of stockholders of D. M. Union amending articles of incorporation	II	488
1890, Apr. 10	Amendment to articles of incorporation D. M. Union signed and acknowledged by Blodgett, How, Hays and others	IV	1604
1890, Apr. 23	Notice of amendment to articles and proof of publication	IV	2010-1

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1886, Oct. 9	Proposition of Polk & Hubbell to Purchasing Committee to purchase the line of the D. M. N. W. Ry. and one-fourth interest in the terminal property.	IV	1573
1886, Aug. 6	Purchasing Committee authorize the sale of the D. M. N. W. to Polk & Hubbell	IV	1555
1887, Mar. 14	Directors of Wabash Co. approve sale of D. M. N. W. to Polk & Hubbell	IV	1530
1887, Sept. 10	Supplemental contract between Polk & Hubbell and Purchasing Committee, by which Purchasing Committee acquire the option of transferring to Polk & Hubbell a one-fourth interest in the terminal property, or "in lieu thereof" one-fourth of the stock and bonds of the terminal company.	IV	1575

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1887, Oct. 3	Articles of incorporation of D. M. & N. W. Ry. Co.	II	615
1888, June 2	Deed from George F. Henry, Commissioner, to Polk & Hubbell of D. M. N. W. Ry. property	II	613
1888, May 19	Deed of Polk & Hubbell to D. M. & N. W. Ry., same property.	II	619
1890, Feb. 5	Proposition from Purchasing Committee to F. M. Hubbell to sell $135,000 bonds and one-fourth interest in capital stock of D. M. Union, and acceptance of proposition	IV	1599
1890, Feb. 11	Draft of contract for sale to Hubbell of one-half the above bonds and stock, with one paragraph in the handwriting of Blodgett, and also guaranteeing that the D. M. & St. L. would approv transfer of stock.	IV	1600
1890, Feb. 11	Contract between Hubbell and Purchasing Committee for sale of above stock and bonds	IV	1601
1890, Feb. 11	Contract of Purchasing Committee to amend articles of incorporation of D. M. Union	IV	1601
1890, Feb. 18	Meeting of Purchasing Committee approving sale of bonds and stock to Hubbell, and acknowledging receipt of purchase price	IV	1558
1890, Apr. 8	Meeting of D. M. & St. L., approving sale of above stock	IV	1603

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1889, Nov. 22	Deed of George F. Henry, Commissioner, to Solon Humphreys et al., trustees, of all property of the St. L., D. M. & N., including stock of D. M. Union	II	589
1889, Nov. 19	Articles of incorporation of D. M. & N. Ry. Co	II	592
1889, Nov. 23	Deed from Solon Humphreys, et al., trustees, to D. M. & N., of property of St. L., D. M. & N., including D. M. Union stock	II	596
1890, Apr. 8	D. M. Union stock issued as follows:		
	G. M. Dodge 1 share		
	F. M. Hubbell 1 share		
	H. D. Thompson 1 share		
	L. M. Martin 1 share		
	J. F. How 1 share		
	C. M. Hays 1 share		
	Purchasing Committee 998 shares		
	D. M. & N. Ry. 998 shares		
	D. M. & N. W. Ry. 998 shares		
	F. M. Hubbell 500 shares		
	G. M. Dodge 500 shares		
	Total, 4,000 shares	II	711
1890, Apr. 8	Letter of Ashley to Hubbell, asking $115,000 for $100,000 D. M. Union bonds and one-eighth D. M. Union stock	IV	1602
1890, June 5	Contract of sale by Purchasing Committee to Hubbell of 50 bonds and 500 shares of stock D. M. Union for $57,736	IV	1613

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1890, July 16	Purchasing Committee approve of sale of above stock and bonds	IV	1560
1891, Feb. 11	D. M. & St. L. approve sale of above stock and bonds	IV	1437-8
1890, Aug. 11	Letter Hubbell to Ashley, enclosing certificate for 996 shares of stock in D. M. Union, asking to have Purchasing Committee assign 498 shares to him	IV	2023
1890, Aug. 15	Letter Ashley to Hubbell, asking for explanation	IV	2023
1890, Aug. 19	Letter Hubbell to Ashley explaining	IV	2024
1890, Aug. 22	Letter Ashley to Hubbell saying explanation is satisfactory.	IV	2026
1890, Aug. 28	Letter Hubbell to Ashley forwarding certificate for 498 shares in D. M. Union in name of Purchasing Committee	IV	2026
1890, Aug. 28	Certificate No. 9, D. M. Union, was canceled and certificate 15 for 498 shares to Purchasing Committee, and certificates 16 and 17 for 250 and 248 shares, respectively, to F. M. Hubbell were issued	II	711

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1891, Feb. 11	Annual meeting of stockholders of D. M. Union. Among those present were G. M. Dodge representing 500 shares, F. M. Hubbell 999 shares, James F. How representing himself and Purchasing Committee, F. C. Hubbell representing D. M. & N. W., G. M. Dodge representing D. M. & N. Minutes of meeting of stockholders and directors for the year 1890 including meeting at which articles were amended were read and approved	IV	1318
1891, Dec. 14	Articles of consolidation of D. M. & N. W. and D. M. & N. organizing the D. M. N. & W. Ry. Co., by which the property of the first two named companies vested in the D. M., N. & W	II	624
1892, Jan. 15	Certificates 10, 11, 12, 14, 16 and 17, aggregating 3,492 shares in the D. M. Union, were transferred to the D. M., N. & W. Ry. Co., and reissued as certificates 19, 20, 21 and 22	II	711
1893, Oct. 4	D. M., N. & W. Ry. Co. pledge F. M. Hubbell & Son 2,500 shares of the D. M. Union stock to secure $122,000 indebtedness	IV	1480

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1893, Oct. 4	Certificates 20, 21 and 22, D. M. Union stock, were canceled, and in lieu thereof were issued certificate 25 for 494 shares, to D. M., N. & W., and certificate 26 to F. M. Hubbell & Son, for 2,500 shares	II	711
1893, Oct. 4	Directors of D. M. Union authorize transfer of above stock.	IV	1333
1894, Jan. 25	Annual meeting of stockholders of D. M. Union, at which F. M. Hubbell & Son appeared as the owners of 2,500 shares of stock	IV	1333-4
1894, Jan. 19	Proxy of Purchasing Committee authorizing Hays to vote 498 shares at above meeting	IV	2012
1894, Jan. 29	Hubbell & Son buy 2,500 shares of stock of D. M., N. & W., held by them as collateral security	IV	1482
1894, Feb. 22	Letter Hubbell to Miller saying D. M., N. & W. own one-fourth, Wabash one-eighth and individuals five-eighth, of the capital stock of D. M. Union	IV	1617
1897, July 31	Ratification contract executed by all railway companies stating that F. M. Hubbell & Son own 2,500 shares of stock in the D. M. Union	II	506
1897, July 21	Meeting of board of directors of D. M. Union authorizing above contract	IV	1357

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1897, Oct. 5	Directors of The Wabash R. R. Co. ratify above contract	IV	1540
1897, Sept. 7	Directors D. M., N. & W. Ry. Co. ratify same contract	IV	1497
1886, Oct. 16	Deed from Mercantile Trust Co. to Purchasing Committee, to properties of Wabash, St. L. & Pacific	II	706
1888, Apr. 25	Deed from Wabash, St. L. & Pac. to Purchasing Committee	II	536
1898, Aug. 18	Deed from Purchasing Committee to The Wabash R. R. Co.	II	543
1899, Feb. 3	Stockholders of D. M. & St. L. R. R. Co. authorizing transfer of its railroad to The Wabash R. R. Co	II	530
1899, Jan. 1	Deed from D. M. & St. L. to The Wabash R. R. Co. transferring its railroad commencing at a point in or near the city of Des Moines where it connects with the tracks of the D. M. Union Ry. Co. and extending to Albia	II	533
1899, Jan. 1	Mortgage of The Wabash R. R. Co. to Continental Trust Co. of its railroad commencing at or near the eastern limits of the city of Des Moines, where it connects with the track of the D. M. Union Ry. Co., and including 500 shares of stock in the D. M. Union Ry. Co.	IV	1928

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1899, Apr. 24	Directors of D. M., N. & W. R. R. Co. authorize the transfer of all its property to the C., M. & St. P. Ry. Co	IV	1499
1899, May 1	Deed of D. M., N. & W. R. R. Co. to Milwaukee Co., transferring its railroad commencing at western imits of city of Des Moines, extending northwesterly, and a one-fourth interest in the capital stock of the D. M. Union Ry. Co	II	673
1899, May 8	Stockholders of D. M., N. & W. R. R. Co. ratify the contract	IV	1508
1907, June 12	Meeting of stocgholders of D. M., N. & W. R. R. Co. authorizing correction deed to the Milwaukee Company covering line extending from Farnham street westerly to Twenty-eighth street	II	678
1907, June 19	Correction deed executed in accordance with the foregoing resolution	IV	680

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1891, Feb. 11	Directors D. M. Union authorize amounts collected from tenants for switching credited on bills of tenant companies	II	497

Date		Vol.	Page
1892, Jan. 7	Directors D. M. Union order that practice of making credits above referred to be discontinued until further orders	II	498
1897, July 31	Ratification contract by which tenant companies agree to pay in strict accordance with the terms of contract of May 10, 1889	II	506
1897, Sept. 7	Directors D. M., N. & W. authorize execution of ratification contract	IV	1497
1897, Oct. 5	Directors of Wabash Co. authorize execution of ratification contract	IV	1540
1906, Mar. 12	Record of meeting of board of directors D. M. Union Ry. Co., at which for the first time complainants claim to be entitled to surplus earnings	II	333-6

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY, Petitioners, vs. DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL and F. C. HUBBELL, and F. M. HUBBELL & SON, Respondents.	No. 66
DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL, F. C. HUBBELL and F. M. HUBBELL & SON, Petitioners, vs. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and WABASH RAILWAY COMPANY, Respondents.	No. 67

PETITION FOR REHEARING.

Come now the Des Moines Union Railway Company, F. M. Hubbell, F. C. Hubbell and F. M. Hubbell and Son, Respondents in Case No. 66 and Petitioners

in Case No. 67, and hereby petition the court to set aside the judgment and decree heretofore entered in these cases and to grant a rehearing thereof and in support of their petition respectfully say:

We are led to present this petition for rehearing because the decree authorized by the opinion of this court will result in a most grievous injustice to the defendants. It gives to one party—the Milwaukee Company—a one-half interest in a valuable property, for which, concededly, it never paid a dollar and never thought it was buying. It gives to another party—the Wabash Company — an interest which it sold many years ago at what was then its full value. This property is taken from persons who not only acquired it with the full knowledge of everybody interested, but made it valuable by devoting their full business life to its care and development. Such a decree can only be justified by the best of reasons. It is therefore with the utmost respect, but with the utmost assurance of the justice of our cause, that we ask a re-examination of this record.

The district court and circuit court of appeals having concluded that complainants were estopped by their conduct and laches, found it unnecessary to determine the primary and fundamental question of whether, by reason of the transactions leading up to the transfer of the property to the Terminal Company, it took an absolute title to the terminal property or simply the legal title in trust for complainants' predecessors. We therefore desire to devote our energies to persuading the court that it has fallen into a serious error in determin-

ing this fundamental proposition in favor of complainants.

In this discussion we will designate complainants and their predecessors the "Railway Companies" and the defendant corporation the "Terminal Company."

THE OPINION OF THE COURT.

A careful analysis of the opinion will, we hope to convince the court, disclose elements which if given due consideration must result in its own destruction.

For this purpose we must inquire into the evidence upon which the court bases its conclusion that it was intended to form a trust. Where, and what is it?

It is probably not fair to the court to assume that the opinion contains a reference to all the facts upon which reliance is placed to support its conclusion, but we think it is fair and must be true that the incidents referred to constitute the outstanding and most persuasive facts contained in the record.

It is unnecessary, of course, to discuss the contract of 1882 in this connection, because, concededly, under that contract the Railway Companies were the absolute owners of and had absolute dominion over the property in controversy. They could make any disposition of it they saw fit. They could have vested the title in the Terminal Company in trust or in fee.

The incident referred to in the opinion primarily in point of time and importance is the language contained in article two of the original articles of the Terminal Company, reading as follows:

> "All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract (contract of 1882)." (Vol. 11, p. 420).

It is this language, the court says, which "amounts to a declaration of trust."

This language does not necessarily amount to a "declaration of trust." It is at best ambiguous. It is not the language one would expect competent lawyers and business men to use for that purpose. That this is so is recognized by the court when it found it necessary to explain, in connection therewith, other items of evidence found in the record, such as the provision in article three authorizing the Terminal Company to acquire the terminal property "in payment" for its stock and "the absolute form of the conveyances."

With respect to these matters the court further says:

> "The absolute form of the conveyances, and the issuance of stock and bonds 'in payment,' were intended to give credit to the company in its dealings with outside parties and to render its bonds more readily salable; but they constituted the mere mechanism for carrying into effect the main purpose of the parties, and as between them were controlled by that purpose and by the articles and resolutions that manifested an express declaration of the trust."

For the moment we may leave out of consideration the resolutions, because "outside parties" were not charged with notice of them.

If this language means anything, it means that "outside parties" in dealing with the Terminal Company and its property were justified in concluding from an examination of the articles of incorporation and the deeds that no trust existed, and that the Terminal Company owned the property.

"Outside parties" were charged with knowledge of the following:

1. The contract of 1882.

2. That article two contained the following language:

> "All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2d day of January, A. D. 1882." (Vol. II, p. 420).

3. That the Terminal Company had the right to lease or otherwise dispose of the use of any part of its franchise to any other railway company, provided the Railway Companies assented in writing.

4. That the corporation was authorized to issue its capital stock "in payment" of the terminal property.

5. The method adopted by article four for nominating and electing directors.

6. That no contract, lease or other agreement amounting to a permanent charge upon the property should be executed without the approval of the Railway Companies and the approval of three-fourths of the stockholders of the Terminal Company expressed at a stockholders' meeting.

7. The deeds transferring the property were absolute in form.

All of these were public records of which every person dealing with the corporation was required to take notice.

The court says that it was "intended" by the parties to so formulate these proceedings as "to give credit to the company in its dealings with outside parties and to render its bonds more readily salable." "Outside parties" knew all the provisions of the contract of 1882, because it was a part of the articles; they knew of the provision of article two, heretofore quoted, because it was a part of the articles; they knew of the

limitations on the power of alienation for they were part of the articles; they knew of the method of control of corporate affairs, because it was contained in the articles. Likewise they knew that the corporation was organized with power to own the property, and was authorized to issue its stock in "payment" therefor, as well as the absolute character of the conveyances, because they were all parts of a public record.

Manifestly it is impossible to say that they formulated a part of these proceedings for the purpose of expressing the intent that the Terminal Company should own the property, and another part to express a trust. Manifestly it is impossible to say that all of them taken together were intended to express a good and complete title and at the same time express a trust.

Manifestly, also, if the use of the language quoted from article two is assumed "to amount to a declaration of trust," then the explanation of the Court of the provision for the issuance of the stock in "payment" and of the absolute form of the deeds, does not explain since no force or effect is allowed to these facts. The failure to give consideration to these cogent circumstances we submit is an adequate reason for a reconsideration of the case.

Right here let us refer to another error the court has made in explaining the form of these deeds. It says:

> "But if, as here, the subject of the trust be a legal interest in property and capable of legal transmutation, the trust is not perfectly created unless the legal interest be actually vested in the trustee. *Adams v. Adams*, 21 Wall. 185, 192, 194. Hence the necessity in this case of deeds conveying the fee to the terminal company."

The *Adams* case does not sustain this conclusion. What was there held was that it was necessary to convey the legal title. What was here done was to convey the fee—the ownership. The form of the deeds can not be explained by saying it was necessary to convey the legal title.

It is fundamental in the law of trusts in real estate that the title is in one and the ownership in another. Justice Story defines it as:

> "an equitable right, title or interest in property, real or personal, distinct from the legal ownership thereof."

2 Story, Equity Jurisprudence, ¶964.

It was not necessary, in order to perfectly create the trust, that these deeds should have been absolute in form.

It is manifest, therefore, that a trust can not be inferred from the provisions of the articles (including the contract of 1882) and the deeds, because to do so would defeat the intended purpose of giving the corporation credit in its dealing with "outside parties" by reason of its apparent ownership of the property.

Of course, it does not necessarily follow from this that a trust was not intended. But it does necessarily follow that evidence of the trust must be found in some records outside of the contract of 1882, the articles and the deeds. To these records we will now give attention.

In support of the trust theory the court refers to the resolutions of the Railway Companies. One of the resolutions passed by the Railway Companies, after reciting the fact of the execution of the contract of 1882

and the subsequent organization of the Terminal Company, reads as follows:

> "Resolved, That this Company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company." (Vol. II, p. 424.)

Do these recitations and resolutions tend to establish a trust? Would they have put "outside parties" who were expected to extend credit upon the theory that the Terminal Company owned the property, on inquiry with reference to the trust had they learned of them? They simply recited the fact of the contract of 1882 and the corporate organization, facts which outside parties were bound in law to know. The resolution simply ratifies the corporate organization and pledges the Railway Companies to discharge their obligations in order to make effective the purposes of the corporation, one of which was to secure credit from "outside parties" on the strength of the ownership.

This resolution is followed by another:

> "Resolved: That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham street in said city, now held, enjoyed or

> claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract." (Vol. II, p. 424.)

There is nothing in this resolution suggesting a trust. It authorizes the transfer of ownership in the most specific language. It authorizes the transfer of every possible interest in the property.

The remaining resolution passed at this time was as follows:

> "Resolved, That the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the Company to the Des Moines Union Railway Company on the 1st day of January, 1885, or as soon thereafter as practicable, leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein, and the same being duly considered was adopted by the meeting, all the stock present and represented, voting therefor." (Vol. II, p. 427.)

This resolution, instead of tending to express a trust, emphasizes the thought that it was designed to convey the ownership. Management and operation of the property were to be transferred to the Terminal Company as soon as practicable, the matter of settling the terms and method of payment for the property, not the trust, conveyed to be settled later.

The resolutions passed by the Terminal Company at this time are of like character in every respect, and we need not set them out or comment on them. There is, therefore, nothing in the resolutions of 1885 tending to express a trust.

This brings us to the resolutions of 1887. These resolutions, in so far as they authorize How and Dodge to transfer, are not significant except as they require evidence of promises to pay as conditions precedent. Otherwise they are just such resolutions as would be expected whether it was intended to establish a trust or otherwise.

The only resolution other than these was that of the Des Moines & St. Louis Company, as follows:

> "Resolved, That the president and secretary of this company be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, roadbed and other property of said company lying and being in the City of Des Moines, east of Farnham street, whether the same was acquired by grant from City of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second, 1882, entered into by and between this company, the Des Moines North Western Railway Company, the St. Louis, Des Moines and Northern Railway Company and others." (Vol. II, p. 439.)

This is the only resolution which can be said to be so much as ambiguous. And there is no ambiguity in it, unless we ignore the provision for the transfer of the property and what the parties did pursuant thereto.

Manifestly they did not intend to carry out the contract in accordance with all its terms. Many of its provisions could not then be carried out. The primary purpose was to provide terminal facilities which they might use in connection with their lines of railway. The means of doing this might be and were several times changed.

We contend that what they had in their minds in using this language was this primary purpose. This is demonstrated by what they did under and immediately following this resolution, to which we will later refer.

The deeds of conveyance do not contain anything tending to establish a trust. This is conceded by the court in its attempt to explain them.

We are therefore necessarily driven back to the articles themselves for any evidence there may be of the establishment of a trust.

Considering the articles, the court says that the parties put into article two the provision that the powers exercised by the corporation should be in accordance with the terms and spirit of the contract of 1882 for the purpose of declaring a trust, and then put into article three a provision that the corporation should receive the terminal property "in payment" of its stock for the purpose of making it appear to "outside parties" that it owned the property and that this latter purpose was emphasized by the form of the deeds.

This manifest inconsistency is a sufficient ground to require, in justice to defendants, a re-examination of this record. This is so because the defendants are entitled to the judgment of this court based upon a proper appreciation of the purposes of the transactions upon which that judgment is based, and manifestly this they have not had.

This brings us to a consideration of the record which may properly be urged in support of defendants' theory, and first

THE ARTICLES OF INCORPORATION.

Of these it is to be said that they are not skillfully drawn. The author of them either did not have clearly in mind the purpose to be accomplished or was unhappy in his choice of method and language in expressing himself. There are some features, however, which are beyond dispute. Manifestly the corporation acquired the power to own a terminal property and operate it for its own profit and that of its stockholders. Manifestly, also, it assumed the power to acquire the ownership of the terminal property in question and pay therefor by issuing its stock. We think it is also manifest that the Railway Companies did not, by the organization of this corporation and transferring to it the terminal property, intend to lose control of that property. They simply intended to change the plan of control. Theretofore they had controlled it because they owned it and had physical possession of it. By this new plan they intended to control it through their stock ownership. This new plan was perfectly feasible. The fact that they later parted with some of the stock for a valuable consideration does not warrant a rescission of the whole transaction but on the contrary emphasizes the argument that they took this stock in exchange for their original direct beneficial interest in the Terminal property.

In considering the articles it is important to note that the power to be the recipient of a trust is not expressly assumed. Such power, if it existed, must be found included in its general powers, or inferred by construction. The language in section two from which the court infers this power and intent is at best ambiguous. In and of itself is it not sufficient to estab-

lish a trust. This the court recognizes when it resorts to other facts and circumstances for the purpose of interpretation. The effect of this language must depend upon other facts and circumstances.

In article three is contained the provision authorizing the corporation to issue its stock "in payment" for the terminal property. The natural import of this language is to express an intent that the corporation should acquire the ownership. This the court recognizes by attempting to explain it upon the theory that it was intended to give third parties assurances contrary to the facts. This explanation is, as we have demonstrated, an obvious error.

In sections two and four are contained provisions restricting the power of alienation and regulating the method by which the Railway Companies should control the corporation through their stock ownership. These provisions, the court says, "were intended not as a substitute for, but as safeguards of, the trust." With this conclusion we take issue. If the Terminal Company simply took the title to this property in trust, it had no power of alienation and therefore there was no necessity for a restriction thereon. Those restrictions were only useful or necessary if the corporation owned the property.

We wish, however, to emphasize the fact that under the Iowa statute these articles were, like the deeds, public records of which "outside parties" were required to take notice.

(*Dempster Mfg. Co. vs. Downs*, 126 Iowa, 80.)

The question we have is, what was the character of the title acquired by the Terminal Company as a result of the transactions culminating in the transfer to it—was it an absolute title or simply in trust? The

question is one of intent. Did the Railway Companies intend that the Terminal Company should have an absolute title—the ownership—of this property, or simply its legal title in trust?

How are we to determine this intent? Strictly speaking, of course, a corporation can have no intent. It has neither mind, body nor soul—it can act only through its authorized representatives. The intent of the authorized agents of these Railway Companies, therefore, was the intent of the Companies themselves. To solve the question, then, we must inquire into the intent with which these persons acted.

Who were they? They were Col. Wells H. Blodgett, general solicitor of the Wabash Railroad Company, and a director in its subsidiary, the Des Moines & St. Louis Company; James F. How, vice-president of the Wabash Railroad Company, and president and director of the Des Moines & St. Louis Railroad Company; James F. Joy, a member of the Purchasing Committee and president of the Wabash Railroad Company; O. D. Ashley, a member of the Purchasing Committee, a director and afterward president of the Wabash Railroad Company; Edgar T. Welles and Thomas H. Hubbard, members of the Purchasing Committee and directors of the Wabash Railroad Company; G. M. Dodge, president and principal owner of the St. Louis, Des Moines & Northern Railway Company, and, to a lesser degree, C. M. Hays, general manager of the Wabash Company.

Unfortunately, all of these men, except Blodgett and Hays, passed from their earthly labors before the trial of this case, or at least we find in the record only the testimony of these two persons, so, as to all except

Blodgett and Hays, we must ascertain their intent entirely by the record they left of their actions.

Colonel Blodgett was and had been for years general solicitor of the Wabash Company and continued to occupy this or a similar position up until long after the commencement of this suit. At the time his testimony was taken he was one of counsel in this case. He assisted in conducting this litigation during its earlier years. He it was upon whom reliance was placed to guide the affairs of the Wabash Company. In him was reposed the confidence of the responsible managing officers and directors of the company. He knew their intent. It was his duty to formulate the proceedings to carry out their intent. He knew what was intended by the transactions which culminated in the transfer of the title of this property to the Terminal Company. He and counsel who examined him at the time his testimony was taken in this case knew that the vital question was that intent, but they carefully avoid putting that question to him. Nowhere in Colonel Blodgett's testimony can be found a reference to the intent with which these transactions were conducted. Colonel Blodgett's oral testimony, then, is not enlightening on the subject, except that it is significant that he is not examined with respect to it. It was competent for Colonel Blodgett to testify directly as to the intent with which these transactions were consummated.

Mr. Hays' testimony on this subject was equally unenlightening. He did not occupy a position of responsibility in the Wabash organization until the latter part of 1887, and, according to his testimony, had no recollection with reference to the details of the transactions nor of the purposes for which they were had.

We are therefore compelled to rely entirely upon the written record made by these gentlemen, which, however, is not subject to the infirmities necessarily inherent in oral testimony, especially as to transactions long past.

THE RESOLUTIONS OF 1885.

To correctly weigh the evidence contained in these resolutions and other material documents, it is important to keep in mind the situation as it then existed. At this time, under the contract of 1882, the Des Moines & St. Louis Railroad Company was the absolute owner of one-half, and the other two railway companies each the owner of a one-fourth, interest in the various items of property making up the terminal, the record title of which stood partly in the name of the Des Moines & St. Louis Company, partly in the name of the St. Louis, Des Moines & Northern Company, and partly in the name of Dodge and How, as trustees. It was competent for the Railway Companies to vest in the Terminal Company the legal title in trust, reserving the beneficial ownership to themselves, or to vest the ownership in the Terminal Company, taking to themselves simply the evidences of indebtedness and the capital stock.

Upon the completion of the organization of the Terminal Company, the Des Moines & St. Louis Company (the subsidiary of the Wabash, which had furnished the bulk of the money), under date of January 1, 1885, passed the following resolution:

> "Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign,

and transfer to said company all its *right title and interest* of whatever name and character, in and to the real estate, franchise, choses in action, and rights in possession or contingent to all the property in the City of Des Moines, east of Farnham street in said city, now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof, purchased, acquired or held in pursuance of said contract." (Vol. II, p. 431.)

This resolution was probably prepared by Colonel Blodgett—at least, he was present at the meeting and voted for it, and therefore approved the form. There is nothing ambiguous about it. It authorized the following things:

1. A transfer by the Des Moines & St. Louis Company of the property which stood in its name.

2. A transfer by the Des Moines & St. Louis Company of its beneficial interest in the property which stood in the name of How and Dodge, trustees.

3. A transfer by the Des Moines & St. Louis Company of its beneficial interest in the property which stood in the name of the St. Louis, Des Moines & Northern Company.

4. A transfer by the Des Moines & St. Louis Company of "all its right title and interest of whatever name and character," in any of this property.

5. A transfer by the Des Moines & St. Louis Company of its "franchises, choses in action, and rights in possession or contingent" in all the property held by any of the parties to the contract of 1882, or any agent or trustee thereof, acquired or held in pursuance thereof.

There was no possible interest, beneficial or otherwise, which the Des Moines & St. Louis Company had in this property that was not authorized to be transferred by this resolution.

The court in its opinion says, in effect, that this resolution doesn't mean what it says; that what it means is that there should be vested in the Terminal Company simply the legal title in trust, reserving to the granting company the beneficial ownership. We respectfully urge that no such conclusion can be legitimately drawn, either from the resolution itself or the recitations which precede it. Neither this resolution nor any other passed at this meeting authorized a transfer of the legal title to the terminal property, except in so far as that legal title stood in the name of the Des Moines & St. Louis Railroad Company. So far as the remainder of the property was concerned, it only authorized the transfer of the beneficial interest. If the theory adopted by the court is right, why did this resolution authorize the transfer of all possible interest which the Des Moines & St. Louis Company had in the terminal property, instead of authorizing the transfer simply of the legal title of that portion of the property which stood in its name? This query can not be answered by saying that this was done in order to give third parties to understand that the Terminal Company was the absolute owner of the property, because this record was not a public record and did not enter into the chain of title of which third parties must take notice.

What we claim for this resolution is emphasized by the following resolution enacted at the same time:

> "Resolved, That the proper officers of the company be authorized to transfer the management

and operation of its property in Des Moines so far as the same may now be vested in the company on the first day of January or as soon thereafter as practicable leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein." (Vol. II, p. 432.)

Resolutions in almost identically the same language were adopted by the St. Louis, Des Moines & Northern and the Des Moines Northwestern Railway Companies. Separate consideration need not be given to them except to observe that none of this property stood in the name of the Des Moines Northwestern Company, and so far as it was concerned, the only subject to which its resolution could refer was the beneficial interest it owned under the contract of 1882.

On the same day the Terminal Company passed resolutions accepting each of these two separate propositions, a record of which will be found on page 433 of Volume II. These resolutions demonstrate that these parties were dealing with respect to this property in good faith, as vendor and purchaser, and that the amount which the Terminal Company was to pay for this property was a subject for negotiation in which it was interested, which could not have been true if it was simply intended that it should be a trustee and a mere agency for the Railway Companies.

It is significant that in none of the resolutions passed in 1885 was any attempt made to authorize How and Dodge, trustees, to transfer to the Terminal Company the titles which they held in trust, which was the only thing necessary to be done, so far as the property which stood in their name was concerned, if it was

intended that the Terminal Company should hold the property in trust. On the contrary, the resolutions are carefully framed, to the end that a transfer of the beneficial ownership of the property should be authorized, the legal title so far as these resolutions are concerned remaining in How and Dodge.

The resolutions of 1887, with the single exception which we will hereafter note, were confined to authorizing How and Dodge, as trustees, to transfer the title held by them to the Terminal Company, a step necessary to be taken before the Terminal Company could be vested with the title to the property, whether in trust or absolute. These resolutions are entitled to no weight in determining the question at issue, because what was done here was the natural thing to have done, irrespective of the character of the title which the Terminal Company was to receive, except that it is significant that in these resolutions they were careful to fix, as one of the conditions upon which the trustees should transfer the title to the Terminal Company, that the latter should execute to them written assurances that it would pay the purchase price as agreed—something which was entirely unnecessary if the Terminal Company was a mere trustee and an agency of the Railway Companies.

In addition to the resolutions authorizing How and Dodge, as trustees, to transfer, the Des Moines & St. Louis Company passed a resolution the material part of which is as follows:

> "Resolved, That the president and secretary of this Company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said company lying and being in

> the City of Des Moines, east of Farnham street, whether the same was acquired by grant from city of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second, 1882, * * * " (Vol. II, p. 439.)

If we consider this resolution by itself, it would not be entirely clear what was meant. It will be noted that it authorizes the transfer of all the "real estate rights of way, franchise, road bed and other property of said company lying and being in the City of Des Moines," which would indicate that it was the purpose to give to the Terminal Company an absolute title, because if it was intended to simply give the Terminal Company the legal title of the property in trust, it was only necessary for the Des Moines & St. Louis Company to transfer the title of that portion of the property which stood in its name. However, it says the resolution is offered for the purpose of carrying out the contract of January 2, 1882. This, of course, does not mean that it was for the purpose of carrying out the contract of 1882 in its literal terms, because, as the court has held, the plans as evidenced by this contract had been changed, and it therefore means, in accordance with that contract as changed by their modified plans.

However, when we come to consider what Mr. How, who offered this resolution, and Colonel Blodgett, who was present at the meeting at which it passed and who no doubt drew it, or at least approved it, immediately did in carrying out its purpose, the meaning of the resolution is perfectly clear, and this brings us to a consideration of

THE DEEDS TRANSFERRING THE PROPERTY TO THE TERMINAL COMPANY.

To our minds, these deeds, and especially the deed of the Des Moines & St. Louis Company, are the most persuasive items of evidence in this case. The latter deed was prepared by Colonel Blodgett, who, as we have said, was the lawyer whose duty it was to formulate the documents by which the parties were to carry out their intention. It was executed by James F. How, president of the Des Moines & St. Louis Company, and vice-president of the Wabash Company, who had for years been the active man, not only in the Terminal matter, but in all of the larger matters of the Wabash Company. Both of these gentlemen knew what the intention was. It was executed by the corporation which the court says intended thereby to retain the beneficial ownership of the property. While the form of the deed was a very proper one if executed by a third party for the purpose of conveying property to a trustee, it must be remembered that this deed was executed by the party whose successor claims to be the beneficiary of the alleged trust.

The deed, in form, is a warranty deed, and after describing that portion of the terminal property standing in the name of the grantor, reads as follows:

> "And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have

> acquired by grant, donation, purchase or otherwise, and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance "granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said City between Court avenue and Vine streets.' And the said Des Moines and St. Louis Railroad Company *hereby covenants to Warrant and Defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it.*" (Vol. II, p. 458.)

The deed of the St. Louis, Des Moines & Northern Company is no less significant. After describing the property standing in its name it says:

> "Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title interest in the above described property, possession claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singular the above mentioned and described premises together with the appurtenances, unto the said parties of the second part and assigns forever." (Vol. II, p. 456.)

This latter deed was prepared, or at least approved, by Colonel Blodgett, and therefore contains language to express what he intended by the transaction.

Notwithstanding all these things, the court says—at least inferentially—that when the Des Moines & St.

Louis Company said that it sold and conveyed to the Des Moines Union Railway Company all its real estate within the City of Des Moines, Iowa, and all its railroad property of every kind and character, it didn't intend to do it and didn't in fact do it, but on the contrary it retained the ownership of all this property which it so carefully described in this deed, and, further, when the Des Moines & St. Louis Railroad Company covenanted "to warrant and defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it," it didn't make any such covenants—that what it in fact did by this language was to reserve unto itself and those claiming by, through or under it the beneficial ownership of this property.

The court in its opinion further says, inferentially, that when the St. Louis, Des Moines & Northern Company in its deed asserted that it thereby conveyed all the property specifically described "and the reversion and reversions, remainder and remainders, rents, issues and profits thereof," it didn't do anything of the kind, but it thereby retained to itself the rents, issues and profits thereof, together with the reversion, reversions and remainder; and also, when this company asserted that it thereby conveyed "all the estate, right, title, interest * * * as well in law as in equity," that it didn't do anything of the kind—that in equity it retained the ownership of this property as well as the rents, issues and profits thereof; and also, when it covenanted in said deed that the grantee should have and hold all of said property and all interest therein for itself and its assigns forever, it didn't do anything of the kind—it retained to itself not only the owner-

ship of the property but the right to recover the same at any time it saw fit.

Frankly, competent lawyers don't do business this way. The parties who were instrumental in the execution of these deeds were of mature age and sound mind, and were among the most experienced and skillful lawyers and business men of their period; they were honest and they knew how to formulate the English language to express their intention.

What possible reason could Colonel Blodgett and James F. How have had for formulating these deeds in this way had it been their intention to retain to the grantors the beneficial ownership?

We have already demonstrated that it could not have been for the purpose of making the trust effective, because for that purpose it was only necessary to transfer the legal title: nor would it help the Terminal Company to obtain credit, as being the absolute owner, from "outside parties," because the evidence of the trust, if any there was, was to be found in the articles, of which "outside parties" were charged with notice."

But this explanation is unwarranted for another reason. If the Terminal Company took this property charged with a trust, one of the conditions of the trust was that it should maintain and operate the property. It was only for the purpose of discharging these functions that it was required to have credit with "outside parties." For any such purposes they had the power to charge the trust property. Therefore it was unnecessary to make it appear to "outside parties" that the corporation had a good title to the property.

There is no possible explanation of these deeds, except that Colonel Blodgett, James F. How, General Dodge and the others having to do with the transac-

tions intended that the Terminal Company should receive an absolute conveyance of the Terminal property —become the absolute owners of it—and this was the interpretation they gave to the provision of the articles and the resolutions of 1885 and 1887. We contend that these deeds from the beneficiaries of the alleged trust are conclusive unless some reasonable explanation of them is given consistent with the trust theory, which has not been done.

THE CONTRACT OF 1889.

With respect to this contract the Court say:

> "The agreement of May 10, 1889, between the Terminal Company of the first part and the three proprietary companies of the second part fixed the terms upon which the property should be managed and the terminal service performed for a period of thirty years to date from May 1, 1888. It constituted a working arrangement for that period, but did not in terms or by implication set aside the trust or place a time limit upon it."

While it is true that this contract does not purport to, and indeed could not, change the terms of the trust, if one existed, yet this does not destroy or impair its probative value as bearing upon what was intended by the parties as the result of the transactions theretofore completed by which the title to the terminal property was vested in the Terminal Company when we come to consider the language in the contract and the circumstances under which it was made.

It was drawn by Colonel Blodgett and executed in behalf of some of the parties by James F. How and General Dodge. These persons knew what was intended by the previous transactions because they were

the persons who consummated them. Their intentions were the intentions of the corporations.

It has been the contention of counsel for the Railway Companies (apparently concurred in by the Court) that this contract was supplemental to the contract of 1882, and the occasion for its execution a desire to change in some few particulars the terms of that contract. This theory is supported by the testimony of Colonel Blodgett given many years after the transaction and after he had evidently compared the two contracts and ascertained in what particulars they differ. He says that the reasons for making this contract were:

> 1. That the agreement of 1882 made no provision for payment of interest or how the interest charge should be distributed among the railway companies;
>
> 2. That it did not obligate the Railway Companies to use the terminal; and
>
> 3. It was desired to apportion the expense of operating the roundhouses upon a different basis from that provided in that contract. (Vol. II, p. 366.)

When we come to examine the contract we find that Colonel Blodgett was careful to state therein the reasons for its execution, but we do not find among those reasons the ones he stated in his testimony many years after.

The reasons stated in the contract are as follows:

> "Whereas, the said party of the first part (the Terminal Company) is the *owner* of valuable terminal facilities in the City of Des Moines, Iowa, as hereinafter described; and
>
> Whereas, the respective parties of the second part have railroads in the State of Iowa which terminate at, or run into and through said City

of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties *should have the use of the terminal facilities of said first party;* and

Whereas, said party of the first part has become incorporated and organized under the laws of the State of Iowa for the purpose of *owning* and operating a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said City to Farnham Street, in the western part thereof; and

Whereas, said party of the first part, in pursuance of said charter has acquired and now *owns* a railway in said City, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, roundhouses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, said second parties *are each desirous of having the right to use* said terminals in connection with their respective railroads; * * * "
(Vol. II, p. 479.)

According to the opinion of the court, when Colonel Blodgett drew, and Mr. How and General Dodge signed, this contract and said that the Terminal Company was the owner of this property, they meant it was owned by the Railway Companies; and when they said that it was important for the Railway Companies to secure the right to use the terminal facilities, they meant that the Railway Companies were the beneficial owners of the terminal facilities and had the right to use them irrespective of any contract; and when they said that the Terminal Company was organized for the purpose of owning the terminal property, they meant it was organized for the purpose of holding its

legal title in trust; and when they said that the Railway Companies were desirous of having the right to use these terminals in connection with their respective railroads, they meant that they owned them and already had the right to use them.

Why did Colonel Blodgett write, and Mr. How and General Dodge sign, these erroneous statements? What purpose had they to accomplish by it? This was a private contract between the parties which was not intended for record and was not so executed that it could be recorded, and therefore was not so drawn for the purpose of deceiving anybody. The language is unambiguous and is not possible of any construction other than that these persons thought that the Terminal Company owned this property. To say that this contract does not correctly and truthfully set out the relations of the Terminal Company to this property as the same was understood by these persons is to convict them of incompetency. We repeat that competent and honest men do not do business this way. While they may inadvertently execute a contract that is susceptible of more than one construction, they do not say one thing and mean something entirely to the contrary.

The opinion refers to some other provisions of this contract relating to the issue and division of the stock; restricting the transfer and sale thereof. These provisions were all perfectly consistent with the theory of ownership of the property by the Terminal Company. These parties being the owners of this stock, it was competent for them to contract between themselves as to its disposition—something entirely unnecessary under the trust theory. These provisions

not only do not furnish evidence of a trust, but are inconsistent therewith.

THE AMENDMENTS OF 1890.

For our purpose the question of the legal effect of these amendments may be ignored. Whatever their effect, no one reading the record can be in doubt as to what it was intended to accomplish by them.

The proceedings leading up to and incident to their adoption were formulated by Senator Cummins. He was and is an able and conscientious lawyer. He was not concerned in the transactions leading up to a transfer of the property nor in the execution of the contract of 1889. His knowledge with respect to the matter was gained from an examination of the record of those transactions and information given him by those who took part in them, all of whom he knew and with all of whom he talked. That Senator Cummins in good faith believed that it was intended by these transactions to vest a good title in the Terminal Company is beyond doubt. That he was in as good a position as anybody could be to know what the intention was is beyond question. An examination of the record disclosed to him that some ambiguities were contained therein. The purpose of the proceedings had on April 8, 1890, was to clear up those ambiguities and make manifest the agreed purpose of the parties in vesting the title. That all the parties interested were advised of this purpose is also beyond question. That Senator Cummins relied upon the good faith of those representing the Railway Companies and failed to appreciate that some day some representative of those companies who was not personally concerned in

the transactions might raise the question, and therefore failed to secure the formal action of the boards of directors of the Railway Companies, is our misfortune. But his failure to do so does not in any way weaken the value of this testimony as bearing upon the intent.

It will be remembered that the proceedings of April 8, 1890, were not hurriedly taken. They had been under consideration and discussion since the annual meeting of January 3, 1890. The amendments were presented at a meeting of the stockholders held on February 18, and the meeting adjourned to April 8, to give further time for consideration.

Why, in the amendment to article two, was the clause relied upon by this Court—"All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882,"—stricken out? Was it not to make clear the purpose of the parties with respect to the title to this property?

Why were articles three and four amended so as to put it beyond question that this corporation should transact its corporate affairs as an ordinary corporation? Was it not for the same purpose?

Why was it provided in article fifteen that certain preambles, including the contract of 1882, should be repealed, stricken out and expunged? Was it not to remove any doubt as to the purposes of the parties?

And why, after amending these articles, did they recite in a resolution:

> "Whereas, the Articles of Incorporation have been amended so as to conform to the true intent of the several parties," etc. (Vol. II, p. 496.)

Can there be any doubt that the people who were present and took part in these transactions thought they were conforming to the true intent of the several parties by putting the title to this property beyond any question?

If these transactions had been formulated and carried out by persons who were not active in the organization of the terminal property and the transfer of the property to it, and were therefore not in a position to know absolutely the intent with which it was done, this evidence would lose much of its weight. But we find the active man at this meeting to be James F. How, who was the most active man in all the prior proceedings, and who, beyond question, knew the intent thereof, because his intent was the intent of the parties. Another active man was Charles M. Hays, who had been connected with a portion of the prior proceedings. They were concurred in by Colonel Blodgett, who signed the amended articles and caused them to be published to the world. These people were not attempting to perpetrate a fraud upon the corporations which they represented, but were attempting in good faith to express by formal record the intention with which the transactions then under consideration were had.

Obviously there was not intended by these amended articles of incorporation any change in the relative rights of the terminal company and the railroad companies in and to the terminal property; and the amendments were designed only to express more clearly what was intended by what had been previously done, and that was that the agreement of 1882 had been carried out fully, although in somewhat changed terms, by the incorporation of the terminal company, the con-

veyance of the property to it and the distribution of its stock to the railroad companies in the measure of their original interest in that property.

THE ATTITUDE OF THE OTHER RESPONSIBLE OFFICERS AND DIRECTORS OF THE RAILWAY COMPANIES.

We know, of course, that while James F. How and Colonel Blodgett were the active men in attempting to carry out the purposes of the Wabash Company, back of them were the directors and other responsible officers of that corporation. These persons were James F. Joy, O. D. Ashley, Edgar T. Welles and Thomas H. Hubbard, officers and directors of the Wabash Company and members of the Purchasing Committee. An examination of their record makes their intent equally clear. The fifth paragraph of the supplemental contract between Polk and Hubbell and the Purchasing Committee relating to the sale of the Fonda line (Vol. IV, p. 1576) cannot be explained on any theory other than that the Terminal Company was to have a good title to the property because an undivided interest in the terminal property itself and a proportionate share of the stock of the company acquiring the property were dealt with as exact equivalents.

The proposition of the Purchasing Committee of February 5, 1890 (Vol. IV, p. 1599), and the contract of February 11, 1890 (Vol. IV, p. 1601), made in pursuance of the proposition of February 5, and the contract of June 15, 1890 (Vol. IV, p. 1613), by which the Purchasing Committee undertook to sell to the Hubbells a portion of the stock of the Terminal Company, can only be explained upon the theory that the Purchasing Committee were either attempting to defraud

the Hubbells by selling them something of no value, or that they understood that this stock represented a valuable interest in the terminal property.

This court, of course, cannot base its decree upon the theory that the responsible representatives of complainants' predecessors were attempting to defraud, and thereby put its seal of approval upon a fraudulent transaction. With respect to this sale the court says:

> "We deem it clear, however, that the intent of the purchasing committee, known and assented to by Hubbell and Dodge at the time, was merely to enable the latter to sell the three-eighths interest to some railroad company capable of participating in the use of the terminal."

If this comment had been made with respect to the stock contracted for by Polk and Hubbell on September 10, 1887 (Vol. IV, p. 1575-6), there would be no answer to it, because it appears from that transaction that the stock was acquired for the Northwestern Company, for it was agreed that it should at once be pledged for the indebtedness of that company. But as applied to the transactions under consideration, the conclusion cannot be justified by the record for the following reasons:

First: Because so far as the two northern lines were concerned, each held one-fourth of the stock in the terminal company and, under the trust theory, were the beneficial owners of the property itself. Additional stock would have been of no value to them. There could have been no inducement for Dodge and Hubbell to invest their money in this stock if it represented nothing of value, and this the Purchasing Committee knew as well as the purchasers.

SECOND: Nor was a sale to some other line of railroad through Hubbell and Dodge as conduits contemplated. Why should they buy the stock and tie up their money in it if they could by no possibility profit by the transaction and might lose their money altogether if no such railroad company should appear.

But let us suppose that such a company did appear and did buy this stock of Hubbell and Dodge. What would that company get by its purchase? Just what Hubbell and Dodge got by theirs. It could not get more, for it would, equally with Hubbell and Dodge, be charged with notice of the agreement of 1882 and the provisions of the articles of incorporation. The quality of the stock would be the same as to each. It could not signify one thing as to one party and another thing as to the other party. And so if there was no intent to convey anything of value to Hubbell and Dodge, then a fraud was intended upon the contemplated purchasing railroad company.

We wish to emphasize that the fundamental error of the Court's opinion is that the agreement of 1882 and the articles of incorporation meant something different to Hubbell and Dodge from what they meant to outside parties. But this cannot be unless there was some other instrument or some other transaction connected with them in some way impressing upon them a significance for Hubbell and Dodge different from that apparent upon their face and with which outside parties could not be charged. But nothing of that sort appears in the record. Every resolution, every deed of conveyance is to the effect that it was intended to convey the entire right and title in the terminal property to the terminal company.

THIRD: The contract of February 11, 1899, contained the following provision:

> "And said Committee hereby authorizes and empowers said Des Moines Union Railway Company, or the proper officers thereof, to issue to said *Hubbell* or his assigns, one-eighth of all the capital stock in the said Des Moines Union Railway Company." (Vol. IV, p. 1601.)

FOURTH: Coincident with the execution of this contract the Purchasing Committee agreed that they would consent to an amendment to the articles which would permit one director of the company to be nominated by any *person* holding one-eighth of the stock of the company. (Vol. IV, pp. 1601-2.)

From these instruments it is clear that the Purchasing Committee, the members of which, as we have said, were also officers and directors of the Wabash Company, understood, not as the court has said, that this stock should be transferred to some railway company, but that it might be held by Hubbell or any other individual, and that the ownership of said stock would give to such owner a voice in the management of the property. These acts of these individuals, if we give them credit for being ordinarily honest, could be predicated only upon their understanding that the Terminal Company owned the property.

In this connection the Court says:

> "In correspondence between Mr. Hubbell and the Purchasing Committee antecedent to this transaction, they warned him that it would be necessary 'to confine a sale of the stock to such railway companies as would be interested in the station,' and he assented to this, acknowledging that 'it would be prejudicial to sell any of this to outsiders, and I understand it as you do that the

> stock can not be sold without the consent of the different railroad companies who now form the terminal company.' "

The correspondence to which the Court refers is found on pages 1059-1061 of Vol. III of the record. Mr. Ashley says, indeed, that he "always supposed it would be necessary to confine the sale to such railroad companies as would be interested in the station," but nothing in the articles of incorporation so confines it. It would be to the advantage of the Terminal Company to sell to such a purchaser, as that would mean a greater use of the terminal facilities. This correspondence occurred in June, 1888.

On May 10, 1889, the railway companies and the Terminal Company executed their operating contract. In this it was provided (Rec., Vol. II, p. 487) that the shares of the Terminal Company

> "are not transferable in whole or in part, without the consent in writing of all the parties of the second part (the railway companies) to this agreement."

With such consent they were, of course, transferable.

Almost a year expired after this before the proposal by Mr. Ashley to sell some of this stock was made. It was an independent transaction. It had no relation to the sales suggested in 1888. The right to sell with the consent of all the railway companies to any purchaser had been provided for. The negotiations for the sale to Hubbell and Dodge were with Hubbell individually. The memorandum contracts for the sale were made with him individually. And the sale included bonds of the Terminal Company as well as stock. The terms of the agreement were the same as

to bonds and stock. The preliminary correspondence is found in Vol. III, pages 1061-1063, and the memorandum contracts, Vol. IV, pages 1599-1602 and page 1613. It is conceded that the sale of the bonds was to Hubbell individually and absolutely, and there is no reason for the assumption that the sale of the stock was in any wise different.

The Court, however, holds that the sale of the stock was not absolute, but with the purpose and, in effect, upon the condition, that it should be resold "to some railroad company capable of participating in the use of the terminal."

But even from this view of the transaction it does not follow that the title of the Terminal Company to the terminal property was that of a naked trustee and that the holders of the shares had not the usual indirect and substantial interest in the property itself.

This anticipated railroad company would acquire an interest in the Terminal Company and the terminal property like in kind to that held by the other proprietary companies and to the extent measured by its shares. That beneficial interest in the property had great value, reflected, among other things, in what were called surplus earnings, derived in part from other than railroad uses of the property.

It is a fair inference from the Court's opinion that if Hubbell had sold to a railroad company which would make use of the terminal facilities, that railroad company would not simply have acceded to a naked trusteeship, but would have acquired something of substantial value and this it would have gotten from Hubbell.

After thirty years this value, with the increment

the years have brought, is taken from the Hubbells and given to the Wabash, which sold it, and to the Milwaukee, which never bought it. Something more than the purchase price of this stock, paid at a time when the outlook of the enterprise was most dubious, should be awarded upon the cancellation of the stock at this time.

Respectfully submitted,

JAMES L. PARRISH AND
FREDERICK W. LEHMANN,

Attorneys and of Counsel for Respondents in No. 66 and Petitioners in No. 67.

CERTIFICATE OF COUNSEL.

The undersigned attorneys and of counsel for the Des Moines Union Railway Company, F. M. Hubbell, F. C. Hubbell and F. M. Hubbell & Son, respondents in No. 66 and petitioners in No. 67, hereby certify that the above and foregoing petition for rehearing is made in good faith and not for purposes of delay, and that in their opinion said petition is well founded in law.

JAMES L. PARRISH AND
FREDERICK W. LEHMANN,

Attorneys and of Counsel for Respondents in No. 66 and Petitioners in No. 67.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. *v.* DES MOINES UNION RAILWAY COMPANY ET AL.

DES MOINES UNION RAILWAY COMPANY ET AL. *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Nos. 66, 67. Argued March 23, 24, 1920.—Decided December 6, 1920.

1. It needs no particular form of words to create a trust, so there be reasonable certainty as to the property, the objects and the beneficiaries. P. 208.
2. If the subject of a trust be a legal interest in property and capable of legal transfer, the trust is not perfectly created unless the legal interest be actually vested in the trustee. But it is not necessary that the trust be expressed in the same instrument that transfers the title; various instruments may be read together in order to ascertain the intention to establish one. *Id.*

Three railroad companies agreed that they would contribute in stated proportions to establish a terminal for the common use of themselves and of such other railroads as they might admit, that the title should be in a trustee, that they would share the cost of maintenance and operation in proportion to their use of the terminal, and that a depot company might be formed to take permanent control and issue its mortgage bonds to them for their respective contributions to the purchase and improvements. Later they caused to be formed a terminal railroad company with broad corporate powers to which they conveyed, by absolute deeds, the property they had acquired for the terminal. The bonds and stock of the terminal company were declared to be issued to them "in payment," but recitals and provisions of its articles, and resolutions attending the transfer, evinced that the main object was, not to abandon, but to effectuate the plan of the original agreement. A subsequent contract between the four companies fixed terms for management of the property,

for performance of the terminal service and division of the cost among the three railroads according to use, permanently allotted the stock among them, authorized one of them to sell one-half its allotment to any outside railroad, acceptable to a majority of them, which might then be admitted as a party to the agreement, but provided that, with such exception, admission of an outside company to the use of the terminal should require consent of all three. *Held:*

3. That the terminal company took the title in trust to maintain and operate the property and to exercise all its corporate powers for the common use and benefit of the three railroad companies, their successors and assigns, and such other companies as might be admitted by them to a proprietary participation in the terminal. Pp. 202–206.
4. That the subsequent contract was a modification only of the original plan and inconsistent with a purpose to treat the terminal company as an independent entity subject only to contractual obligations and remit the proprietary companies to the ordinary rights of stockholders. P. 208.
5. That, as between the proprietaries and others having notice, the stockholding interest was restrained to the full extent necessary to give effect to the trust, and the shares, representing the right to participate in the trust, could not be regarded, while the trust continued, as having an independent exchange value. P. 210.
6. That the fiducuary character of the terminal company extended to its officers and directors. P. 211.
7. That, where stock in the terminal company was sold by one of the proprietary companies to fiduciaries, officers and directors of the terminal company, for value, to enable them to sell it to some company capable of participating in the use of the terminal, the successor of such vendor company was not estopped from denying that the vendees acquired a substantial and valuable interest in the terminal company. P. 213.
8. That where a successor of two of the proprietary companies bought terminal shares from such individuals and afterwards, through its directors, transferred to one of them and to another officer and director of the terminal, in settlement of a loan, equivalent shares of the terminal and enough more to make more than a majority of the terminal stock, still retaining an interest, it was not estopped to dispute their claim of full ownership, or from asserting its rights under the trust and seeking relief against any inequitable use of the shares so transferred. P. 214.

9. That, in the absence of express authorization, agents deputed by the proprietary companies to vote their stock in the terminal company, including the presidents of two and the vice president of the other, were without power to amend its articles so as to do away with the trust or seriously impair the rights of the proprietaries under it. P. 215.

10. That the absence of any reference to the trust in deeds and mortgages of the property, including the terminal shares, of the proprietary companies, and in contracts made by the terminal company in discharging its functions, was not persuasive evidence against the existence of the trust. P. 218.

11. That, where the articles of the terminal company were in form amended so as to deprive the proprietary companies, as it was claimed, of their exclusive ownership and control, and in effect to discharge the trust, and the validity of the amendments was unchallenged for 17 years, and where certain individuals, for value, acquired from proprietary companies bonds and a majority of the shares of the terminal company, and held them many years during which the property increased in value, the successors of the proprietary companies were not estopped, or barred by laches, from asserting the trust against such individuals, it appearing that the latter were and remained officers and directors of the terminal company, with constructive and actual knowledge of the trust, and were not misled, that the amendments were not authorized or ratified by the proprietaries, that, although their officers acquiesced in certain internal changes in the terminal company directed by the amendments and in the *de facto* distribution of its stock, there was no substantial departure from the trust in the management and possession of the property, and it appearing further that no claim that the trust had been repudiated was made until shortly before the suit. Pp. 219–222.

12. That the fiduciaries holding such shares were estopped to avail themselves of incautious, negligent or mistaken acts of officers of the proprietary companies in order to obtain an advantage for themselves at the expense of those companies. Pp. 221, 222.

13. That the shares, held by such fiduciaries, represented no value or interest which they could set up against the proprietaries, and that the latter, upon repaying what the former had paid for them, with interest, were entitled to have the shares surrendered and canceled, and meanwhile to have any sale, assignment, transfer or voting of the shares prevented by an injunction. P. 223.

14. That, under contracts of the parties, earnings derived from switch-

ing and other terminal services and privileges should be credited, as they accrued, to the proprietaries in proportion to their use of the terminal, *i. e.*, to wheelage. P. 225.

254 Fed. Rep. 927, reversed.

THE case is stated in the opinion.

Mr. Robert J. Cary and *Mr. Burton Hanson*, with whom *Mr. John C. Cook*, *Mr. Winslow S. Pierce*, *Mr. Lawrence Greer* and *Mr. F. C. Nicodemus, Jr.*, were on the briefs, for Chicago, Milwaukee & St. Paul Ry. Co. *et al.*

Mr. James L. Parrish and *Mr. Frederick W. Lehmann* for Des Moines Union Ry. Co. *et al.*

MR. JUSTICE PITNEY delivered the opinion of the court.

This was a suit in equity brought in the year 1907 in the Circuit (now District) Court of the United States for the Southern District of Iowa by the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company against the Des Moines Union Railway Company. By an amended bill the individual defendants, Frederick M. Hubbell, Frederick C. Hubbell, and their firm of F. M. Hubbell & Son, were brought in; and afterwards the Wabash Railway Company, having succeeded to the rights of the Wabash Railroad Company, was substituted as a complainant in its stead. Jurisdiction depended entirely upon diverse citizenship of the parties.

Complainants own and operate lines of railroad extending to the City of Des Moines, Iowa, and connecting there with a joint terminal property, legal title to which is held by the defendant Des Moines Union Railway Company (hereinafter called for convenience the terminal company), in which complainants hold a minority of stock, the Wabash Company an eighth, the other complainant a quarter,

while the Messrs. Hubbell hold five eighths. Complainants assert that the terminal company holds its property in trust for their use, and that they are the sole beneficial owners, having an equitable tenancy in common, and being entitled to the joint use of the property in perpetuity, exclusive except as other railroads may be admitted to participate in such use with their consent. This is the principal matter in controversy. Intimately connected with it is the question of the validity as against complainants of the Messrs. Hubbell's claim to ownership of five eighths of the capital stock. A subordinate issue relates to the disposition of what are called "surplus earnings," acquired by the terminal company from outside parties during the operation of the terminal under an agreement made in the year 1889 between the terminal company and the predecessors of complainants and which expired in 1918.

Complainants base their principal contention upon a trust alleged to have been established under and pursuant to an agreement made January 2, 1882, between three companies then engaged in the construction of as many railroads converging at Des Moines, and through the incorporation of the terminal company in the year 1884 for the express purpose of acting as trustee for the three companies, and the conveyance to it by them of the terminal property, followed by the working agreement of 1889; from all of which it is contended that the terminal company has from the beginning held and still holds all its property subject to a trust under which the three railroad companies and their successors and assigns, and such other railroad companies having lines terminating at Des Moines as may be admitted with their consent, are entitled to have the terminal property maintained and operated for their use and benefit at the actual cost of the terminal service performed. Complainant Chicago, Milwaukee & St. Paul Railway Company is the remote

successor of two of the three companies, owning what may be called the Northern and the Northwestern lines. Complainant Wabash Railway Company is the remote successor of the original company that owned the third, which may be called the St. Louis line. The bill of complaint prayed for a decree declaring and establishing the trust; an accounting for all income and profits received by the terminal company for switching or handling traffic at the terminal for companies other than complainants and their predecessors, and for rentals of real estate and the like; and specifically and generally for other appropriate relief. The defenses set up in the answer and attempted to be supported by the proofs are, briefly, that by the deeds of conveyance made to the terminal company it took title not as trustee but absolutely and for its own sole use and benefit; that, whatever relation may have arisen from the provisions of the original articles of incorporation, whether fiduciary or merely contractual, was substantially modified, and if fiduciary terminated, by amendments adopted April 8, 1890, alleged to have been thereafter recognized by complainants and their predecessors as valid and so treated by defendants and all others concerned; that complainants by their conduct and that of their predecessors are estopped from setting up the equitable title alleged, and have been guilty of laches barring relief in equity; hence that they are not entitled to assert any right or interest in the terminal property except such as arises from their ownership of a portion of the stock of the terminal company and from the provisions of the agreement of 1889; and that by the proper construction of that agreement the so-called surplus earnings are the property of the terminal company and not of complainants.

Upon final hearing the District Court made a decree from which both sides appealed to the Circuit Court of Appeals, where it was held (one judge dissenting) that

the terminal company had complete and absolute title to the terminal property; that complainants, except as holders of its stock or bonds, had no interest in it, nor voice in the control or management; that by the true construction of the 1889 agreement complainants were entitled to the surplus earnings until May 1, 1918, and that thereafter the rights of the parties respecting the use of the terminal were only such as sprang from their nature as carriers and their physical and business relations to each other and to the terminal; by reason of which the terminal company must furnish them with reasonable terminal facilities at reasonable charges to be agreed upon, or in default of agreement to be fixed by the proper public tribunal. 254 Fed. Rep. 927.

Cross-writs of certiorari bring the resulting decree here for review.

The facts are intricate, and the evidence so voluminous that any detailed recital of it would be unduly tedious. It is sufficiently referred to in the prevailing and dissenting opinions delivered in the Circuit Court of Appeals, and we will content ourselves with touching upon the salient points. The case involves no abstruse legal or equitable doctrine; the application of familiar principles to the facts as they are developed will direct us to the proper outcome.

The agreement of January 2, 1882, was made between the three railroad companies and two individuals in whose names certain titles had been taken for the benefit of the companies. Its principal provisions were that terminal facilities in Des Moines should be purchased, constructed, and maintained at the joint expense of the three companies and held and used in common; that the expense of acquisition should be borne one-half by the St. Louis Company, one-quarter by each of the others; "that a depot company may be organized and may take permanent charge of the property upon the terms herein set forth, and

that said company may issue and deliver to the companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements. . . . The title to said property shall be and remain in a trustee to be named by agreement of said companies, but subject to the joint use and occupation of all of said railway companies upon the terms herein described." The St. Louis Company was to be charged with police control, supervision, and maintenance of the terminal, and the expense thereof (including taxes) apportioned between it and the other companies according to the use they should respectively make as evidenced by the wheelage; spur tracks were to be built connecting the terminal with factories and other sources of trade in and about the city, but if either of the companies should deem the construction of any such track not advantageous the question of constructing it and which of the three companies should pay for it was to be determined by arbitration; any railroad company having a line not extending to Des Moines but having effected an arrangement for running its trains into the city over the line of either of the three companies was to be entitled to the use of the terminal facilities upon paying a fair sum for rental and a proportion of the maintenance account, the rental to inure to the three companies in the same proportion as the original outlay, and the sum due for maintenance to be determined in the same manner as in the case of the three companies; railroad companies having lines extending into Des Moines might be admitted to the use of the terminal by agreement of all three companies; differences arising under the agreement were to be referred to arbitration.

The terminal company was organized by representatives of the three companies under articles of incorporation dated December 10, 1884, which recited the 1882 contract in full, with special emphasis upon the provision that a

depot company might be organized to take permanent charge of the property, and declared that the new company was organized for this purpose as well as others that were expressed. The articles contained apt provisions to comply with the laws of the State of Iowa so as to enable it to construct, own, and operate a railway in, around, and about the city, with depots and everything else useful and convenient for the operation of railways at the terminal point, and with all the powers conferred upon corporations for pecuniary profit. Its corporate existence was to continue for fifty years, with the right of renewal. It was expressly declared: "All the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882." There was a provision that the written assent of the three companies should be necessary before the terminal company should lease or otherwise dispose of the use of any part of its franchises to any other railroad company. The capital stock was to be $1,000,000, divided into shares of $100 each, and paid in as the board of directors might determine, with authority to the board to receive in payment the property and franchises in Des Moines held by the three companies and their trustees. Four members of the board of directors were to be nominated by the St. Louis Company, two members by each of the other proprietary companies, and no stockholder to be eligible for membership in the board unless so nominated; this provision to apply to and be enjoyed by any grantee or assignee of either of the three companies. No contract, lease, or other agreement amounting to a permanent charge upon the property of the corporation to be entered into unless first approved by the three companies or their assigns and by more than three-fourths of all the stockholders.

January 1, 1885, each of the three companies held a stockholders' meeting, at which formal resolutions were

adopted reciting the contract of January 2, 1882, and the organization of the terminal company as contemplated in that contract and in order to carry out its purpose; each company thereby accepting and ratifying, so far as its interests were affected, the articles of incorporation of the terminal company as in substantial accord and compliance with the terms and conditions of the contract, and authorising its officers to transfer to the new company all its right, title, and interest in the terminal property in exchange for a proper share of the bonds and stock of the terminal company.

On the same day the board of directors of the terminal company adopted resolutions accepting the transfer, management, and operation of the terminal property, appointing a committee to confer with the three railroad companies with respect to the terms and price at which the terminal property and franchises should be conveyed to it, and to procure from them "such conveyance and transfer as may be necessary to fully invest this company with the title, control and management of said properties as provided for in said contract of January 2nd, 1882"; and authorizing the issue of all its capital stock and not exceeding $500,000 of bonds to be secured by mortgage of the properties so to be conveyed; the bonds and stock to be used in paying for the property, maintaining, operating, and improving it, and purchasing other property necessary to carry out the objects of the company.

Due apparently to the financial embarrassment of the original Wabash Company, which dominated the St. Louis and the Northwestern, terminal matters remained in abeyance until November, 1887, when deeds were authorised, which, between that time and the following April, were made by the companies and the individual trustees with the effect of vesting in the terminal company complete legal title to the properties that had been acquired for the purpose of establishing the terminal. The

deeds were absolute in form. The terminal company by amendment of its articles increased its capital stock from $1,000,000 to $2,000,000, and authorized the making of a mortgage, which afterwards was given as of date November 1, 1887, to the Central Trust Company of New York as trustee, to secure an issue of $800,000 of 5 per cent. bonds for the purpose of paying for its property and completing improvements thereon; the mortgage covering all its real estate, rolling-stock, etc., then owned or thereafter to be acquired.

Until May 1, 1888, the terminal property continued to be operated by the St. Louis Company under the original agreement; on that date the terminal company took possession, and ever since then has continued to operate it and render terminal service thereon to the three railroad companies and their successors, as well as to other companies admitted from time to time under special agreements.

Upon a review of all the evidence, construing the writings in the light of the circumstances and the manifest purpose and intent of the parties, we are clear that the effect of the transactions thus far recounted was to establish a trust in the full and proper sense of the word, the terminal company being invested as trustee with complete legal title, but without beneficial ownership, and subject to a duty to maintain and operate the property and exercise all its corporate powers for the common use and benefit of the three railroad companies, their successors and assigns, and such other companies as might be admitted by them to a proprietary participation in the terminal.

The gist of defendants' argument to the contrary is that the incorporation of the terminal company and the conveyance of the property to it by deeds absolute in form manifested a substantial change of plan from that embodied in the contract of January 2, 1882; stress being laid

upon the fact that the powers of a terminal railway company as acquired under the articles of incorporation were much more extensive than those of a depot company, and it being contended that the provisions of the articles respecting the control of the terminal company and the resolutions providing for the transfer of the property to it, the form of the deeds themselves, and the issuance of stock and bonds to the proprietary companies in payment, demonstrated a purpose to invest the terminal company with title for all purposes. But the main object of establishing a joint terminal at the common expense and for the common use of the three companies and to retain their proprietary interest in it while confiding its maintenance and operation to their trustee is so manifest that all the proceedings are properly to be construed as designed to give effect to it, and seeming inconsistencies and ambiguities resolved accordingly. The provision of the articles that "all the powers exercised by this company shall be in accordance with the terms and spirit of the aforesaid contract" is not merely contractual, but amounts to a declaration of trust and together with the other evidence shows clearly that the powers were procured from the State expressly to enable the company the better to fulfill the purposes of its existence as such trustee, and not to set it up in business on its own account. The substitution of the terminal company with more elaborate powers in place of the depot company contemplated at the beginning shows a development and modification of the original plan, but no departure or substantial change. The particular stipulations contained in the articles respecting the control of the terminal company were intended not as a substitute for but as safeguards of the trust. The absolute form of the conveyances, and the issuance of stock and bonds "in payment," were intended to give credit to the company in its dealings with outside parties and to render its bonds more readily salable; but they constituted the

mere mechanism for carrying into effect the main purpose of the parties, and as between them were controlled by that purpose and by the articles and resolutions that manifested an express declaration of the trust. All the circumstances, and what we have quoted from the resolution of the terminal company directors, show that the title was conveyed for the purpose of enabling that company to control and manage the terminal in furtherance of the objects of the 1882 agreement.

It needs no particular form of words to create a trust, so there be reasonable certainty as to the property, the objects, and the beneficiaries. *Colton* v. *Colton*, 127 U. S. 300, 310. But if, as here, the subject of the trust be a legal interest in property and capable of legal transfer, the trust is not perfectly created unless the legal interest be actually vested in the trustee. *Adams* v. *Adams*, 21 Wall. 185, 192, 194. Hence the necessity in this case of deeds conveying the fee to the terminal company. But it is not necessary that the trust be expressed in the same instrument that transfers the title. Various instruments may be read together in order to ascertain the intention to establish one. *Loring* v. *Palmer*, 118 U. S. 321, 340.

The agreement of May 10, 1889, between the terminal company of the first part and the three proprietary companies of the second part fixed the terms upon which the property should be managed and the terminal service performed for a period of thirty years to date from May 1, 1888. It constituted a working arrangement for that period, but did not in terms or by implication set aside the trust or place a time limit upon it. It provided that for the terminal service the proprietary companies should make payments, in proportion to the wheelage of each, to cover interest upon the mortgage bonds, the cost of maintenance, repairs, taxes, and insurance, and the cost of operating the terminal, including all expenses (except the operation of engine-houses, care of engines, and repairs

thereto, which were separately dealt with), after deducting any amounts which other railway companies might be obliged to pay for the use of the property. Engine-house expenses were to be apportioned according to the number of engines of each company, engine repairs to be charged to the company for which the work was done. The agreement contained other provisions of permanent effect, providing for the allotment of the stock of the terminal company to the proprietary companies and declaring the terms upon which outside companies might be admitted to ownership of the stock or the use of the property. It recited that the proprietary companies were entitled to the stock in the proportion of one-half to the St. Louis Company, one-fourth to each of the others, and provided for the issuance of certificates accordingly, and that these should express upon their faces that they were not transferable without the consent in writing of all the proprietary companies, except as to shares issued to qualify directors. And there was a provision that the St. Louis Company might sell one-half of its stock, or one-quarter of the whole, to such railroad company as might be acceptable to a majority of the proprietary companies, in which case the purchasing company might be admitted as one of the parties to the agreement upon the same terms and conditions as those stipulated for the other parties of the second part; and that, except as thus provided, other railroad companies should not be admitted to the use of the terminal property without the consent of all the parties of the second part.

Here again we have a further modification of some of the details of the original plan, but in respects altogether consistent with the continuance of the trust; inconsistent, indeed, with a purpose to treat the terminal company as an independent entity subject only to contractual obligations and remit the proprietary companies to the ordinary rights of stockholders. Their contributions to the original cost

of the property having been secured by mortgage bonds according to the plan of 1882, provision was now made for distributing the entire capital stock according to the original proportions, one-half to the St. Louis, one-quarter to each of the two other companies, but with certain material restrictions upon the ordinary rights of stockholders expressed in the agreement and others necessarily implied.

Since, from the very nature and terms of the trust, all the property and franchises of the terminal company were to be held for the benefit of the proprietary companies, and all its corporate powers exercised in the administration of the joint terminal for their common use, the stockholding interest in the terminal company necessarily must be modified, as between the parties, to the extent necessary to give full effect to the trust. In the hands of the proprietors of the connecting lines the stock was the evidence of their right to participate in the benefits of the trust, in the control and management of the terminal company, and in the use of the terminal; but such use, in the nature of things, must be proportioned, not according to the magnitude of their respective stock holdings, but according to their respective traffic requirements. And since the terms of the trust required that these connecting lines should have the entire beneficial use of the property upon paying the cost of the terminal service, there was no room for a profit from the operations of the terminal company out of which dividends could be paid. Except in the theoretically possible but extremely improbable event of an abandonment of the terminal (as to the effect of which no opinion need be expressed), it is plain that, as between the parties to the trust and others having notice of it, the stock could have little or no exchange value except to a company owning or operating a railroad line connecting or capable of connecting with the terminal. In the hands of others having notice of the trust, the stock represented no sub-

stantial property interest. Some recognition of the anomalous status of the stockholding interest is to be found in the acts of the parties above set forth, especially in the provisions of the agreement of 1889. The amount of stock provided for shows that it was deemed probable that eventually the property would have a value in excess of the original cost represented by the bond issue, or that value might be given to the stock through liquidation of the bonds or otherwise, and that upon a sale of a participation in the terminal property and facilities to an outside railroad company, evidenced by a transfer of stock in the terminal company, some return could be got for such increased value. The apportionment of the original issue, and the stipulations of the 1889 agreement, recognized that the St. Louis Company, as representative of the original Wabash Company, was equitably entitled to preference in any profits that might be derived from such a sale to an outside company. And evidently it was then anticipated that there would be four proprietary companies, each holding one-fourth of the stock, with equal representation in the board of directors.

We are not here concerned with any question pertaining to the rights of the bondholders. It may be assumed that, if necessary for their protection, the mortgage would be treated as conveying the entire estate, both legal and equitable, in the terminal property. No express provision appears to have been made for paying off the principal of the bonds. Whether the beneficiaries of the trust, as between themselves, were or are entitled to have provision made for discharging the principal by including periodic amortization charges as a part of the cost of operating the terminal is a question that we need not consider.

Nor are we at this moment concerned with any question that might arise if stock of the terminal company had come or should come to the hands of a *bona fide* purchaser for value without notice. The principal contro-

versy arises from the fact that defendants F. M. Hubbell and F. C. Hubbell have become the holders of five-eighths of the capital stock, upon which fact, together with the alleged effect of the amendments to the articles of incorporation adopted April 8, 1890, defendants rest the insistence that the proprietary companies have lost their right to control the action of the terminal company, that the Messrs. Hubbell as stockholders are entitled to control it and to have dividends out of its profits, and that from and after the expiration of the 1889 agreement, complainants have no right to the use of the terminal except upon terms to be agreed upon by the terminal company as controlled by the Messrs. Hubbell.

It is important, therefore, to consider the circumstances under which their stock was acquired and the amendme. adopted.

Obviously the fiduciary character of the terminal company extended to its officers and directors as to all others concerned in its management, charging them with a duty to uphold the trust and imposing upon them the usual disability about reaping a personal advantage at the expense of the beneficiaries. And it is clear and undisputed that the Messrs. Hubbell acquired their stock with full notice of all essential facts pertaining to the trust; they themselves at all times material were officers and directors of the terminal company and acted in a fiduciary capacity in everything relating to its affairs. Mr. F. M. Hubbell was an officer and director of that company at the beginning and continuously thereafter, especially active in its management; and during a period which included the important transactions in question he also was a director and officer of each of the proprietary companies and their trusted representative in respect to terminal matters at Des Moines. Mr. F. C. Hubbell became a director of the terminal company in January, 1890, president two years later, and has been such continuously since.

In the year 1886 and thereafter until and during the year 1890 the property of the Wabash system, including the stock of the St. Louis Company with control of its part of the stock of the terminal company, was in the hands of a purchasing committee as trustees for the Wabash bondholders. In February, 1890, F. M. Hubbell obtained from this committee an option for the purchase of $135,000 of the terminal company bonds and a quarter interest in its capital stock for $135,000, accepted the option, made over to General Dodge a half interest in it, and Hubbell and Dodge each received one-half of the specified bonds and one-eighth of the outstanding capital stock, with a guaranty on the part of the purchasing committee that the St. Louis Company would approve the transfer (as it afterwards did, through its board of directors), and that the committee would consent to such change in the articles of incorporation of the terminal company as would permit one director to be nominated by any person or company holding one-eighth of the stock. At this time General Dodge was president of the terminal company, and also president and principal stockholder of the Northern Company; Hubbell, besides his relation to the terminal company, was president of the Northwestern Company and its controlling stockholder. In correspondence between Mr. Hubbell and the purchasing committee antecedent to this transaction they warned him that it would be necessary to confine a sale of stock "to such railway companies as would be interested in the station"; and he assented to this, acknowledging that "it would be prejudicial to sell any of this stock to outsiders, and I understand it as you do that the stock cannot be sold without the consent of the different railroad companies who now form the terminal company." Later Hubbell acquired from the purchasing committee $50,000 of the bonds and an additional eighth interest in the capital stock of the terminal company for $57,736, being

par and accrued interest for the bonds and 15% of par for the stock, upon the understanding expressed in writing that an eighth interest should be "sufficient to represent a proprietorship in the company, according to the understanding we had when you were here"—evidently meaning that the eighth retained by the purchasing committee should carry with it a proprietary interest and influence in the terminal not limited in proportion to the amount of the stock.

Defendants insist that because the purchasing committee sold the stock to Hubbell and Dodge for a valuable consideration, they must be taken to have dealt with it as having substantial value; and that since, in afterwards making report to the board of directors of the Wabash Company, with an account of their financial transactions, the committee included their receipts from sales of the stock and bonds of the terminal company, and the directors approved the account, complainant Wabash Railway Company is estopped from denying that Hubbell and Dodge acquired a substantial and valuable interest in the terminal company. We deem it clear, however, that the intent of the purchasing committee, known and assented to by Hubbell and Dodge at the time, was merely to enable the latter to sell the three-eighths interest to some railroad company capable of participating in the use of the terminal. Whether consistently with their fiduciary relations or not, they took advantage of this opportunity in the following year, when the Northern and Northwestern companies were consolidated and they sold to the consolidated company the stock in question, apparently and presumably at a profit over and above what they paid the purchasing committee for it. There is no foundation for the suggested estoppel.

The title now asserted by the Messrs. Hubbell to five-eighths of the terminal company stock was derived not directly from the Wabash purchasing committee, but from

the consolidated Northern and Western company. That company, in addition to the three-eighths transferred to it by Hubbell and Dodge, had the two quarter-interests originally owned by those companies, making seven-eighths in all. In October, 1893, the consolidated company pledged to F. M. Hubbell & Son five-eighths of the terminal company stock (2,500 shares) as security for a debt. The stock was transferred to the Hubbell firm on the books at that time, and so remained down to the institution of this suit, except as to five "qualifying shares" placed in the names of individuals but controlled by the firm. On January 29, 1894, the indebtedness was settled between the directors of the consolidated company and the Messrs. Hubbell upon terms that included a purchase by the latter of the 2,500 shares of terminal company stock at ten per centum of its par value. Passing for the moment certain special grounds of attack upon the title they thus acquired to these shares, it is obvious that they took them subject to all qualifications arising out of the trust that pertained to the property and franchises of the terminal company.

The quarter-interest in the terminal company stock retained by the consolidated company afterwards passed from it to the complainant Chicago, Milwaukee & St. Paul Railway Company, which acquired at the same time the Northern and Northwestern lines. That company took with notice of the claim of the Hubbells to a five-eighths interest; but this does not estop it from disputing the validity of their claim, nor from setting up, as in this suit, whatever beneficial participation in the trust respecting the terminal property may be incident to its ownership of one-fourth of the stock of the terminal company together with connecting lines of railroad, and asking for relief against any inequitable use by the Hubbells of the five-eighths interest claimed by them.

As to the amendments to the articles of incorporation: These are alleged to have been adopted at a meeting of

the stockholders of the terminal company held April 8, 1890. Their purport was, briefly, to omit from the articles the copy of the contract of 1882 recited therein, the declaration that the powers exercised by the company should be in accordance with the terms and spirit of that contract, and the requirement that assent in writing of the proprietary companies should be necessary before any disposition of the franchises of the terminal company should be made; to set aside previous proceedings respecting the amount of capital stock to be issued to the proprietary companies and provide for the distribution of a much decreased amount ($400,000 par instead of $2,000,000) but in the same proportions as before, the remaining capital stock ($1,600,000 par) to be issued only by resolution of the stockholders adopted by vote of more than seven-eighths of all the stock theretofore issued; and to eliminate the former method of selecting directors and provide that they should be elected by the stockholders, but that it should require the votes of more than seven-eighths of all the stock to elect a director, and that as to all matters except the ordinary operation of the property the directors could act only upon unanimous vote of the eight members of the board. One of the articles adopted purported to repeal, strike out, and expunge the proceedings of a stockholders' meeting held December 10, 1884, at which the original articles of incorporation were adopted.

It is plain enough, and is conceded, that the corporation could not, by merely altering its own internal organization, affect the interests of its *cestuis que trustent*. It is as evidence of a modification of the agreement between the stockholders of the terminal company—themselves beneficiaries of the trust—that the amendments are invoked. So regarding them, the question is, by what authority and with what intent were they adopted? The stockholders' meeting was attended by six individuals (including the two Hubbells), and two others by proxy, each of

whom assumed to represent, and in a general sense did represent, one or the other of the three proprietary companies. F. M. Hubbell himself was president of the Northwestern Company and assumed to represent it. Others present were the vice president of the Northern and the president of the St. Louis companies. The evidence fails to show that those present had express authority to act for the proprietary companies in amending the articles; and action of this kind—materially affecting the property interests of the three companies in a matter so vital as the ownership and control of an important terminal—was so far out of the usual or ordinary course of business that authority to represent their corporations in assenting to it was not to be implied as coming within the general scope of their duties. Nor did either of the proprietary companies, by any formal corporate action, accept or ratify the amendments.

Moreover, it affirmatively appears, and both courts below in effect found, that there was no actual intent on the part of any of the parties concerned to affect the substantial rights or equities of the proprietary companies, or to terminate, repudiate, or substantially modify the trust respecting the terminal property. It does appear that some of those active in proposing the amendments, and assuming to act for the proprietary companies in assenting to them (there is a question whether they actually were adopted by a proper vote of the stockholders, but we do not go into this), were under the impression that the contract of 1882, recited in the articles of incorporation, already had been abrogated and the trust set aside by the issuance of the terminal company's bonds and apportionment of the stock to the proprietary companies in payment for the property conveyed and by the making of deeds absolute in form; that both in respect to the ownership of the property and the management of it under the contract of 1889 the original arrangement had been abandoned; and

that it was desirable to amend the articles so as to make them conform to the situation actually existing.

Clearly, this was a mistaken impression, as will appear from what we have said. It was a mistake not indeed as to any mere matter of fact, nor on the other hand as to any pure question of law, but rather as to the existing legal rights, interests, and relations of the parties resulting from antecedent transactions. Whether it was such a mistake as to furnish — and for a cancellation of the amendments in equity, is a question into which we need not enter. (See *Snell* v. *Insurance Co.*, 98 U. S. 85, 90; *Griswold* v. *Hazard*, 141 U. S. 260, 284; *Utermehle* v. *Norment*, 197 U. S. 40, 56; *Philippine Sugar Co.* v. *Philippine Islands*, 247 U. S. 385, 389; Pom. Eq. Jur., §§ 841-849.) For the fact that those who assumed to act for the proprietary companies in assenting to the amendments were mistaken as to the existing legal situation, so that the amendments, if given effect according to their terms, instead of bringing the articles into conformity with the situation already actually existing, would materially change the situation to the disadvantage of the proprietary companies by putting an end to an important trust contrary to their actual intent as parties beneficially interested, is a cogent reason for holding as we do that authority on the part of agents to assent to such amendments is not to be implied where it was out of the ordinary course of business and express authority was not conferred.

In support of the contention that the terminal property was not subject to any trust either before or after the amendments, defendants cite a series of contracts in which the terminal company asserted its ownership without qualification, and of conveyances, mortgages, etc., by the proprietary companies recognizing the legal title of the terminal company to its property and asserting in themselves only a title to shares in the terminal company. But when a trust is once established and acknowledged it does

not need to be constantly reiterated or confessed. None of the instruments referred to is in anywise inconsistent with the trust; the contracts of the terminal company were made in the very course of its administration of the trust; and the mortgages and conveyances of the proprietary companies dealt with legal titles only, their equitable interests in the terminal passing without mention as incidental to their ownership of the stock together with the connecting lines.

The majority of the Circuit Court of Appeals held that the control of the proprietary companies was relinquished by reason of the amendments and the conduct of the parties at the time and thereafter, upon this theory: that although the amendments were neither previously authorized nor afterwards formally accepted or ratified by the three companies, yet since their executive officers were aware of and approved the action of the meeting; since Hubbell was encouraged to purchase the bonds and stock, the value of the stock being wholly prospective; since after the amendments the stock of the terminal company was issued in accordance therewith and directors elected by the new method, the railroads making no attempt to exercise their right of naming directors in certain proportions as before; since for seventeen years the railroads acted, as it seemed to the court, in harmony with the amended articles, not questioning their validity until this suit was commenced; they could not, after such delay, enforce their rights in a court of equity against defendants who to their knowledge had acted upon the belief that such rights did not exist, and had acquired and held property which had largely increased in value in the interval. It was held that this result had come to pass although the railroads never had intended it; that the sale of a part of the Wabash stock by the purchasing committee to Hubbell and Dodge, then influential in the two other roads, would seem at the time a mere rearrangement of the interests of

the three companies in the terminal company; but that the effect of the amendments was a severance of the control of the roads over the terminal company, and subsequent events confirmed this, so that when the Hubbells disposed of their interests in the Northern and Northwestern to the Milwaukee, retaining for themselves a majority of the terminal holdings, the result was that the railroads themselves had gradually let slip that exclusive ownership and control which at the beginning they had so much valued and so carefully guarded.

Convinced that the relation of the parties was fiduciary and not merely contractual, we are unable to accept the view thus outlined. It would require a clear case to warrant a court of equity in declaring that the trustees of an express trust, in the very course of their administration of the trust, had acquired a dominant interest in the trust property and in effect a discharge of the trust, through mere inattention or even negligence—not raising an estoppel or amounting to laches—on the part of the parties beneficially interested, or of their executive officers. Conduct merely equivocal, or apparently inconsistent with a vigilant insistence upon the obligations of the trustee, is not sufficient to discharge a trust. The *cestui que trust* is entitled to rely upon the fidelity of the trustee, until plainly put on guard against him. And the trustee is at all times disabled from making a profit for himself out of any dealings in the trust property without the express consent of the *cestui que trust*.

Nothing appears to create an estoppel against complainants. Neither they nor their predecessors have misled defendants to their disadvantage. The purchasing committee accepted a money consideration from Hubbell and Dodge for the transfer of a block of stock. But the purchasers had more complete and intimate knowledge of the situation than the committee had, and were specially put on notice, as the correspondence shows. Indeed, their

knowledge of the true nature and office of the terminal company constituted adequate notice. And again, when the Messrs. Hubbell reacquired the same three-eighths with an additional one-quarter interest from the consolidated Northern and Western Company, they were as before chargeable with full notice of all the facts out of which the equities of complainants arise.

The question of laches presents more difficulty; but after mature consideration we are convinced that it must be resolved in favor of complainants. Acquiescence by the executive officers of the proprietary companies in the changed situation resulting from the amendments of April 8, 1890, is stressed by counsel for defendants, as it was in the majority opinion of the Circuit Court of Appeals; it being pointed out that after the amendments directors were elected in the new mode, and that in an agreement of ratification dated July 31, 1897, made for the purpose of giving recognition to the participation of the Wabash and of the consolidated Northern and Western Company in the obligations of the 1889 agreement, it was declared that so much of that agreement as related to the issuance and distribution of the capital stock of the terminal company was no longer binding, and the stock was held in specified proportions, including "F. M. Hubbell & Son 2,500 shares." This was a recognition of their status as *de facto* stockholders, but not a concession that the fiduciary character of the terminal company had been changed, or that the stock possessed any quality or value other than was consistent with the nature and terms of the trust. The parties acted in harmony with the amended articles so far as the internal organization of the company was concerned, but the company remained in possession of the property as before and continued to manage it in accordance with the terms of the agreement of 1889. Such possession was as consistent with a continued recognition of the trust as with the opposite; and it does not appear

that at any time until shortly before the bill was filed defendants contended that the amendments amounted to an express repudiation of the trust or that the terminal company would be free from obligation at the expiration of the agreement. Prior to this there had been a difference about the disposition of the "surplus earnings," but this was no more than a question about the proper construction of the working agreement.

It seems to us the court below attributed undue weight to the conduct of the executive officers of the proprietary companies indicating acquiescence in a supposedly changed situation resulting from the amended articles. It would not be surprising if occasionally there was a failure to appreciate fully and accurately the rights and obligations growing out of the trust. But the Messrs. Hubbell, because of their fiduciary relation, are estopped from laying hold of the incautious, negligent or mistaken acts of the executive officers as a ground on which to build up a profit or advantage for themselves at the expense of the proprietary roads which were their *cestuis que trustent.*

Upon the whole case, it is our conclusion that the trust with respect to the terminal property continues substantially as it was established at the incorporation of the terminal company; that this company holds all its property and franchises—whether conveyed to it at the beginning or acquired since—in trust for the purpose of carrying out, in substance, the terms and spirit of the contract of January 2, 1882, with such minor changes as have been agreed upon since, and is bound to exercise all its powers (including its power to renew the corporate charter) in furtherance of the trust; that the amendments of April 8, 1890, were unauthorized by the proprietary companies and had no effect in discharging or modifying the trust; that complainants are the sole beneficial owners of the property and franchises of the terminal company, and they and their successors and assigns, and such other

railroad companies owning or operating lines of railroad extending to or near to Des Moines as may be admitted to a proprietary interest by consent of complainants and their successors and assigns, are (as between the present parties and their successors) entitled to the sole beneficial use of the terminal property upon paying the cost of the terminal service, including interest upon the mortgage debt and other proper charges, after crediting all revenues derived from other sources, and without profit to the terminal company; and that from and after the expiration of the 1889 agreement complainants were and are entitled to have a similar working arrangement renewed from time to time perpetually: its specific terms to be agreed upon between themselves, or judicially ascertained if they are unable to agree.

Complainants are entitled to a decree establishing the trust, with all appropriate incidental relief. We do not attempt to lay down the particular provisions of the decree. These may be settled by the District Court upon the going down of the mandate.

To consider, next, the status of the Hubbell stock: The title acquired by them from the consolidated company is attacked by the Chicago, Milwaukee & St. Paul on the ground that it was acquired by inequitable means, the Hubbells being at the time in control of the board of directors. It is attacked by the Wabash on the ground that the consolidated company could not in equity pass the stock to the Hubbells and thus impair the interest in the terminal company then held by the St. Louis Company, to which the Wabash has succeeded. We have not found it necessary to consider whether these contentions ought to be sustained as independent grounds of substantive relief, or to what extent they would be affected by the agreement of July 31, 1897, in which the consolidated and the Wabash companies apparently gave recognition to the ownership of the stock by the Hubbells.

We pass this, because convinced that as incidental to the

principal relief granted, and necessary to give full effect to it, complainants are entitled upon equitable terms to have the Hubbell shares (including all "qualifying shares" controlled by them) surrendered for cancellation. Our reasons, briefly, are as follows: The issuance of the stock to the Messrs. Hubbell, and the clause of the 1897 agreement relating to it, already have been considered with other evidence cited by defendants to show an assent to or acquiescence in a modification or abandonment of the trust, and are found insufficient for the purpose. Hence this stock, being like all other stock of the terminal company subordinate to the trust that dominates all its property and franchises, does not represent in the hands of the Hubbells any property interest that they are entitled to set up as against the proprietary companies. When they acquired it, and at all other times material, they themselves were and still are acting in a fiduciary relation to the trust; hence they cannot be heard to assert any right in the stock that is inconsistent with the trust. Manifestly it would be inequitable for them to sell it to a *bona fide* purchaser who might claim (even though unsuccessfully) to hold it exempt from the trust. They may have expected to sell it at a profit to one of the proprietary companies, or with their consent to an outside company or companies qualified to participate in the beneficial use of the terminal property under the trust. But, because of their fiduciary character, they are debarred in equity from trafficking in the trust property in this or any other way, without the express consent of the beneficiaries; they would be bound to account for any profit that might accrue; and any seeming consent on the part of the beneficiaries to waive such profit in advance, not amounting to a termination of the fiduciary relation, is in its nature revocable. The Hubbell stock, therefore, representing no legitimate proprietary interest as against complainants, serves merely to evidence a voting power and to qualify its holders to act as directors

and officers of the terminal company: in short, to participate in a fiduciary employment, without profit beyond compensation for the value of the services rendered. But complainants, being the sole present beneficiaries of the trust and equitable owners of the terminal property, are entitled in equity to a controlling voice in the choice of directors, and especially to have the management of the trustee company, now and hereafter, freed from the domination of a stock interest that represents no property interest in the concerns of the trust. To guard against such alien control and at the same time prevent the danger of the Hubbell stock getting into the hands of *bona fide* holders who might set up rights under it which the present holders are debarred in equity from asserting—in short, to avoid undue jeopardy to the trust—complainants are entitled to have this stock surrendered, retired and canceled, and, until surrendered, to an injunction against any sale, assignment, or transfer of it or any part of it, and against the exercise of any voting power thereon; but upon terms that complainants shall repay to the Messrs. Hubbell the amount they paid to the consolidated Northern and Western Company for it, viz., $25,000, with interest thereon from January 29, 1894. How this should be apportioned, as between complainants, has not been discussed. It may be settled by the District Court.

The issue as to the surplus earnings relates to a considerable accumulation of moneys received by the terminal company from sources outside the proprietary companies. Possibly it may have become a moot question, in view of the result we have reached upon the main matter; but as this is not altogether clear we will dispose of the issue as raised. The agreement of 1889 provided that in making up the net cost of maintenance and operation chargeable to the proprietary lines on a wheelage basis, there should be deducted "the amount if any which other railway companies may be under obligation to pay by virtue of con-

tracts for the use of said property or parts thereof." In the course of time, the terminal company received not only payments from outside railroad companies under contracts technically for participation in the use of the terminal property—which have been credited to complainants and their predecessors according to their wheelage—but, in addition, substantial sums from railroad companies and others for switching and other terminal services and for rent of portions of the property and privileges thereon. Receipts of the latter character were called "surplus earnings." For a period of nearly two years after the making of the 1889 agreement they were included in the credits given to the proprietary companies. This was done at first by the accounting officers of the terminal company under the general direction of its president and executive committee. In February, 1891, the practice was approved by action of the board of directors. About a year later the board resolved that until its further action sums received as rents of real estate and all switching charges should not be thus credited, but should be used as a cash capital "with which to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies." Thereafter the surplus revenues were not again credited to the proprietary companies.

We concur in the opinion of the Circuit Court of Appeals that by the fair construction of the 1889 agreement and the practical construction placed upon it by the parties at the beginning—a construction entirely consonant with the terms of the trust—complainants and their predecessors were entitled to credit for the surplus earnings as they accrued, each company to a share proportioned to its wheelage; and that the 1897 contract did not change this. It was decreed that these earnings belonged to complainants, and that there should be an accounting to ascertain the part due to each upon a wheelage basis. As to this the only question that occurs to us is whether the accounting

should include sums that have been appropriated out of these earnings and devoted to capital expenditures for acquiring additional property and for permanent improvements—sometimes, apparently, with approval of complainants or their predecessors, sometimes without. This would hardly seem to be of serious consequence in view of the result we have reached upon the main issue. It is chiefly of interest to complainants; but they have not argued the question, declaring indeed that the entire controversy as to the surplus earnings would be material only should this court decide that complainants had no proprietary interest in the terminal company. Defendants have assigned error to so much of the decree of the Circuit Court of Appeals as awards the surplus earnings to complainants, but have not furnished data enabling us to draw an accurate line between those that were and those that were not disbursed for permanent improvements, or between those disbursements that were approved and those that were not. Unaided by counsel we hardly could be expected to unravel the somewhat obscure evidence bearing upon these points. We must therefore content ourselves with simply affirming that portion of the decree which relates to the surplus profits.

The main portion of the decree as attacked by complainants must be reversed, and the cause remanded to the District Court for further proceedings in conformity with this opinion.

As to costs, the decrees of the courts below apportioned them one-half to complainants and one-half to the terminal company. We leave this disposition undisturbed. The entire costs in this court should be paid by defendants Frederick M. Hubbell and Frederick C. Hubbell.

No. 66. Decree reversed.

No. 67. Decree affirmed.

Cause remanded to the District Court for further proceedings in conformity with this opinion.